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*INTRODUCTION &  
ADMINISTRATION  
OF TAXES IN  
NIGERIA*

**Definition of Tax:** Tax is a compulsory contribution levied by a sovereign power, on the incomes, profits, goods, services or properties of individuals and corporate persons, trusts and settlements. Such taxes when collected are used for carrying out governmental functions, such as maintenance of law and order, provision of infrastructure, health and education of the citizens, or as a fiscal tool for controlling the economy.

Tax is described as a form of levy, imposed on all the residents living in, as well as non-residents doing business, within a tax jurisdiction. It is a civic and patriotic responsibility of citizens, to pay taxes imposed, which also come to the government as income or revenue yielding device to finance the provisions of socio-economic and infrastructural amenities and also to enhance industrial efficiency.

The process of levying and collection of tax from taxpayers is known as taxation.

#### OBJECTIVES OF TAXATION

1. Revenue Generation
2. Redistribution of Income and Wealth
3. Management of the economy
4. Harmonization of the economy
5. To improve gross national income
6. Economic development
7. To favour balance of payment

#### TYPES OF TAXES AND TAX SYSTEM

The structure of Nigerian tax system, basically, deals with classification of and types of taxes. Nigerian taxes can be classified in any of the following ways: Proportional, Progressive and Regressive taxes (methods); and Direct and Indirect taxes (incidence).

a. **Proportional Tax:** This form of tax assesses a taxpayer to tax, at a flat rate on his total assessable income. Therefore, the tax payable is proportional to the taxpayer's income. For instance, at a flat rate of 20%, a taxpayer with total assessable income of N100,000 will pay tax of N20,000, while a taxpayer with income of N1,000,000 pays tax of N200,000 and so on.

b. **Progressive Tax:** This form of tax is graduated as it applies higher rates of tax as income increases.

c. **Regressive Tax:** Under this type of tax, the tax payable decreases as the taxpayer's income increases. This type of tax is not commonly applied.

The second form of classification is by incidence as follows:

(i) **Direct Tax:** This form of tax is assessable directly on the taxpayer who is required to pay tax on his property, income or profit etc. The types of taxes that fall under this heading are:

- Personal income tax;
- Companies income tax;
- Capital gains tax;
- Tertiary Education tax; and
- Petroleum Profits tax.

(ii) **Indirect taxes** are those which are imposed on commodities before they reach the consumer and are paid by those upon whom they ultimately fall, not as taxes, but as part of the selling price of the commodity. Examples are as follows:

- Value added tax;
- Stamp duties;
- Excise duties; and
- Customs duties.

Indirect taxes may affect the cost of living, as they constitute taxation on expenditure.

#### PRINCIPLES/CANONS OF TAXATION

Adam Smith (1776) put forward the under listed as the characteristics, usually called canons of taxation that a modern tax system should have:

- a. **Equity:** This affirms that every taxable person should be taxed according to his ability. Thus, the rich should pay more, while the poor pay less.
- b. **Certainty:** The time of payment, the manner of payment, the amount to be paid should be certain and clear to the taxpayer. The determination of tax liability should not be left to the whims and caprices of tax officials.
- c. **Convenience:** The social and economic standing of the taxpayer must be taken into consideration. Thus, the time of payment should not inconvenience the taxpayer.
- d. **Administrative efficiency:** The process of levying and collection must be administrative efficient, transparent and must not cause economic distortion to the taxpayers.
- e. **Simplicity:** The tax system should be such that is simple to understand by the taxpayers.
- f. **Productive:** The tax system should be such that brings in sufficient revenue to the government. The cost of administering the tax should be less than the revenue such tax will generate.

**g. Flexibility and stability:** A good tax system should be flexible enough for changes to be effected by any government of the day. This flexibility, however, must be balanced with the need to have a stable tax

#### SOURCES OF NIGERIAN TAX LAWS

The tax system in Nigeria is administered through statutes rather than common law.

The sources of Nigerian tax laws are:

1. The Constitution of the Federal Republic of Nigeria
2. Legislation relating to tax issues
3. Circulars and Practices of the Inland Revenue
4. Judicial Precedents or case law
5. Opinions of tax experts and authors insofar as the courts take judicial notice of them.
6. Budget and pronouncement of relevant ministries

#### MULTIPLE TAXES

This is a tax regime under which various and similar types of taxes are imposed on taxpayers by different tiers of government. For instance, while the Federal Government imposed the Value Added Tax on consumption and made it applicable throughout the Federation, some states, notably, Lagos State, introduced the sales tax based on the same principle as the former and made it applicable in Lagos State. Particularly guilty of the problem of multiplicity of taxes, are the Local Governments, where all kinds of taxes were introduced. In fact, this tier of Government pursued the collection of taxes/levies imposed on taxpayers with reckless abandon, to the extent that it became a national problem and consequently attracted the attention of Federal Authorities.

#### Federal Government's Solution to Problem of Multiplicity of Taxes

Following the outcry of the citizenry to the problem of multiplicity of taxes, especially its unorthodox collection procedures, the Federal Military Government of Nigeria intervened by the promulgation of Act 21 which was cited as the Taxes and Levies (Approved List for Collection) Act, 1998. The purpose of the Act was to resolve the confusion created by the multiplicity of taxes imposed by the three tiers of Government, namely; Federal, State and Local Governments. It lays down in very clear terms, the types of taxes collectible by each tier of Government.

#### TAXES AND LEVIES IMPOSED AND COLLECTED BY EACH TIER OF GOVERNMENT

The number of taxes each tier of government is authorised by the Act to collect are as follows:

##### Taxes to be collected by the Federal Government

- Companies income tax;
- Withholding tax on Companies, residents of the FCT and non-resident individuals;
- Petroleum profits tax;
- Value added tax;
- Education tax;
- Capital gains tax on Companies, and non-resident individuals;
- National Information Technology Development Levy;
- Stamp Duties on Corporate body and
- Personal income tax on:
  - i Members of the Armed Forces of the Federation of Nigeria;
  - ii Members of the Nigerian Police Force;
  - iii Staff of the Ministry of External Affairs and non-resident individuals.

##### Taxes and Levies to be collected by State Governments

- Pay As You Earn (PAYE);
- Withholding tax on individuals;
- Capital Gains tax on individuals;
- Stamp Duties on instruments executed by individuals;
- Pools betting, Lotteries Gaming and Casino Taxes;
- Road taxes;
- Business premises registration fees, for:
  - i Urban Areas – as defined by each State:
    - N10,000.00 (maximum) for registration
    - N5,000.00 for annual renewal of registration.
  - ii Rural areas as defined by each State:
    - N2,000.00 for registration; and
    - N1,000 for annual renewal of registration.
- Development Levy (individuals only), not more than N100 per annum on all taxable individuals;
- Naming of street registration fees in State Capital;
- Right of Occupancy Fees on Lands owned by the State in urban cities of the state; and
- Market taxes and levies where state finance is involved.
- Land use Charge, where applicable
- Entertainment Tax, where applicable

- Environmental (Ecological) fee or levy
- Mining, milling and quarrying fee, where applicable
- Hotel, Restaurant or Event Centre Consumption Tax, where applicable
- Animal Trade Tax, where applicable
- Produce Sales Tax, where applicable
- Slaughter or Abattoir fees, where applicable
- Infrastructure Maintenance Charge or levy, where applicable
- Fire Service Charge
- Property Tax, where applicable
- Economic Development Levy, where applicable
- Social Services Contribution Levy, where applicable
- Signage and Mobile Advertisements, jointly collected by the State and Local Government

#### Taxes and Levies to be collected by Local Governments

- Shops and kiosks rates;
- Tenement rates;
- Marriage, birth and death registration fees;
- Slaughter slab fees;
- On and off Liquor License Fees;
- Street naming registration fee except in State capital;
- Right of occupancy Fees on Lands in rural areas (exclusive of those collectable by Federal and State Governments);
- Market Taxes and Levies excluding any market where state finance is involved;
- Motor Park Fees;
- Domestic animal License Fees;
- Bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck;
- Cattle tax-payable by cattle farmers only;
- Merriment and Road Closure Levy;
- Radio and Television License fees (other than Radio and Television Transmitter);
- Vehicle Radio License fees (to be imposed by the Local Government of the State in which the car is registered);
- Wrong parking charges;
- Public convenience sewage and refuse disposal fees;
- Customary burial ground permit fees;
- Religious places establishment permit fees;
- Signboard and Advertisement permit fees;
- Wharf Landing Charge, where applicable.

#### ORGANS OF TAX ADMINISTRATION

##### 1. Federal Inland Revenue Service Board

The administration of taxation on the profits of incorporated companies is vested in the Federal Inland Revenue Service (FIRS) whose management board is known as the Federal Inland Revenue Service Board (FIRSB) (Sections 1-3, FIRS Establishment Act, 2007).

