Private Client

In 17 jurisdictions worldwide

Contributing editors
Anthony Thompson and Nicole Aubin-Parvu

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GETTING THE DEAL THROUGH

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CONTENTS

Nigeria

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Tax

1 How does an individual become taxable in your jurisdiction?

An individual becomes taxable either directly or indirectly in Nigeria. By direct taxation, an individual is taxed where he or she is deriving income from Nigeria either by employment or otherwise. For an individual who derives income from employment is liable to income tax, however, that income may not be liable to income tax where, by virtue of the Personal Income Tax (Amendment) Act 2011, that individual is not deemed to be resident in Nigeria or the individual's duties are performed for an employer who is in another country and the individual's income is liable to tax in that other country. A person is deemed resident in Nigeria if he or she resides in Nigeria for 183 days in any period of 12 calendar months. Expatriates holding residence permits are liable to tax in Nigeria even if they reside in the country for less than 183 days in any 12-month period. The residence of an individual determines the extent of a taxpayer's liability in Nigeria.

The Capital Gains Act 2004 subjects an individual to tax in respect of gains accruing to a taxpayer from the sale or lease or other transfer of proprietary rights in a chargeable interest. While in respect of indirect taxation, an individual is subjected to tax indirectly through the Value Added Tax (Amendment) Act 2007. Value added tax is a consumption tax levied at each stage of the consumption chain and is borne by the final consumer.

2 What, if any, taxes apply to an individual's income?

Personal income tax (PIT) would apply. For individuals in employment, Pay As You Earn (PAYE) applies. PAYE is a variant of personal income tax. The PIT rate is applied on a graduated scale on taxable annual income as set out below:

- the first 300,000 naira is assessed at 7 per cent;
- the next 300,000 naira is assessed at 11 per cent;
- the next 500,000 naira is assessed at 15 per cent;
- the next 500,000 naira is assessed at 19 per cent;
- the next 1.6 million naira is assessed at 21 per cent; and
- above 3.2 million naira is assessed at 24 per cent.

Earners of income above 20 million naira will be subject to a top marginal tax rate of 18.96 per cent for non-routine payments (eg, bonus and 13th month) as only 79 per cent of income is taxed at 24 per cent while the top marginal tax rate for non-routine payments for earners of less than 20 million naira is 19.2 per cent (see 'reliefs and deductions' below).

Reliefs and deductions

Consolidated relief allowance

Above 200,000 naira or 1 per cent of gross income plus 20 per cent of gross income. Gross means wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other income derived solely by reason of employment.

Child allowance

For each child up to a maximum of four children: 2,500 naira, provided that none is above 16 years or married. However, relief can be granted for a child over 16 years if the child is in a recognised school, under artisanship or learning a trade.

Dependent relative

2,000 naira for each dependent relative up to a maximum of two relatives who are widowed or infirm.

Deductions allowed

Deductions allowed are the following:

- National Housing Fund contribution, National Health Insurance Scheme, Life Assurance Premium, National Pension Scheme and gratuities;
- reimbursement expenses incurred in the performance of employment duties from which it is not intended that the employee should make any gain or profit; and
- interest and dividend interest income earned from debt instruments including treasury bills and corporate bonds now fully exempt while withholding tax at 10 per cent is the final tax on the dividend.

Benefits in kind (BIK)

BIK provided to an employee by the employer such as official cars, accommodation, etc, are deemed to be part of the employee's gross emoluments. The taxable benefit is 5 per cent per annum of the cost where the asset is owned by the employer or the actual cost paid where the asset is leased by the employer.

BIK on accommodation is taxable based on the annual value of the premises as determined for purposes of local rates or as determined by the relevant tax authority rather than the cost or actual rent paid.

3 What, if any, taxes apply to an individual's capital gains?

By virtue of section 2 (2) of the Capital Gains Tax Act 2004, Capital gains tax is chargeable on any gains accruing to any person in a year of assessment at the rate of 10 per cent.

Chargeable assets are listed as options, debts and incorporeal property, and generally include:

- profit from foreign exchange transactions;
- any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired;
- goodwill;
- copyrights;
- buildings; and
- chattels

Exempt assets

Exempt assets and gains

These include gains from disposal of shares and stocks, Nigerian government securities, life assurance policies, the main residence or dwelling of an individual, compensation for wrongs or injuries suffered by an individual, mechanically propelled road vehicles not suitable for private use and decorations awarded for valour or gallant conduct.

