Setting up your Business in Nigeria
Issues to consider

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Nigeria has an estimated population of over 160 million people with a land area of 923,768 square kilometers consisting of 910,768 square kilometer land and 13,000 square kilometer water. It offers investors abundant natural resources, a low-cost labour pool, and the largest domestic market in sub-Saharan Africa in addition to a stable political system with a democratically elected government.

However there are a number of issues which you must consider when you are looking to set up your business in Nigeria. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

Establishment (a branch of your overseas business)

- Foreign companies wishing to set up business in Nigeria are required to obtain local incorporation of the Nigerian branch or subsidiary
- The foreign investor may incorporate a Nigerian branch or subsidiary by giving power of attorney to a qualified solicitor in Nigeria for that purpose
- Exceptions from local incorporation could be obtained from the Secretary to the Federal Government of Nigeria for some specific reasons such as invitation to execute specific project by any tier of Government in Nigeria.
- If the company is registered in Nigeria, the whole income will be liable to tax in Nigeria
- If the company is not resident in Nigeria, the profit derived from Nigeria is taxable at the full tax rate of 30%
- Every foreign company (whether incorporated in Nigeria or not) must file annual returns (using the prescribed forms) with the Corporate Affairs Commission
- Foreign companies may set up representative offices in Nigeria for the purpose of promoting the business. However, such office can not engage in business or conclude contract.

Limited Company:

- Provides limited liability to members of the company
- Gives a perception of a local business, with longevity
- Corporation tax to be paid on profits at the rate of 30%
- All companies are required to file annual returns with the Corporate Affairs Commission
- All limited liability companies are required to audit their accounts every year.

Limited Liability Partnership:

- Members (partners) have limited liability
- Profits are allocated to members who then pay Income Tax on these profits personally
- The tax residence of the member will determine in what jurisdiction these profits are taxed

Partnership:

- Two or more persons may choose to carry on business in the form of partnership
- Profits are allocated to members who then pay Income Tax on these profits personally
- The tax residence of the Partners will be determined by their normal place of residence and not the place where the business is situated.
- The liability of partners is not limited.
- Every partnership is required to file annual returns with the Corporate Affairs Commission
- There could be a limited partnership in which at least one of the Partners must have unlimited liability
- The limited partner does not take active part in the business but only contributes a certain sum of money

How much Corporation Tax will the business pay?

Current Corporation Tax rates in Nigeria are:

Tax rate (%)		**Taxable profit Naira**
Small co rate	20%	0 – 1,000,000 (for first four years of companies engaged in Manufacturing, Agriculture, Mining of Solid Minerals or wholly export business)
Full rate	30%	Over 1,000,000 turnover

(NB: rates have been stable for the last ten years and are expected to remain so)

In addition to the company's income tax, all companies (except those in Petroleum exploration and production) are required to pay Education Tax of 2% per annum on their profit.

A company making loss may be required to pay minimum tax if it has been in existence for more than four years and it is not engaged in agricultural business. A company would also be exempted from education tax if it has at least 25% equity capital imported into the country.

The rate of minimum tax is 0.125% of turnover above Naira 500,000 and the highest of any one of the following factors:
0.5% of gross profit; or
0.5% of net assets; or
O.25% of paid-up capital; or 0.25% of the turnover below Naira 500,000

In Nigeria taxation is actively used as a fiscal policy to attract foreign investment and encourage investors to some specific (preferred) sectors of the economy. Some of the incentives are:

- Small Manufacturing companies with Naira 1,000,000 turnover and below pay tax at a reduced rate of 20%
- Dividend paid from small manufacturing companies are exempted from tax in the first 5 years of business
- Dividend derived from manufacturing companies in the petrochemical and liquefied natural gas subsectors are tax exempt
- The profits of any Nigerian Company in respect of goods exported from Nigeria of which the proceeds are repatriated to Nigeria or used for the purchase of raw materials or plant and spare parts are exempted from tax
- The profits of companies whose products are used for the manufacture of products for export are exempted from tax
- Operations of registered enterprises in the Oil and Gas Free Zone are exempted from all forms of tax.
- There are also other tax incentives for specific industries like Solid Minerals, Hotel and Tourism and Agriculture
- Pioneer industries are exempted from tax.