##### Composition of the FIRSB

The Federal Inland Revenue Service Board comprises:

- (a) Executive Chairman – who shall be a person within the service, to be appointed by the President;
- (b) Six members with relevant qualifications and expertise, to be appointed by the President to represent each of the six geo-political zones;
- (c) A representative of the Attorney-General of the Federation;
- (d) The Governor of the Central Bank of Nigeria or his representative;
- (e) A representative of the Minister of Finance not below the rank of a Director;
- (f) The Chairman of the Revenue Mobilisation Allocation and Fiscal Commission or his representative who shall be any of the commissioners representing the 36 states of the Federation;
- (g) The Group Managing Director of the N.N.P.C. or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent;
- (h) The Comptroller-General of the Nigerian Customs Service or his representative, not below the rank of Deputy Comptroller-General;
- (i) Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director; and
- (j) The Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.

The members of the Board, other than the Executive Chairman, shall be part-time members. Also, the Chairman and other members of the Board, other than ex-officio members shall each hold office:

- (i) For a term of 4 years renewable once only;
- (ii) On such terms and conditions as may be specified on the letter of appointment.

##### Powers and Functions of the Board and the Service

The Board Shall:

- (a) Provide the general policy guidelines relating to the functions of the Service;
- (b) Manage and superintend the policies of the Service, on matters relating to the administration of the revenue assessment, collection and accounting system under this

Act or any enactment or law;

(c) Review and approve the strategic plans of the Service;

(d) Employ and determine, the terms and conditions of service including, disciplinary measures of the employees of the Service;

(e) Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and

(f) Do such other things, which in its opinion, are necessary to ensure the efficient performance of the functions of the Service under the Act.

#### Duties of the Secretary to the FIRSB (Section 12)

There shall be a Secretary to the Board who shall be appointed by the Board within the FIRS whose duties are to:

(a) Issue notices of meetings of the Board;

(b) Keep records of the proceedings of the Board; and

(c) Carry out such duties as the Executive Chairman or the Board may, from time to time, direct.

The Service shall:

(i) Assess persons including companies and enterprises chargeable with tax

(ii) Assess, collect, account and enforce payment of taxes as may be due to the Government or any of its agencies;

(iii) Collect, recover and pay to the designated account any tax under any provision of this Act or any other enactment or law;

(iv) In collaboration with the relevant ministries and agencies, review the tax regimes and promote the application of tax revenue to stimulate economic activities and development;

(v) In collaboration with the relevant law enforcement agencies, carry out the examination and investigation with a view to enforcing compliance with the provisions of the Act;

(vi) Make from time to time, a determination of the extent of financial loss and such other losses by government arising from tax fraud, evasion and such other losses (or revenue forgone) arising from tax waivers and other related matters;

(vii) Adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion;

(viii) Adopt measures which include compliance and regulatory actions, introduction and maintenance of investigation and control techniques on the detection and prevention of non-compliance;

(ix) Collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters;

x) Undertake exchange of Personnel or other expert with complementary agencies for purposes of comparative experience and capacity building;

#### Composition of the Technical Committee

In order to assist the FIRS in the performance of its duties, provision is made in Section 9 for the setting up of a committee of the Board, to be known as "The Technical Committee".

The Technical Committee shall consist of:

• The Executive Chairman of FIRS as Chairman of the committee;

• All Directors and Heads of departments of the FIRS;

• The Legal Adviser to FIRS; and

• Secretary to FIRSB.

The Technical Committee may co-opt from the Service, such staff as it may deem necessary, for the effective performance of its functions under the Act.

#### Functions of the Technical Committee

The Technical Committee shall:

• Consider all tax matters that requires professional and technical expertise and make recommendations to the Board;

• Advise the Board on any aspect of the functions and powers of the FIRS; and

• Attend to such other matters as may from time to time be referred to it by the Board.

#### 2. Joint Tax Board (JTB)

Section 86 of the Personal Income Tax Act, Cap P8, LFN 2004 and Personal Income Tax (Amendment) Act, 2011, establish the Joint Tax Board (JTB).

#### Composition

The JTB comprises:

(a) The Chairman of the Federal Inland Revenue Service Board, who doubles as the Chairman of the JTB;

(b) One member from each State, being a person experienced in income tax matters, nominated either by name or office, from time to time, by the Commissioner charged with responsibility for matters relating to income tax of the State in question;

(c) The Secretary, who is not a member of the Board, and is appointed by the Federal Civil Service Commission; and

(d) The Legal Adviser of the FIRS acts as the Legal Adviser to the JTB.

#### Quorum

Seven members or their representatives shall constitute a quorum {Section 86 (6)}.

## Functions of the JTB

The Board shall:

- (a) Exercise the powers or duties conferred on it by the PITA and other Acts;
- (b) Advise the Federal Government, on request, in respect of double taxation arrangement with any other country;
- (c) Advise the Federal Government, on request, in respect of rates of capital allowances and other taxation matters, having effect throughout Nigeria in respect of any proposed amendment to PITA;
- (d) Promote uniformity, both in the application of PITA and in the incidence of tax on individuals throughout Nigeria; and
- (e) Impose its decisions, on matters of procedure and interpretation of PITA, on any State, for purposes of conforming to agreed procedures or interpretations.

## 3. State Board of Internal Revenue (SBIR)

Section 87 of PITA, 2004 and PIT (Amendment) Act, 2011 establish the State Board of Internal Revenue whose operational arm is known as The State Internal Revenue Service (SIRS).

### Composition

The State Board of Internal Revenue for each state of the Federation comprises:

- (a) The executive head of the State Internal Revenue Service as Chairman;
- (b) The Directors and Heads of Departments within the State Internal Revenue Service;
- (c) A Director from the State Ministry of Finance;
- (d) The Legal Adviser to the State Internal Revenue Service;
- (e) Three other persons nominated by the Commissioner for Finance, on their personal merit; and
- (f) The Secretary of the State Internal Revenue Service, who shall be an ex officio member.

### Quorum

Any five members of the State Board of Internal Revenue of whom one shall be the Chairman or a Director, shall constitute a quorum {Section 87 (3)}

### Functions of the State Board of Internal Revenue

The State Board of Internal Revenue shall be responsible for:

- (a) Ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant laws;
- (b) Doing all such things as may be deemed necessary and expedient, for the assessment and collection of the tax and shall account for all sums so collected, in a

manner to be prescribed by the Commissioner;

(c) Making recommendations, where appropriate, to the JTB on tax policy, tax reform, tax legislation, tax treaties and exemptions as may be required, from time to time;

(d) Generally controlling, the management of the State Service on matters of policy, subject to the provisions of the law setting up the State Internal Revenue Service; and

(e) Appointing, promoting, transferring, and imposing discipline on employees of the State Internal Revenue Service.

### Other Issues Relating to Delegation of Functions

The State Board may, by notice in the Gazette or in writing, authorise any person to:

(a) Perform or exercise on behalf of the State Board, any function, duty or power conferred on the State Board; and

(b) Receive any notice or other document to be given or delivered to it or in consequence of this Act or any subsidiary legislation made under it.

However, the State Board shall not delegate any power conferred on it under the following sections of PITA to any person:

In order to assist the State Internal Revenue Board in the performance of its duties, PITA also established a committee of the Board, known as "The Technical Committee".

### Technical Committee of the State Internal Revenue Board

### Composition

Section 89 establishes the Technical Committee of the State Board which comprises:

- (a) The Chairman of the State Board as chairman;
- (b) The Directors within the State Service;
- (c) The Legal Adviser to the State Service; and
- (d) The Secretary of the State Service.

### Functions

The Technical Committee shall:

(a) Have powers to co-opt additional staff from within the State Service, in the discharge of its duties;

(b) Consider all matters that require professional and technical expertise and make recommendations to the State Board;

(c) Advise the State Board on all its powers and duties;

(d) Attend to such other matters as may, from time to time, be referred to it, by the Board.

#### **4. Local Government Revenue Committee**

Section 90 of Personal Income Tax Act, 2004 establishes Local Government Revenue Committee (LGRC), for each Local Government Area of a State. It should be noted that many local governments in Nigeria are against this provision, as they claim that it contravenes the provisions of the 1999 Constitution of Nigeria, which vests the local government administration in the State House of Assembly, as against this Federal law. This is one of the constitutional issues that should be addressed, especially under a Federal system of government.

##### **Composition**

The Revenue Committee (LGRC) shall comprise:

- (a) The Supervisor for Finance as Chairman;
- (b) Three Local Government Councilors as members; and
- (c) Two other persons experienced in revenue matters to be nominated by the Chairman of the Local Governments on their personal merits.

##### **Functions**

The Revenue Committee (LGRC) shall be responsible for the assessment and collection of all taxes, fines and rates, under its jurisdiction and shall account for all amounts so collected, in a manner to be prescribed by the Chairman of the Local Government. The Revenue Committee shall be autonomous of the Local Government Treasury department and shall be responsible for the day-to-day administration of the Department, which forms its operational arm.

