



FEDERAL INLAND REVENUE SERVICE
15 SOKODE CRESCENT, WUSE ZONE 5, ABUJA, NIGERIA

Information Circular

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Subject: **INFORMATION CIRCULAR ON THE CLAIM OF TAX TREATIES BENEFITS AND COMMONWEALTH TAX RELIEF IN NIGERIA.**

This circular is issued for the information of the general public and in particular, all resident and non-resident taxpayers, taxpayers' representatives or advisers, and the staff of the Revenue Services. The contents are based on the provisions of the Double Taxation Agreements between Nigeria and other countries and provisions of relevant tax laws. This Circular withdraws and replaces the earlier FIRS Information Circular No. 2021/05 of 3rd June 2021.

1.0 Introduction

A Tax Treaty otherwise called an Avoidance of Double Taxation Agreement (ADTA) or Double Taxation Agreement (DTA) is an agreement between two or more countries (otherwise known as the Contracting States or parties) with the objective of ensuring that a resident of one or both contracting countries does not suffer tax more than once on the same income in both jurisdictions or unduly benefit from not paying appropriate taxes in any of the countries through tax evasion or avoidance. The Agreement covers taxes on income and capital only, and does not extend to consumption taxes such as Value Added Tax or sales taxes.

This Circular is issued pursuant to Sections 45 and 46 of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended), Sections 38 and 39 of the Personal Income Tax Act (PITA) Cap. P8 LFN 2004 (as amended), Sections 61 and 62 of the Petroleum Profits Tax Act (PPTA) Cap. P13 LFN 2004 and Section 41 of the Capital Gains Tax Act (CGTA) Cap. C1 LFN 2004, to provide a general description of the application of the DTAs between Nigeria and other countries, especially on the treaty benefits that can be accessed by residents of either contracting countries by way of relief from double taxation, treaty tax rates on income from source countries, dispute resolution mechanisms and others.

2.0 Nigeria's DTA's with other countries

Nigeria currently has operational DTAs with sixteen (16) countries, as detailed below:

S/N	Country	Type	Date of Entry into Force	Effective Date
1	Italy	Air and Shipping Transport Agreement Only.	22 nd February 1977	1 st January 1968
2	United Kingdom	Full DTA	1 st January 1988	1 st January 1989
3	Belgium	Full DTA	1 st January 1990	1 st January 1991
4	Pakistan	Full DTA	7 th March 1990	1 st January 1991
5	Czech	Full DTA	2 nd December 1990	1 st January 1991
6	Slovakia	Full DTA	2 nd December, 1990	1 st January, 1991
7	France	Full DTA	2 nd May, 1991	1 st January, 1992
8	Netherlands	Full DTA	9 th December, 1992	1 st January, 1993
9	Romania	Full DTA	18 th April, 1993	1 st January, 1994
10	Canada	Full DTA	16 th November, 1999.	1 st January, 2000
11	South Africa	Full DTA	5 th July, 2008	1 st January, 2009
12	China	Full DTA	21 st March, 2009	1 st January, 2010
13	Philippines	Full DTA	18 th August 2013	1 st January, 2014
14	Sweden	Full DTA	7 th December, 2014	1 st January, 2015
15	Spain	Full DTA	5 th June, 2015	1 st January, 2016
16	Singapore	Full DTA	1 st November, 2018	1 st January, 2019

The full texts of the Agreements may be obtained from the FIRS website: <https://www.firs.gov.ng/TaxResources/TaxTreatiesNew>. This Information Circular shall also be applicable to any Agreement that comes into effect after the date of its publication.

3.0 Entitlement to Treaty Benefits in Nigeria

There are conditions that must be fulfilled before a taxpayer can claim benefits under a tax treaty. The extent of tax relief or benefits that may be granted will depend on the specific provisions contained in that particular agreement.

3.1 Who is Entitled to Treaty Benefits in Nigeria?

To be entitled to the benefits under a tax treaty between Nigeria and another country, a taxpayer must be:

- a) a resident of Nigeria;
- b) a resident of Nigeria's treaty partner; or
- c) a resident of both Nigeria and her treaty partner

It should be noted that a resident of a country is not entitled to any benefit under a tax treaty of which its country is not a party.

3.2 Conditions for Deriving Benefits under any of the DTAs

In addition to 3.1 above the following conditions must be present in order to take advantage of any benefit provided by a DTA:

- i) The taxpayer is subject to tax in the treaty country of which he is a resident.
- ii) The income is not exempted from tax in Nigeria.
- iii) The tax for which that individual is seeking benefit is covered by the treaty.
- iv) The benefit sought is not specifically excluded under the treaty.
- v) The benefit is claimed within the time stipulated by the treaty or domestic laws.

