

PwC Insights on FIRS Circular on Taxation of Seafarers and Platform Workers



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Background

The Federal Inland Revenue Service (FIRS) released an Information Circular on the taxation of Seafarers and Platform workers. This Circular seeks to provide guidance on their residence and taxation in Nigeria.

Circular highlights

The circular defines certain terms and analyses them using illustrations. Below are highlights of the FIRS' position:

Tax Residency: An individual will be described as tax resident in Nigeria, if he/she:

1. has a permanent place available for his domestic use in any part of Nigeria;
2. is in Nigeria for a period or periods amounting to an aggregate of 183 days (inclusive of annual leave or temporary periods of absence) or more in any twelve-month period; or
3. serves as a diplomat or diplomatic agent of Nigeria in another country.

Seafarer: A person who assists in the navigation and operation of a vessel at sea and includes officers and seamen (ratings).

Platform worker: A person engaged on any facility, installation, structure, ship or place used for any activity in connection with the exploration or exploitation of natural resources on Nigerian subsoil, seabed, territorial waters or continental shelf. It includes, but not limited to, workers engaged on onshore or offshore drilling rig, oil platform or any other non-oil onshore or offshore platforms

Determination of Residence

The circular provides that a seafarer or platform worker will be deemed tax resident in Nigeria if he or she has a permanent place available for his/her domestic use in any state in Nigeria, even if he or she is not physically present in Nigeria for up to 183 days.

Place of Residence

The first schedule of the Personal Income Tax Act (PITA) defines place of residence as a place available for an individual's domestic use in Nigeria on a relevant day, and does not include any hotel, rest-house or other place at which the individual is temporarily lodging unless no permanent place is available for the individual's use on that day.

Determination of Taxability

Seafarer: An individual (including a non-resident individual) who signs articles in the territory of Nigeria as a Seafarer, whether for a Nigerian or non-Nigerian vessel, is liable to income tax in Nigeria on the income derived under such articles. This is applicable only during any period in which the individual is serving under articles which he had signed in Nigeria or is performing stand-by duty on board a ship preparatory to his signing articles in Nigeria. This provision excludes individuals in the Nigerian Navy or the Nigerian Ports Authority.

Platform workers: The employment income of an individual (including a non-resident individual) working as a platform worker in Nigeria is liable to tax in Nigeria where either:

1. the duties of the employment of an individual, including a non-resident platform worker, is wholly or partly performed in Nigeria, in which case the general exemption principles available under Section 10 PITA, will apply;
 - The duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria; and
 - The employee is not in Nigeria for an aggregate of 183 days in 12 month period; and
 - The income of the employee is liable to tax in another country under the provisions of a Double Tax Treaty (DTT) with the other country.
- Or
2. The employer is resident in Nigeria or has a fixed base of business in Nigeria.

Double Tax Treaty (DTT) Implications

Where a seafarer or platform worker is liable to tax in Nigeria and is resident in a country which has a DTT in force with Nigeria, the income will be taxed in line with the provisions of the relevant DTT. The DTT will be used in determining;

1. the country of residence of the seafarer or platform worker as provided in the Article on "Resident".
2. the taxing right on the employment income as provided in the Article on "Income from Employment" or "Dependent Personal Services", as the case may be.

Relevant Taxing Authority

The Circular also addresses the relevant tax authority under which non -resident workers will be taxed.

Residents: The worldwide income of any seafarer or offshore platform worker, who is a resident of Nigeria, will be subject to tax by the Tax Authority of the State of which he is a resident.

Non-residents and Itinerant workers: It provides that where an itinerant seafarer or platform worker who has spent 183 days in Nigeria or is subject to tax in Nigeria does not have a place of residence in Nigeria, such persons will be taxed in:

1. the state where the principal office of the employer is located if the employer is in Nigeria and
2. where the employer is not in Nigeria, the FIRS will be the taxing authority.

Insights

The basis of FIRS' definition of residence is not legal as this term is not defined in the local tax law. PITA rather defines the place of residence as it relates to the tax authority (state/federal) having taxing rights over an individual's income, particularly one with multiple places of residence within the country. The FIRS' definition of residence as the availability of a permanent place is also not in line with the law. For example, it will be inaccurate to suggest that Nigerians who have residential apartments in the country but do not live full time or earn income in Nigeria are residents.

The Court of Appeal (CA) defined residence in **ECODRILL NIGERIA LIMITED v. AKWA IBOM BOARD OF INTERNAL REVENUE (2014)** relying on sub-paragraphs 10 (1) (a) (ii), paragraph 3 to the First Schedule of PITA, paragraph 4 (3) of the second schedule of PITA and paragraph 6 (2) of the Third Schedule of PITA as follows: **that a person is deemed to be resident in Nigeria for a year of assessment if s/he is in Nigeria for a period(s) amounting to 183 days or more in any twelve-month period commencing in the calendar year and ending either in the same year or the following year.**

Given this is case law, the definition can be relied on until overridden in a higher court.