Allowable deductions

Allowable deductions are the following:

- the initial cost of the asset;
- stamp duties;
- the cost of enhancing the value of the asset;
- expenditure incurred in establishing, preserving or defending the title to, or right over the asset;

- incidental expenses for the purpose of acquiring or disposing of the assets, such as fees, commission or remuneration paid for professional services of any surveyor, or valuer, or auctioneer, or accountant, or agent, or legal adviser and the cost of transfer or conveyance; and
- the cost of advertising to find a seller during acquisition and advertising costs to find a buyer during disposal.

Non-allowable deductions

Non-allowable deductions are:

- premiums paid under a policy of insurance taken against any risk, or damage to, or injury to, or depreciation of or loss of an asset; and
- expenses that are deductible under the Companies Income Tax Act or Personal Income Tax Act.

4 What, if any, taxes apply if an individual makes lifetime gifts?

By virtue of section 40 of the Capital Gains Tax Act, any disposal of an asset by way of gift acquired by an individual by way of a gift or otherwise (not being an acquisition on a devolution on death) is not liable to chargeable Capital Gains Tax.

However, where the lifetime gift is made by a document, then that document may be liable to stamp duty. Stamp duty is chargeable either at fixed rates or in proportion to the value of the consideration, depending on the class of instrument.

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

The general view is that there is no inheritance or gift tax in Nigeria. However, where the transfer is made by a document, then that document would be liable to stamp duty. However, there is a 10 per cent estate fee charged on a deceased person's estate when the executors or administrators of the estate apply for a letter of administration with or without a will.

Income from the estate would also be liable to personal income tax in the hands of the executors.

The income of a trust will include any income earned in, derived from, received in or brought into Nigeria. This income is referred to as computed income and it is subject to tax in line with the provisions of the Personal Income Tax Act (2011).

6 What, if any, taxes apply to an individual's real property?

The taxes that apply to an individual's real property can be placed into two categories.

Tax imposed on the income derivable from the property

The income an individual receives from rental properties is subjected to tax under the PITA. This income is subject to tax after the deductions of allowable expenses on the property and the graduating scale as stated in question 2 will be applied to calculate the tax payable to the state government.

Also, on disposal of the real property, the individual would be liable to chargeable gains tax at 10 per cent of the gains derived from the disposal of the property.

Direct tax on the property.

The tax imposed directly on real property are land use charges, tenement rates and ground rent. The tax payable in these cases is based on the location and the size of the property. In Lagos state for instance there is the land use charge, which is a harmonised property tax. This tax is subdivided into tenement rate, ground rent and neighbourhood improvement charge. The applicable tax rate is based on the category under which the property falls (eg, commercial, residential and corporate residential) and this also depends on the location of the property.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to and from your jurisdiction?

When an asset is imported, customs duty and value added tax at 5 per cent of the value of the asset apply.

Capital gains tax applies on the gains from any export of a chargeable asset. However, where the income on the disposal of an asset has been taken into account in determining income tax, that income would, by section 12 of the Capital Gains Tax Act, be excluded from the computation of capital gains.

VAT would not apply as all exports are exempt from VAT.

Customs and excise duties

The taxes that apply on import or export for personal use and enjoyment of assets other than cash by an individual are the customs and excise duties. Custom duties are levied on cost, insurance and freight. Rates vary for different items, and are assessed with reference to the prevailing Harmonised Commodity and Coding System.

8 What, if any, other taxes may be particularly relevant to an individual?

There is no wealth tax in Nigeria. VAT is borne by the end-user at the rate of 5 per cent on the value of goods or services acquired or received respectively.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Trusts are assessed for tax under the Personal Income Tax Act in the hands of the trustees. Income from estates and settlements are also liable to PIT in the hands of the executors.

10 How are charities taxed in your jurisdiction?

By virtue of section 23(1)(c) of the Companies Income Tax Act, the income of any company engaged in charitable activities of a public nature is exempt from income tax in so far as the income is not derived from a trade or business carried on by the charity. Consequently, any income received by a charity for any trade or business it carries on would be liable to income tax.