3.3 Denial of Treaty Benefits

A taxpayer, resident or non-resident, may not be granted treaty benefits if:

- a. based on facts and circumstances, it is discovered that its residency of one of the treaty countries was principally for the purpose of accessing the treaty benefit (such behaviour is considered as treaty shopping); or
- b. if it was discovered, after careful review of the case, that one of the principal purposes of the arrangement of a transaction or business is to take advantage of the treaty or abuse its provisions (Principal Purpose Test "PPT").

4.0 Available Treaty Benefits

The following are the benefits and reliefs that may be available under the tax treaties of which Nigeria is a party:

- a) Relief from double taxation.
- b) Reduced (Treaty) tax rates to foreign airlines or shipping companies or exemption of their income from tax.
- c) Reduced (Treaty) withholding tax rates for passive income or fees for technical service derived from Nigeria by residents of a treaty partner.
- d) Requirement for permanent establishment (PE) before taxation in the Source State
- e) Access to Mutual Agreement Procedure (MAP) for dispute resolution.
- f) Non-Discrimination in Taxation Matters.

4.1 Relief from Double Taxation (Tax Credit):

Where a resident of Nigeria has paid foreign tax on an income derived from a treaty partner of Nigeria, the Article on Elimination of Double Taxation in the tax

treaty and Section 46 of CITA, Section 39 of PITA, Section 62 of PPTA or Section 41 of CGTA, as the case may be, allows for a credit relief against similar tax payable in Nigeria by that resident. The amount of foreign tax paid is deductible from the tax payable in Nigeria on same income.

However, the following conditions must be fulfilled in computing the amount of tax credit allowed for deduction from tax payable in Nigeria:

1. The foreign income have been included in the global income of the company in line with section 13(1) of CITA or relevant provisions of the other laws, chargeable to tax in Nigeria and constitute part of the assessable profit of the company in Nigeria for the relevant year of assessment.
2. The income is not exempt from tax in Nigeria. As such, the company cannot be granted relief on an income exempt from tax e.g. passive income brought in through Government approved channels [S.23(1)(k) of CITA].
3. Where the foreign tax paid is on gross basis (e.g. withholding tax), the credit relief can only be granted in Nigeria on a net basis i.e. based on the total profits of the company.
4. By reason of the limitation provided in section 46(4) of CITA, section 39(4) of PITA and section 62(4) of PPTA, the tax credit allowable is restricted to an amount not exceeding the total tax payable in Nigeria for that year of assessment on that same income for that entity. As such, the rate of tax credit claimable cannot exceed Nigerian tax rate applicable to the income.
5. Consequently, a Nigerian taxpayer that is charged to tax in a country with a higher tax rate than that of Nigeria or charged to tax on gross basis will be entitled to only partial relief of an amount equivalent to the amount that is produced using the Nigerian tax rate on the income, while those from a lower tax rate may be able to claim full relief of the foreign tax paid.
6. The procedure for determining the amount of credit relief claimable shall be as follows: -
 - i) determine the total profits of the company and the tax on the total profits,
 - ii) determine the effective tax rate of the company i.e., the tax computed divided by the total taxable income.
 - iii) determine the proportion of the tax computed that relates to the foreign income i.e., the foreign income multiplied by the effective tax rate computed.
 - iv) The amount so computed is the maximum relief that may be claimed.

4.1.1. Computation of Tax Credit that is Claimable:

The examples below illustrate the computation of claims for tax credit in Nigeria:

Example 1:

XYZ Nigeria Limited is a Nigerian Company, which commenced business in June 2002. The company paid income tax of \$750 and \$2,100 in Belgium on its taxable profits of \$3,000 and \$6,000 for 2015 and 2016 tax year respectively, with respect to its branch, which qualifies as a permanent establishment in Belgium. The Total Profits of the company in Nigeria in those respective tax years, based on its worldwide income, are ₦6 million and ₦8 million. The tax rate in Nigeria is 30%, while Belgium imposes tax at the rate of 25% for income below \$4,000 and 35% for \$4,000 income and above. Nigeria and Belgium have a double taxation agreement, with Article 23 of the Agreement providing for credit method of elimination of double taxation. Compute the tax payable in Nigeria by the company for the relevant years of assessment in line with Section 46 of CITA. (Assume exchange rate of ₦200 to \$1 in both years).

The tax payable in Nigeria is computed thus:

For 2015 Year of Assessment:

Tax rate on the income in Belgium = 25%
Nigeria's rate of tax = 30%

Tax paid in Belgium = \$750 (i.e. \$3,000 X 0.25)

Tax payable in Nigeria:		₦'000
Total Profit (based on the worldwide income)		<u>6,000</u>
Tax Computed (6,000 X 0.3) =		1,800
Less Double Taxation Relief: (\$750 X ₦200) =		<u>(150)</u>
Tax Payable =		<u>1,650</u>

The rate of tax on the income in Belgium is on net basis and lower than the Nigerian rate of tax, full credit relief will be granted.