#### **5. Joint State Revenue Committee (JSRC)**

Section 92 of PITA, 2004 establishes the Joint State Revenue Committee for each State of the Federation.

##### **Composition**

It comprises:

- (a) The Chairman of the State Internal Revenue Service as the Chairman;
- (b) The Chairman of each of the Local Government Revenue Committee;
- (c) A representative of the Bureau on Local Government Affairs not below the rank of a Director;
- (d) A representative of the Revenue Mobilisation Allocation and Fiscal Commission, as an observer;
- (e) The State Sector Commander of the Federal Road Safety Commission, as an observer;
- (f) The Legal Adviser of the State Internal Revenue Service; and

(g) The Secretary of the Committee who shall be a staff of the State Internal Revenue Service.

##### **Functions**

The functions of the Joint State Revenue Committee shall be to:

- (a) Implement the decisions of the Joint Tax Board;
- (b) Advise the Joint Tax Board and the State and Local Governments on revenue matters;
- (c) Harmonise tax administration in the State;
- (d) Enlighten members of the public generally on State and Local Government revenue matters; and
- (e) Carry out such other functions as may be assigned to it by the Joint Tax Board.

#### **TAX JURISDICTIONS**

For incorporated companies, the FIRS Board is the relevant tax authority, while the State Board of Internal Revenue, is the relevant tax authority for unincorporated entities, individuals and body of individuals. To determine which State's Board is the relevant tax authority for a particular taxable person, the question of residence of such a person must be settled first.

#### **REGISTRATION OF TAXPAYERS**

An incorporated company is expected to register with the FIRS while unincorporated entities and individuals are to register with the State Board of Internal Revenue (SBIR) of the State, in which they are resident. Incorporated entities are also required to register with SIRSB of the States where their employees and suppliers are resident for PAYE and Withholding tax purposes.

##### **Incorporated Companies**

Within eighteen months of incorporation or six months after the end of its first accounting period, whichever is earlier, a newly incorporated company is required to register with the FIRS through a written application, providing the following information/documents:

- (a) Nature of the company's business;
- (b) The company's adopted year end;
- (c) The names and addresses of shareholders, directors; and details of allotment;
- (d) The appointed auditor and tax consultants, if already appointed;
- (e) The registered and business address of the company;
- (f) The appointed bankers, if any;
- (g) Certified true copies of the certificate of incorporation; and

(h) Certified true copies of the Memorandum and Articles of Association.

The company will be registered if the FIRS is satisfied with the application; otherwise, it calls for further information and/or documents

#### Others

A taxable person (within the meaning of the PITA), is expected to register with the relevant tax authority within 3 months of the year by completing the prescribed form and forwarding it to the relevant tax authority. An employer is expected to register itself, as an agent, of the state tax authority, for the purposes of deduction of taxes, from the emoluments of its employees and remitting the tax, so deducted, to the tax authority under the Pay As You Earn (PAYE) Scheme.

#### FILING OF TAX RETURNS

Companies and individual taxpayers are required to file various tax returns applicable to them. These tax returns must comply with laid down regulations and be accompanied by relevant documents.

#### Relevant documents for filing Companies income tax returns

These include:

- Originals of Financial Statements for the relevant financial year containing:
  - (a) Auditors' report with the seal of the principal audit partner of the audit firm and the official stamp of the audit firm's regulatory professional body;
  - (b) Statement of Financial Position signed by two directors of the company;
  - (c) Statement of Comprehensive Income / profit and loss account;
  - (d) Directors report;
  - (e) Statement of Cash flows;
  - (f) Notes to the financial statements and a five year financial summary;
- Capital allowances computation;
- Income tax computation, including minimum tax where applicable);
- Relevant schedules to the financial statements e.g. fixed assets, debtors, creditors; and
- Duly completed FIRS self assessment forms for Income and Education Taxes.
- Evidence of payment of tax in full or a part of an agreed payment by installment plan.

#### FILING OF TAX RETURNS

##### Nature of Tax Returns

Every incorporated company carrying on business in Nigeria is required to file with the Federal Inland Revenue Service (FIRS) the following returns annually:

(a) Self -assessment return in the prescribed form;

(b) Audited accounts; and

(c) Tax and capital allowances computations.

The prescribed form of return shall contain a declaration duly signed by a director or the company secretary, stating that:

- (i) The return contains a true and correct statement of the company's profits computed in accordance with the provisions of CITA and rule made hereunder; and
- (ii) Particulars given in the return are true and complete.

#### Time Limit for Filing Tax Returns, Audited Accounts

Every company is required to file its tax returns, audited accounts, tax and capital allowance computations with the Federal Inland Revenue Service within:

- (a) Six (6) months after the end of a company's accounting year in the case of an old company; or
- (b) In the case of a newly incorporated company, eighteen (18) months from the date of incorporation, or six (6) months after the end of its first accounting period, whichever is earlier.

#### Penalty for Non-Compliance

Section 55, CITA makes provision for payment of penalty by any company that fails to comply with the requirements for filing of tax returns.

A defaulting company shall pay:

- (a) N25,000 in the first month in which it fails to file its annual returns, and
- (b) N5,000 for each subsequent month in which the failure continues.

Any director, manager, secretary, servant, or agent of a defaulting company who is proved to be guilty of connivance, neglect or acquiescence to the commission of the offence, of non-compliance with the above provision, shall be liable to a fine of N100,000 or imprisonment for 2 years or both.

#### Incentive Bonus for Early Filing of Tax Returns

Prior to May 2007, any company that files its self-assessment returns within the time specified for filing same and does not default in its payment arrangement will be entitled to a bonus of one percent (1%) of the tax payable.

However, with effect from May 2007, the self-assessment filing bonus has been abolished.

## Other Returns

In addition to filing the tax returns referred to above, some other returns are required to be filed by certain companies: Such companies are:

### (a) Banks

A company engaged in banking business is required to submit to FIRS within seven (7) days after the end of a month, the names and addresses of its new customers in respect of the preceding month.

### (b) Stock Broking Companies

Every company operating on the floor of the Nigeria Stock Exchange is required within seven (7) days after the end of each calendar month to file with the FIRS a return for the preceding calendar month.

The information to be contained in the return are as follows:

· Transactions involving an offer in the primary market

(i) Type of offer;

(ii) Services rendered;

(iii) Amount of tax deducted at source; and

(iv) Amount of value added tax payable.

· Transactions involving operations in the secondary market

(i) Number and value of transactions carried out for relevant calendar month;

(ii) Commission received or paid;

(iii) Amount of tax deducted at source; and

(iv) Amount of value added tax payable.

## ASSESSMENT PROCEDURES

Where a company has filed a self-assessment return comprising its audited accounts and tax computations based thereon, the FIRS may accept the returns as made, if found satisfactory.

At the expiration of the time limit specified by Section 55 (3), CITA for the submission of tax returns, audited accounts and tax computation, the FIRS, shall proceed to assess every company that fails to file its self-assessment tax returns.

### Best of Judgement (BOJ) Assessment

The Federal Inland Revenue Service will assess a company to tax based on its "Best of Judgement" under the following situations:

(a) Where a company files its returns, audited accounts and tax computations, the tax authority may refuse to accept same if found unsatisfactory and therefore, proceed to determine, based on its "Best of Judgement", the company's Total profit and raise an

assessment thereon accordingly.

(b) Where a company has failed to submit a self – assessment return, audited accounts, etc, and the FIRS is of the opinion that it is liable to tax, it may proceed, based on its "Best of Judgement", to determine the Total profit of such a company and raise an assessment thereon accordingly.

### Additional Assessment

Where the FIRS discovers or is of the opinion that a company liable to pay tax:

(a) Has not been assessed; or

(b) Has been assessed for an amount which is less than the amount actually chargeable, it (the Service) may, within the year of assessment or within six (6) years following that year, and as often as it may be necessary, raise on the company an assessment for the tax or additional tax that is chargeable. The implication of this provision is that if within the six years allowed for the FIRS to go back for the purpose of raising an assessment or additional assessment, it further discovers that tax has also not been paid or is under paid, for any of those six years, it may again go back for six years to raise an assessment or additional assessment on the company.

### Back Duty Assessment

Where a taxpayer or its representative has committed fraud, willful default or neglect in connection with the tax assessed on it, the FIRS is empowered to assess such company to additional tax in order to make good any loss attributable to the fraud, willful default or neglect. The additional tax referred to above can be raised by the Revenue at any time or as often as it may consider necessary without a time limit.

### Service of Notice of Assessment

The FIRS shall arrange to serve or send by registered post to any company or person in whose name a company is chargeable, a notice of assessment showing:

(a) amount of total profits;

(b) the tax payable; and

(c) the place at which such tax should be paid.