A charity is also exempt from capital gains tax as long as the gain it makes from any disposal is not in respect of any asset acquired by the charity in connection with any trade or business carried on by it and that the gain is applied purely for the purpose of the charity.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

Trusts are recognised in Nigeria. The prominent features of a trust lie in its basic essentials, which require that the words used in the trust deed must be imperative. Further, because a trust involves the transfer of property, the subject matter of the trust must also be certain and the beneficiaries must be clearly identified.

12 Does your jurisdiction recognise private foundations?

Private foundations are recognised in Nigeria. The salient features of private foundations lie in their basic essentials, which are:

- they are a charitable organisation and thus subject to the rules applicable to charities;
- their financial support comes from one source, usually an individual, a family, or a company; and
- they make grants to other organisations for charitable purposes.

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

The Nigerian legal system expressly prohibits any form of same-sex relationship. Prior to the enactment of the Nigeria Same Sex Marriage (Prohibition) Act, 2013, sections 214, 215 and 217 of the Criminal Code Act 1990 manifestly criminalises all forms of same-sex relationship.

Section 217 of the Criminal Code Act states that:

> *Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for three years.*

Although section 217 of the Criminal Code Act specifically refers to indecent practices between males, it is our view that same will be applied with equal force on issues bothering on indecent practices between females.

The Nigeria Same Sex Marriage (Prohibition) Act, 2013 was enacted with a view to prohibiting any form of same-sex relationship. Section 1 of the Act provides thus:

(1) A marriage contract or civil union entered into between persons of the same sex;
(a) is prohibited in Nigeria; and
(b) shall not be recognised as entitled to the benefits of a valid marriage.

Any person who contracts a same-sex marriage or civil union is liable upon conviction to a term of 14 years imprisonment by virtue of section 5[1] the Same Sex Marriage (Prohibition) Act 2013. Also, any marriage or civil union entered into between persons of the same sex by virtue of a certificate issued by a foreign country is void in Nigeria and any benefit accruing therefrom by virtue of the said certificate shall not be enforced by any court of law in Nigeria. By virtue of these provisions, the Nigeria legal system does not recognise a same-sex relationship and consequently, the law of succession in Nigeria does not apply to such relationships because it is deemed criminal under Nigerian laws.

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

The Nigerian legal system recognises three forms of marriages, namely, statutory marriage, customary marriage and Islamic marriage. Customary and Islamic marriages are governed by the various customary practices and Islamic injunctions.

With regard to customary marriages, it should be noted that levirate marriage (ie, a customary practice where the deceased wife is inherited by any of the deceased surviving male relatives simply because the widow is deemed to be part of the deceased's estate) has been declared by Nigerian courts as repugnant to natural justice. Section 26 of the High Court Law of Lagos State 2003 enjoins the High Court to observe and enforce the observance of customary law, which is applicable and is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by implication with any law for the time being in force.

Statutory marriage on the other hand, is regulated by the Marriage Act 1990 and the Matrimonial Causes Act 1990. There are no tax incentives for couples based on the type of marriage contracted.

In Nigeria, the laws governing succession can be conveniently divided into statutory and customary. The laws governing statutory succession are the Wills Act of 1837, the Wills Law of the various states of the federation and the administration of estate laws of the various states respectively. The system of succession under customary law varies from one ethnic group to another.

Consequently, other forms of legal relationship prevalent in other jurisdictions such as civil union, registered partnerships, domestic partnerships, etc, do not enjoy any form of legal recognition under the Nigerian law nor are they accorded any special concession for the purposes of tax or inheritance.

Succession

15 What property constitutes an individual's estate for succession purposes?

An individual's estate for succession purposes consists of all real and personal properties owned by him or her. It also includes property owned jointly by that individual under a 'tenancy in common'. Where a tenancy in common exists, succession is determined by the deceased will or intestacy rules.

A deceased's estate, however, does not include property held under a 'joint tenancy'. Where a joint tenancy exists, the rule of survivorship applies to vest the deceased interest in the property on the surviving joint tenants.

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

Under Nigerian law, individuals have the freedom to dispose their entire estate during their lifetime but do not have the right to dispose community property or properties held under joint tenancy.

It should be noted that under the Matrimonial Causes Act, upon the dissolution of a marriage contracted under the Marriage Act, the court has the inherent jurisdiction to order the distribution of marital property in such a way that could limit an individual's freedom to dispose his or her property the way he or she pleases.