For 2016 Year of Assessment:

Tax payable in Belgium = \$2,100 (i.e. \$6,000 X 0.35)

Tax Payable in Nigeria:		₦'000
Total Profit (based on the worldwide income)		<u>8,000</u>
Nigeria's rate of tax = 30%		
Tax Computed (8,000 X 0.3) =		2,400
Less Double Taxation Relief: *(\$6,000 X 0.3 X ₦200) =		<u>(360)</u>
Tax Payable =		<u>2,040</u>

*Although the rate of tax on the income is on net basis, it is higher than the rate of tax in Nigeria. As such, the maximum credit that may be given in Nigeria is restricted to the amount which is equivalent to that produced using the Nigerian rate of tax on the foreign income.

Example 2:

The total income of ABG Nigeria Ltd taxable in Nigeria for 2020 year of assessment is ₦16 Billion, while the total profits is ₦4.8 billion. Included in this total income is a foreign interest income of £5 million earned on the fund it deposited in a UK Bank. The interest income was subjected to withholding tax (WHT) of £625,000.00 at the rate of 12.5% in the UK. The interest income has been included in the income taxable in Nigeria because the incentive contained in S.23(1)(k) of CITA in respect of passive income brought in through Government approved channels has not been claimed, considering that the income has not been brought into the country through Government approved channel. Hence the company has submitted an application for the tax credit relief pursuant to Article 22 of the Double Taxation Agreement (DTA) between Nigeria and UK.

Compute the DTA relief that may be claimed in Nigeria by ABG Nigeria Ltd pursuant to section 46 of CITA and Article 22 of the Nigeria-UK DTA. (Assume exchange rate of ₦400 to £1 in years).

The DTA relief in Nigeria is computed thus:

		<u>₦'million</u>
Total (global or worldwide) Income	=	<u>16,000</u>
Foreign Interest Income (£5 million X ₦400)	=	<u>2,000</u>
Total Profits	=	<u>4,800</u>
Tax Payable @ 30% (₦4.8 billion X 0.3)		1,440
Effective tax rate = (1,440 /16,000)	= 9%	
Tax Payable in Nigeria on the Foreign Interest Income		
= (2 billion X 9%)	=	180 million
Maximum credit relief allowed by section 46(4) of CITA		<u>(180)</u>
Tax Payable in Nigeria		<u>1,260</u>
Tax Paid in UK (£625,000 X ₦400)	=	250
Maximum credit relief allowed by section 46(4) of CITA		<u>(180)</u>

4.1.2. Time Allowed to Claim Tax Credit

In line with the relevant provisions of the tax laws, a claim for tax credit can only be made not later than two years after the end of the year of assessment in which the foreign tax was paid. Example: a foreign tax paid in 2014 year of assessment cannot be claimed after 2016 year of assessment.

4.2 Withholding Tax

Tax treaties provide general rules restricting taxing rights mainly in the source country and so rely heavily on domestic law practices for computation, and mode of tax collection. Although the treaty provides caps on withholding tax applicable to certain passive incomes and technical service fees (where applicable) these caps do not extend to the application of withholding tax under the Articles on business profits and that of Independent Personal Services. Consequently, when assessing a permanent establishment or fixed base to tax in Nigeria under the Article on Business Profit or the Article on Independent Personal Services respectively, the withholding tax rate and mode of collection prescribed under the domestic law would apply.

4.2.1 Treaty Withholding Tax Rate on Passive Income and Technical Service Fee

Tax treaties do not impose a specific withholding tax rate on income from the source State; they however provide a ceiling (maximum rate) above which the tax authority of the source State (jurisdiction where the payment arises) should not exceed. This cap is usually indicated in the relevant Articles of the treaty as negotiated by the contracting parties.

The Articles on Dividends, Interests, Royalties and Technical Service Fees in the DTA between Nigeria and other countries may sometimes provide for lower applicable rates for withholding tax (WHT) on passive income and technical service fees than those contained in the domestic laws.

The treaty WHT rate cap is only applicable in Nigeria when payments are made to non-residents and the payments are not connected to a Permanent Establishment that the non-resident has in Nigeria. For Nigerian residents, the treaty WHT are to be granted to them by the other treaty countries when payments are made to them from a source in those other countries.

Where the payment received from Nigeria by the non-resident is connected to a permanent establishment or fixed base (where there is an article on independent personal services) which the non-resident has in Nigeria, the WHT rate applicable would not be the reduced treaty rate but the WHT rate prescribed in the domestic law.

