NIGERIA'S BILATERAL TAX TREATY AGREEMENT WITH SINGAPORE

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Introduction

A bilateral tax treaty or agreement is a legal instrument executed between two jurisdictions that addresses conflicts or duplications regarding common tax issues. One of such common issues is double taxation. Double taxation is the levying of tax more than once on the same income or transaction. Double taxation frequently occurs in international setting when the same income is taxed in two different countries or an individual or company is recognized by tax laws as resident (and therefore taxable) in more than one jurisdiction. Agreements to address these anomalies are referred to as Double Taxation Treaties ("DTT"), "Double Taxation Avoidance Agreements" or "Avoidance of Double Taxation Agreements".

Nigeria has adopted the Organization for Economic Co-operation and Development ("OECD") model as the basis for formulating its current DTT with other countries. The model defines the principles of permanent establishment, allocates taxing rights amongst nations and provides bases for information-sharing and dispute resolution between contracting states. OECD currently also tackles base-erosion and profit-shifting that arises from the abuse of tax treaties.

Nigeria has signed DTTs with thirteen countries namely, the United Kingdom, the Netherlands, Canada, South Africa, China, Philippines, Pakistan, Romania, Belgium, France, the Czech Republic, Slovakia and Italy. She has signed, but has not yet ratified, DTTs with eight other countries[1] namely the United Arab Emirates, Kenya, Mauritius, Poland, South-Korea, Spain, Sweden, and Qatar.

A company resident in a country with no DTT with Nigeria pays a flat withholding tax ("WHT") rate of 10% of any revenue from a dividend, interest, or royalties while counterparties from DTT countries pay only the rate prescribed in the treaty (usually 7.5%).

Nigeria-Singapore DTT

Nigeria on Wednesday, August 2, 2017 signed an agreement with Singapore for the avoidance of double-taxation on income and capital gains tax between the two countries[2] ("the DTT"). The signing took place in Nigeria between Singapore's Senior Minister of State for Trade and Industry, Dr. Koh Poh Koon and Nigeria's Minister of Finance, Mrs. Kemi Adeosun. Nigeria's Federal Executive Council on November 16, 2016 approved the DTT.

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[1] Under the Nigerian constitution, DTTs will not be enforceable within Nigeria until they are enacted into law by an Act of the National Assembly. Section 12 of the 1999 Constitution of the Federal Republic of Nigeria.

[2] To have the effect of law in Nigeria, the agreement must be ratified and enacted into law by the National Assembly.

The DTT defines (a) "resident" as it relates to individuals and enterprises and (b) "permanent establishment" ("PE") as it relates to enterprises. It sets out the taxing rights between the two countries on profits, income, or chargeable gains of both individuals and enterprises.

Income derived from immovable property located in one country may be taxed in that country. The profit of an enterprise incorporated in a country is taxable in that country unless the enterprise earns profits in the other country ("Country B") through a PE located in Country B, in which case only the profits (after deduction of expenses) attributed to Country B through the PE would be taxed there. The DTT, however, reserves each country's customary practice of attributing to a PE the total profits of the enterprise to its various parts based on apportionment.

The profits of an enterprise resident in country derived from shipping and air transport operations in international traffic shall be taxed in that country, but the amount taxed shall not exceed 1% of the income that the enterprise made in Country B.

The DTT reflects OECD standards which obligate a country to adjust the profits of an enterprise in its jurisdiction that carried on business transactions with an associated enterprise in another jurisdiction, but which did not do so at arm's length. After such adjustment, however, the other country will have to make an appropriate adjustment to the amount of the tax charged on the profits of the enterprise in the first country.

The DTT also sets out the withholding tax rights of the respective countries on passive income derived from dividends, interest and royalties. It stipulates that the rate of such tax shall not exceed 7.5% of the gross amount in issue.

The DTT further specifies that realized gains from property disposed of by a resident of a country shall be taxed only in the country where the property is located. In the case of the alienation of ships or aircraft that operate in international traffic or movable property pertaining to the operation of such ships or aircraft, the realized gain shall be taxed in the country of the resident.

In addition, the DTT provides for the taxing of the income of both dependent and independent providers of personal services, artists and sportspersons, government services, and the services of students, researchers and lecturers in one country of individuals who are resident in another country.

However, the DTT did not cover withholding taxes on income derived from transactions[3], other than those arising from interest, royalties and dividends, but which are recognized in any or both countries. The implication is that the respective rates of withholding tax for those transactions will remain as prescribed in the relevant national laws.

[3] Withholding tax is also deductible and payable in Nigeria on fees charged as rent, consultancy, technical and professional services, commissions, management services, building, construction and related services, and all contracts (other than contract in the ordinary course of business).

Nevertheless, the DTT, when operational, will provide enhanced tax reliefs to investors and business between both countries to eliminate or reduce the incidence of double taxation and enhance exchange of information and mutual assistance on tax matters.

Conclusion.

In line with the role of taxation as a tool for wealth and employment-creation, the 2017 National Tax Policy (NTP) of Nigeria identifies international and regional treaties as ways of attracting foreign direct investments to Nigeria. To this end, it is imperative that Nigeria leverages on its status as the largest economy in Africa and takes advantages of the benefits that DTTs offer. Accordingly, and to accelerate Nigeria's growth to being one of the top 20 economies in the world, Nigeria has to widen its current range DTTs.

The benefits of the DTT to Nigeria and Singapore cannot be overemphasized given the history of trade relations and prospects. However, the treaty is yet to be ratified by the National Assembly and thus remains ineffective in Nigeria until ratified and enacted as a law. It is expected that efforts will be unified across the various arms of government to fast-track the ratification of the DTT with Singapore as well as other such pending treaties to support the ongoing efforts of government at improving the ease of doing business and particularly of paying taxes in Nigeria.