Professional advice is required to have full information about the available tax incentives in Nigeria.

Nigeria currently does not practice group tax.

The Nigerian Tax Laws are being reviewed with the aim of simplifying the main ones and ensuring that they accord with global practices. The country is a federation and taxation is enforced by the three tiers of government namely Federal, State and Local Government. Every tier has a list of approved taxes for collection.

What if we use Nigeria to set up our holding company?

The Nigeria's competitive tax legislation means that it is a very attractive place to set up a holding company.

If a Nigeria company holds shares in another company, and these shares are subsequently sold, then the resulting gain is exempt from tax.

Dividends are subject to withholding tax at the rate of 10%. However such dividends are regarded as Franked Investment Income in the hands of the recipients as the tax is regarded as final tax in the hands of the recipients.

What if we make cross-border transactions between group companies?

Nigeria follows internationally recognised **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties.

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Sale, purchase or lease of tangible assets
- Provision of management services
- Property rental charges
- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a "market" interest on loans

A business will need to prepare a Transfer Pricing Report proving the arm's length basis of transactions. The report will include a functional and risk analysis, analysis of the adopted pricing model and benchmarking of the arm's length basis.

A connected person may request that the Revenue enters into an Advance Pricing Arrangement (APA) to establish an appropriate set of criteria for determining whether the person has complied with the arm's length principle for certain future transactions.

A connected taxable person may be exempted from the requirements of transfer pricing where the controlled transactions are priced in accordance with the requirements of Nigerian Laws or if the prices of connected transactions have been approved by any other Government agency established under Nigerian Law.

However even if an entity is exempt from the Nigerian transfer pricing regime it may fall under the scrutiny of the other international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

What Employment Taxes and Social Security will need to be paid?
If an individual is resident in Nigeria then they are subject to Nigeria's tax laws.
From December, 2011, the personal income tax act was amended and now incorporates certain changes in the residency considerations for exemptions of income from tax.

Whether the activity is wholly or partially performed in Nigeria, such an individual is required to show evidence that the income is subject to tax in another country with which Nigeria has a double taxation treaty. An individual is regarded to be resident in Nigeria (and as such subject to Nigeria income tax) if he spends 183 days in a year in the country. The 183 days includes period of leave or temporary absence

Current Personal Income Tax rates in Nigeria are:

Band of income (Naira)	Tax rate (%)
0 – 300,000	7%
300,001 – 600,000	11%
600,001- 1,100,000	15%
1,100,001- 1600,000	19%
1,600,001- 3,200,000	21%
Above 3,200,000	24%

(NB: rates are effective from 2011 tax year)

Also kindly note that the tax brackets are applied after deducting personal allowance of 200,000 Naira and 20% of the gross emolument.

Employers and employees also have to pay Nigeria social security, which is called Pension Contribution:

The employer and employee are required to make 10% and 8% respectively of the gross emolument as pension cost.

It is the employers' legal responsibility to pay over employee's tax and social security deductions to the Nigerian tax authorities and pension fund administrators

What is Value Added Tax (VAT) and should the business be registered?

VAT is a "goods and services tax" on supplies made, the standard rate of which is 5%. All businesses must be registered for VAT.

There are three types of supply

- Taxable – must charge VAT on supplies, can reclaim input VAT
- Exempt – cannot charge VAT nor reclaim input VAT
- Outside the scope – VAT on exports

The supply of most types of goods and services in Nigeria would be classed as Taxable supplies. However when these supplies are made to companies which are outside Nigeria, they are regarded as export and are Zero rated for VAT.

In Nigeria, all goods and services are subject to VAT except those that are specifically exempted by the VAT law. Items exempted include Basic food items, Books and educational materials and baby products. For a full list of exempted products and services you are kindly requested to seek professional advice.

In addition to VAT, some states charge sales tax on certain consumptions like hotels and entertainment services. The rates and items involved vary from state to state.

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Nigeria.

How else can we compensate our employees?

Nigeria has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Nigeria businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to spend their benefits allowance; which can range from purchasing additional holiday entitlement to obtaining full family medical cover.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or email us directly.

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The information in this document was prepared as at 3rd November 2016