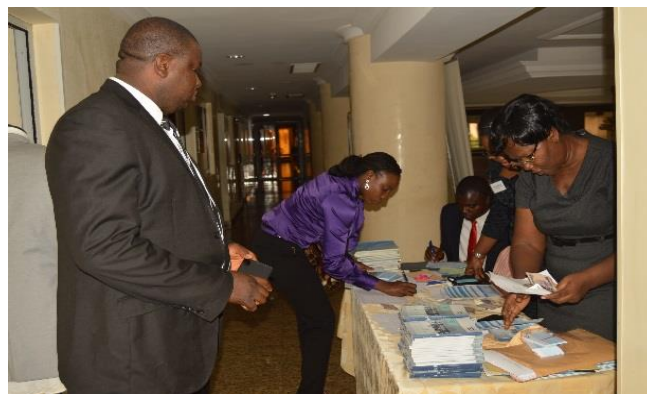


**“THE IMPLEMENTATION OF THE IMMIGRATION ACT, 2015 AND EXPATRIATE TAXATION”**

We hosted the second edition of our Roundtable on Immigration in Abuja on the theme **“The Implementation of The Immigration Act 2015 and Expatriate Taxation”** at the Chelsea Hotels, on Thursday 8th of September 2016. As with the maiden edition, the objective of the Roundtable was to highlight ongoing efforts of the Nigeria Immigration Service (NIS) in implementing the Immigration Act 2015 and expounding the emerging compliance requirements under the Act. We also set out to provide better insight into the compliance requirements of the local content policy of the Federal Government particularly with respect to the grant of Expatriate Quota in the Oil and Gas and Power Sectors and to understand the roles of the stakeholders within the context of the Act. The issue of Expatriate Taxation in Nigeria which remains a front burner issue was also on the agenda.

Leading the team of subject-matter experts were the Comptroller General, Nigerian Immigration Service represented by Barr. Babale David from the Legal Unit; Mr. Lawrence Adigwe, Deputy Director, Citizenship and Business Department, Federal Ministry of Interior, and Mr. Shittu Taofeek, a tax expert.



Barr. David Babale took participants through the **“Implementation of the Immigration Act 2015 and the Evolving Compliance Requirements”**. He restated the basis for the enactment of the Immigration Act 2015, affirming that the 1963 Immigration Act had become obsolete in the context of current realities. He noted that the 1963 Act did not provide for the legal personality of the NIS but rather made the Service a department within the former Federal Ministry of Internal Affairs. The passport and visa regime under the preceding Act were also considered complicated and bereft of the desired ease required for seamless compliance by the expatriate community. Also, the duties of the NIS were not adequately spelt out in the old Act. The imperative of domesticating the Smuggling of Migrant Protocol and criminalizing obnoxious cross border conduct also necessitated the passage of the Immigration Act 2015.



Barr. Babale noted the various innovations introduced by the new Act including the issuance of Visa on Arrival to qualified expatriates, the conferment of residency status on investors who meet a specified investment threshold as may be specified from time to time in the National Visa Policy, the prerogative of the NIS officers attached to Nigerian embassies and foreign missions to issue visa amongst others.

Mr. Babale remarked that since the commencement of the 2015 Act, the Service had been ensuring full compliance with the Act and stressed the following as steps taken by the NIS thus far:

- i. Sensitization of the public through different for
  - a. He conceded that much more was required by the NIS in this regard.
- ii. Creation of a dedicated website by the Service.
- iii. Creation of a central computerized repository for management of expatriate information and permits granted by the Service.
- iv. A streamlined visa management process
  - v. Regular routine inspection of corporate entities employing expatriates.

Barr. Babale enumerated some of the key provisions of the Act as follows: The operation of the Immigration Act 2015

- a. With the abolition of the Re-Entry Visa regime, only the CERPAC Card is required of a qualified expatriate to live, work and travel in and out of Nigeria.
- b. Minor dependents of the expatriates will only require to have the CERPAC details of their parent endorsed on their passports while adult dependents are required to obtain CERPAC Cards.
- c. Permanent CERPAC Cards (the green cards) must be obtained within ninety (90) days from the date of purchase of the temporary cards.
- d. Filing of monthly quota returns by companies employing expatriates is now compulsory
- e. Application for the recently introduced Visa-on-Arrival shall be made by the Nigerian host and approval obtained prior to the arrival of an expatriate at the port of entry.



- f. Fees for the Visa-on-Arrival differ per country of residence and duration of stay of the expatriate.
- g. Expatriates with CERPAC Cards who intend moving around Nigeria outside their primary base (state, city or town) must obtain brown cards (essentially, an internal movement permit).