### Final and Conclusive Assessment

An assessment raised on a company is said to be final and conclusive where:

(a) No valid objection or appeal has been lodged against the amount of Total profit assessed on a company within the time statutorily allowed for that purpose; or

(b) The amount of Total profit has been agreed by the taxpayer after his objection has been determined by FIRS; or

(c) The amount of Total profit has been determined on appeal.

## COLLECTION PROCEDURES

### · Provisional Tax

Every company is required to pay provisional tax in one lump sum, of an amount equal to the tax paid in the immediately preceding assessment year. The provisional tax is payable not later than three months from the commencement of a year of assessment. The provisional tax is a payment on account of the tax that may be payable by a company for a year of assessment. It is pertinent to state that provisional tax is still a statutory provision of the tax law but no longer relevant as every company is now required by the provisions of CITA to file self-assessment return and pay the tax stated thereon. Self-assessment filers are exempted from payment of provisional tax.

### Time Limit for Paying Tax

The time limit for payment of income tax depends on whether or not the tax payable has been determined by:

- (a) An assessment raised by the FIRS on the company; or
- (b) Self-assessment filed by the company.

### Assessment Raised by FIRS

Where Companies income tax becomes payable by a company on the basis of an assessment notice served on it by the FIRS, such tax should be paid at the place stated on the notice within two (2) months after the service of the notice upon the company.

However, where the two (2) months period expires after the 14th day of December of the assessment year for which the tax is charged, any outstanding balance shall become payable not later than that day, that is, 14 December of the assessment year. Where notice of objection or appeal has been given by the company, the collection of the tax assessed shall remain in abeyance until the determination of the objection or appeal. In this situation, the company is liable to pay the provisional tax or the tax not in dispute, whichever is higher.

On final determination of an objection or appeal, the Service (FIRS) shall serve upon the company a notice of the tax payable as determined and same shall become payable not later than one month after the date of service of the notice, provided that any outstanding balance as of 14 December of the year of assessment shall become payable not later than that date.

### · Self-Assessment

A company that files a self-assessment return is required to pay the tax due in one lump sum on the due date of filing the return or in such number of monthly

installments, not exceeding six, as the FIRS may approve. An application to FIRS for installment payment of tax shall be accompanied by proof of payment of the first instalment to a designated bank.

### Currency of Payment of Tax

Income tax charged on a company shall be paid in the currency of the transaction, that is, the currency in which the income that gives rise to the tax was derived and paid to the company. If a company's transactions are in a foreign currency, tax shall be payable in that currency.

### Penalty for Late Payment of Tax

Where tax assessed on a company is not paid within the time statutorily allowed for that purpose, the company is liable to:

- (a) Penalty of an amount equal to ten percent per annum of the amount of tax payable; and
- (b) Interest at the bank lending rate from date when the tax becomes due until it is paid. The penalty and interest are payable not later than one month after the date of service of demand notice, otherwise, failure to pay within this period is deemed to be an offence against the provisions of CITA.

### Enforcement Procedures

Where a company has failed to pay any Companies income tax assessed on it, the FIRS is empowered to either enforce payment or recover the tax due, through any of the methods stated hereunder, namely:

- (a) Distraint on the taxpayer's goods, other chattels, bonds or other securities; and
- (b) Distraint upon land, premises, or places owned by the taxpayer.

The goods, properties, etc, distrained above may be sold by the tax authority and tax due and incidental costs recovered therefrom.

However, this can only be done if, after keeping the goods, chattels, properties, etc for fourteen days, the taxpayer still failed to pay the tax due, cost and charges;

- (c) The FIRS may sue a taxpayer for recovery of a tax due by filing an action in a court of competent jurisdiction; and

(d) Where a company is in business as a ship owner or charterer and has been in default of payment of tax for more than three months, the FIRS may recover such tax by issuing a certificate to the Nigerian Customs Service, stating the name and address of the ship owner and particulars of the tax in default. The certificate is an authority to the Nigerian Customs Service to deny clearance to the company until the tax due is paid.

The denial of clearance to the company means a detention of the ship owned or chartered by the company.

To exercise this power, the tax due:

- (i) Must have become final and conclusive;
- (ii) Assessment notice must have been served on the company;
- (iii) A demand notice must have been duly served on the company; and
- (iv) The company must have failed or refused or neglected to pay the tax within the time statutorily allowed for that purpose.

## TAX CLEARANCE CERTIFICATE

### Introduction and Nature of Tax Clearance Certificate

A Tax Clearance Certificate is issued by the relevant tax authority, that is, the Federal Inland Revenue Service in respect of Companies and the States Boards Internal Revenue in respect of individuals.

It shows the tax position of the taxpayer to whom it is issued. The certificate is issued only upon application by the taxpayer. In issuing the certificate, the relevant tax authority would have satisfied itself that, the tax assessed on the income of the applicant for the three years immediately preceding the current year of assessment, has been fully paid or that no tax is due on such income or that the applicant is not liable to tax for any of the three years.

The certificate must be issued within two weeks of demand. Otherwise, the relevant tax authority must give reasons for the delay or denial. Meanwhile, the payment of current year tax shall not be made a condition, for the issuance of the certificate, unless the applicant is leaving the country finally.

A Tax Clearance Certificate shall disclose in respect of the last three years of assessment:

- (a) Name, address and taxpayer's identification Number (TIN) of the company;
- (b) Chargeable income;
- (c) Tax payable;
- (d) Tax paid;
- (e) Nature of business;
- (f) Type of Assessment (BOJ, Self Assessment and so on); and
- (g) Expiry date.

### Objective and Relevance of Tax Clearance Certificate

The requirement to obtain a Tax Clearance Certificate on an annual basis, places the onus to ensure full compliance on the taxpayer. The law makes it mandatory for a Ministry, Department or an Agency of Government or a commercial bank, with whom a person has any dealing, with respect to any of the following transactions, to demand from the person, a Tax Clearance Certificate for the three years immediately preceding the current year of assessment:

- (a) Application for Government loan for industry or business;
- (b) Registration of motor vehicle;
- (c) Application for firearms license;
- (d) Application for foreign exchange or exchange control permission to remit funds outside Nigeria;
- (e) Application for certificate of occupancy;
- (f) Application for award of contracts by Government, its agencies and registered companies;
- (h) Application for trade license;
- (i) Application for transfer of real property;
- (j) Application for import or export license;
- (k) Application for agent license;
- (l) Application for pools or gaming license;
- (m) Application for registration as a contractor;
- (n) Application for distributorship;
- (o) Confirmation of appointment by Government, as chairman or member of public board, institution, commission, company or to any other similar position made by the Government;
- (p) Stamping of guarantor's form for Nigerian Passport;
- (q) Application for registration of a limited liability or of a business name;
- (r) Application for allocation of market stalls;
- (s) Appointment or election into public office;
- (t) Change of Ownership of vehicle by Vendor; and
- (u) Application for plot of land.

Tax Clearance Certificate is also required to be tendered by an applicant, for foreign exchange control permission, to remit funds to a non-resident recipient, in respect of income accruing from rent, dividend, interest, royalty, fees or any other similar income, to the effect that tax has been paid on the fund in respect of which the application is sought or that no tax is payable, whichever is the case.

When a person who has deducted any tax, fails to pay the tax so deducted, to the relevant tax authority, no Tax Clearance Certificate may be issued to that person, even

if he has fully discharged his own tax liability.

## Penalties

A person who:

- (a) for the purpose of obtaining a Tax Clearance Certificate, gives incorrect information in relation to any matter or thing affecting his liability to tax; or
- (b) counterfeits or falsifies any document which is required by or for the transaction of any business under the Act or any law listed in the First Schedule to the Act commits an offence and shall be liable on conviction to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 3 years or both such fine and imprisonment (section 43 of the Federal Inland Revenue Service (Establishment) Act 2007).

## Problems of Tax Clearance Certificate

Although, Tax Clearance Certificate is issued based on tax compliance for the preceding year, the tax authorities sometimes require that taxpayers comply with tax payments to date of application for the certificate. This often poses a challenge, as the Revenue could use the opportunity to issue additional assessments and demand payment before issuing the certificate. The certificate, also, often takes a long period to be issued, notwithstanding the two week limit stated in the tax legislation. A taxpayer could therefore lose an opportunity to win a major contract or be unable to clear imported goods, where such taxpayer is unable to obtain a Tax Clearance Certificate on time.

Another issue is the authenticity of Tax Clearance Certificates, as evidence of tax compliance. The certificates are sometimes issued under questionable circumstances or may be forged in extreme cases. The security features of Tax Clearance Certificates should be enhanced to avoid forgery. Also, the process should be computerised as much as possible, to facilitate the prompt issuance and reduce human intervention with the attendant implications.

## OBJECTION TO TAX ASSESSMENT

If any company disputes a tax assessment raised on it by the tax authority, it may give a notice of objection, to the Federal Inland Revenue Service, seeking a review or revision of the assessment.

