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Nigeria's Expatriate Employment Levy: A Commentary

Introduction:

On Tuesday, February 27, 2024, Nigeria's President Bola Ahmed Tinubu announced the introduction of an Expatriate Employment Levy (the **Levy**) that will be administered by the Nigerian Immigration Service (NIS), a foremost agency in the Federal Ministry of Interior. The announcement was formalised with the release of a Handbook that contains information on the Levy.

Summarily, the Levy is an annual tax (US\$10,000 for non-Directors and US\$15,000 for Directors) on employers of expatriates in Nigeria, with the contribution stated to be geared towards:

- (i) promoting knowledge and skills sharing to local employees;
- (ii) striking a balance between encouraging foreign direct investments (FDIs) and safeguarding the interests of Nigerian workers;
- (iii) enhancing collaboration between public and private sectors; and
- (iv) enabling the prioritization of acquiring and developing Nigerian talents.

In this brief, we attempt to share relevant information, as available in the Handbook, on the Levy; the NIS' current informal interpretation of the Levy and its intended administration; and the pecuniary and other implications of the development on employers of expatriates in Nigeria.

Scope of the Levy:

The Levy applies to all employers of expatriates in Nigeria. In other words, both Nigerian and non-Nigerian organisations that employ expatriates are liable to pay the Levy. The size of the organisation and whether it is for profit, is also irrelevant save for accredited personnel of diplomatic missions, foreign governments, international agencies, and their dependents (with the exception of those taking on other employments in Nigeria), all of who do not come within the category of expatriates on whom the Levy is payable for.

Expatriates who are engaged for less than 183 days of employment in a year, and apparently on a temporary work permit (TWP), are exempted from the imposition of

the Levy. In the case of an expatriate by more than one employer over a period that exceeds the 183 days threshold, the last employer bearing immigration responsibility shall be liable for the Levy.

Significantly, the NIS reserves the right to exempt any employer from payment of the Levy.

Responsibilities of Employers:

As earlier stated, US\$15,000 is payable by an employer for a Director role and US\$10,000 for non-Director role. The Handbook is silent on whether the Levy is fixed for an Expatriate Quota position or based on the total number of expatriates employed, in which case the employer shall be responsible to pay on each expatriate employed. It is significant that employers are permitted to reallocate the position of an expatriate who has left the organisation to a new expatriate employee, without any charges until the expiration of the Levy.

An employer is also required to maintain accurate and up-to-date record of the details of expatriates under its employment, submit timely reports and adhere to reporting deadlines through designated digital platforms.

NIS' Enforcement Powers:

The NIS is saddled with the responsibility of enforcing the Levy and may, to this end, carry out compliance audits or checks on the accuracy and consistency of information provided by employers. Non-compliance by an employer is an offence with an imprisonment term of 5 years or fine of N1,000,000 (*One Million Naira*), or both. Other infractions such as failure to register employees or file information or forgery attract a fine of N3,000,000 (*Three Million Naira*).

The Curious Case of Employers in the Free Trade Zones (FTZs):

Free Zone Enterprises (FZEs) who are employers in the FTZs have not been specifically mentioned. This is necessary in light of the special economic dispensation that the extant FTZ laws in Nigeria give them. Specific in this regard are the provisions of Sections 8 of the Nigeria Export Processing Zone Authority (NEPZA) Act which exempts FZEs from all Federal, State and Local Government taxes, levies, and rates; and Section 18 which states that legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within FTZs in Nigeria. These legislative provisions clearly outplace the subsidiary legislative effect of the Levy; in other words and in our view, unless there is an amendment of Sections 8 and 18 of the Act, the Levy will not apply to FZEs, that is, employers in the FTZs.

Conclusion:

The Levy is to disincentivise the employment of expatriates and promote the employment and development of the Nigerian workforce. While the employment of highly-skilled expatriates do not, arguably, diminish the development of the Nigerian workforce but rather, also arguably, accentuates it, the Federal Government of Nigeria (FGN) will be within its rights to employ the protectionism of the Levy, within

the context of its bi-lateral and multi-lateral international obligations, to protect Nigerian workers. Some advantage must be created for Nigerians, the playing field cannot be that levelled; so the FGN's plot seems to say. That said, it is assumed that the FGN had indeed considered all its bi-lateral and multi-lateral international employment law obligations in arriving at the conclusion of the Levy. The fact that the Levy and Handbook appears to have glossed over the FZEs situation and reaffirm the investment protection of such provisions as Sections 8 and 18 of the NEPZA Act suggests that some good homework may not have been done. Related to this is also the issue of "transition". Some transition time to the Levy regime may just have been afforded, not especially in the current economic climate where foreign investments of years yore are being eroded by the depreciation of the Naira. Lastly, some concern should be had to the vacillation on the non-dollarisation policy. First, the FGN frowns at the dollarisation of the economy and proceeds to denominate the Levy in same dollars and yet again, denominates the infraction of the dollarized Levy in rebounding Naira. Some homework might just need be marginally redone.

At AO2LAW, we maintain a foremost Immigration Practice in advisory, representation, and compliance/enforcement and management capacities. Situated within our Commercial and Criminal Law Practice Group (CCLP), our Immigration Practice brings to bear our expertise in investments and employment laws to assist businesses and individuals on their obligations and rights in employment migration to and from Nigeria.

For further information on the foregoing (none of which is a legal advice) or related matters, please generally contact us at cclp@ao2law.com, or specifically contact the key contacts.