



**Nigeria Issues Companies Income Tax  
(Significant Economic Presence) Order, 2020**

Foreign companies that are not registered in Nigeria but provide digital, technical, professional, management or consultancy services to Nigerian customers would now be liable to income tax in Nigeria once it is established that they have significant economic presence (SEP) in the country.

The Companies Income Tax (Significant Economic Presence) Order 2020 (Order) signed by the Honourable Minister of Finance, Budget and National Planning, Mrs. Zainab Shamsuna Ahmed, provides guidance on the Significant Economic Presence (SEP) concept introduced by the Finance Act 2019.

The Order which commenced on 3<sup>rd</sup> February 2020 expands the scope of companies liable to income tax such that non-resident companies deriving income from activities in Nigeria would be assessed for taxation purposes and may be liable to tax. Under this Order, companies other than Nigerian companies would be liable to pay tax, in Nigeria, on the profit generated from the provision of digital, technical, professional, management or consultancy services once they have a significant economic presence in Nigeria in any accounting year. The Order provides detailed requirement for the establishment of SEP as stipulated below.

## Significant Economic Presence for Digital Service Providers

A digital service provider, albeit a foreign company, would be deemed to have significant economic presence in Nigeria and liable to tax on profits derived from its activities in Nigeria, if it:

### Category A

Derives an annual gross turnover of more than N25 Million or its equivalent in any currency from any or the combination of the following activities:

- Streaming or downloading services of digital contents, including but not limited to movies, videos, music, applications, games and e-books to any person in Nigeria;
- Transmission of data collected about Nigerian users which has been generated from such users' activities on a digital interface including website or mobile applications;
- Provision of goods or services directly or indirectly through a digital platform to Nigeria; or
- Provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria, or

### Category B

- Uses a Nigerian domain name (that is, '.ng') or registers a website address in Nigeria; or

### Category C

- Has a purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in Nigeria, including reflecting prices of its products or services in Nigerian currency or providing billing or payment options in Nigerian currency.

## Connected Persons

The Order provides that the turnover from the activities carried out by the connected persons of the foreign company shall be aggregated in determining if the N25 Million threshold was met.

The Order defines “connected persons” to include:

- a.) persons that are "associates", or
- b.) persons that are business associates in any form, such as where:
  - such person participates directly or indirectly in the management, control or in the capital of the foreign company, or
  - the same person or persons participate directly or indirectly in the management, control or in the capital of both companies.

## Significant Economic Presence for Companies Providing Technical, Professional, Management or Consultancy Services

A foreign company providing technical, professional, management or consultancy services would be deemed to have significant economic presence in Nigeria and becomes a taxable person, if it earns income or receives any payment from:

- a person resident in Nigeria; or
- a fixed base or agent of a foreign company in Nigeria.

The Order elaborates that services of technical nature refer to specialised services which include advertising services, training or provision of personnel that are not professional, management or consultancy services.

## Exemptions

- Any foreign company covered under a multilateral agreement or consensus arrangement to address the tax challenges arising from the digitalization of the economy, to which Nigeria is a party, shall be treated in accordance with that agreement or arrangement and would not be subject to the SEP rules in this Order.
- A company is not deemed to have significant economic presence in Nigeria, in relation to payment:
  - Made to an employee under an employment contract;
  - Made for teaching in an educational institution or for teaching by an educational institution;
  - Made by a foreign fixed base of a Nigerian company.

## Conclusion

The Order clarifies that the absence of a business presence/residency in Nigeria will no longer exempt foreign companies from taxation on the income they derive from certain goods and services provided to customers in Nigeria.