## CONTENTS OF A NOTICE OF OBJECTION

In line with the provision of Section 69 of Companies Income Tax Act Cap C21 LFN 2004, for a notice of objection to be valid, it must:

- (a) Be in writing and addressed to the Chairman, Federal Inland Revenue Service;
- (b) State the grounds of objection, namely:
  - (i) Amount of Assessable and Total profits of the company for the relevant assessment year; and
  - (ii) Amount of tax which the taxpayer claims is payable for the year of assessment.
- (c) Be raised within thirty days of the date of service of the notice of assessment.

## PROCEDURE FOR RAISING OBJECTION TO TAX ASSESSMENT

### Receipt of Notice of Objection

On receipt of the notice of objection, the tax authority has the following options:

- (a) Review and revise the assessment to an amount that is mutually agreeable to the taxpayer and the Federal Inland Revenue Service. If this occurs, the tax authority will amend the assessment and serve on the company a notice of revised tax payable; or
- (b) Review and refuse to revise the assessment to the amount claimed by the taxpayer. In a situation where the taxpayer fails to agree with the tax authority on the amount of tax payable, and the Federal Inland Revenue Service does not see any reason to further revise the assessment, then it will issue a Notice of Refusal to Amend its assessment.

## The Tax Appeal Tribunal

### (a) Establishment of Tax Appeal Tribunals

- (i) Pursuant to section 59 (1) of this Act, there shall be established a Tax Appeal Tribunal (hereinafter referred to as "the Tribunal") to exercise the jurisdiction, powers and authority conferred on it by or under this Schedule.
- (ii) The Minister may by notice in the Federal Gazette specify the number of zones, matters and places in relation to which the Tribunal may exercise jurisdiction.

### (b) Composition of the Tribunal

- (i) A Tribunal shall consist of five members (hereinafter referred to as "Tax Appeal Commissioners") to be appointed by the Minister.
- (ii) A Chairman for each zone shall be a legal practitioner who has been so qualified to practice for a period of not less than 15 years with cognate experience in tax legislation and tax matters.
- (iii) A Chairman shall preside at every sitting of the Tribunal and in his absence; the members shall appoint one of them to be the Chairman.
- (iv) The quorum at any sitting of the Tribunal shall be three members.

### (c) Qualifications for appointment as a Tax Appeal Commissioner

- (i) A person shall not be qualified for appointment as a Tax Appeal commissioner unless he is knowledgeable about the laws, regulations, norms, practices and operations of

taxation in Nigeria as well as persons that have shown capacity in the management of trade or business or a retired public servant in tax administration.

(ii) Terms of Office

A Tax Appeal Commissioner shall hold office for a term of three years, renewable for another term of three years only and no more, from the date on which he assumes his office or until he attains the age 70 years whichever is earlier.

(iii) Resignation and Removal

A Tax Appeal Commissioner may by notice in writing under his hand addressed to the minister resign his office;

- Provision that the Tax Appeal Commissioner shall, unless he is permitted by the Minister to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is earlier.
- A Tax Appeal Commissioner may be removed from office by the Minister on the grounds of gross misconduct or incapacity after due inquiry has been made and the Tax Appeal Commissioner concerned has been informed of the reasons for his removal and given an opportunity of being heard in respect of the reasons.

(d) Salary, Allowances and Conditions of Service of Tax Appeal Commissioners

The salary and allowances payable to and the terms and conditions of service of the Tax Appeal Commissioners shall be determined by the Revenue mobilization allocation and Fiscal Commission and shall be prescribed in their letters of appointment. Neither the salary and allowance nor the other terms and conditions of service of a Tax Appeal Commissioner shall be varied to this disadvantage after appointment.

(e) Jurisdiction of the Tribunal, etc.

(i) The Tribunal shall have power to adjudicate on disputes, and controversies arising from the following tax laws (hereinafter referred to as "the tax laws"):

- Companies Income Tax Act CAP C21 LFN 2004 (as amended)
- Personal Income Tax Act CAP P8 LFN 2004 (as amended)
- Petroleum Profits Tax Act CAP P13 LFN 2004 (as amended)
- Value Added Tax Act CAP V1 LFN 2004 (as amended)
- Capital Gains Tax Act CAP C1 LFN 2004 (as amended)
- Any other law contained in or specified in the first Schedule to this Act or other laws made from time to time by the national Assembly.

(ii) The Tribunal shall apply such provisions of the tax laws referred to in subparagraph (1) of the paragraph as may be applicable in the determination or resolution of any dispute or controversy before it.

(f) Powers and Procedures of the Tribunal

- (i) The Tribunal may make rules regulating its procedures.
- (ii) The Tribunal shall, for the purposes of discharging its functions under this Schedule, have power to
  - summon and enforce the attendance of any person and examine him on oath;
  - require the discovery and production of documents;
  - receive evidence on affidavits;
  - call for the examination of witnesses or documents;
  - review its decisions;
  - dismiss an application for default or deciding matters ex parte;
  - set aside any order or dismissal of any application for default or any order passed by it ex parte; and
  - do anything which in the opinion of the Tribunal is incidental or ancillary to its functions under this Schedule
- (iii) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes.

Hearing before the Tax Appeal Tribunal

Where an appeal is not discontinued, the procedures for hearing the appeal before the Tax Appeal Tribunal are as follows:

- (a) The Tax Appeal Tribunal gives seven (7) days notice to the appellant and FIRS of the date and place fixed for hearing of the appeal,
- (b) An appeal should be heard by not less than three members of the Tax Tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding;
- (c) A member with vested interest in any matter before the Tax Appeal Tribunal must disclose such interest and abstain from attending any sitting, at which the matter is to be heard.
- (d) All appeals before the Tax Appeal Tribunal are heard in public;
- (e) Appellant may be represented by a professional adviser or may give its evidence by written notice;
- (f) Appellant leads the case, by proving that the assessment is excessive, that is, onus of proof is put on the appellant;
- (g) If the representative of the FIRS can prove to the Tax Appeal Tribunal that:
  - (i) Appellant failed to file returns, audited accounts etc. as required by CITA; or

(ii) The appeal is frivolous, vexatious or an abuse of appeal process; or

(iii) It is expedient to require appellant to pay a security deposit:

· The Tax Appeal Tribunal may make an order that the appellant pay deposit to the tax authority on account of tax being disputed, before the matter could be heard.

· The deposit payable, is the lower of: (1) tax paid in the immediately preceding year; and (2) half of the tax charged (which is on appeal), plus 10% of the deposit.

(h) The Tax Appeal Tribunal can confirm, reduce, increase, or annul the assessment, as deemed necessary;

i) The Tax Appeal Tribunal's decisions are recorded in writing, by the Chairman, and a certified true copy is supplied to the appellant or the FIRS on request, within 3 months of the decision;

(j) Particulars of the extent to which the Tax Appeal Tribunal is dissatisfied with the appellant's accounts, books, etc, non-compliance with precepts delivered by the Tax Appeal Tribunal by the appellant or his representative and refusal to answer questions put, should all be noted in the decision of the Tax Appeal Tribunal; and

(k) Notice of the amount of tax chargeable, as determined by the Tax Appeal Tribunal, shall be served on the company by FIRS. The tax payable as determined by the Tax Appeal Tribunal is payable within one month of the date of notice of assessment, notwithstanding that an appeal may be pending on same, before the Federal High Court.

#### Appeals before the Federal High Court

For such appeals to be valid, the following conditions must be satisfied, namely:

(a) Amount involved must not be less than N400;

(b) The appeal must be on points of law;

(c) Notice of appeal must be given to the Tax Appeal Tribunal within 30 days after the date of the judgement of the Tax Appeal Tribunal; and

(d) The Grounds of law on which the decision of the Tax Appeal Tribunal is being challenged should be stated.

Further appeal against the decision of the Federal High Court shall lie with the Court of Appeal and from there to the Supreme Court.



COMPILED BY: KAYODE ONI

# *BASIS PERIOD*

## Basis Period Questions

### QUESTION 1

Obanijesu Ltd commenced business on 1 July, 1996 and makes up account to 31 October of every year. The adjusted profit of the company for the first three years shows the following:

	₦
Period to 31/10/96	30000
Year ended 31/10/97	60000
Year ended 31/10/98	100000

Compute the assessment for the relevant years.

### QUESTION 2

Jojo communication commenced business on 1st January 2003 making up accounts to 31st December each year. The following information is given:

	₦
Year ended 31st December 2003	1,860,000
Year ended 31st December 2004	900,000
Year ended 31st December 2005	1,040,300

You are required to compute the assessable profit for the first four years bearing in mind the taxpayer's right of election.

