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Does Section 120 of the NTA Provide a Blanket Domestication of All Existing Double Tax Treaties?





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It is no longer news that on 26th June 2025, President Bola Ahmed Tinubu assented to the following Acts: the Nigeria Tax Act (the "NTA"), the Nigeria Tax Administration Act, the Nigeria Revenue Service (Establishment) Act, and the Joint Revenue Board of Nigeria (Establishment) Act, (together "the Tax Reform Acts"). While the NTA took effect on 1st January 2026, the three other Acts commenced on 26th June 2025.

As the dust begins to settle, Nigerians are coming to terms with the extent and impact of the Tax Reforms. This article brings to the fore a very significant but un-publicised provision in the NTA.

Section 120 (1) of the NTA provides that a Double Tax Treaty or Agreement (DTA) "shall have effect upon ratification or domestication by the National Assembly" while Section 120(5) of the NTA deems all "extant double taxation agreements" as applicable throughout Nigeria with effect from 1st January of the year immediately following the date each agreement entered into force.

Ratification by the executive alone does not give a treaty force of law in Nigeria. Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 ("the Constitution") requires that the National Assembly must enact the treaty before it can have the force of law in Nigeria.

Is Section 120(5) of the NTA sufficient to give the force of law to DTAs already ratified but not domesticated before 1st January 2026?

The Constitutional Requirement

Section 12(1) of the Constitution provides that no treaty between Nigeria and another country shall have the force of law in Nigeria "except to the extent to which any such treaty has been enacted into law by the National Assembly."

The Supreme Court in Abacha v. Fawehinmi [2000] 6 NWLR (Pt. 660) (pg. 228) @ 288, paragraphs F – G affirmed that signing or ratifying is not enough. The National Assembly must enact it before it can have the force of law in Nigeria.

The Federal High Court recently applied the same principle in the unreported case of Federal Inland Revenue Service (FIRS) v. Check Point Software Technologies B. V. Nigeria Limited [Suit No. FHC/L/10A/2023, judgment delivered by A. O. Faji, J. on 5th May 2025] where it held that the Organisation for Economic Cooperation and Development Country-by-Country Multilateral Competent Authority Agreement could have the force of law in Nigeria without domestication under Section 12 of the Constitution.

As such, Section 120 of the NTA must be read together with Section 12(1) of the Constitution.

Which DTAs Does Section 120(5) of the NTA Cover?

A DTA already validly domesticated before the NTA commenced did not need Section 120(5) of the NTA to remain legally effective. It remains binding unless the National Assembly repeals the law that domesticated it. It is also worth noting that the NTA did not repeal the laws domesticating the DTAs already in force on 1st January 2026. As such, Section 120(5) of the NTA focuses on a different category of DTAs.

The provision of Section 120(5) of the NTA does not refer to "all signed" or "all ratified" DTAs. It refers specifically to "extant" DTAs and links their application to the date each agreement entered into force. In our view, this points to DTAs that had already entered into force but had not yet been domesticated in Nigeria before 1st January 2026.

What Does Section 120(5) of the NTA Actually Do?

While Section 12(1) of the Constitution requires a treaty to be "enacted into law", it does not require the National Assembly to reproduce the treaty word for word or enact a stand-alone statute domesticating each treaty. This, in our view, means the National Assembly can domesticate more than one treaty through a single statutory provision.

There are already examples of this approach. Section 50 of the Civil Aviation Act 2022 (the "CAA") identifies several international conventions, including the Geneva Convention 1948, the Cape Town Convention and Protocol, and the Tokyo Convention and provides that they "shall… have the force of law in Nigeria".

Section 120(5) of the NTA takes a different approach. It does not identify individual DTAs by name. Instead, it refers to "all extant double taxation agreements".

The Supreme Court in Registered Trustees of National Association of Community Health Practitioners of Nigeria & 2 Ors v. Medical and Health Workers Union of Nigeria (2008) LPELR-3196(SC) pages 52-53, paragraphs C-B, stressed that a treaty must be supported by legislation specifically enacted to domesticate it and give it the force of law in Nigeria.

This raises an important question: are the words "all extant double taxation agreements" clear enough to identify the treaties being domesticated, or must the National Assembly identify each treaty by name?

We are not aware of any Nigerian court decision on this specific question. However, in our view, the expression "all extant double taxation agreements" is clear enough to identify the DTAs covered by Section 120(5) of the NTA.

Does Section 120(5) of the NTA Apply to Earlier Tax Years?

Section 120(5) of the NTA raises another question. It provides that an existing DTA shall apply from 1st January of the year immediately after the treaty entered into force, Suppose, for example, that a DTA entered into force in July 2022 but had not been domesticated in Nigeria before the NTA commenced. A literal reading of Section 120(5) of the NTA could suggest that the DTA took effect in Nigeria from 1st January 2023. That would make the DTA apply [retrospectively] to the 2023, 2024, and 2025 tax years.

> "In our view, Section 120(5) of the NTA provides the legislative basis for DTAs that were already in force but had not yet been domesticated before 1st January 2026. In practical terms, the provision has cleared an important backlog in Nigeria's DTA framework in one legislative step."

We do not think Section 120(5) of the NTA should be read this way. The settled position as stated in Musical Copyright Society of Nigeria Ltd/Gte v. Compact Disc Technology Ltd (2019) 4 NWLR (Pt. 1661) (pg. 1) @ 27-28, is that legislation is presumed to operate prospectively unless a different purpose or intention is clearly stated or necessarily implied.

Reading Section 120(5) of the NTA in light of this principle and the purpose of the provision, we are of the view that it does not give existing DTAs retrospective effect in Nigeria.

Conclusion

Section 12(1) of the Constitution requires a treaty to be enacted by the National Assembly before it can have the force of law in Nigeria. In our view, Section 120(5) of the NTA provides the legislative basis for DTAs that were already in force but had not yet been domesticated before 1st January 2026. In practical terms, the provision has cleared an important backlog in Nigeria's DTA framework in one legislative step.

This matters for businesses and investors. DTAs can reduce or eliminate double taxation, reduce Nigerian withholding tax in appropriate cases, determine when a foreign company has taxable presence in Nigeria, and provide access to treaty procedures for resolving cross-border tax disputes.

On 29th June 2026, the NRS issued an information circular identifying sixteen (16) DTAs which it currently treats as operational. The circular also explains the available treaty benefits and the process for claiming them.

As such, companies and individuals involved in cross-border transactions should review their current and proposed arrangements to determine whether a DTA now provides a tax benefit they have not previously considered. This is particularly relevant to dividends, royalties and service fees, foreign tax credits, taxable presence in Nigeria, and international shipping or airline income.

The provision is equally important to foreign investors. Access to treaty benefits can reduce the risk of double taxation and provide greater certainty about how investments in Nigeria will be taxed.

Section 120(5) of the NTA may therefore have achieved a legal and commercial objective at once: clearing the backlog of existing DTAs that had not been domesticated, and making Nigeria's treaty network more useful to businesses, individuals and investors.

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