4.2.1 Applicable WHT Rates

With effect from 1st July 2022, the WHT rate in the tax laws would apply to dividend, interest and royalties paid to residents of treaty countries, except where the rates in the tax laws exceed the maximum rate in the treaty, in that instance, the maximum rate cap specified in the treaty shall apply.

The policy statement of government on unilateral reduction of WHT rate to 7.5%, as contained in the budget statement of 1999, was not promulgated into a decree and published in the Official Gazette of the Federal Government. As such, there is no reduction or any form of amendment to the tax laws on the WHT rates applicable in Nigeria to residents of Nigeria's treaty partners. Also, Protocols were not executed between Nigeria and the treaty partners to effect any reduction in the WHT rates specified in the relevant DTAs.

Consequently, the unilateral WHT reduction will not be implemented by Nigeria from 1st July 2022. The following WHT rates will therefore be applicable with respect to the current operational treaties between Nigeria and other countries:

S/N	Country	Dividend		Interest	Royalties	
		Company with voting powers of 10% and above	All others		Payment to Companies	Payment to Individuals
1	Italy	10%	10%	10%	10%	5%
2	United Kingdom	10%	10%	10%	10%	5%
3	Belgium	10%	10%	10%	10%	5%
4	Pakistan	10%	10%	10%	10%	5%
5	Czech Republic	10%	10%	10%	10%	5%
6	Slovak Republic	10%	10%	10%	10%	5%
7	France	10%	10%	10%	10%	5%
8	Netherlands	10%	10%	10%	10%	5%
9	Romania	10%	10%	10%	10%	5%
10	Canada	10%	10%	10%	10%	5%
11	South Africa	7.5%	10%	7.5%	7.5%	5%
12	China	7.5%	7.5%	7.5%	7.5%	5%
13	Philippines	10%	10%	10%	10%	5%
14	Singapore	7.5%	7.5%	7.5%	7.5%	5%
15	Sweden	7.5%	10%	7.5%	7.5%	5%
16	Spain	7.5%	10%	7.5%	7.5%	5%

NOTE:

Domestic withholding tax rate shall apply on dividend, interest and royalty payments in all cases where the payment is connected to a permanent establishment or fixed base of the non-resident recipient in Nigeria, irrespective of the maximum rate cap specified in the treaty.

In the case of payments for management, professional, technical or consultancy services, 5% WHT rate shall apply to individuals and 10% to companies where the payment is taxable under the Article on Business Profits in the DTA or where the payment is connected to a permanent establishment or fixed base of the non-resident recipient in Nigeria, as the case may be.

4.2.2 Entitlement to any Reduced Treaty WHT Rate

In addition to fulfilling the conditions for the entitlement to treaty benefits as contained in paragraph 3 of this Circular, the following conditions must be fulfilled for the treaty WHT rate to apply:

- 1) Beneficial owner – the beneficial owner of the income must be a resident of the other treaty partner, even if the income was not paid directly to him. An agent, nominee, conduit company or a person acting as a fiduciary or administrator who is the direct recipient of the payment but not the beneficial owner is not entitled to the treaty WHT rate cap. For example, where a dividend is paid by a Nigerian company directly to a resident of Nigeria's treaty partner but for the benefit of a resident of Nigeria or another country, the treaty rate on dividend will not be applicable. On the other hand, the treaty rate will be applicable if the dividend is paid to a resident of another country but for the benefit of a resident of the treaty country.
- 2) Absence of Permanent Establishment (PE) – the income must not be connected with a PE, which the beneficiary has in the paying country. The treaty WHT rate will not be applicable where the non-resident beneficial owner of the income carries on a business in Nigeria through a PE and the income is connected to that PE.

4.2.3. Application of Treaty WHT Rate to Rental Income

Taxation of rental income may fall under three separate Articles in the tax treaties as follows:

- 1) The Article on Income from Immovable Property – this Article of the treaties covers rental income derived from the direct use, letting, or use in any other form of immovable property, such as land, building, plantation and forestry,

including royalties for the exploitation of mineral deposits and other natural resources. The treaty WHT rate is not applicable in the source country in respect of income derived from these sources. For example, where a non-resident derived rental income from a building situated in Nigeria, the domestic WHT rate and not a treaty WHT rate will be applicable on such income.

- 2) The Article on Royalties – the definition of “Royalties” in some tax treaties includes income from lease of equipment (i.e. the right to use, industrial, commercial or scientific equipment). The treaty WHT rate applicable to “Royalties” in the tax treaty may apply to the rental income from lease of equipment. For example, where a non-resident derived from Nigeria, a rental income from the leasing of aircraft, ship, machinery, oil rig or any other industrial, commercial or scientific equipment, the treaty WHT rate on royalties will apply to such rental income, if the definition of royalties in the agreement covers such scope.
- 3) In all other cases, the provisions of the Article on Business Profits and domestic laws (including the applicable WHT rates) will apply to the taxation of the rental income.

