Nigeria

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Acquisitions (from the buyer's perspective)

1 Tax treatment of different acquisitions

What are the differences in tax treatment between an acquisition of stock in a company and the acquisition of business assets and liabilities?

Although the same laws apply, there are significant differences between the tax treatment of an acquisition of stock in a company and an acquisition of business assets and liabilities of that company, as shown in the analysis below.

Acquisition of stocks

There are no transfer taxes in Nigeria on the sale of shares. The Capital Gains Tax Act 2004 (CGT Act) exempts any gains realised by a person from a disposal of shares from capital gains tax. In addition, the Stamp Duties Act 2004 (Stamp Duties Act) exempts instruments for the transfer of shares (share transfer forms) from the payment of stamp duty. In practice, however, parties to share acquisition transactions will usually stamp the share transfer forms at a nominal rate of 1,000 naira (about US$3.30) for the original document and 50 naira (about US$0.30) for each counterpart. Furthermore, where parties enter into share sale and purchase agreements to document the terms of such transfers the parties will usually stamp that agreement, and the rate of stamp duty payable on such agreement can only be determined following an assessment of the agreement by the Commissioner for Stamp Duties (Commissioner). On a related note, if the shares are held in a public company listed on the Nigeria Stock Exchange, certain fees and taxes will be paid in relation to the transfer and the rates for those fees range from 0.06 per cent to 1.35 per cent. The fees are calculated on an ad valorem basis (ie, they are calculated based on the value of the transaction). Fees payable in relation to the transfer of shares in a public listed company are currently exempted from VAT. This exemption, which was granted for a period of five years, took effect on 25 July 2014 and will end on 24 July 2019.

Business assets

The transferor of business assets has an obligation, unless the transferor is among the entities exempted from the tax, to pay capital gains tax on any gains realised from a disposal of the assets at the rate of 10 per cent.

The Stamp Duties Act also requires stamp duty to be paid on instruments executed in connection with the transfer of such assets, regardless of where such instruments are located at the time they are executed. The ad valorem rate at which stamp duty is assessed on such agreements is 1.5 per cent of the value of the transaction, with the Commissioner having the final say in relation to the assessment. The obligation to pay stamp duty is imposed on the purchaser of the business assets. Stamp duty must be paid within 40 days after the date of execution of the instrument, in the case of instruments liable to stamp duty at a nominal rate, and within 30 days after execution in the case of instruments liable to stamp duty at an ad valorem rate. Where an instrument is executed outside Nigeria, stamp duty on such instrument must be paid within thirty days from the date after the instrument is first brought into Nigeria. The Stamp Duties Act further provides that failure to stamp an instrument will render such instrument inadmissible as evidence in any civil proceedings before any Nigerian court.

The Value Added Tax Act 2004 (as amended) (VAT Act) imposes VAT on the value of the consideration for the supply or purchase of goods and services in Nigeria except where those goods and services are expressly exempted from the tax. The goods exempted from VAT include plants, machinery and equipment purchased for utilisation of gas in downstream petroleum operations; farming machinery and farming transportation equipment; and tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes. Consequently, where some of the business assets to be acquired are among those liable to VAT, the buyer will have an obligation to pay VAT on the consideration payable for such assets at the rate of 5 per cent. What this means is that the seller of the business assets will have an obligation to add VAT to the consideration, collect the VAT from the buyer and remit same to the Federal Inland Revenue Service (FIRS) within 21 days from the date of the transaction. There is currently no VAT on the transfer of real estate and intangible properties in Nigeria.

If the business assets include land then in addition to the payment of stamp duty and capital gains tax, other fees will be payable in connection with such transfer, to the respective governments of the Nigerian states in which such land is located. The fees vary across the 36 states of Nigeria. In Lagos State, for instance (Nigeria's main commercial centre), other fees payable in connection with a transfer of land amount in the aggregate to 3 per cent of the assessed fair market value of the property. This is broken down into:

- governor's consent fees – 1.5 per cent;
- capital gains tax – 0.5 per cent;
- stamp duties – 0.5 per cent; and
- registration fees – 0.5 per cent.

2 Step-up in basis

In what circumstances does a purchaser get a step-up in basis in the business assets of the target company? Can goodwill and other intangibles be depreciated for tax purposes in the event of the purchase of those assets, and the purchase of stock in a company owning those assets?

