

Management of Expatriate Monthly Returns (EMR) to Avoid Potential Tax Liabilities



Introduction

Companies with expatriate employees, who reside and work in Nigeria, are required to submit a monthly report on the utilization of the Expatriate Quota (EQ) approval issued to them by the Federal Ministry of Interior (FMI). Information on any visiting expatriates, whether or not such expatriates are on Business, Temporary Work Permit (TWP) or Tourist visa should also be disclosed in the Expatriate Monthly Returns (EMR), in line with the prescribed format by the Nigeria Immigration Service (NIS). The EMR will show information, such as their nationality, when the expatriates arrive or exit Nigeria and where they reside in the country.

The NIS requires Companies to prepare and submit the EMR in the first week of the month following the relevant month. The returns should be submitted at the headquarters of the NIS in Abuja, the Zonal office and relevant sections within the State Command of the NIS, where a company operates. The relevant sections include the Comptroller's office, the Assistant Comptroller's office, the Enforcement unit, the Quota unit, and the Aliens and Investigations unit, of the NIS. Upon submission, the EMR would be duly endorsed by the

various units of the NIS to confirm receipt of the documents.

Failure to submit the EMR at the relevant NIS offices is a violation and will attract a fine on conviction. According to the Immigration Act 2015, Section 105 (4b):

Any corporate body that refuses to render expatriate monthly returns shall be liable on conviction to a fine of three million naira (about USD \$13,600)

Failure to submit the EMR at the relevant NIS offices is a violation and will attract a fine on conviction.

Late submission of EMR is deemed as non-compliance and subject to rejection, query or investigation of erring companies, by NIS.

The significance of the EMR

One of the key requirements for processing the renewal of an existing EQ position or obtaining additional

quota position from FMI is the presentation of a duly endorsed EMR for the last three (3) months preceding the application. The Ministry will not process any application without the EMR.

The EMR is also one of the documents which the Tax authorities rely on in determining the activities of a company, with respect to its resident expatriates in any period. The Personal Income Tax Act, 2004, as amended, requires companies to deduct and remit Personal Income Tax (PIT) on behalf of their employees, including resident expatriates, who live and work in Nigeria. Failure to file the EMR as and when due may expose companies with resident expatriates to tax liabilities. The major causes of potential tax exposure are discussed below:

Failure to delete expatriates upon exit

One of the major causes of tax exposure is the failure of companies to delete expatriates who are no longer in their employment. The standard immigration practice requires a company to apply to the Comptroller General of Immigration, for the deletion of an exited expatriate. Through this process, a deletion slip is obtained

and the Company is released of immigration and financial (tax inclusive) responsibilities on behalf of the exited expatriate. The **deletion slip** serves as evidence that the Quota position has been freed for subsequent utilization by the company to bring in a new assignee.

Most companies do not adhere to this deletion process and only resort to manipulation of the EQ returns by simply taking the expatriate's name off their report upon his/her exit. This practice is grossly inappropriate and exposes the Company to undue tax liabilities by the various States Authorities. Many companies prepare and file their personal income tax returns of their expatriates based on the Deemed Income Basis¹. Failure to delete an expatriate upon exit, and without any sufficient proof to show the exit of the expatriate from Nigeria, will expose such companies to tax for that relevant month.

Delayed deletion

A few Nigerian companies actually observe the process of deletion. However, the timeliness of the process is still an area of concern, as most companies are prone to delays before initiating the deletion process. This may be as a result of negligence or simply out of blatant disregard for the Nigeria immigration law, regardless of imminent tax implications.

The deletion process should commence upon an expatriate's exit from a Company, without delay. Otherwise, the Company may be liable to tax for that period of time that the deletion was not initiated.

Double Taxation due to misrepresentation of facts

It is important to note that the content of the EMR should be accurate as Tax

authorities usually rely on its content to administer expatriate PIT. Therefore, the recommended template for the EMR should be adhered to and updated as expatriates arrive or exit a company's employment. Information, such as the names of Nigerian understudies, name and nationality of the expatriate, validity of the expatriate's residence permit, quota position occupied, academic qualification and **location** of stay in Nigeria, should be included and captured correctly on the monthly EQ returns.

Location is of great importance on the EMR, since personal income taxes are paid to the relevant tax authority where the expatriates are deemed to be resident. If an expatriate is reported in the wrong location, the Company faces the risk of paying the relevant tax to different states' tax authorities.

Companies, therefore, need to ensure that they properly prepare and file the EMR as and when due to avoid unnecessary exposure to back duty taxes or multiple taxes and interest/penalty that may result from non-compliance.

Companies must therefore ensure that the details of the Returns are captured correctly to avoid misrepresentation and double taxation.

Record keeping and accessibility

The importance of record keeping cannot be overemphasized as Tax authorities occasionally call for a



¹ Under this basis, expatriates are assessed to tax based on a deemed salary, which is a function of the expatriate level and nationality.

company's records for as far back as six years, or longer, if an investigation is being carried out on a company. The EMR would serve as a quick point of reference if the Company's records have been properly kept over time. Proper record keeping of expatriate quota returns and deletion slips makes it easier for a company to provide clarification on certain issues that may arise in the course of a Tax audit/investigation or a routine visit by immigration authorities. The accessibility of information makes the exercise less cumbersome and facilitates speedy completion of the audit exercise.

Conclusion

The EMR is just not an administrative requirement for immigration purposes only. It also has a significant impact in the management of expatriates' taxes. Companies, therefore, need to ensure that they properly prepare and file the EMR as and when due to avoid unnecessary exposure to back duty taxes or multiple taxes and interest/penalty that may result from non-compliance. The EMR will also greatly help in facilitating the timely processing of additional expatriate quota positions, when required.

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