4.3. Treaty Rates for Non-Residents Operating in International Transport

The Article on “International Traffic” or “International Transport” in the DTAs between Nigeria and other countries moderates the provision of Section 14 of CITA. The Article deals with the sharing of taxing right between Nigeria and the treaty partner on the income from shipping or air transport. The Article covers income from international shipping and air transport, but for neighbouring countries, the Article may also cover income from boats, trains and road vehicles operated in international traffic. In any case, the scope of coverage may be identified from the definition of international traffic in the Article on General Definitions in the Agreement. The Article moderates the provision of Section 14 of CITA as follows:

- 1) Where there is reciprocity in international traffic between Nigeria and the home country of the foreign airline or shipping company i.e. where any Nigerian airline or shipping company also operate to the home country of the foreign airline or shipping company in the year of assessment, then the foreign airline or shipping company will not pay tax at all in Nigeria in that year of assessment. In such a case, each country will tax its own airline or shipping company.

2) Where there is no reciprocity, that is, no Nigerian airline or shipping company operate to the other treaty country in a year of assessment, then the tax payable by the foreign airline or shipping company in Nigeria in that year of assessment shall be at the rate specified in the respective DTAs. The rate of Nigerian tax on total revenues (“earnings” as defined in the respective treaties) in situations of non-reciprocity range from 1% to 1.5%, depending on the DTA. Only the DTA with the United Kingdom, Italy, Czech, Slovakia and China depart from this rule. For United Kingdom, Italy and China, no tax is payable in the source country, even when there is no reciprocity (each country will tax its own airline or shipping company in all cases). However, for treaties with Czech and Slovak Republics, taxation is in accordance with domestic law (Section 14 of CITA) in all cases.

Below is the applicable rate of tax in the source country when there is no reciprocity in each of the Nigerian DTAs:

S/N	Country	Rate of Tax on Earnings in the Source State
1	Canada	1%
2	Pakistan	1%
3	Belgium	1%
4	France	1%
5	Romania	1%
6	Netherlands	1%
7	United Kingdom	N/A
8	China	N/A
9	South Africa	1%
10	Italy	N/A
11	Philippines	1.5%
12	Czech	N/A (taxation in accordance with domestic law)
13	Slovakia	N/A (taxation in accordance with domestic law)
14	Singapore	1%
15	Sweden	1%
16	Spain	1%

It should be noted that the above rules are not applicable to any airline or shipping company (whether local or foreign), operating local routes within Nigeria, either on its own or in conjunction with another airline. The profits of each of the airlines or shipping companies from domestic operations are taxable in Nigeria like any other Nigerian company.

4.4 PE Requirement before the Taxation of Business Profits

Where a non-resident company from a treaty partner derives business profits from Nigeria, the income is only taxable under the Article on Business Profits where the company has a permanent establishment (PE) in Nigeria. As such, the income will be exempt from tax under the Business Profits Article where there is no PE for the non-resident in Nigeria.

Note:

An income that is not taxable under the Article on Business Profits may be taxable under any other Income Articles of the Agreement.

4.5 Access to Dispute Resolution Mechanism Through Mutual Agreement Procedure.

Whenever there is a dispute between a resident taxpayer and the tax authority of either Nigeria or her treaty partner regarding the interpretation or application of tax treaty provisions on the taxation of income of that taxpayer, the DTA provides the taxpayer with access to a dispute resolution mechanism through Mutual Agreement Procedure (MAP). The Competent Authority (CA) of Nigeria is required to interact with the CAs of the other treaty country with a view to resolving disputes arising from the interpretation or application of the tax treaty provisions. The Service has published a Guideline on the access to MAP which may be downloaded on FIRS website:

<https://www.firs.gov.ng/TaxResources/TreatyRelatedGuidelinesandCirculars>.

4.6 Non-Discrimination of Nigerian Citizens on Taxation Matters

By the operation of the Article on Non-Discrimination in the DTAs, citizens or nationals of Nigeria should not be subjected in the other treaty country to any taxation or any requirement connected therewith which is other, or more burdensome, than the taxation or requirements to which citizens or nationals of that other treaty country are or may be subjected to in the same circumstances. Likewise, citizens or nationals of Nigeria's treaty partners are entitled to tax treatments in Nigeria similar to that applicable to Nigerians.

A resident of either contracting party that alleges discrimination may approach the CA of his jurisdiction of residence to seek redress via the MAP.

