

FAQ: Nigeria's Tax Law for NGOs

The Companies and Income Tax Act of 2007 makes tax compliance mandatory for nongovernmental organisations (NGOs) registered under the Companies and Allied Matters Act. NGOs that do not make profits from trade or business are exempt from paying company income tax. The Federal Inland Revenue Service (FIRS) regulates tax issues.

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WHICH TAX LAWS AND REGULATIONS ARE RELEVANT TO NGOs?

1. Companies and Income Tax Act (CITA), 2007
2. Personal Income Tax Act No. 104, 1993
3. Value Added Tax Act No. 102, 1993
4. Value Added Tax Act, 2007 (As amended)
5. Tax and Levies (Approved List for Collection) Decree No.21, 1998

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DO NGOs PAY ANY TAX?

Yes. NGOs pay the following taxes:

1. Pay-as-you-earn (P.A.Y.E) tax.
2. Withholding tax on goods and services.
3. Local taxes and fees such as parking or garbage collection levies.
4. Income tax on passive income such as dividends, rent, royalties, interests, investment income.
5. Capital gains tax if assets are disposed at a profit.

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WHERE ARE NGO TAXES REMITTED?

NGOs must deduct P.A.Y.E tax from an employee's salary and withholding taxes on consultancies, rents and services awarded to individuals, contractors and suppliers to remit to the State Board of Internal Revenue where the employee resides or from where contractors and suppliers operate, along with a schedule of deductions. Local taxes, fees and charges, income tax on passive income and capital gains tax are also remitted to the State Board of Internal Revenue.

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FOR WHICH INCOME ARE NGOs LIABLE TO PAY TAX?

If an NPO engages in any trade or business, the profit derived from it will be subject to income tax. While NGOs are exempt from paying taxes on income derived from their primary registered activities such as foreign and domestic grants, subscriptions, membership dues, donations, gifts, endowments etc., they are liable for income tax on their commercial activities (unrelated business income), such as a business or trade.

NGOs must also pay income tax on passive income (that is, income received on a regular basis, with little effort required to maintain it, such as from dividends, rent, royalties, or interest), investment income, and capital gains tax if they dispose of their assets at a profit.

NGOs pay VAT on goods and services consumed, except those purchased exclusively for donor-funded humanitarian projects or activities, which are zero rated under the Value-Added Tax Act, as amended.



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WHICH ORGANIZATIONS ARE EXEMPT FROM PAYING TAXES?

Organizations that engage in philanthropy under the Companies and Allied Matters Act (CAMA) are considered charity organizations, and their excess income (derived from grants, subscriptions, donations, gifts, endowments, and so forth) over expenditures is exempt from corporate tax. According to Section 23 (1) of CITA, all NGOs are generally tax exempt, provided they do not have profits derived from any trade or business. Similarly, Section 23 (c) of CITA and Section 19, Para 13, Third Schedule of PITA provide that the profits of any company or institution engaged in ecclesiastical, charitable, benevolent, or educational activities of a public character are exempt from income tax provided such profits are not derived from a trade or business conducted by the organisation.

Foreign NGOs operating in Nigeria are exempt from income tax and are eligible for exemptions from other taxes under double-taxation treaties.

Not-for-profit companies, such as social enterprises and foundations engaging in economic or commercial activities, may apply to the president of Nigeria for an order to exempt them from taxation on their income or profits, no matter what the source.



WHERE CAN I FIND MORE INFORMATION ABOUT TAX ISSUES?

FIRS provide updated information, guides, notices and clarifications on tax issues via Tax Circulars. These can be found on its website, at the following link: <http://www.firs.gov.ng/Resource-Centre/Pages/Tax-Circulars.aspx>

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WHAT DOES FIRS CONSIDER 'TRADE'?

Trade is determined by FIRS using indicators called 'badges of trade' to determine if an activity fits the definition of trade. The indicators include:

1. Examining if there is an intention to make a profit.
2. Frequency of transactions.
3. Nature of the asset.
4. Transactions similar to an existing trade.
5. Changes to the asset; if repaired, modified or improved to make it more saleable.
6. Manner in which the sale was carried out.
7. Source of finance.
8. Interval of time between purchase and sale.
9. Method of acquisition.



WHERE ARE THE FIRS OFFICES LOCATED?

FIRS offices are located in different parts of the country and can be found using the locator at this link: <http://www.firs.gov.ng/contactus/Pages/FIRS-Locator.aspx>

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DO INDIVIDUAL TAX GIVERS OBTAIN TAX DEDUCTIONS?

No. Individuals do not obtain tax deductions for their donations to NGOs.

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HOW DO NGOs OBTAIN A TAX EXEMPTION OR CLEARANCE CERTIFICATE?

An NGO must register with FIRS, maintain accurate records of employees and proper books of accounts, and file tax returns every year. To obtain a tax exemption certificate, a NGO applies manually for a tax clearance certificate at the integrated tax office where it is registered and files its tax returns. If upon review of application the integrated tax office finds the NGO qualified, it will issue a tax-clearance certificate. If the application is denied, an explanation for the reasons is given in writing within two weeks of the application, but this cannot be appealed.

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ARE DONATIONS BY COMPANIES TO NGOs TAX DEDUCTIBLE?

A donation by a company to a NGO is tax deductible provided the donation does not exceed 10 percent of the company's total profit for the year, as calculated before the donation is made, and where it is not of a capital nature.

Section 25(3) of CITA applies to any company making donations to NGOs. The Fifth Schedule of CITA provides a list of organisations to which donations may be made and activities that are tax deductible. These organisations cannot be established for profit or gain of the individual members of the association. Eligible organisations are those working on:

- Promotion or defense of human rights
- Women's empowerment and development
- Re-orientation, rehabilitation, welfare support service for orphans, widows, physically challenged, refugees and all categories of persons that may require social or economic rehabilitation and transformation
- Youth empowerment and development
- Leadership and resource development
- Promotion of social and economic development
- Accident prevention and control
- Information system development and awareness
- Creation of awareness for transparency in governance and electoral processes
- Promotion of national unity and patriotism
- Museum development and promotion of sports, arts and culture
- Rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development
- Any professional body established under an Act of the National Assembly for the regulation and practice of the profession



WHERE CAN I LEARN MORE ABOUT PHILANTHROPY LAW IN NIGERIA?

More information about the Nigerian tax law may be found in ICNL's Nigeria Philanthropy Law Report, which offers detailed information about the national laws and regulations affecting philanthropy in Nigeria:

<http://bit.ly/PhilanthropyLawReports>