

AN ANALYSIS OF THE LEGAL AND ECONOMIC IMPLICATIONS OF THE EXPATRIATE EMPLOYMENT LEVY, 2024

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1.0 INTRODUCTION

On February 27, 2024, the Federal Government of Nigeria, through the Federal Ministry of Interior, released a Handbook on Expatriate Employment Levy (“EEL or the Levy”) 2024 (“the Handbook”).

The Handbook introduced a compulsory Levy payable by employers who employ expatriate workers in Nigeria. The introduction of this Levy placed Nigeria among the host of countries such as Saudi Arabia as far back as 2017, and Malaysia in 2018,¹ who introduced similar levies to regulate the employment of foreign workers in their respective countries.

It is noteworthy that on March 8, 2024, representatives of the Nigerian Association of Chambers of Commerce, Industry, Mines, and Agriculture communicated to the general public (vide a press release) that the Federal Government had suspended the implementation Expatriate Employment Levy, pending further review and consultation with relevant stakeholders.² The Ministry of Interior further confirmed that it was engaging in constructive dialogue with members of the organised private sector³.

Undoubtedly, the imposition of the Levy which comes with cognisable economic and legal implications, particularly as it relates to affected businesses, has given rise to controversy, in recent times. Thus, although we are not aware of any official communication from the Federal Government, at the time of this publication, it is probable that the reported suspension of the Levy is borne out of stakeholders' concerns as to the impact of the levy.⁴

This article reviews the Handbook on Expatriate Employment Levy, 2024, and analyses the potential legal and economic implications of the Handbook and the imposed Levy, if implemented.

¹ World Bank, “Who is Keeping Score? POVERTY AND EQUITY GLOBAL PRACTICE SOCIAL PROTECTION AND JOBS GLOBAL PRACTICE Estimating the Number of Foreign Workers in Malaysia” available at <https://documents1.worldbank.org/curated/en/892721588859396364/pdf/Who-is-Keeping-Score-Estimating-the-Number-of-Foreign-Workers-in-Malaysia.pdf>

² Punch Nigeria, 'FG suspends implementation of expatriate employment levy' available at <https://punchng.com/just-in-fg-suspends-implementation-of-expatriate-employment-levy/> Accessed on March 8, 2024

³ BBC, 'Nigeria pauses controversial expatriate employment levy' Available at <https://www.bbc.com/news/world-africa-68521394> Accessed on March 11, 2024

⁴ Arise Nigeria, 'Nigeria Announces Suspension Of Expatriate Employment Levy' available at <https://www.arise.tv/nigeria-announces-suspension-of-expatriate-employment-levy/#:~:text=The%20Nigerian%20Association%20of%20Chambers,the%20Federal%20Ministry%20of%20Interior> Accessed on March 11, 2024



2.0 HIGHLIGHTS OF THE EXPATRIATE EMPLOYMENT LEVY

According to the Handbook on Expatriate Employment Levy, 2024, the objectives of the Expatriate Employment Levy are to balance the benefits of expatriate employment with the protection of Nigeria's local labour markets and resources; encourage skill transfer and knowledge sharing through the development of local talents and strengthening of the domestic workforce⁵; balance economic growth and welfare by ensuring that the presence of expatriate workers in the country does not compromise the rights or limit the opportunities available to local employees; enhance collaboration between public and private sectors; and address demographic shifts.

The Handbook defines expatriate workers as non-citizens employed in Nigeria, which may include individuals on specific types of work permits, visas, or other temporary residency arrangements⁶. EEL is also applicable to expatriates involved in cross-border assignments and secondments, occupying quota positions in companies operating in Nigeria⁷, and those with temporary work permits who have worked for a total of one hundred and eighty-three (183) days within a year.⁸

The following are highlights of the Handbook:

1. **Eligibility:** All employers in the private sector industries, regardless of the business size (multinationals, small and medium enterprises (SMEs)) that utilise foreign workforce or rely on expatriate labour are liable to pay the EEL on an annual basis.⁹
2. **Scope of Applicability:** The Levy is applicable to all expatriate workers employed in Nigeria for a total period of 183 days or more within a fiscal year.¹⁰ Expatriate workers employed on a short-term basis are, however, exempted from EEL where the duration of such employment or assignment from the date of entry into Nigeria for such assignment/employment is cumulatively less than 183 days in a fiscal year.¹¹

⁵ See the Expatriate Employment Levy (EEL) Handbook, Available at <https://pwcniigeria.typepad.com/files/eel-handbook.pdf>