5.0 Procedures for Claiming Treaty Benefits in Nigeria

Where a taxpayer has met all the criteria for eligibility for tax treaty benefits as contained in paragraphs 3.1 and 3.2 of this Circular, that person may apply for such benefits in line with the following procedures:

5.1 Completion of Certificate of Residence

There are two types of certificates of residence available on the FIRS website <https://www.firs.gov.ng/TaxResources/TreatyRelatedForms>.

- 1) Certificate of Residence for Nigerian residents – which is to be completed by a Nigerian resident seeking to make tax treaty claims in another country that has treaty with Nigeria. The certificate is to be endorsed by the FIRS, on behalf of the Competent Authority of Nigeria, before it is submitted to the tax authority of the country where the claim is to be made.
- 2) Certificate of Residence for non-residents – which is to be completed by a non-resident seeking to access tax treaty benefits from Nigeria. The certificate is to be duly endorsed by the tax authority of the country of residence of the non-resident taxpayer. In place of the Certificate of Residence form downloaded from FIRS' website, the non-resident may submit a certificate of residence issued by its country of residence.

5.2 Submission of Formal Application to the Relevant Tax Authority

To claim treaty benefits, a taxpayer must submit a formal application, addressed to the Executive Chairman FIRS, for the attention of the Director, Tax Policy and Advisory Department, with the following documents attached:

- 1) Duly completed Certificate of Residence with official stamp/seal of relevant revenue authority;
- 2) For Nigerian residents seeking credit relief for foreign tax paid, evidence of foreign tax paid issued to the taxpayer by the revenue authority of the treaty partner e.g. payment receipt, tax clearance certificate, WHT credit note etc.;
- 3) For non-resident claiming treaty WHT rate cap, evidence to support the income on which the treaty rate is being sought e.g. copy of contract agreement with a Nigerian resident in the case of royalties or fees for technical service; evidence of shareholding such as CSCS statement, share certificate, Form CAC 10 or Form CAC 2 etc. and board resolution evidencing the dividend in question in the case of dividend or loan agreement in the case of interest.

5.3 Submission of Claim for Tax Credit

After receiving an approval or ruling for claim of tax treaty benefits from the Federal Inland Revenue Service, the taxpayer should:

- 1) Where the application was in respect of foreign tax credit relief, reflect the applicable credit in their tax computations in the self-assessment returns, to be submitted with a copy of the approval or ruling, to the appropriate FIRS

field office or the State Board of Internal Revenue (SBIR), as the case may be.

- 2) In the case of foreign airlines or shipping companies that are subject to a tax rule in Nigeria that is different from Section 14 of the Companies Income Tax Act Cap. C21 LFN 2004 (as amended), reflect the applicable tax rule in the tax computations included in the self-assessment returns, to be submitted with a copy of the approval or ruling to the appropriate FIRS field office.
- 3) In the case of WHT treaty rate, submit a copy of the approval or ruling to the WHT collecting agent (e.g. Government ministries, departments, agencies and parastatals, companies, statutory bodies, institutions and other withholding tax (WHT) collecting agents of FIRS etc.), to reflect the rate in the WHT deduction.

5.4 Check-List for Residency Certificate Application for Nigerian residents seeking Treaty Benefits.

1. Individual

- Written application letter addressed to the Executive Chairman, FIRS (attention of Director, Tax Policy and Advisory Department)
- Duly completed Certificate of Residence Form (details typed-in and forwarded in word format)
- Means of identification of taxpayer (international passport, drivers' license, voters' card, national ID, residency card etc.)
- Recent Tax Clearance Certificate (TCC)

2. Partnership

- Written application letter addressed to the Executive Chairman, FIRS (attention of Director, Tax Policy and Advisory Department)
- Duly completed Certificate of Residence Form (details typed-in and forwarded in word format)
- Certificate or Document evidencing Registration
- CAC Form 2 (document listing the names of partners in the partnership)
- Means of identification of each partner (international passport, drivers' license, voters' card, national ID, residency card etc.)
- Recent Tax Clearance Certificate (TCC) of the partnership (if available)
- Recent Tax Clearance Certificate (TCC) of each partner

3. Companies

- Written application letter addressed to the Executive Chairman, FIRS (attention of Director, Tax Policy and Advisory Department)
- Duly completed Certificate of Residence Form (details typed-in and forwarded in word format)
- Certificate or Document evidencing Incorporation or Registration
- Recent Tax Clearance Certificate (TCC) of the company

5.5 Check-List for Non-Residents seeking Treaty Benefit

- Written application letter addressed to the Executive Chairman, FIRS (attention of Director, Tax Policy and Advisory Department)
- Certificate of residence issued by the residence country, (either on their Form or on the certificate of residence Form for non-resident downloaded from FIRS website)
- Copy of contract agreement with a Nigerian resident (in the case of royalties or fees for technical service)
- Evidence of shareholding such as CSCS statement, share certificate, Form CAC 10, Form CAC 2, etc.
- Board resolution evidencing the dividend in question in the case of dividend;
- Copy of loan agreement and certificate of capital importation in the case of interest.