Mr. Taofeek Shittu anchored the discussion on “**Expatriate Taxation in Nigeria**”. The highpoint of the discussion was that Expatriates are liable to tax in Nigeria under the following conditions:

- i. *Where the duty of employment is wholly or partly performed in Nigeria or the employer is in Nigeria or has a fixed base in Nigeria.*
- ii. *The employment income is liable to tax in Nigeria, whether paid for in Nigeria or outside Nigeria-thus both the living allowance (paid in Nigeria) and offshore payments are liable to tax in Nigeria.*



- iii. *Employment income liable to tax includes cash, and other benefits in kind such as accommodation, cars, air tickets and children education allowance.*
- iv. *Expatriates on Subject to Regularization (STR) Visas and CERPAC are liable to tax regardless of length of stay in Nigeria.*
- v. *Expatriates on business visa though not permitted to work in Nigeria are liable to tax for any employment income earned in Nigeria.*

He further noted that remuneration of an expatriate on Temporary Work Permit (TWP) shall be liable to tax in Nigeria if:

- i. *His country of residence does not have Avoidance of Double Taxation Treaty with Nigeria or the remuneration earned in Nigeria is not liable to tax in his country of residence; and*
- ii. *If his duties are performed for a Nigerian employer or if an employer with a fixed base in Nigeria bears the cost of his remuneration.*

Mr. Taofeek emphasized that expatriates are subject to the provisions of the various tax laws which apply to Nigerians unless it could be established that they are entitled to benefit from the exceptions provided for in those laws. These include the Personal Income Tax Act, which provides for the Pay-As-You-Earn (PAYE) tax.



Mr. Lawrence Adigwe, a Deputy Director in the Citizens and Business Department of the Federal Ministry of Interior anchored the session on **“Implementation of Local Content in the Administration of Expatriate Quota: Implication for Business”**. Mr. Adigwe explained that the

Nigerian Expatriate Quota Policy derives from the Immigration Act and noted that the Minister of the Federal Ministry of Interior is charged with the responsibility of enforcing the provisions of the Act as they relate to employment of expatriates in Nigeria. The Policy is premised on four cardinal objectives:

1. To bridge the gap created by inadequate indigenous manpower in different sectors of the economy
2. To encourage the training and development of local manpower
3. To attract foreign direct investment and expertise as well as promote economic activity
4. To achieve transfer of technology through the importation of foreign expertise i.e the “Nigerianisation” Policy also known as the “Understudy Programme”.



According to Mr. Adigwe, the Expatriate Quota Policy requires that two (2) Nigerians with relevant basic qualification understudy an expatriate occupying a quota slot. In addition, the beneficiary company is required to have in place a comprehensive training programme for the understudies and reserve some senior management positions for qualified Nigerians.

He further noted that pushing further the frontiers of national strategy to achieve 90% employment of Nigerians in the nearest future, Local Content Development Policies have been developed for the Oil and Gas and Power Sectors. These policies are aimed at:

- a. Achieving in-country value creation through deliberate utilization of Nigerian human and material resources and related services.
- b. Achieving maximum Nigerian participation in the value and supply chain and promoting use of in-country human resources, materials and services.



Following the passage of the Local Content Development Act 2011, the Nigeria Content Development and Monitoring Board (NCDMB) released a Local Content Policy for companies in Oil and Gas Sector. The policy requires that Nigerian Engineering and other expert skills must be sought for, given first consideration, and used by oil and gas companies or ventures before foreigners could be considered. In addition, companies with significant percentage of Nigerian Content in terms of ownership and management, use of Nigerian manufactured goods and services shall be given premium consideration in the award of contracts in the sector. A “No Objection” letter certifying compliance with the Local Content Policy from the NCDMB is required by the Federal Ministry of Interior when considering an application for Expatriate Quota Positions by companies operating in the oil and gas sector.

Mr. Adigwe noted that the Nigerian Electricity Regulatory Commission (NERC) had also released a local content policy for the electricity power sector - “Regulations on National Content Development for the Power Sector 2014” - under the enabling Electricity PowerSector Reforms Act 2005.



Mr. Adigwe took the participants through the facilities granted by the Ministry for employment of expatriates. These include Business Permit (and amendments thereof), and Expatriate Quota approval and renewal. He noted that the expatriate quota positions could be renewed, revalidated, re-designated, de-tagged, restored, etc. He noted that a company (limited by share) applying for any of these facilities shall have a minimum of 10 million share capital and provide supporting documentation



The Roundtable had in attendance participants from divers sectors including oil and gas, banking, manufacturing, professional services, information and technology, power, construction, food and dairies sectors.

The next edition is scheduled for the 24<sup>th</sup> of November at the Lagos Sheraton Hotel, Ikeja.

## Who We Are

DCSL Corporate Services Limited (DCSL) provides corporate, company secretarial, immigration, training and governance services to corporate bodies, individuals, government agencies and business organizations. We operate from our Head Office in Lagos, with an operational branch in Abuja.

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