### QUESTION 3

Oloruntobi Ltd commenced business on 1 July 1996 and makes up accounts to 28th February every year. The adjusted profit of the company for the tax purposes for the first few years of trading are as follow:

	₦
Period to 28/2/97	50000
Year ended 28/2/98	90000
Year ended 28/2/99	120000
Year ended 28/2/00	130000

You are required to compute the assessment for the relevant years.

### QUESTION 4

XYZ Limited commenced business on March 1, 2020, and makes up accounts to October 31, each year.

Required:

State the relevant assessment year and the profits to be assessed.

### QUESTION 5

XYZ Limited commenced business on April 1, 2020 and makes up accounts to November 30, each year.

Required:

Determine the basis periods for the first four years of assessment

### QUESTION 6

Asun Limited was incorporated in December 2018 and commenced business on October 1, 2019. The first set of financial statements prepared by the company covered a period of 15 months, that is October 1, 2019 to December 31, 2020 and the adjusted profit was N3,000,000.

Required:

Ascertain the relevant basis periods and the assessable profits for the relevant assessment years.

### QUESTION 7

Problem Ltd which has been trading for many years ceased trading on 30th September 1997. The adjusted profit of the company for the three years preceding cessation showed the following:

	₦
Year ended 31/12/95	40000
Year ended 31/12/96	38000
Period to 30/09/97	30000

You are required to compute the assessable income for all the relevant years of assessment.

**QUESTION 8**

Apex Nigeria Limited that was incorporated in 1990, ceased operation on March 31, 2020, having been in business for over 25 years. The accounting year-end of the company is December 31, annually.

Required:

- Determine the relevant years of assessment and the due dates of payment of tax.
- Given the same scenario stated above, assume the company ceased operation on August 31, 2020.

**QUESTION 9**

Agbadaina Ltd, a once booming enterprise, due to mismanagement of fund went into liquidation on 30/9/17.

The financial returns of the company prior to this date are as follows:-

	₦
Year ended 31/12/14	9,000,000
Year ended 31/12/15	700,000
Year ended 31/12/16	540,000
Period to 30/09/17	360,000

Additional information:

On 1/10/09, the liquidator received ₦20,000.00 written off as bad debt at the end of 2014 accounting year. Also, the liquidator paid the rent due ₦40,000.00 at the end of 2015 accounting year on the same date.

Required:

Compute the assessable profits for all available years of assessment.

**QUESTION 10**

Palazzo Ltd gave you the following information in relation to its accounts:

Details	Adjusted profit (₦)
Year ended 30/06/10	400,000
Year ended 30/06/11	520,000
Year ended 30/06/12	600,000
Period to 30/09/13	470,000
Year ended 30/09/14	820,000
Year ended 30/09/15	960,000

Required: Compute assessable profit for Palazzo Ltd for the three relevant assessment years.

**QUESTION 11**

Netflix & Chill Ltd has been in business for several years. The adjusted profits of the company for the following years are as follows:

	₦
Year ended 31/03/04	500,000
Year ended 31/03/05	400,000
Year ended 31/03/06	300,000
Period to 31/12/06	200,000
Year ended 31/12/07	150,000
Year ended 31/12/08	320,000
Year ended 31/12/09	150,000

Required:

Using a tax rate of 30%, compute the companies income tax liability of Netflix and Chill Ltd., for all the relevant years of assessment



# *CAPITAL ALLOWANCE*

Capital Allowance	<p>These are granted on tangible non-current assets used in generating taxable profits, in lieu of accounting depreciation. The amortisation of most intangible assets over their useful lives is tax deductible (with the exception of internally generated intangible assets and intangible assets with indefinite lives).</p> <p>Capital expenditure incurred on the development or acquisition of software and capital outlays on electronic applications are now recognised as qualifying expenditure for the claim of capital allowances.</p> <p>Capital allowance in respect of assets exclusively used to generate tax exempt profits will not be claimable, and capital allowance on assets that are partially used for generating taxable profits will be prorated. The restriction will only apply where the proportion of non taxable income exceeds 20% of the company's total income .</p> <p>For small and medium companies, capital allowances for each year, together with any unabsorbed capital allowances brought forward, will be deemed to be utilised. However, such companies can carry forward the tax residue (tax written down values) of qualifying assets to subsequent periods when it may become taxable. Pioneer Companies are exempt from these amendments during their pioneer period.</p>	<table border="1"> <thead> <tr> <th data-bbox="1487 25 1922 108">Qualifying Expenditure</th><th data-bbox="1922 25 2101 108">Initial Allowance</th><th data-bbox="2101 25 2511 108">Annual Allowance</th></tr> </thead> <tbody> <tr> <td data-bbox="1487 108 1922 213">Building (Industrial &amp; Non-Industrial)</td><td data-bbox="1922 108 2101 213">15%</td><td data-bbox="2101 108 2511 213">10%</td></tr> <tr> <td data-bbox="1487 213 1922 270">Mining</td><td data-bbox="1922 213 2101 270">95%</td><td data-bbox="2101 213 2511 270">Nil</td></tr> <tr> <td data-bbox="1487 270 1922 404">Plant: Agriculture Production Others</td><td data-bbox="1922 270 2101 404">95% 50%</td><td data-bbox="2101 270 2511 404">Nil 25%</td></tr> <tr> <td data-bbox="1487 404 1922 476">Furniture &amp; Fittings</td><td data-bbox="1922 404 2101 476">25%</td><td data-bbox="2101 404 2511 476">20%</td></tr> <tr> <td data-bbox="1487 476 1922 610">Motor Vehicles: Public Transportation Others</td><td data-bbox="1922 476 2101 610">95% 50%</td><td data-bbox="2101 476 2511 610">Nil 25%</td></tr> <tr> <td data-bbox="1487 610 1922 682">Plantation Equipment</td><td data-bbox="1922 610 2101 682">95%</td><td data-bbox="2101 610 2511 682">Nil</td></tr> <tr> <td data-bbox="1487 682 1922 754">Housing Estate</td><td data-bbox="1922 682 2101 754">50%</td><td data-bbox="2101 682 2511 754">25%</td></tr> <tr> <td data-bbox="1487 754 1922 826">Ranching and Plantation</td><td data-bbox="1922 754 2101 826">30%</td><td data-bbox="2101 754 2511 826">50%</td></tr> <tr> <td data-bbox="1487 826 1922 902">Research and Development</td><td data-bbox="1922 826 2101 902">95%</td><td data-bbox="2101 826 2511 902">Nil</td></tr> <tr> <td data-bbox="1487 902 1922 990">Software</td><td data-bbox="1922 902 2101 990">Unspecified</td><td data-bbox="2101 902 2511 990">Unspecified</td></tr> <tr> <td data-bbox="1487 990 1922 1081">No facilities at all</td><td data-bbox="1922 990 2101 1081">100%</td><td data-bbox="2101 990 2511 1081"></td></tr> <tr> <td data-bbox="1487 1081 1922 1156">No electricity</td><td data-bbox="1922 1081 2101 1156">50%</td><td data-bbox="2101 1081 2511 1156"></td></tr> <tr> <td data-bbox="1487 1156 1922 1231">No water</td><td data-bbox="1922 1156 2101 1231">30%</td><td data-bbox="2101 1156 2511 1231"></td></tr> <tr> <td data-bbox="1487 1231 1922 1321">No tarred road</td><td data-bbox="1922 1231 2101 1321">15%</td><td data-bbox="2101 1231 2511 1321"></td></tr> </tbody> </table>	Qualifying Expenditure	Initial Allowance	Annual Allowance	Building (Industrial & Non-Industrial)	15%	10%	Mining	95%	Nil	Plant: Agriculture Production Others	95% 50%	Nil 25%	Furniture & Fittings	25%	20%	Motor Vehicles: Public Transportation Others	95% 50%	Nil 25%	Plantation Equipment	95%	Nil	Housing Estate	50%	25%	Ranching and Plantation	30%	50%	Research and Development	95%	Nil	Software	Unspecified	Unspecified	No facilities at all	100%		No electricity	50%		No water	30%		No tarred road	15%	
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Investment Allowance	<p>This is an additional allowance granted at the rate of 10%, to companies that incur expenditure on plant, machinery and equipment. It is an uplift to the tax depreciation available in respect of plant and equipment (resulting in a 110% allowance). It is not considered in determining the tax written down value of the asset. It is calculated on cost and granted in the year of assessment in which the asset is first put into use.</p> <p>Rural investment tax relief is available to businesses on infrastructure costs incurred if located not less than 20km away from the following facilities at the following rates</p>																																														