6.0 Claim of Commonwealth Tax Relief as provided under Section 44 of the Companies Income Tax Act (CITA) Cap, C21 LFN 2004

Commonwealth Income Tax Relief (CWTR) is a double taxation relief available to commonwealth nations for the avoidance of double taxation among the member states. This provides that tax paid on income earned in a commonwealth country may be relieved by another commonwealth country or grants reduced rate of tax on income that is taxable in another commonwealth country.

6.1 Legal Framework for the Claim of Commonwealth Tax Relief

Section 44(1) of the Companies Income Tax Act (CITA) Cap. C21 LFN 2004 (as amended) provides for the Commonwealth tax relief in Nigeria. The section provides thus:

(1) If any Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Service that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows:

(a) if the Commonwealth rate does not exceed one-half of the rate of tax under the Act, the rate at which relief is to be given shall be the Commonwealth rate tax;

(b) in any other case the rate at which relief is to be given shall be half the rate of tax under this Act.

(2) If any company, other than a Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Service that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows-

(a) if the Commonwealth rate of tax does not exceed the rate of tax under this Act, the rate at which relief is to be given shall be one half of the Commonwealth rate of tax;

(b) if the Commonwealth rate of tax exceeds the rate of tax under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax under this Act exceeds one half of the Commonwealth rate of tax.

(3) For the purpose of this section-

*"Commonwealth income tax" means any tax on income or profits of companies charged under a law in force in any country within the Commonwealth or in the Republic of Ireland **which provides for relief from tax charged both in that country and Nigeria in a manner corresponding to the relief granted by this section.***

6.2 Conditions for claim of the Relief

For a company to claim the commonwealth tax relief following Conditions must apply-

- i. The income or profit is derived from a country within the Commonwealth or in the Republic of Ireland, which does not have a DTA with Nigeria [S.45(3) of CITA].
- ii. There must be a corresponding relief of the same manner in the other jurisdiction, in such a way that it provides reciprocity between the two countries;
- iii. That is, the provisions in the tax law of the other jurisdiction should reflect both S. 44(1) and S. 44(2) of CITA. In other words, the relief should be granted to both residents and non-residents.
- iv. Accordingly, in addition to the other commonwealth jurisdiction having a provision in its domestic law, consistent with Section 44(1), it should have a provision granting relief to a resident of Nigeria that derives income from its jurisdiction, consistent with Section 44(2) of CITA.

- v. The Company that seeks to benefit from the relief in Nigeria must furnish proof of the tax deduction in the other Jurisdiction.
- vi. Claims for the commonwealth tax relief for any year of assessment must be made not later than six years after the end of the year the tax was incurred;
- vii. The tax to be relieved shall be available for set-off against the tax which the company is liable to pay for that year of assessment.

6.3 How to Apply Relief

- a. *if the Commonwealth rate of tax does not exceed the rate of tax under this Act, the rate at which relief is to be given shall be one half of the Commonwealth rate of tax;*

Where the commonwealth rate is not more than one half of Nigerian tax rate, the commonwealth rate of tax for the relief shall be one half of the Nigerian tax rate, (10% for medium size companies and 15% for large size companies);

- b. *If the Commonwealth rate of tax exceeds the rate of tax under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax under this Act exceeds one half of the Commonwealth rate of tax."*

Where the commonwealth rate is not more than one half of Nigerian tax rate, the commonwealth rate to be allowed as relief shall be half the rate of tax under this Act."

7.0 Further Enquiries

Any request for further information or clarifications should please be directed to the:

Executive Chairman,
Federal Inland Revenue Service,
Revenue House, No 20 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Director, Tax Policy and Advisory Department
Federal Inland Revenue Service
Revenue House, No 12 Sokode Crescent,
Wuse Zone 5, Abuja.

Or

Email: tpld@firs.gov.ng



CERTIFICATE OF RESIDENCE

(FOR USE BY NIGERIA RESIDENTS: INDIVIDUALS & COMPANIES)

Application* for implementation of the tax treaty between **Nigeria** and

(Please write the name of the country in this box)

1. Applicant's Name

2. Tax Identification Number (TIN)

3. Address

4. Post/Zip Code

5. State of Residence in Nigeria

(for individuals)

6. Incorporation (RC) No. (for companies) /Means of ID and Serial No.
(for individuals)

7. Date of Incorporation *(for Companies)*
/Date of birth *(for individuals)*

For use by the Tax Authority only

8. Declaration by Nigerian tax authority

The Federal Inland Revenue Service hereby certifies that the applicant, for the purposes of the above-mentioned tax treaty-

- is a resident of **Nigeria** for tax purposes for theyear of assessment;
- is subject to income tax by a tax authority in **Nigeria** under the above-mentioned tax identification number.

