

# *Nigeria joins the OECD Convention on Mutual Administrative Assistance in Tax Matters*

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## *In brief*

The Nigerian government recently ratified the Convention on Mutual Administrative Assistance in Tax Matters (“The Convention”). The Convention is an initiative of the Organisation for Economic Co-operation and Development (“OECD”) to facilitate effective exchange of information on tax matters between the tax jurisdictions of the signatory countries. Nigeria signed the Convention in 2013 and ratified it in April 2015.

The ratification of the Convention is a significant step in the administration of taxes in Nigeria, as it may give the Federal Inland Revenue Service (“FIRS”) new lines of enquiry about the tax affairs of multinational companies (“MNC”) operating in Nigeria.

## *In detail*

### *Background*

In January 1988, the Convention on Mutual Administrative Assistance in Tax Matters was jointly developed by the Organisation for Economic Cooperation and Development and (OECD) and the Council of Europe. In 2010, the Convention was amended to align with international standards on information exchange for tax purposes and opened to all countries in order to make it easier for them to benefit from a co-operative tax environment. The amended convention came into force on 1 June 2011, with over 60 countries ratifying the Convention as at 8 April 2015. Nigeria signed the Convention on 29 May 2013 and ratified it in April 2015. Nigeria’s

participation is expected to take effect three months after the deposition of the instrument of ratification with the OECD. Nigeria is in the process of completing the deposition of the instrument with the OECD.

### *Purpose of the Convention*

The Convention was developed to facilitate international cooperation among tax authorities in order to tackle tax avoidance and evasion. The Convention aims to foster administrative assistance to enable governments enforce their tax laws while respecting the rights of taxpayers. The aim of the Convention for the tax authorities in participating jurisdictions are:

- i. exchange of information, including simultaneous tax examinations and participation in tax examination abroad;
- ii. assistance in recovery of tax claims; and
- iii. assistance in respect of service of documents.

### *Taxes Covered by the Convention*

A wide variety of taxes covered in the Convention include;

- taxes on income or profit,
- capital gains tax, including taxes on immovable property,
- net wealth tax,

- estate, inheritance or gift tax,
- general consumption taxes – including value added tax and sales taxes,
- specific taxes on goods and services such as excise taxes,
- taxes on the use or ownership of motor vehicles or movable property.

The Convention also covers compulsory social contributions payable to the government or institutions established under public law.

### **Exchange of information**

The Convention requires Nigeria and other participating jurisdictions to exchange information relevant for enforcing the domestic tax laws of the jurisdictions that are party to the convention. Apart from providing information available in tax files, participating jurisdictions are required to take all relevant steps to provide other signatory countries, with necessary information, upon request, automatically or spontaneously.

#### **Exchange of information on request**

Under this approach, one country (“Applicant State”) may request for tax information relating to a particular case from the tax file of another country (“Requested State”). Where the information available in the tax files of the Requested State is not sufficient, it shall take all relevant measures to provide the Applicant State with the information requested.

#### **Automatic Exchange of information**

This refers to information exchanged periodically on an automatic basis, without any prior request. Automatic

exchange of information requires additional procedures to be mutually agreed between the countries that intend to exchange information automatically. After the relevant procedures are in place, parties are expected to automatically transmit information that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by the Convention.

#### **Spontaneous exchange of information**

According to the Convention, a jurisdiction is obliged to provide information to another participating jurisdiction without the latter requesting for it. This form of information exchange is beneficial where a jurisdiction has knowledge of tax affairs of any MNC that may result in a tax loss in another jurisdiction, reduction of taxes in one State that may increase taxes in the other jurisdiction, or a party supposes that there are tax savings by MNC resulting from artificial transfer of profits within the group.

In effect, spontaneous exchange of information may place focus on the tax planning activities of MNCs without any formal request. It does not require a mutual agreement between both countries.

#### **Simultaneous Tax Examination**

The Convention also encourages participating jurisdictions to assist one another (upon agreement) in carrying out tax examination for mutual interest and for the purpose of exchanging relevant information. Furthermore, the tax authority of a Requested State, upon application from the Applicant

State, may agree that a representative of an Applicant State be present during relevant tax examination of particular taxable persons in its jurisdiction.

Simultaneous tax audit across different jurisdictions is aimed at eliminating challenges faced by tax authorities during a tax audit due to the incomplete disclosure of relevant information relating to affiliated entities.

Such examination may result into greater compliance burden to MNC as they have to deploy more resources for the purpose of simultaneous tax audits.

#### **Other aims for tax authorities**

1. At the request of the Applicant State, the Requested State shall take the necessary steps to recover tax claims of the Applicants State in its territory.
2. At the request of the Applicant State, the Requested State may implement procedures in service of documents, relating to judicial decisions, addressed to a taxpayer in the Requested State jurisdiction.

#### **Implications for FIRS**

The Transfer Pricing Unit of the FIRS has identified inadequate information in respect of transactions and tax returns of non-resident companies (“NRC”) as a challenge to assessing them to taxes. As soon as the Convention comes into force, the FIRS will in theory have better access to information that it would previously not have had due to limitation in its authority

to act outside Nigerian jurisdiction.

With the Convention, the FIRS can work with a wider scope of cooperation with more than 60 other jurisdictions. Some of the jurisdictions include most of the OECD member countries, some emerging economies (like India, Argentina) and some tax havens like Bermuda, British Virgin Island, Cayman Islands, Gibraltar, Isle of Man etc.

Also, as the FIRS will be required to share information with other signatories to the Convention, the FIRS needs to invest more in information management systems that are robust and flexible. The FIRS will also need to build its in-house capacity for the purpose of simultaneous tax examinations and participating in tax audits abroad.

### ***Implications for taxpayers***

Multinational taxpayers need to be aware that the FIRS can

acquire access to more information on the group operations and financials going forward.

Similarly, the FIRS may have the right to request and receive the Country by Country Report (“CbCR”) from participating countries which have taxpayers with Nigerian subsidiaries. The CbCR is information relating to the global allocation of the MNC’s income and taxes. The CbCR will be prepared as part of transfer pricing documentation from 2016 in line with the OECD transfer pricing guidelines. Hence, increased access to the CbCR will bring under greater scrutiny, the structure and value allocation of taxpayers.

### ***The takeaway***

The ratification of the Convention is a significant step in the administration of taxes in Nigeria. It will foster cooperation

between the FIRS and other tax authorities in dealing with tax evasion and avoidance.

The Convention indicates that the FIRS is interested in determining the level of transparency regarding tax affairs of MNC. Consequently, taxpayers are to give greater attention to consistency of information across the entire group since they may be under greater scrutiny by the FIRS even though inconsistencies may not be intentional.

Also, the Convention will address some of the challenges anticipated with respect to administration of taxes for Non Resident Companies (NRC). For example, verification of foreign tax treatment of shared costs and expenses incurred abroad but attributable to the operations of the NRC in Nigeria.

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## ***Let’s talk***

For a deeper discussion of how this issue might affect your business, please contact:

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