Step-up in basis

We understand step-up in basis to mean the readjustment of the open market value of an asset that has appreciated for tax purposes following the inheritance of that asset by another person. Although this rule is not expressly stated to be applicable under Nigerian law, the CGT Act states that on the death of an individual, any of his or her assets shall be deemed to be disposed of by him or her at the date of his or her death and acquired by his or her personal representatives, or other persons on whom the asset devolved, for a consideration equal to: if the amount of the consideration for which the asset was purchased by way of a bargain made at arm's length is ascertainable, that amount; and in any other case, the market value of the assets at that date. However, any gains that may accrue to the personal representatives, or other person on whom the asset devolved, shall not be chargeable to capital gains tax. This provision applies to inheritance and does not apply to an acquisition of the business assets of a company by a person or an entity.

In relation to the acquisition of the business assets of a company by merger, takeover, acquisition or restructuring, the Companies Income

Tax Act 2004 (as amended) (CITA) requires the parties to obtain clearance from the FIRS with regard to any capital gains tax that may be due on the disposal of such assets where the parties to such transaction are related parties. In giving its clearance, the FIRS will usually permit that the assets be transferred at their tax written down value, and not at their current fair market value, which will eliminate any liability to capital gains tax as the transferor would not have realised any gains from such a disposal. In addition, when granting a clearance, the FIRS may impose certain conditions such as the provision of a guarantee or security satisfactory to the FIRS for the payment of any taxes due or to become due by the company selling or transferring its trade or business. If the assets are transferred at their current market value, any gains realised by the transferor from that disposal will be liable to capital gains tax at the rate of 10 per cent.

Goodwill

Under Nigerian law, gains realised from the transfer of goodwill are liable to capital gains tax. There are currently no provisions in the tax laws that allow a taxpayer to deduct or amortise the cost of acquiring goodwill. Therefore, if goodwill is subsequently disposed of by the acquiree, any gains will be liable to capital gains tax in accordance with the provisions of the CGT Act. Regarding depreciation, goodwill cannot be depreciated for tax purposes in the event of the purchase of the assets to which it is attached. The FIRS' position, as expressed in one of its circulars titled 'Tax Implications of the Adoption of the International Financial Reporting Standards (IFRS)' 2013, is that goodwill impairment charged to the income statement shall be disallowed for tax purposes; goodwill acquired shall not form part of the qualifying capital expenditure on which capital allowances can be claimed on an asset; and capital allowances shall not be granted on purchased goodwill. Gains arising from the disposal of a cash-generating asset with goodwill will be subject to capital gains tax. In addition, gains or losses made from the disposal of a cash-generating asset or subsidiary with goodwill component will be subject to capital gains tax in the hands of the parent company, but where the acquisition is fully share based (ie, the acquisition of shares in an asset owning company) there shall be no tax implication.

Intangible assets

The FIRS permits the cost of acquiring intangible assets that meet the requirements of qualifying capital expenditure (ie, wholly, exclusively, necessarily and reasonably incurred in the purchase of the asset) to be capitalised and depreciated during the useful life of the intangible asset. For instance:

- software that forms an integral part of a computer will be treated as qualifying plant expenditure while stand-alone software will be treated as an intangible asset and the cost shall be amortised over the useful life of the asset;
- the cost of acquiring a customer list acquired as an intangible asset and used to generate taxable profit for the company shall be tax deductible through amortisation over the useful life, but if the intangible assets have an indefinite life then no tax deduction would be allowed; and
- the cost of a franchise shall be expensed over the useful life of that franchise. In relation to capital gains tax, gains realised from a disposal of intangible assets shall be liable to capital gains tax.

3 Domicile of acquisition company

Is it preferable for an acquisition to be executed by an acquisition company established in or out of your jurisdiction?