Investment Allowance	<p>Investment allowance cannot be claimed, or if already granted, shall be withdrawn if any of the following happened within a period of five years from the date of acquisition of the assets:</p> <ul style="list-style-type: none"> <li>• Any sale or transfer of the asset otherwise than to a person acquiring the asset for a chargeable purpose or for scrap;</li> <li>• Any appropriation of the asset for a purpose other than a chargeable purpose;</li> <li>• Any sale or transfer or other dealing with the asset being a case where it appears either: <ul style="list-style-type: none"> <li>i. That the purpose of obtaining tax allowances was the sole or main purpose of the company for incurring the expenditure or for so dealing with the asset; or</li> <li>ii. That the incurring of the expenditure and the asset being so dealt with were not bona fide business transactions, or were artificial or fictitious transactions, and were designed for the purpose of obtaining tax allowances. For the purpose of this section, "chargeable purpose" means the purpose of putting the assets to a use such that profits accrue or are intended to accrue therefrom and will be chargeable to tax.</li> </ul> </li> </ul>
Balancing Adjustment	<p>There are two types of balancing adjustment, namely: Balancing Allowance and Balancing Charge</p> <ul style="list-style-type: none"> <li>• Balancing Allowance: When the sales value of an asset is less than the tax written down value (TWDV), the related loss shall attract balancing allowance. It is claimable as additional allowance.</li> <li>• Balancing Charge: Where the sales value of an asset exceeds the TWDV, balancing charge arises. Balancing charge is a taxable income. It is to be added to the adjusted profit of the taxpayer to arrive at the assessable profit. Proceeds can also be in the form of insurance claim. Balancing charge is a claw back of capital allowances previously enjoyed by the company and should not exceed the reliefs actually given.</li> </ul>
Conditions for granting capital allowance	<ul style="list-style-type: none"> <li>• The company claiming the allowance must be the owner of the assets at the end of its basis period for a year of assessment</li> <li>• The assets must be used for the purpose of a trade or business carried on by the company</li> <li>• The assets must be in use as at the end of the company's basis period</li> <li>• For assets above ₦500,000, a claim should be made by the company before any capital allowance can be granted.</li> </ul>
Capital allowance upon cessation of trade	<p>On cessation of trade or business, unclaimed capital allowance in the assessment year in which trade permanently ceases may be carried back for relief against the total profits of the five years of assessment preceding the final year of trading.</p>
Restriction on Capital allowance	<p>The amount of capital allowances calculated is generally restricted to a percentage (at present 66 2/3%) of the assessable profits. Any company in the agro-allied industry or that which is engaged in manufacturing is not affected by this restriction.</p>
Capital allowance on assets acquired on Hire Purchase	<p>A company or an individual taxpayer wanting to preserve liquid fund or that fall short of it may elect to enter into hire purchase agreement. Such agreement usually flexes the payment which is done in instalments. Since payment is made in piece meal, such arrangement will attract some interests on cost. Thus, usually the cost of acquiring on hire purchase will be higher than the cost of outright purchase by the margin of the interest charge as per agreement. <i>Hints on calculation will be discussed in the class.</i></p>

## Capital Allowance Questions

### QUESTION 1

Mumu-bet Nigeria Limited was incorporated on April 4, 2001 but commenced business on July 1, 2002.

The following assets were purchased on the dates stated hereunder:

	₦
1/7/2002 Plant and Machinery	260,000
2/8/2002 Motor Vehicles	580,000
1/7/2004 Furniture, Fixture & Fittings	172,000

You are required to compute the capital allowance for the relevant YOA.

### QUESTION 2

Manufacturing Company Plc has been in business for several years. Financial statements are made up to June 30, every year. The following acquisitions of property, plant and equipment were effected in the year ended June 30, 2014.

	₦
Industrial buildings	5,000,000
Plant and machinery	1,750,000
Motor vehicles	3,500,000

The following disposals were made during the same year:

Motor vehicle acquired for N1,500,000 in year ended 30/6/2012 was sold for ₦2million. The residues of qualifying expenditure as at July 1, 2013 were:

	₦
Industrial building (5yrs more)	10,000,000
Plant and machinery (2yrs more)	2,000,000
Motor vehicles (2yrs more)	3,000,000

Required:

Compute the capital allowances for the relevant assessment years.

### QUESTION 3

Apex Limited incurred qualifying capital expenditure (QCE) of N2,000,000 on furniture and Fittings in 2020 assessment year when the revenue of the company was N24,000,000. The company achieved revenue of N27,000,000 in 2023 assessment year.

### QUESTION 4

On September 1, 2014 Idiaraba Limited entered into a hire purchase agreement with Idiarere Limited. Ten (10) Generators was acquired on hire purchase by Idiaraba Limited with N2,000,000 paid as initial deposit on that date.

This was followed by twenty four equal monthly instalments of N200,000 commencing from November 30, 2014. The cash price of the ten (10) Generators was N5,600,000. Idiaraba Limited usually prepare its account to June 30 every year. Compute the capital allowance for the relevant years of assessments.

### QUESTION 5

Ultimate Limited is a company engaged in the production and sale of new electric cookers. The company ceased business on May 31, 2020 due to stiff competition from importers of fairly used cookers. The company achieved an annual gross turnover of over N100,000,000 in 2019 and 2020 before cessation. The results of the company revealed the following for the year ended December 31

	Assessable profits ₦
2012	1,800,000
2013	2,300,000
2014	3,500,000
2015	1,500,000
2016	1,700,000
2017	1,200,000
2018	950,000
2019	780,000
5 months ended May 31, 2020	250,000

The company's claims for capital allowances are as follows:

Assessment year	Capital allowances ₦
2013	1,950,000
2014	920,000
2015	1,350,000
2016	870,000
2017	850,000
2018	730,000
2019	950,000
2020	990,000

Balancing allowance after disposal of all company's property, plant and equipment on cessation of business amounted to ₦ 2,350,000.

Required:

Compute the company's income tax liabilities for 2013 to 2020 assessment years, taking into consideration the relevant provisions of the Finance Act, 2019



*LOSS RELIEF*

Loss Relief	<p>This is an incentive available to business such that losses incurred by a business during a year of assessment can be carried forward to be relieved from subsequent year's profit. For a company, losses incurred on a particular source of income cannot be relieved with income from other sources. Such a loss must be carried forward to be relieved from the same source. For an individual in business, the loss incurred from a particular business can be relieved with income from other sources if the individual makes a claim for current year loss relief.</p>
Types of loss relief	<ol style="list-style-type: none"> <li>1. <b>Current year loss relief:</b> This is one of the methods of relieving losses. It is applicable to only individuals. In this case, losses incurred from a particular source of income can be relieved against other sources. In order to enjoy this relief, a written claim must be made within 12 months after the end of the year of assessment in which the loss arises. It is important to note that the current year loss relief is applicable to a loss incurred only in the first year. Any unrelieved loss can only be set off against profit from the source from which the loss was incurred.</li> <li>2. <b>Carry forward loss relief:</b> This is available to all taxpayers (individuals and companies). There is no need for a written application by the taxpayer as it is automatically granted to them. The relief is granted on preceding year basis. The loss of a source of income shall be available for relief against future profit from the same source of income until it is fully relieved.</li> </ol>
Rules of loss relief	<ol style="list-style-type: none"> <li>1. The amount of the loss to be allowed should be that which the Revenue Service is satisfied as having been incurred by the company in a trade or business during a preceding year of assessment.</li> <li>2. In no circumstance shall the amount to be relieved exceed the total amount of the loss incurred</li> <li>3. Relief can only be against profits from the same trade or business in which the loss was incurred</li> <li>4. With effect from 2007, losses can be carried forward indefinitely and relieved against future profits</li> <li>5. The loss available for relief should be computed on the same basis as that of assessable profit, for a year of assessment</li> </ol>
Question	<p>Oluwalogbon commenced a merchandizing business on 1 May 2020 and had always prepared his account to 30th April of each year. The assessable profit/ loss of his business from commencement period to 30th April 2024 are stated below</p> <p>12 months to 30th April 2021 (400000)      12 months to 30th April 2022 (20000)      12 months to 30th April 2023 500000      12 months to 30th April 2024 600000</p> <p>Required:      Compute his assessable profit for the relevant years of assessment.</p>