⁶ Paragraph 3.2.1 of the Handbook

⁷ Paragraph 3.6.1 of the Handbook

⁸ Paragraph 3.7.1 of the Handbook

⁹ Paragraphs 3.1 and 3.3 of the Handbook

¹⁰ Paragraph 3.4 of the Handbook

¹¹ Paragraph 3.7 of the Handbook



However, where an expatriate worker enters Nigeria on seasonal and short-term employment with different companies for more than 183 days within a fiscal year, the last employer who bears immigration responsibility on behalf of the expatriate shall be liable to pay the EEL when the payment becomes due.¹² It is instructive to note that employers are at liberty to reallocate positions of expatriate employees who leave their organisation without any charge till the existing EEL validation.¹³

3. **Exemption:** The Handbook exempts staff of diplomatic missions, government officials and international agencies accredited in Nigeria and their dependents from paying EEL. This exemption would, however, not apply where such dependents are confirmed to be engaged in any employment while resident in Nigeria.¹⁴
4. **EEL Rate:** The applicable EEL rates for employers covered by the EEL Handbook are \$15,000 (Fifteen Thousand United States Dollars) for directors and \$10,000 (Ten Thousand United States Dollars) for other categories of expatriates. It should be noted that the applicable rate is not a one-off payment but rather expected to be paid on an annual basis via the EEL portal www.eel.interior.gov.ng for the period that the expatriate is in employment within Nigeria.
5. **Monitoring and Compliance:** Under the Handbook, the Nigerian Immigration Service is saddled with the responsibility of enforcing the Levy in line with the provisions of the Immigration Act, 2015, as well as verifying information provided by expatriate employers.¹⁵ Additionally, employers are required to ensure compliance by maintaining accurate records, submitting timely reports, and complying with stipulated reporting timelines.¹⁶
6. **Timeline for compliance:** By a public notice released by the Federal Ministry of Interior (FMIT) on its website on February 27, 2024¹⁷, the effective date for the implementation of EEL is **March 15, 2024**, and the last date of compliance is **April 15, 2024**. The statement suggests that an EEL card will be issued upon completion of EEL registration and would serve as a mandatory document to be submitted by expatriates at the time of lawful exit and entry into the country. **The foregoing may however be changed or reviewed in light of the reported suspension of the Levy.**

¹² Paragraph 3.7.2 of the Handbook

¹³ Paragraph 8.8 of the Handbook

¹⁴ Paragraph 3.8 and 8.4 of the Handbook

¹⁵ Paragraph 4.1 of the Handbook

¹⁶ Paragraph 5.2 of the Handbook

¹⁷ Minister of Interior "Public Notice of February 27, 2024", available at <https://interior.gov.ng/press-release/public-notice-expatriate-employment-eel-eelinteriorgovng/> Accessed on March 7, 2024.



7. **Offences and sanctions:** Failure by an employer to comply with reporting and payment obligations attracts penalties. Particularly, the failure to file EEL or register expatriate employee within thirty days, failure to renew EEL within thirty days of expiration, as well as falsification of information on EEL renders the entity liable to a fine of N3,000,000 (Three Million Naira).¹⁸

Furthermore, in relation to employers' obligation to maintain and submit accurate and timely report, it must be noted that inaccurate or incomplete reporting by an employer attracts imprisonment for a term of five years and/ or a fine of One Million Naira. Notably, additional sanctions may also be imposed in accordance with the Immigration Regulations 2017.y also be imposed in accordance with the Immigration Regulations 2017.¹⁹

¹⁸ Paragraph 6.3 of the Handbook

¹⁹ Paragraph 6.1 of the Handbook



3.0 LEGAL AND ECONOMIC IMPLICATIONS OF THE EXPATRIATE EMPLOYMENT LEVY

The issuance of the Handbook appears to align with the responsibility placed on the Nigerian Content Development and Monitoring Board (NCDMB) to ensure that preference is given to Nigerian products, services, and employees to foster the growth of local content.²⁰ However, it goes without saying that the imposition of the EEL on employers comes with cognisable legal and economic implications. While the implementation of the EEL Policy is reported to have been suspended, pending further review and consultation with stakeholders, it is expedient to highlight and examine the potential implications of the implementation of the EEL (as presently constituted). These will be examined below:

1. Legal basis for the imposition of the Expatriate Employment Levy:

The legal basis for the imposition of the EEL appears to be uncertain and this has raised numerous questions in the mind of employers, as employers with expatriate staff struggle to understand whether the Levy is a tax or merely a fee. The legal reasoning which accentuates this important distinction is deeply rooted in the nature and essential validity of taxes.