Shares

With fairly limited exceptions, foreign registered companies are permitted to hold up to 100 per cent of the shares in Nigerian companies. These exceptions relate to companies operating in the oil and gas and advertising sectors of the Nigerian economy, where Nigerians are required to hold a majority interest, and also in relation to companies that are engaged in the production of arms, ammunition, narcotic drugs and psychotropic substances, where foreign companies are not permitted to have any shareholding at all. Therefore, if an acquisition will only be of shares in a Nigerian company, it is preferable to set up an acquisition company in a foreign jurisdiction. In that case, the dividends payable to such a foreign company will only be liable to a withholding of tax and the tax withheld, when remitted to the FIRS, will be the final tax due on that income in Nigeria in the hands of the foreign investor. On the other hand, if the share acquisition company is set up in Nigeria, any dividends received by the acquisition company from the target company would be franked investment income and would not be subject to the imposition of companies income tax as part of the profits of the acquisition company. Where the acquisition company is to pay out the dividends received from the target to its shareholders (ie, redistributed), and where the acquisition company would be required to account to the FIRS for the tax it is required to withhold from such dividends, the acquisition company may set off any tax withheld by the target company before the target company paid the dividend to the acquisition company against the amount of tax which the acquisition company has to remit to the FIRS. Although any dividend that the acquisition company receives from the target company will be franked investment income and, therefore, not liable to further tax, the CITA provides that where a dividend is paid out by the acquisition company as profit on which no tax is payable due to no total profits, or total profits that are less than the amount of dividend that is paid, the acquisition company shall be charged to tax at the rate of 30 per cent as if the dividend is the total profits of the acquisition company for the year of assessment to which the accounts, out of which the dividend is declared, relate. What this means is that the CITA imposes what, for want of a better term, can be described as an 'excess dividend tax'. It is this excess dividend tax that makes it not tax efficient to set up the acquisition company in Nigeria.

It is also preferable for an acquisition company to be established outside Nigeria and in a country that has a double tax treaty with Nigeria. This is because the dividends payable to the non-resident company will be subject to the withholding of tax at the rate of 7.5 per cent instead of 10 per cent.

Business assets

An acquisition of business assets must be executed by an acquisition company incorporated in Nigeria. This is because under section 54 of the Companies and Allied Matters Act 2004, any foreign company that seeks to carry on business in Nigeria is required to take steps to incorporate as a separate entity in Nigeria. The ownership of business assets in Nigeria by a foreign entity would, in our opinion, be deemed to be doing business in Nigeria. Therefore, if a foreign registered company acquired business assets in Nigeria without incorporating a subsidiary in Nigeria, that would breach the above provision. The section further provides that any act done in contravention of the provision shall, among other things, be void.

4 Company mergers and share exchanges

Are company mergers or share exchanges common forms of acquisition?

The acquisition of shares in a Nigerian company is the most common form through which acquisition transactions are executed in Nigeria. This is because, as we have indicated in our response to question 1 above, any gains realised from a disposal of shares are not liable to capital gains tax. Mergers are also sometimes used to acquire the business assets of another entity. With clearance from the FIRS, a merger can also help parties eliminate the payment of capital gains tax and stamp duties in appropriate cases. In addition, the exchange of shares pursuant to a merger is also not liable to capital gains tax. However, if the business assets include land held by the company that will be dissolved following the merger, registration fees will be paid to register the surviving entity as the owner of that land at the relevant state's land registry.

5 Tax benefits in issuing stock

Is there a tax benefit to the acquirer in issuing stock as consideration rather than cash?

There are no tax implications if the consideration paid in a share acquisition transaction is shares instead of cash. In relation to the acquisition of business assets, there are also no tax implications to the acquirer in issuing stock as consideration (rather than cash) in the acquisition of business assets. This is because if the acquisition is in relation to shares, any gains made will not be liable to tax regardless of how the consideration is paid by the acquirer. On the other hand, if the acquisition is of business assets, then the applicable taxes will still be due, regardless of the form that the consideration takes.

6 Transaction taxes

Are documentary taxes payable on the acquisition of stock or business assets and, if so, what are the rates and who is accountable? Are any other transaction taxes payable?

As already indicated in our response to question 1, stamp duty and VAT (where applicable) are payable on the agreements and consideration for the acquisition of business assets while capital gains tax is payable on any gains realised by the seller from such disposal. These taxes will be eliminated if the acquisition is done through a merger sanctioned by the court and cleared by the FIRS. No VAT or capital gains tax is payable on the acquisition of stocks. Although exempted from stamp duty, parties will usually stamp share transfer forms at a nominal rate while the stamp duty payable on a share sale and purchase agreement can only be conclusively determined following an assessment of the document by the Commissioner. Stamp duty is payable by the purchaser of the business assets while capital gains tax on any gains is payable by the seller. Although VAT is payable by the acquirer of the assets, the seller has the statutory obligation to collect the tax from the buyer and remit same to the FIRS.

7 Net operating losses, other tax attributes and insolvency proceedings

Are net operating losses, tax credits or other types of deferred tax asset subject to any limitations after a change of control of the target or in any other circumstances? If not, are there techniques for preserving them? Are acquisitions or reorganisations of bankrupt or insolvent companies subject to any special rules or tax regimes?