Is a vessel or platform a place of residence?

The FIRS' attempt to provide clarity with the illustrations in the circular raises additional questions and inconsistencies. In the first illustration, Mr X, a platform worker working for a Nigerian company for over 183 days on a vessel within the Exclusive Economic Zone (EEZ), is deemed resident in the state of his employer on the basis that **he has no place of residence**. His taxes are considered due to the state even though the circular states that the EEZ is subject to exclusive jurisdiction of the Federal Government.

According to PITA, a Nigerian employment is one which is not a foreign employment and duties are wholly or partly performed in Nigeria. A foreign employment is defined as one where the duties are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria.

Mr X has a Nigerian employment because his duties are performed in Nigeria (according to PITA) and the platform suffices as a place of residence since there is no other permanent place available for his use. Where the same individual however, has multiple places of residence, the principal place of residence would be the place at which the branch office or operational site is situated only if the platform has more than 49 workers. With less than 50 workers, his residence would be the place permanently available for his use which then excludes the platform.

Illustration 2 and 3 have similar facts as illustration one save that the individual is employed by a foreign company. The FIRS circular states the tax is due to the FIRS because the employer is foreign. This is not in line with the law which treats the individual as having a Nigerian employment. Accordingly, the platform, in the absence of a permanent residence, would be his place of residence. The bigger question therefore would be who the relevant taxing authority is on Nigerian waters?

"Can littoral states lay claim to taxes due from individuals working on oil platforms on Nigerian territorial water or the Exclusive Economic Zone (EEZ)?"

The EEZ is defined in the EEZ Act as any area extending up to 200 nautical miles seawards from the coasts of Nigeria, The Territorial Waters Act defines territorial waters as every part of the open sea within 12 nautical miles of the coast of Nigeria or of the seaward limits of inland waters. The appropriate authority in both Acts is the Federal Government of Nigeria (FGN) or any one designated by the FGN for the purpose of exploiting natural resources.

In the 2001 case of **Attorney General of the Federation v. Attorney General of Abia State & 35 Ors**; eight(8) littoral states, the Supreme Court ruled that the states boundary ended at the low water mark of

the land surface or the seaward limits or inland waters within the state for the purpose of calculating revenue accruing from natural resources.

Section 1 of the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004 (The Act) provides differently that the two hundred metre water depth Isobath contiguous to a state shall be deemed to be a part of that State for the purposes of computing the revenue accruing.

Neither the Supreme Court case nor the Allocation of Revenue Act address the boundaries and rights of the state in taxing individuals on the waters. PITA is a federal legislation but gives powers of collection to both states and the FIRS. Yet nowhere does it address the issue of littoral states. As such the controversy remains on the appropriate taxing authority once the place of residence is determined to be a vessel on territorial waters or the EEZ.

Paragraph 11 to the First Schedule to the Act, provides that taxing authorities who discover taxes have been assessed on another individual by another state, should discharge any such assessments. Credit should be given for any taxes wrongly paid. While credits have been a challenge in Nigeria, it goes without saying that taxpayers who have paid taxes to an authority, can rely on this provision to avoid double payment of taxes.

Takeaway

All resident seafarers and platform workers will be liable to tax on their worldwide income by virtue of the provisions of section 2 of PITA, bearing in mind the exemptions available under the Act. Non-resident seafarers will either be liable to tax on income attributable to Nigeria or on the total income earned where the article was signed in Nigeria. Also, non-resident platform workers will only be liable to tax on income attributable to employment duties performed either wholly or partly in Nigeria. The relevant taxing authority will be either in the taxpayer's state of residence, the principal office of the employer if located in Nigeria or the FIRS, in line with the provisions of the First Schedule of PITA. This would depend on;

- whether or not the taxpayer has a place of residence in Nigeria;
- has more than one place of residence in which case the employer would need to determine the principal place of residence.

The administrative circulars are not binding. Taxpayers are advised to analyse the tax consequences peculiar to each scenario as this will differ depending on the facts of the case. Clear amendments are required in the law to bring much needed closure on the taxing rights of littoral states versus the FIRS.

For a deeper discussion, please contact:

Esiri Agbeyi
Tax Partner
emuesiri.agbeyi@pwc.com

Oluwatoyin David
Senior Manager
oluwatoyin.david@pwc.com

Abiola Ogunsola
Senior Associate
abiola.ogunsola@pwc.com