

Individuals working on the Nigerian offshore oil-drilling platforms – Who gets the tax?

Nigeria operates a federal system of government. Governing bodies at the centre differ from governing bodies in the sub-units (states). This dichotomy also impacts tax administration, with the Federal Inland Revenue Service (FIRS) overseeing taxation of companies, non-resident individuals etc., and State Boards of Internal Revenue (SBIRs) administering taxation of individuals resident within its territory. This tax administration dichotomy sometimes degenerates into controversies on the authority with taxing rights in some situations – e.g. income of workers exercising their employment duties on offshore oil-drilling platforms on Nigeria's territorial waters.

Territorial waters generally mean the waters under the sovereign jurisdiction of a nation. Internationally and based on the Territorial Waters Act (TWA), Nigeria's territorial waters (in terms of ownership, control, and proprietary right to land) include every part of the open sea, not exceeding 12 nautical miles from the coast of Nigeria. This jurisdiction is under the exclusive purview of the Federal Government (FG) and only Federal laws are applicable there.

Personal Income Tax Act (PITA), which is a federal legislation applies within Nigeria's territorial waters. Generally, section 2(2) of PITA, provides that personal income tax (PIT) be paid to the State where an individual taxpayer resides. Therefore, it becomes imperative to ascertain the relevant "State" with taxing rights on territorial waters considering it is under the control of Federal Government. There appears to be no direct legislation at this point to ascertain the relevant State. However, we can draw an analogy from the provision of Allocation of Revenue (Abolition of Dichotomy in the Principle of Derivation) Act 2004 (ARDPDA), which provides that "the two-hundred-meter water depth Isobaths



contiguous to a State of the Federation shall be deemed to be a part of that State," when determining resources from the states in accordance with Nigeria's constitution.

Although ARDPDA was enacted for another purpose, it can safely be assumed that for PITA administration purposes, a State includes territorial waters close to it. This however does not solve the potential issue on taxing rights where the "territorial water" spans more than one State or the employee has more than one place of residence.

In this regard, PITA provides that where an individual has more than one place of residence in different states, PIT is payable to the State where he has his principal place of residence by 1 January of the year or soon thereafter. The First Schedule of PITA provides tiebreaker rules in determining an individual's principal place of residence. Relevant rules are evaluated below vis-a-vis probable scenarios:

1. One State of residence

Where the territorial water is deemed to be within one State and an offshore worker maintains actual residence in the same State, there is no need to refer to the tiebreaker rules.

2. More than one place of residence in different states

Offshore worker who works on offshore oil drilling platforms deemed to be located in one State and his home in a different State triggers the tie-breaker rule. In this regard, the rule stipulates the principal place of residence of such a person to be the place where the offshore platform exists provided he has at least 49 other co-workers. This comes with inherent issues described below:

• Controversy around State control over territorial waters:

Territorial waters where the offshore platform exists are within the exclusive jurisdiction of the FG. FIRS, being the tax authority of the FG, is not empowered under PITA to collect taxes on income from territorial waters. Neither does the tax law empower SBIRs to collect same.

However, the analogy of the provision of ARDPDA described above may be useful in determining the relevant State boundaries for PIT collection purposes.

• Spread of platform across two states:

Issues get more complicated where the relevant platform on the territorial waters spreads across 2 "states". Each of the states may lay claim to taxing rights, thus leading to potential double taxation. In this regard, another tie-breaker rule could be used – (actual residence closest to his place of work). Alternatively, contiguous states could agree on modalities to apportion the income. In this instance, taxpayers and employers are obliged to keep appropriate documentation.

• Working across multiple places during the year:

Where an employee works across multiple rigs or offices, the employee may be treated as an itinerant worker (i.e. worker carrying out employment in different states for at least 20 days in 3 months within an assessment year). Section 3 of PITA empowers SBIRs to impose and collect tax from an itinerant worker wherever he/she is found during the year.

In recognition of possible double taxation, PITA provides that credit is given against any tax paid to other tax authorities for the same year of assessment on an itinerant worker. This also requires collaboration by the states and proper record keeping by the taxpayer.

• Less than 50 workers on the platform:

Where the offshore worker has more than one place of residence in different states and works with less than 49 co-workers on Nigeria territorial waters, his principal place of residence is determined by principal place of residence closest to where he normally works.

In view of the inherent issue with taxing rights, it is common practice for the tax authorities of littoral states to demand PIT (under the Pay-As-You-Earn scheme) from employers of offshore workers, on the basis of some geographic determination that allocates a portion of the territorial waters to their States – possibly ARDPDA.

On the potential multiple taxation of income, possible resolution will emanate from automation, collaboration and information dissemination by each SBIR. SBIRs are encouraged to automate their processes (similar to FIRS' automation of corporate income taxes) to enable taxpayers retrieve their records of tax payment (across all states) when needed. There may be light at the end of the tunnel with the recent communique by the Joint Tax Board, urging all SBIRs to automate their processes.

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