Nigeria ratifies Tax Treaty with Spain

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Introduction

On 26 January 2018, the Nigerian government announced the ratification of the Nigeria-Spain avoidance of double taxation agreement (DTA).

The DTA was initially negotiated in June 2009 and presented to the National Assembly for ratification in 2016, alongside DTAs with Sweden and South Korea. Ratification involves the passage of a treaty by the National Assembly so that it forms part of the country's domestic law.

Overview

Nigeria's DTAs are typically modelled after the Organisation for Economic Cooperation and Development's (OECD) model tax convention (MTC). Among other things, the MTC prevents double taxation and double non-taxation, allocates taxing rights between countries, encourages settlement of international tax disputes, etc.

In December 2016, OECD released an updated version of the MTC which includes measures aimed at reducing base erosion and profit shifting (BEPS) as well as harmful tax practices.

In order to effect the changes in the updated MTC to existing DTAs, OECD designed a multilateral instrument (MLI) to allow countries make concurrent amendments to all existing and prospective DTAs. Nigeria became a signatory to the MLI in August 2017 and indicated the changes it would adopt from the MLI. See Nigeria's MLI position.

As the Nigeria-Spain DTA is modelled after the old MTC, the provisions in the DTA are expected to be automatically updated once the MLI is ratified by the National Assembly.

Some provisions in the DTA

- ***Entry into force:*** The DTA comes into force three months after both countries have notified each other of ratification by their respective parliaments.
- ***Scope***: the DTA will apply to all taxes on income and capital gains.
- ***Permanent establishment (PE) threshold:*** the threshold, in the case of employees providing services, is 6 months in any 12-month period.
- ***Passive income:*** *Dividends:* the reduced tax rate is 7.5% provided the recipient is beneficial owner and has a minimum of 10% shareholding of the company making the distribution.
- ***Interest:*** interest payable to a beneficial owner will be subject to a maximum tax rate of 7.5%.
- ***Royalties:*** a tax rate of 7.5% is imposed on royalties in the case of companies. A maximum rate of 3.75% is imposed on royalties for non-corporate beneficial owners.

The takeaway

Although Nigeria's DTAs with Qatar, South Korea, Sweden, Singapore and UAE – which were all listed for amendment in Nigeria's position at the time of signing the MLI – are yet to be ratified, the announcement of the Nigeria-Spain DTA expands Nigeria's treaty network to 13.

Some of the potential changes to the Nigeria-Spain DTA (based on Nigeria's MLI position) include amendments to the definition of PE to prevent abuse through commissionaire arrangements, qualify existing PE exemptions (specific activity exemption), and introduction of a principal purpose test to prevent treaty shopping etc.