

NIGERIA AND SPAIN SIGN DOUBLE TAX AGREEMENT

Introduction

One of the essentials of a good tax system is “certainty”. That is, such a system must clearly prescribe those who are liable to pay tax, the amount/rate to be paid, and the time within which such payment must be made, hence the need for tax regulations.

Different countries have their tax regulations which specify the tax regime applicable in the country, therefore it is not uncommon to be taxed on the revenue generated from a foreign country and still be liable to tax on the same income to your country of residence. This is the fate particularly suffered by individuals and corporate bodies who transact businesses in other countries besides the country of their residence.

As a result of this problem, more commonly referred to as double taxation, governments of various countries, at one point or another enter into agreements/treaties (which are sometimes required to be domesticated in their laws) to either avoid or reduce double tax liabilities, which can occur as a result of international transactions.

Therefore, double taxation treaties (DTT) are written tax agreements between two contracting states directed at avoiding double taxation by defining the standard of liability of taxable income and the country entitled to such taxes.

Nigeria currently has double taxation treaties with a number of countries, including, The United Kingdom, The Netherlands, Canada, South Africa, China, Philippines, Pakistan, Romania, Belgium, France, Mauritius, South Korea, Italy and Spain.

THE AVOIDANCE OF DOUBLE TAXATION AGREEMENT BETWEEN THE FEDERAL REPUBLIC OF NIGERIA AND THE KINGDOM OF SPAIN (DOMESTICATION AND ENFORCEMENT) ACT, 2018.

Nigeria signed her Double Tax Treaty (DTT) with Spain 9 years ago, however the treaty could not be enforced in Nigeria until it has been ratified into law by the National Assembly as provided in Section 12(1) of the 1999 constitution as amended.

The National Assembly started the ratification process of the treaty in 2016, and it was recently assented to by the President, Muhammadu Buhari on the 26th January, 2018. The effect of this assent is that business transactions in both Nigeria and Spain will now be regulated by the DTT with respect to the tax liabilities of the individuals and corporations involved.

Like the other DTTs which Nigeria had previously entered into with other countries, the DTT with Spain will have the following effect:

1. Guide against the occurrence of a double taxation scenario in which a particular income is taxed twice in the hand of a taxpayer by either his home Country (Country of residence) or the Country of source of the income.
2. Modify the domestic tax laws of both countries by reducing the domestic tax rate.
3. Grants concessions to beneficiaries.
4. Guide against the occurrence of a double non-taxation scenario in which a particular income escapes taxation from both the source State (where the revenue is generated) and resident State (State of residence of the enterprise) in the hand of a taxpayer.

5. Exchange of all relevant tax information beneficial to either or both Contracting States for the furtherance of the operation of the Agreement.
6. Assistance in the collection of taxes by either Contracting States.
7. Establishment of the Mutual Agreement Procedure (MAP) for the resolution of disputes emanating from the implementation of the agreement or the taxation of income of residents of both Contracting States.

Nationals of both Nigeria and Spain stand to benefit from this DTT with respect to their tax liabilities as a result of their business transactions with one another. Some of the benefits are:

1. Taxing rights of both countries are properly elucidated, therefore there is a guarantee that the income of a resident will not suffer double taxation.
2. As opposed to the normal Withholding tax (WHT) rate at 10% for corporate bodies and 5% for individuals, residents of a Contracting state will be liable to WHT at 7.5% for corporate bodies, and 7.5% on dividends and interest or 5% on royalty for individuals.

CONCLUSION

The recent ratification of the DTT with Spain is a laudable feat for Nigeria because it brings the number of DTTs entered into by Nigeria with other States to 14. However, there is the need to ratify more of these treaties if Nigeria to attract more foreign direct investment as a measure for the growth of the economy.