Sometimes, in practice, it is difficult to distinguish a tax from other forms of impositions. Many taxes are often disguised by ascribing to them different terminologies such as fees, rates, charges and levies, etc., thereby raising questions as to the true nature of such impositions. Whereas a fee is generally exchanged for a service rendered or a benefit conferred, and some reasonable relationship exists between the amount of the fee and the value of the service or benefit, a tax is a compulsory monetary charge imposed on a person's or entity's income, property or transaction, without any direct benefit whether it is called a tax or not²¹ – hence the aphorism "there is no *quid pro quo* between a taxpayer and the tax authority".

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Importantly, one of the fundamental principles of taxation is that for a tax to be legally binding, it must be imposed by Statute. The implication of this is that the imposition of tax can only be deemed valid where it is

²⁰ See Sections 2, 4 and 109 of the Local Content Act

²¹ National Tax Policy 2017 available at <https://www.nipca.gov.ng/ViewerJS/?#.wp-content/uploads/2019/03/National-Tax-Policy.pdf> accessed on March 5, 2024



imposed pursuant to an enabling tax law. This position has been the subject of a number of pronouncements both by Courts of Superior Record and the Tax Appeal Tribunal.²²

Flowing from the foregoing, the EEL, which has not been shown to be made pursuant to any existing tax legislation, may be argued to be unlawful, thereby creating doubts as to its implementation.

Conversely, it may be argued that the EEL is not a tax but merely a fee required for the entry of expatriate workers into the country. However, the wording of the EEL Handbook casts serious doubt on the plausibility of such an argument. Specifically, Paragraph 1.1 of the Handbook describes the EEL as a *government-mandated contribution*. Similarly, the Federal Ministry of Interior clarifies in Paragraph 8 of the Handbook that the EEL is mostly imposed on *offshore earnings of expatriates working in Nigeria*. The above expressions appear consistent with the settled position that once an imposition by a public authority is compulsory and is levied for no direct benefit, it is a tax, regardless of the nomenclature ascribed²³. The implication of the above is that the EEL may be challenged as an attempt to indirectly impose additional taxes on companies and businesses, albeit without statutory backing.

2. **Duplicity of regulations on local content promotion:** Given that the objective of the EEL is to balance the benefits of expatriate employment with the protection of Nigeria's local labour market resources and to strengthen the domestic workforce, its issuance appears to be a duplication of some of the already existing regulations on the local content rule. In the petroleum sector, for instance, the Nigerian Oil and Gas Industry Content Development Act²⁴ ("Nigerian Local Content Act" or the "Act") has copious provisions mandating companies to give preference to Nigerian employees in the oil and gas industry. The Act requires that Nigerians are given first consideration for employment and training in any project by any operator or project promoter in the oil and gas industry.²⁵

Furthermore, the Act mandates operators to make every reasonable effort to locally train Nigerians where they are not employed because of their lack of training.²⁶ In the same vein, operators and companies are

²² (unreported) Appeal No. TAT/SEZ/001/17 – Polaris Bank Plc. v Abia Board of Internal Revenue. See also Peace Mass Transit Ltd v. FCT & Ors (2014) LPELR-23740(CA)

²³ Organisation for Economic Co-operation and Development, 'Negotiating Group on the Multilateral Agreement on Investment (MAI), Definition of Taxes' available at <https://www.oecd.org/daf/mai/pdf/eg2/eg2963e.pdf> accessed on March 2, 2024

²⁴ 2010 Act No. 2

²⁵ Section 28 (1) of the Nigerian Local Content Act

²⁶ Section 30 of the Nigerian Local Content Act



required to submit a succession plan for any position not held by Nigerians with provisions for Nigerian to understudy each incumbent expatriate for a period of 4 years, following which the position will be “*Nigerianised*”²⁷ Similarly, the Act requires all operators and companies to employ only Nigerians in their junior and intermediate cadre.²⁸

Furthermore, the Nigerian Information Technology Development Agency (NITDA)²⁹ in 2019, released Guidelines for Nigerian Content Development in Information and Communication Technology (ICT). Under the said Guidelines, telecommunications companies and networking service companies are obligated to provide a local development plan for the creation of jobs, recruitment of Nigerians and human capital development.³⁰

While the above is strictly applicable to the oil and gas and the ICT sectors, the Handbook on Expatriate Quota Administration issued by the Federal Ministry of Interior in 2022 also contains provisions that safeguard the interests of local workers in Nigeria regardless of the sector. The Handbook provides that for each expatriate quota granted, two Nigerians must be employed to understudy the expatriate and further provides that the quota would only be granted where there is sufficient proof that Nigerians cannot fill the positions.³¹

Furthermore, the Nigerian Immigration Act copiously makes provision for the expatriate quota that must be applied for and obtained by the employer prior to the employment of an expatriate.³² This procedure affords the government the opportunity to regulate the influx of expatriates into the country.