Net operating losses, tax credits or other types of deferred tax asset are generally not subject to any limitations after a change of control of the target or in any other circumstances except in insolvency. However, under Nigerian law, the net operating losses made by a company (except agricultural companies) within the first four years from the date of commencement of business can only be carried forward for another four years while losses incurred by a company thereafter (and those of agricultural companies) are permitted to be carried forward indefinitely until fully absorbed by the company from its future profits. Any impairment losses charged to a company's income statement are not allowed for tax purposes. Where a company becomes insolvent and it is wound up, the losses shall cease.

An acquisition or reorganisation of a bankrupt or an insolvent company is not subject to any special rules or tax regimes under Nigerian law.

8 Interest relief

Does an acquisition company get interest relief for borrowings to acquire the target? Are there restrictions on deductibility where the lender is foreign, a related party, or both? Can withholding taxes on interest payments be easily avoided? Is debt pushdown easily achieved? In particular, are there capitalisation rules that prevent the pushdown of excessive debt?

Interest

There are no specific interest reliefs available to parties that have taken on borrowings in connection with an acquisition. In the event, however, that an acquisition company is a Nigerian company that has obtained a foreign loan for the acquisition, and that loan meets both the moratorium and tenor requirements prescribed in the CITA, the interest payments on such a loan may be partly or wholly exempted from the withholding of tax. A 'foreign loan', for purposes of the CITA, is one: granted to a Nigerian company by a foreign company using funds that the foreign company brought into Nigeria from any territory outside Nigeria or any loan granted to a Nigerian company by that foreign company in any territory outside Nigeria; and granted in a currency other than the Nigerian currency. The tax exemptions applicable to foreign loans are as follows:

Repayment period including moratorium	Grace period	Tax exemption allowed
Above seven years	Not less than two years	100 per cent
Five to seven years	Not less than 18 months	70 per cent
Two to four years	Not less than 12 months	40 per cent
Below two years	Nil	Nil

This incentive is, strictly speaking, not an incentive for the acquisition company but is an incentive for the foreign lender. What it means is that where an acquisition company has an obligation to gross up interest payments to a lender on account of the tax required to be withheld from such interest, the acquisition company will have no obligation to do so (ie, gross up the interest payment) if the terms of the loan agreement meet the requirements of the CITA.

There are generally no restrictions on the deductibility of interest, regardless of whether the lender is a foreign company, a related party, or both. Where the lender is a related party, however, the FIRS requires that the rate of interest should reflect the rate at which the borrower should have been able to obtain a similar loan on transactions entered into on an arm's-length basis. Where the FIRS determines that the rate of interest agreed by the parties does not satisfy the arm's-length test, it will disregard the rate agreed to by the parties, impose a rate that it thinks the borrower should have been able to obtain the loan in a transaction entered into at arm's length, and impose tax on the borrower accordingly.

Unless a lending transaction comes within those specifically exempted from tax, the requirement to withhold tax on interest payments, and to remit the tax withheld to the relevant tax authority, cannot be avoided.

Debt pushdown

Debt pushdown can be achieved through a merger of a borrower and another company, provided such pushdown does not result in the target company providing 'financial assistance' to the borrower. This is because under Nigerian law, it is unlawful for a company to give financial assistance (which includes a gift, guarantee, security or indemnity, loan, any form of credit and any financial assistance given by a company), directly or indirectly, for the acquisition of its own shares. There will be financial assistance if the borrower had used the loan that is sought to be 'pushed down' to the other company to acquire shares in the company that the debt is being pushed down to.

There are no thin applicable capitalisation rules that prevent the pushdown of excessive debt in Nigerian companies. However, some sector-specific regulators (such as the banking and insurance regulators) may object to the pushdown of excessive debts into the entities that they regulate.

9 Protections for acquisitions

What forms of protection are generally sought for stock and business asset acquisitions? How are they documented? How are any payments made following a claim under a warranty or indemnity treated from a tax perspective? Are they subject to withholding taxes or taxable in the hands of the recipient?

The forms of protection that parties generally seek and obtain in most stock and business asset acquisitions include representations, undertakings, warranties and indemnities. We have also seen parties enter into a deed of tax covenants. These are usually documented in the acquisition and transaction agreements.

There is no requirement to withhold taxes on payments made in respect of claims for breach of warranties or under indemnities. If the recipient of payments in respect of such claims is a Nigerian company, such payments will, however, be taxable in the hands of such a recipient at the applicable rates.

Post-acquisition planning

10 Restructuring

What post-acquisition restructuring, if any, is typically carried out and why?

