

FIRS ISSUES INFORMATION CIRCULAR ON THE CLAIM OF TAX TREATY BENEFITS IN NIGERIA



As part of its efforts to implement the OECD's Base Erosion and Profit Shifting action plan, the Federal Inland Revenue Service (the "FIRS") recently issued information circular No. 2019/03 on the Claim of Tax Treaties Benefits in Nigeria (the "Circular"), pursuant to its powers under the FIRS (Establishment) Act 2007 and the provisions of other enabling laws. The Circular was issued with a view to ensuring the effective and correct implementation of the provisions of the double taxation agreements ("DTA") between Nigeria and other countries, and enlightening taxpayers and the general public on existing tax treaty benefits and the procedure to be followed in accessing such benefits. Effective 1st January 2020, any taxpayer that wishes to take advantage of any of the benefits in the DTAs in any year of assessment is required to comply with the procedure set out in the Circular.

Nigeria currently has effective DTAs with the United Kingdom, Belgium, Canada, China, the Czech Republic, France, the Netherlands, Pakistan, the Philippines, Romania, Spain, Slovakia and South Africa. These treaties have been modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, which Nigeria signed in 2017.

What treaty benefits are available?

The following are the benefits and reliefs available under the DTAs that Nigeria is a signatory to:

- relief from double taxation, in form of tax credits or deductions of foreign tax paid from tax payable in Nigeria by a Nigerian resident in order to eliminate double taxation.
- treaty tax rates to foreign airlines or shipping companies or exemption of their income from tax.
- treaty withholding tax rates for passive income or fees for technical service derived from Nigeria by residents of a treaty partner.
- access to Mutual Agreement Procedure (MAP) for dispute resolution.
- non-discrimination in taxation matters.

What conditions must be satisfied to enjoy treaty benefits?

In order to claim the treaty benefits set out above, a taxpayer must satisfy the following conditions:

- the taxpayer must be resident in Nigeria, the country of the treaty partner, or both Nigeria and the country of the treaty partner;
- the taxpayer must be liable to tax in the treaty country of which he is a resident;
- the income in question is not exempted from tax in Nigeria;

- the tax for which that individual is seeking benefit is covered by the treaty;
- the benefit is not specifically excluded under the treaty; and
- the benefit is claimed within the time stipulated by the treaty or domestic laws.

A taxpayer could however be denied claim to treaty benefits where, based on facts and circumstances, it is discovered that his/her residency in one of the treaty countries was principally for the purpose of accessing that treaty benefit (treaty shopping), or that one of the principal purposes of the arrangement of a transaction or business is to take advantage of the treaty or abuse its provisions.

What is the Procedure for claiming treaty benefits in Nigeria?

A taxpayer that has met the eligibility criteria for tax treaty benefits may apply for such benefits in accordance with the procedure set out in the Circular.

A formal application, addressed to the Executive Chairman, for the attention of the Director, Tax Policy and Advisory Department of the FIRS must be submitted together with the following documents:

- a duly completed certificate of residence ("Certificate") with the official stamp/seal of the relevant revenue authority. There are two types of Certificates – (i) Certificate for Nigerian residents, which is to be completed by a Nigerian resident seeking to make treaty claims in another country that has a DTA with Nigeria which must be endorsed by the FIRS; and (ii) Certificate for non-residents, which is to be completed by a non-resident seeking to access treaty benefits from Nigeria and endorsed by the tax authority of the taxpayer's country of residence; and
- evidence of foreign tax paid or evidence to support the income on which the treaty rate is being sought for Nigerian residents and non-residents respectively.

Upon receipt of an approval or ruling for claim of tax treaty benefits from the FIRS, the taxpayer is expected to apply the credit or ruling when computing their taxes and submit the approval or ruling when filing their returns to the appropriate tax authority. In the case of withholding tax ("WHT") treaty rate, the taxpayer must submit a copy of the approval or ruling to the WHT collecting agent (e.g. Government ministries, departments, agencies and parastatals, companies, statutory bodies, institutions and other withholding tax (WHT) collecting agents of FIRS etc.), to reflect the rate in the WHT deduction.

This article is for general information purposes only and does not constitute legal advice. If you have any questions or require any assistance or clarification on how the Circular applies to you or your business, please contact: taxteam@uubo.org.