17 To what extent do individuals have freedom of disposition over their estate on death?

Customary and Islamic law act as limitations to the freedom of an individual to dispose his or her estate upon his or her death. Under Customary law, the limitation placed on the right to dispose assets is couched in various ways by the different Wills Law. For example, section 1 (1) of the Wills Law 2003 states that:

It shall be lawful for every person to bequeath or dispose of, by his will executed in accordance with the provision of this law, all property to which he is entitled, either in law or in equity, or at the time of his death. Provided that the provisions of this Law shall not apply to any property which the testator had no power to dispose of by will or otherwise under Customary Law to which he was subject.

Section 2 of the same Wills Law permits certain named persons who were being maintained either wholly or partly by the deceased immediately prior to his or her death to apply to court for reasonable provision for them on the ground that the disposition of the deceased's estate effected by his or her will did not make reasonable financial provision for them.

Under Islamic law, a testator cannot by his or her will bequeath more than a third of his or her estate to persons outside his or her family.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

Where such a situation arises, the deceased's estate will devolve on his or her heirs and the distribution of his or her estate will be governed by the personal law that the deceased was subjected to before his or her death.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Illegitimate children

The concept of an 'illegitimate child' for whatever purposes has been abolished in Nigeria. Section 42(2) of the 1999 Constitution of the Federal Republic of Nigeria 2004 provides that: 'No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstance of his birth.'

Adopted children

There is no Nigerian statute that specifically deals with inheritance in relation to adopted children. However, a testator can by his or her will bequeath a legacy to an adopted child. Under customary law, the right of an adopted child to inherit (if any) varies and depends on the particular customary law that the deceased was subject to before his or her death.

It should be noted, however, that in most Nigerian customs, paternity is usually determined by affirmation. Consequently, once a man or woman acknowledges an individual as his or her child during his or her lifetime and treats that individual as such, upon his or her death, his or her properties are usually distributed to his or her children without any distinction.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The distribution of the immoveable property of an intestate person such as land is usually governed by the law of the place where the land is situated. There could, however, be further refinements (eg, if the deceased was subject to a particular customary law or Islamic law at the time of death, his or her personal law will apply, irrespective of the law of the place where the land is situated).

The distribution of moveable property is usually governed by the law of domicile of the deceased at the time of his or her death. However, where the deceased was subject to customary law or Islamic law at the time of his or her death, his or her personal law will apply in the distribution of his estate.

21 What formalities are required for an individual to make a valid will in your jurisdiction?

The will must meet the following requirements:
- it must be in writing;
- it must be signed at the foot or end of the document by the testator or by another person appointed by the testator in his or her presence and by his or her direction;

- the signature must be affixed in the presence of at least two witnesses present at the same time;
- the witnesses must attest and subscribe to the will in the presence of the testator; and
- the testator must have the testamentary capacity to make a will.

The testamentary capacity simply connotes that the testator must have a sound disposing mind at the time of making the will and must also be of age. In Lagos state, anyone under the age of 16 years is not eligible to make a will. This age limit does not apply to a seaman or a mariner, or a crew member in a commercial airline at sea or in the air.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Foreign wills are recognised in Nigeria insofar as they comply with Nigerian law. Where a will has been read and probate obtained in a foreign country, the will could be resealed in the particular jurisdiction in Nigeria where the deceased property is situated. Order 58 Rule 26 of the High Court of Lagos State (Civil Procedure) Rules 2012 allows the Probate Registry to reseal a will upon an application for resealing made by the person to whom the grant was made or by any person authorised in writing to apply on his or her behalf.

23 Who has the right to administer an estate?

Where a person dies leaving a will, the estate will be administered by the executors of his or her estate, while in the case of an intestate person, his or her estate will be administered by his or her administrators after the grant of a letter of administration by the Probate Registry of the High Court of the respective state.

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Where the deceased dies testate, his or her estate is vested in his or her executors who administer the estate on behalf of the beneficiaries. Where the deceased dies intestate, his or her estate is held by the administrators appointed by the court who administer the estate on behalf of the beneficiaries.