A scheme of merger, scheme of arrangement or reduction in share capital are the post-acquisition restructuring mechanisms that we typically see used by companies in Nigeria. The type of post-acquisition restructuring and the mechanisms to be adopted by a company will depend on the circumstances of each company and the objective that its management intends to achieve. For instance, the rationale for a post-acquisition restructuring may range from need for capital reconstruction or reconstitution, to streamline a company's structure for efficient management and reduction of cost, to eliminate or minimise tax leakages, or to comply with a regulatory requirement.

11 Spin-offs

Can tax neutral spin-offs of businesses be executed and, if so, can the net operating losses of the spun-off business be preserved? Is it possible to achieve a spin-off without triggering transfer taxes?

Other than a spin-off that is executed through an acquisition of shares, there is no other method to execute a completely tax neutral spin-off of businesses under Nigerian law. The available spin-off arrangements (such as a scheme of merger and a scheme of arrangements) can only help to minimise the applicable taxes and fees. In relation to any arrangement (by a merger, transfer, takeover or restructuring) that involves a transfer of business assets to another company, the CITA requires the company that wishes to transfer its assets to another company to obtain a clearance from the FIRS in relation to the capital gains tax that may be due on any gains realised from a disposal of such assets. As we have already indicated above, in giving its clearance in respect of related parties transfers, the FIRS will usually permit that the assets be transferred at their tax written down value, and not at their current fair market value. Where this is the case, it will eliminate any capital gains tax liability as the transferor would be deemed not to have realised any gains from a disposal of the assets.

Where a spin-off is executed through the contractual acquisition of business assets, one of the ways to mitigate any capital gains tax liability is through a rollover relief. Rollover relief is available to any company that has sold its business assets and used the whole proceeds to acquire new assets (or an interest in new assets) to be used for the purposes of the trade in replacement of the old assets. What this means is that if any gains were realised from the disposal of the assets, there will be no obligation to pay capital gains tax on such gains. However, a company will only be entitled to claim a rollover relief if the new assets (or interest therein) are acquired, or an unconditional contract for the acquisition is entered into, within the period beginning twelve months before, and ending twelve months after, the disposal of the old assets. The consideration that has been applied to acquire the new assets will be treated for the purposes of capital gains tax as if the consideration for the disposal of the old assets were (if a greater amount or value) of such amount as would secure that on the disposal neither a loss nor a gain accrues to the seller, and as if the amount or value of the consideration for the acquisition of the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of the old assets over the amount of the consideration that the seller is treated as receiving. The rollover relief shall not apply if only part of the amount or value of the consideration for the disposal of the old assets is applied to purchase the new assets. However, if all of the amount or value of the consideration except a part of it that is less than the amount of the gain (whether chargeable gain or not) accruing on the disposal of the old assets is to be applied to purchase the new assets, then the rollover relief shall apply. The relief will also not be available if the proceeds realised from a disposal are not used to purchase new assets or are used to purchase new assets outside the period permitted by law.

Regarding losses, under Nigerian law, losses do not pass with the business assets under a contractual asset sale. Losses will remain with the seller as its tax assets. In the case of a merger, the surviving entity could inherit the unabsorbed losses and capital allowances of the merged companies if it is proved that the new business is a reconstituted company. Therefore, where a reconstituted company is carrying on the same business previously carried on by the company that it has merged with, and it is proved that the losses have not been allowed or utilised against any assessable profits or income of the other company for any previous year, in that case the amount of unabsorbed losses shall be deemed to be losses incurred by the reconstituted company in its trade or business during the year of assessment in which the business commenced.

A spin-off of business assets carried out through a scheme of arrangement or merger approved by the court will not trigger transfer taxes such as VAT and stamp duties. However, if the business assets include land, registration fees will be paid to have the land registered in the name of the surviving entity. On the other hand, a contractual spin-off of business effected through the acquisition of shares in the company that owns the assets will not trigger any transfer taxes.

12 Migration of residence

Is it possible to migrate the residence of the acquisition company or target company from your jurisdiction without tax consequences?

Under Nigerian law, it is not possible to change the residence of a company incorporated in Nigeria.

13 Interest and dividend payments

Are interest and dividend payments made out of your jurisdiction subject to withholding taxes and, if so, at what rates? Are there domestic exemptions from these withholdings or are they treaty-dependent?

