

Taxation of entertainers and sportsmen in Nigeria

What, how and where?

It is trite that around the world, entertainers and sportsmen are some of the highest paid individuals. Their sources of income are vast, ranging from performance and appearance fees to endorsement deals, royalties from image rights, tournament participation fees, etc. These incomes are often earned in multiple jurisdictions, which can potentially make accounting for appropriate taxes complicated. It is thus no surprise that many advanced economies have special tax regimes for such individuals, both resident and non-resident, to ensure that no potential tax revenue is permitted to escape assessment and collection.

Income generated by individual entertainers and sportsmen in Nigeria can be categorised broadly as follows:

- income earned in Nigeria by resident entertainers and sportsmen e.g. fees earned for local appearances or performances
- income derived from other jurisdictions by residents e.g. fees earned for international performances
- income derived from Nigeria by non-residents e.g. fees earned by visiting international performers in Nigeria

Nigeria does not have a special tax regime for entertainers and sportsmen. Except as may be applicable under tax treaties, the same tax regime applicable to other individuals applies to entertainers and sportsmen.

Thus, an author, sportsman, playwright, musician, artist etc. that is resident in Nigeria would be liable to tax in Nigeria, on his worldwide income. Such tax would be assessed, collected and enforced by the relevant State Internal Revenue Service (SIRS) where the individual is deemed resident. Also, rules applicable to other individuals regarding exemption, reliefs and allowances apply.

For example, exemption will apply where income is earned abroad and brought into Nigeria through approved channels in foreign currencies



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and paid into a local domiciliary account.

It may be tempting to assume that this is straightforward. What then is the position with a non-resident author, sportsman, playwright, musician, artist etc. earning income from Nigeria? For example, could the relevant SIRS have charged:

- Asa, the France-based Nigerian singer, to tax on the income derived from recent live performances in Nigeria?; or
- Chimanda Ngozi Adichie, the US-based Nigerian author, to tax on income earned in Nigeria?; or
- Beyoncé to tax on the earnings from her musical performance in Nigeria in 2006?¹

Conversely, what about cash or kind prizes won on reality shows by Nigerian or

non-resident participants e.g. Gulder Ultimate Search, Idols Nigeria/West Africa, Big Brother Nigeria/Africa? Is there scope for taxing these winnings?

This brings to mind the just concluded "Big Brother Nigeria" (BBNaija) reality game show that was shot in South Africa (SA) with over 26 million votes counted from viewers and a grand prize of ₦25million plus a sports utility vehicle. Despite the excitement and euphoria that surrounded the winner of the grand prize, the relevant questions remain – will the relevant SIRS seek to tax winnings arising from the game show?

Specifically, would the BBNaija prizewinner be required to pay tax on the coveted prize? Is there any possibility that South Africa Revenue Service (SARS) would seek to assert any right to tax the BBNaija winner in SA? This is against

the backdrop that South African tax laws² require source withholding of tax, at the rate of 15%, for income earned from a sporting or entertainment activity that is carried out in SA by a non-resident person.

In considering the tax consequence for the BBNaija winners, it may be relevant to note that Nigeria has a double tax treaty (DTT) with SA. Based on general knowledge, the prizewinners of BBNaija are understood to be tax resident in Nigeria. This implies that they should be liable to tax on their worldwide income.

Again, based on publicly shared information, it appears BBNaija prizewinners were paid in Naira with the cash prize received in Nigeria (and not SA). If this is the case, the exemption provided by PITA for foreign-sourced income brought into Nigeria in foreign currency through government-approved channels may not be applicable.

Thus, whilst the potential for SA to seek to subject the same prize money to tax exists, the provision of Article 17 of the DTT between Nigeria and SA provides guidance on the jurisdiction with taxing rights. Specifically, this Article provides that the income derived by a resident of either Nigeria or SA as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from his personal activities exercised in either country, may be taxed in that country where such activities were exercised.

The definitive word being "may" implies that while SA, based on its domestic tax laws, can subject the prize money to tax in SA, Nigeria reserves the right to tax the income based on residence principle. Clearly, this may lead to double taxation for the winner. However, we expect the provision of the DTT on elimination of double taxation to kick in. This means that any tax the winners pay in SA will be available as credit against tax due in Nigeria, in line with the provision of Article 22 - elimination of double taxation.

This position would appear to illustrate the potential tax

consequence for Nigerian tax resident entertainers who earn income outside the shores of Nigeria. However, the situation with foreign entertainers etc. who earn income from Nigeria by way of personal activities exercised in Nigeria is far from resolved. Income derived in Nigeria from such personal activities by non-residents appear to be escaping assessment and collection, and when this leakage is aggregated could be significant. PITA may therefore require a further amendment to take the issue of taxability of non-resident entertainers and sportsmen beyond the realm of conjecture or speculation.

¹Alternatively, could Federal Inland Revenue Service (FIRS), if these fees were earned through a corporate vehicle, have assessed for the income tax and value added tax due?

²<http://www.sars.gov.za/ClientSegments/Individuals/Tax-Stages/Tax-and-Non-Residents/Pages/Withholding-tax-for-non-resident-entertainers-and-sportspersons.aspx>

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