With regard to the administration of the estate of a deceased who died intestate, section 49 of the Administration of Estate Law of Lagos State has laid down the rules regulating the succession to the real and personal property of such a deceased person:

> *If the intestate leaves issues but no husband or wife the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate.*
>
> *If the intestate leaves no husband or wife and no issue but both parents, then the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely. However, where the intestate has only one surviving parent, then the residual estate shall be held in trust for the surviving parent absolutely.*
>
> *If the, intestate leaves no husband or wife and no issue and no parent, then the residual state of the intestate shall be held in trust for the following persons living at the death of the intestate in the following order and manner, namely;*
>
> *First, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolute vested interest under such trusts; then*
>
> *Secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolute vested interest under such trusts; then*
>
> *Thirdly, for the grandparents of the intestate and, if more than one survive the estate, in equal shares; but if there is no member of this class; then*
>
> *Fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolute vested interest under such trusts; then*
>
> *Fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers and sisters of the half blood of a parent of the intestate).*
>
> *In default of any person taking an absolute interest under the foregoing provisions, the residuary estate shall belong to the State (ie, Lagos State) as bona vacantia, and in lieu of any right to escheat.*

The Administration of Estates Laws in the various states will govern the administration of the deceased's estate.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

Order 60 of the High Court of Lagos State (Civil Procedure) Rules, 2012, which deals with proceedings in probate and administration actions, allows not only disappointed heirs and beneficiaries but also interested persons to make a claim against the estate.

Capacity and power of attorney

26 What are the rules for holding and managing the property of a minor in your jurisdiction?

Section 45 (1) of the Administration of Estates Law 2003 allows for the appointment of trustees of infants' property. The said section provides that:

> *Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Law (the deceased) to a devise or legacy, or to the residue of the estate of the deceased, or any share, therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives),to be the trustee or trustees of such devise or trustee or trustees of such legacy, residue or share for the infant, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.*

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

The Administration of Estates Law of Lagos State does not specifically stipulate at what age an individual attains legal capacity for the purpose of holding and managing a property. However, section 3 of the Wills Law of Lagos State expressly prohibits any person below the age of 18 from making a will except that it allows any seaman, mariner or member of the crew of a commercial airline under the age of 18 to dispose of his or her estate. While there may be no definite age limit, the consensus is that anyone below the age of 18 is deemed to be a minor.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

If someone loses capacity to manage his or her affairs either by reason of ill health or insanity, his or her personal representatives will manage the property on his or her behalf. Such personal representatives could be the spouse, extended family members and even close family friends. In some cases where a dispute has arisen as to right person to manage the property, an interested party can apply to court seeking for judicial intervention in the appointment of qualified persons or an institution to manage the affairs of the incapacitated person.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

The legal and regulatory framework for the entry of foreign nationals is governed by the Immigration Act. Visa requirements for foreign nationals differs depending on the nationality of the visitor. Economic Community of West African State (ECOWAS) citizens do not require a visa before visiting Nigeria because they are issued with visas at the port of entry. There are also several other countries where Nigeria does not have an embassy, where by virtue of government policy, the Nigeria Immigration Service is able to issue a 30-day non-extendable visitors' tourist visa at the port of arrival to the visitor.

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A foreign national can spend between 30 days and 10 years on a visitor's visa depending on the visa issued. Visitors who are in Nigeria for investment purposes are eligible to be issued 10-year visas where they meet laid-down criteria.

31 Is there a visa programme targeted specifically at high net worth individuals?

Yes, the visa policy recently announced by the federal government of Nigeria for expatriates and investors seeking to invest in the country allows for qualified investors to be issued this special category of visa. Under the new visa regime, five categories of visa can be issued, namely: visa at point of entry, short-visit visas, temporary resident visa, employment-based visa and a scarce skills transfer visa. Foreign investors with US$10 million investment may be given a 25 per cent employment quota without sacrificing employment for Nigerians.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

Yes, individuals are entitled to bring their spouse or dependants with them. Dependants will be granted visas in accordance with the applicant or sponsor.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

No, but the visa granted is renewable upon the expiration of each term.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

No, the constitution of the Federal Republic of Nigeria provides for three ways in which citizenship can be acquired: through birth, by registration and through naturalisation. To be qualified for citizenship through naturalisation an applicant must have lived in Nigeria for a continuous period of 15 years or have lived in Nigeria in the past 20 years for a cumulative period of 15 years.

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