.....
Name

.....
Designation

.....
Signature & Seal

.....
Date & Place

***Note:** Companies presenting this form for endorsement by the Nigerian revenue authority must attach **Certificate of Incorporation** (for Companies), **Form CAC 2, Form CAC 7, Memorandum and Article of Association** and the latest **Tax Clearance Certificate (TCC)**. In case of natural persons, a copy of means of identification and TCC from the state of Residence must be attached.

A check-list of required processes and documents is attached below

Check-List

1. Individual

- Written application letter addressed to the Executive Chairman, FIRS (attention of Director, Tax Policy and Advisory Department);
- Duly completed Certificate of Residence Form (details typed-in and forwarded in word format);
- Means of identification of taxpayer (international passport, drivers' license, voters' card, national ID, residency card etc.); and
- Recent Tax Clearance Certificate (TCC).

2. Partnership

- Written application letter addressed to the Executive Chairman, FIRS (attention of Director, Tax Policy and Advisory Department);
- Duly completed Certificate of Residence Form (details typed-in and forwarded in word format);
- Certificate of Registration;
- CAC Form 2 (document listing the names of partners in the partnership);
- Means of identification of each partner (international passport, drivers' license, voters' card, national ID, residency card etc.);
- Recent Tax Clearance Certificate (TCC) of the partnership (if available); and
- Recent Tax Clearance Certificate (TCC) of each partner.

3. Companies

- Written application letter addressed to the Executive Chairman, FIRS (attention of Director, Tax Policy and Advisory Department);
- Duly completed Certificate of Residence Form (details typed-in and forwarded in word format);
- Certificate of Incorporation; and
- Recent Tax Clearance Certificate (TCC) of the company.



CERTIFICATE OF RESIDENCE

(FOR USE BY FOREIGN RESIDENTS: INDIVIDUALS & COMPANIES)

Application for implementation of the tax treaty between **Nigeria** and

(Please write the name of the country in this box)

1. Applicant's Name (Surname first) or Name of Company

2. Applicant's Nigerian Taxpayer Identification Number

3. Applicant's Taxpayer Identification Number in the country of residence.

4. Particulars of Individual (for individual only)

Country of Residence.....

Occupation.....

Means of Identification International Passport Driver's License

Name on Identification.....

ID's Number and Country of Issuance.....

Permanent Residential Address.....

State of Residence (if also resident in Nigeria).....

5. Particulars of Establishment of Company (for companies only)

Country of incorporation..... of

Date of incorporation.....

Registration Number / Incorporation

Contact address (in the country of residence)..... of

Post/Zip Code.....

Address in Nigeria (or name & address of Agent, if any).....

Email Address _____ Telephone Number(s): _____

Name, Address and Telephone Number(s) of Contact Person in Nigeria (where no business address)

Post Code.....

6. Claims

Year(s) of claim(s)

Type and brief description of trade, profession / employment or business carried on in Nigeria

Name of Employer/Payer.....

Nature of Employment/Business/Transaction.....

Date of entry into Nigeria.....Date of commencement of Employment/Business/Transaction.....

End date of Employment/Business/TransactionExpiry date of work permit.....

Date of exit from Nigeria.....

Income for which tax benefits under the Agreement are to be claimed in Nigeria (tick as applicable)

- Business Profit
- Dividend
- Royalties
- Government service
- Other Income (Please specify)
- Employment Income
- Interest
- Technical service fee
- Directors Fee
- Pension/Annuity
- profit from shipping/Air transport

Nature and Amount of Income. (for each year of claim)

Year Income was made.....

Name, Address and country of residence of the Beneficial Owner of the Income.....

6. Beneficiary's Declaration

I hereby declare that:

- I am beneficially entitled to the income for which the treaty benefits are being claimed;
- For the purposes of the abovementioned tax treaty, I am a resident of (Country).....;
- I do not have a permanent establishment or fixed base that this income is attached to in Nigeria;
- This income has been or will be reported to the tax authorities in my country of residence.

.....
Name (of the person signing the form)

.....
Designation (where applicable)

.....
Signature & Seal

.....
Date & Place

7. Declaration of the foreign tax authority

The tax authority of hereby certifies that:

- The information provided by the applicant is correct;
- For the purposes of the abovementioned tax treaty, the beneficiary is a tax resident of for year of assessment;
- The beneficial owner of the income and the income which is the subject of this application are subject to taxation by the authority under the tax identification number (where applicable).
- The company is not just a pass-through entity but is into active business (YES/NO).....

.....

Name

.....

Designation