Nigerian tax laws provide for the withholding of tax on interest and dividend payments due to any person or company (whether or not resident in Nigeria), unless such payments are specifically exempted from tax. The rate at which tax is withheld from dividends and interest is 10 per cent. Where the recipient of the dividend or interest is resident in a country with which Nigeria has entered into a double taxation agreement, the rate at which tax will be withheld from the dividend or interest is reduced from 10 per cent to 7.5 per cent. Nigeria currently has double taxation treaties with the United Kingdom, Belgium, Canada, China, the Czech Republic, France, the Netherlands, Pakistan, the Philippines, Romania, Slovakia and South Africa.

In the case of a non-resident person or company, the tax withheld from dividend and interest payments shall, when remitted to the FIRS, be regarded as the final tax due on that income from such non-resident person or company. Taxes are required to be withheld and remitted in the currency of a transaction.

Certain dividend and interest payments are exempted from tax. These include dividends paid by oil and gas exploration companies, as well as dividends paid by companies that have been granted 'pioneer status' (ie, a tax-exempt status granted to Nigerian companies that are engaged in certain businesses). Interest payments on foreign loans that have a term of at least seven years plus one day and a grace period on the payment of principal and interest are also wholly exempt from tax and so is the interest earned on Nigerian government bonds and treasury bills, and the interest on corporate bonds. Similarly, any interest or dividend that is received by a Nigerian company from offshore sources, and brought into Nigeria through a Nigerian bank, is exempted from tax.

14 Tax-efficient extraction of profits

What other tax-efficient means are adopted for extracting profits from your jurisdiction?

There are various methods of extracting profits from Nigeria with minimal or reduced taxes within the ambit of existing tax laws. For example,

Update and trends

The federal government of Nigeria recently constituted and inaugurated a committee for the review of the national tax policy as part of its efforts to diversify Nigeria's economy. However, the committee is yet to commence operation as of the time of writing. There is nothing else to suggest that any changes to Nigerian tax laws, as they relate to inbound investments, will soon be forthcoming.

a foreign shareholder may put minimal equity in a company and fund the company's operations with shareholder loans. If such a loan meets the requirements as discussed in question 8 above, the interest payment may be partly or wholly exempt from the withholding of tax. In addition, the interest payment on that loan will be a deductible expense for the company. A foreign shareholder could also invest in a Nigerian company (by debt or equity investment) through an entity incorporated in a country with which Nigeria has entered into a double taxation agreement. The rate at which tax will be withheld on any interest or dividend payments to such a company will be reduced from 10 per cent to 7.5 per cent. Another option would be for a shareholder to invest in companies that have certain tax incentives such as a company that has been granted a pioneer status certificate or in a gas utilisation company. Such company will have a corporate tax exemption of up to five years, favourable treatment in respect of capital allowances and any dividend distributed by a pioneer company within the pioneer period will not be liable to a withholding of tax. In addition to the above, gains realised from a disposal of shares will also not be liable to capital gains tax.

Disposals (from the seller's perspective)

15 Disposals

How are disposals most commonly carried out – a disposal of the business assets, the stock in the local company or stock in the foreign holding company?

Depending on the nature of the arrangements and on how a company is structured, the disposal of businesses is usually carried out through a contractual sale of the business assets, sale of the stock in the local company that owns the business assets, or sale of the stock in the local or foreign parent company of the Nigerian company that owns the assets.

16 Disposals of stock

Where the disposal is of stock in the local company by a non-resident company, will gains on disposal be exempt from tax? Are there special rules dealing with the disposal of stock in real property, energy and natural resource companies?

Any gains realised by a non-resident company from the disposal of stocks in a Nigerian company will be exempt from tax in Nigeria. This is because the tax exemption applicable to any gains realised from a disposal of shares applies to both resident and non-resident shareholders.

Although there are no special rules in relation to taxes while dealing with the disposal of stocks in a company engaged in the business of energy and natural resource, if the disposal of the stocks is in an oil and gas exploration and production company then, depending on the proportion of the shares that are to be sold, such a disposal will require the consent of the minister in charge of petroleum resources. There are also no special rules that are applicable to the disposal of stocks in a company that is engaged in the real property business.

17 Avoiding and deferring tax

If a gain is taxable on the disposal either of the shares in the local company or of the business assets by the local company, are there any methods for deferring or avoiding the tax?

As we have already indicated above, there is no tax in Nigeria on gains realised from a disposal of shares. In relation to a contractual disposal of business assets, there is a rollover relief in respect of capital gains tax if the proceeds of the disposal are used to purchase business assets to replace those disposed of. Another method is to obtain a clearance from the FIRS, but this will require that the assets be transferred at their tax written down value. See question 11 for details.

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