It is evident from the foregoing that there are sufficient regulations that prioritise and ensure the protection of the local workforce. It would seem that the imposition of EEL may place additional burdens on employers and foreign investors who are already regulated and taxed.

3. **Flight of Foreign Investment:** The EEL appears not to be helpful to Nigeria's ongoing quest for foreign direct investment (FDI) as it could deter the inflow of FDI into the country. Foreign businesses may be

²⁷ Section 31 (1) and (2) of the Nigerian Local Content Act

²⁸ Section 35 of the Nigerian Local Content Act

²⁹ While the NITDA has been replaced with the Nigerian Data Protection Commission, The Nigerian Data Protection Act preserves all regulations made by NITDA.

³⁰ Paragraph 11.0 and 12.0 of the Guidelines for Nigerian Content Development in Information and Communication Technology (ICT) (as amended, August 2019) ISSUED BY THE NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT AGENCY (NITDA)

³¹ Paragraph 3.0 (iii) and (x) of the Handbook on Expatriate Quota Administration, 2022

³² Section 34 Immigration Act



discouraged from investing in Nigeria due to the high cost of employing expatriates in areas such as ICT, artificial intelligence and health care, where Nigeria is lagging in terms of technical knowledge. It must be noted that as of 2020, Nigeria ranked 131 out 190 economies in the world on the ease of doing business.³³ As such, the implementation of the EEL, especially in light of the existing regulations with similar objectives, may only work further to discourage foreign direct and portfolio investment.

Additionally, when converted to local currency, indigenous companies employing expatriate workers would be required to pay around N23,865,000 (Twenty Three Million, Eight Hundred and Sixty-Five Thousand Naira) for directors and N15,910,000 (Fifteen Million, Nine Hundred and Ten Thousand Naira)³⁴ for other expatriate categories. This would most likely significantly affect operational expenses for companies in Nigeria. Given the substantial cost discussed, the compliance timeline appears exceedingly short, making it impractical for companies to adhere to the stipulated deadline of April 15, 2024. This may adversely impact the bottom line of companies, particularly amid the prevailing macro-economic and inflationary issues in Nigeria.

4. **Nigeria's obligation under the African Continental Free Trade Area (AfCTCA) and other trade agreements:** On July 7, 2019, Nigeria became a signatory to the African Continental Free Trade Area (AfCFTA) Agreement. By signing the Agreement, Nigeria signalled its commitment to the creation of a single African market for goods and services facilitated by free movement of persons, capital, and investment to deepen economic integration within the African continent. It must also be recalled that Nigeria is a signatory to the Treaty of Economic Community of West African State (ECOWAS) and under the Treaty, Member States are mandated to abolish any obstacles to the free movement of persons, goods, services, and capital, and to the right of residence and establishment.³⁵

EEL appears to be antithetical to Nigeria's commitment and obligation under the above Agreements and raises a presumption that the country is avoiding its international obligation. This is because the EEL fails to take cognisance of the agreements by excluding expatriates

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³³ <https://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf>

³⁴ Figures were generated using the CBN official exchange obtained from the CBN website as of the date of writing this article.

³⁵ Article 3 (2) (d) (iii) of the ECOWAS Treaty



who are citizens of countries that are signatories to the Agreements. Apart from the possible legal issues that the EEL may raise, it may impact the image of the country within the international communities.

Additionally, there is a potential risk of other countries issuing reciprocal policies in response to the EEL, which will affect Nigerian citizens working in the diaspora and possibly reduce the diaspora remittance.



4.0 CONCLUSION

While the intention of the Nigerian government to safeguard the domestic workforce is beneficial, the effect of the implementation of the EEL in achieving this objective remains in doubt. Given the short timeline for compliance as well as the amount of the imposition, it may be fair for the government to extend the timeline, to ensure compliance. Furthermore, it may be advisable for the government to reconsider the necessity of the EEL, especially considering its potential macro-economic effects and the need to attract foreign investors.

Notably, the legality and the authority of the EEL as tax (which it appears to be in indeed) is doubtful in the absence of an enabling law and may culminate in litigation. We are of the view that it may be best for the government to secure a statutory backing for the Levy.

Against the backdrop of the above, we are of the view that the reported suspension of the Levy pending further consultation with stakeholders is a step in the right direction. **It is however important for the Federal Government to make an official communication on the status of the levy to ensure that relevant stakeholders/ businesses are certain as to their legal obligations.**

In all, taxpayers and businesses should seek legal advice when in doubt as to the application of the EEL vis-à-vis their operations.

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This article does not constitute legal advice, or a legal opinion and Kenna Partners will not be liable for any reliance thereon.



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