# *WITHHOLDING TAX*

<b>Withholding Tax</b>	Withholding TAX (WHT) is an advance payment of income tax deductible at source on specified transactions. It can be applied as a tax credit against income tax liability in most instances. The relevant provisions are in the CITA, PITA, PPTA, and WHT Regulations.																												
<b>Due date for payment of WHT</b>	<p>In the case of WHT deducted from companies, remittance is due to the FIRS within 21 days after the duty to deduct WHT arose.</p> <p>In the case of WHT deducted from individuals and unincorporated entities, remittance is due to the relevant State tax authority within 30 days after the duty to deduct WHT arose.</p> <p>For FIRS WHT, the schedule of WHT deducted must be submitted in electronic form and must contain specific information such as the Tax Identification Number (TIN) of the various suppliers from whom the tax has been deducted.</p>	<table border="1"> <thead> <tr> <th>Transactions</th><th>Companies</th><th>Individual</th></tr> </thead> <tbody> <tr> <td>Dividends, Interest and Rent</td><td>10%</td><td>10%</td></tr> <tr> <td>Royalties</td><td>10%</td><td>5%</td></tr> <tr> <td>Hire of Equipment, Motor Vehicles, Plants and Machinery</td><td>10%</td><td>10%</td></tr> <tr> <td>Commission, Consultancy, Technical and management fees, legal fees, audit fees and other professional fees</td><td>10%</td><td>5%</td></tr> <tr> <td>Construction of road bridges, building and power plant (Finance Act 2019)</td><td>2.5%</td><td>5%</td></tr> <tr> <td>Other types of construction</td><td>5%</td><td>5%</td></tr> <tr> <td>All types of contracts and agency arrangements, other than <b>*sales*</b> in the ordinary course of business</td><td>5%</td><td>5%</td></tr> <tr> <td>Directors' fees</td><td>N/A</td><td>10%</td></tr> </tbody> </table>	Transactions	Companies	Individual	Dividends, Interest and Rent	10%	10%	Royalties	10%	5%	Hire of Equipment, Motor Vehicles, Plants and Machinery	10%	10%	Commission, Consultancy, Technical and management fees, legal fees, audit fees and other professional fees	10%	5%	Construction of road bridges, building and power plant (Finance Act 2019)	2.5%	5%	Other types of construction	5%	5%	All types of contracts and agency arrangements, other than <b>*sales*</b> in the ordinary course of business	5%	5%	Directors' fees	N/A	10%
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<b>Filing requirements</b>	Withholding tax returns should include a schedule showing vendor Tax Identification Number, name and address, type of contract, rate applied, amounts, and evidence of payment.																												
<b>Offences and Penalties (CITAS 85, PITAS 74, FIRS Act S 40)</b>	<p>Failure to remit WHT due to the FIRS: a penalty of 10% per annum and interest at CBN's lending rate.</p> <p>Failure to remit WHT due to SIRS: 10% of tax due, in addition to the principal tax and interest at the CBN monetary policy rate (14%).</p>																												
<b>Withholding VAT deduction</b>	<p>All government agencies, ministries and department and companies operating in the oil and gas sector are required to:</p> <ul style="list-style-type: none"> <li>Act as agents in the deduction of withholding tax from contract sums payable to their contractors; and</li> <li>Also act as agents in the collection of VAT from their contractors when such contractors are paid. This is often referred to as <b>withholding VAT</b>.</li> </ul>	<p>The rate of WHT on dividend, interest and royalty is reduced to 7.5% when paid to a corporate recipient resident in a treaty country. In the case of individuals, 7.5% is applied on dividend and interest and 5% on royalty. The FIRS has introduced administrative requirements for relevant parties to take advantage of treaty benefits.</p> <p>WHT will not apply to distributions to a Real Estate Investment Company (REIC), and on compensating payments under a Registered Securities Lending Transaction.</p>																											
	<p>The deductions from individuals are payable to the FIRS or FCT IRS, when they are made from residents of the FCT, Abuja, members of the Nigerian Armed Forces and Police, Officers of the Nigerian Foreign Service and persons resident outside Nigeria who derive income from Nigeria. Withholding taxes on dividend, interest, rent and royalties when suffered by non-residents are final taxes. Also, with effect from January 1996, withholding tax on interest and dividend are final taxes when suffered by Nigerians.</p>																												

Credit notes	<p>This is the document that the relevant tax authority must issue to every beneficiary as evidence that WHT was deducted from its business. As soon as payment is made to the bank and evidence provided to the FIRS, the withholding tax section of the FIRS is required to issue credit notes in favour of the beneficiaries (taxpayers) contained in the schedule. The credit notes are to be forwarded by the collection agent to the beneficiaries who suffered the deductions. This is because the credit notes are to be used in claiming tax credits at the various tax offices where their files are domiciled. It is important to emphasise that the presentation of a letter from the collector agent showing that a taxpayer has suffered deductions is not enough for the FIRS to give credit.</p>
Exemption of sales in the ordinary course of business from withholding tax	<p>On November 30, 2020, the Tax Appeal Tribunal (TAT), Lagos Zone, in the case of Tetra Pak West Africa Limited vs Federal Inland Revenue Service, ruled that sales in the ordinary course of business shall not be liable to withholding tax (WHT).</p> <p>The TAT laid the following criteria in ascertaining what constitutes “sales in the ordinary course of business”;</p> <ul style="list-style-type: none"> <li>• The inclusion of the transaction/activity in the objects of the memorandum of associations;</li> <li>• The nature and practice of the taxpayer’s business and industry;</li> <li>• The history of the taxpayer in relation to the activity, and</li> <li>• The frequency of the type of transaction.</li> </ul>
Advance income tax payment	<p>When a company wishes to pay dividend, CITA Section 31(7) provides that tax at standard company tax rate is payable on the amount of the dividend. The provisions of Sections 15A and 16(B) of CITA also have the same effect.</p> <p>If any provisional tax has been paid by the company for the assessment year, this will be taken into account in determining the amount of tax payable under this section. The tax is payable before the dividend is paid and has nothing to do with withholding tax which will still be deducted normally. The tax so paid will be taken as a deposit against the tax due from the company on the profits out of which the dividend is paid. Thus, when the company wishes to settle its tax liability, the amount paid as deposit will be deducted from the total amount of the income tax liability of the company for that year.</p>
Illustration	<p>A company is paying a dividend amounting to ₦500,000 in respect of the year ended December 31, 2013, payable on June 15, 2014. The total profit of the company for the year was ₦800,000 after capital allowances. The company intends to file its self assessment by the due date of June 30, 2014.</p>



# *TAXATION OF INVESTMENT INCOME*

<b>Investment Income</b>	Investment incomes are incomes received primarily from investment decisions. Investment decisions include decisions such as purchase of shares, purchase of property for letting purposes, placement of cash in fixed and other interest yielding accounts etc. The incomes that accrue as a result of the investment decisions are called investment incomes and they include dividend, interest, royalty, rent, etc. They are assessed on PYB.
<b>Dividend Income</b>	
<b>Definition</b>	Dividend is the profits distributed by a company to its shareholders in proportion of their respective shareholdings.
<b>Nigerian Dividend</b>	The income from a dividend distributed by a Nigerian company, shall be deemed to be derived from Nigeria, and shall be the gross amount of that dividend before the deduction of any tax which the company is required to deduct, WHT shall be the final tax on such dividend
<b>Nigerian dividend received by Non-resident companies</b>	No tax shall be charged on it for that year in respect of the dividend received by it from Nigerian company apart from withholding tax
<b>Undistributed profit of a Nigerian Company</b>	Any undistributed profit of a Nigerian company which is later distributed under the provisions of any law in force in Nigeria shall be deemed to be income accruing to any shareholder of the company in proportion of his shareholding for the purpose of WHT deduction. The income from a dividend distributed by a Nigerian company shall be deemed to arise on the day on which payment of that dividend becomes due.
<b>Relevant tax authority</b>	For a Nigerian resident, the RTA shall be where he resides. For non-residents, the RTA shall be the FCT IRS.
<b>Excess Dividend</b>	Where any dividend is paid out of profits on which no tax is payable due to no total profits or total profits which are less than the amount of dividend which is paid, whether the recipient of the dividend is a Nigerian company or not, the company paying the dividend shall be charged to tax at the CIT rate as if such dividend is the total profits of the company for the year of assessment which relates to accounts out of which the dividend is declared. However, this section was amended by Finance Act 2019.
<b>Illustration</b>	A company with a total profit of ₦140, 000 for 2014 assessment year, paid ₦250,000 dividends to its shareholders in respect of the 2013 financial statements which formed the basis for the assessment
<b>Provisions of Finance Act 2019 on Excess Dividend Tax Section 19 of CITA</b>	According to Finance Act 2019, Excess Dividend Tax is not applicable on: <ul style="list-style-type: none"> <li>• Dividends paid from retained earnings, provided that the profits have been subjected to tax under CITA or other tax laws,</li> <li>• Dividends paid out of tax exempt profits</li> <li>• Dividends paid from franked investment income and</li> <li>• Dividends paid by a Real Estate Investment Company to its shareholders</li> </ul>
<b>Interim Dividend</b>	With implementation of Finance Act, 2019, tax on interim dividend paid to shareholders of a company is no longer applicable.
<b>Dividend exempted from tax</b>	<ul style="list-style-type: none"> <li>• Dividend earned from abroad and brought into Nigeria by a Nigerian resident in convertible currency and paid into a domiciliary account in a bank approved by the government.</li> <li>• Dividend paid to a person by a company incorporated in Nigeria if the equity participation of the person in the company paying the dividend is either wholly paid for in foreign currency or by assets brought into Nigeria between 1 January 1987 and 31 December 1992 and the person to whom the dividend are paid own not less than 10 per cent of the equity shares of the company.</li> </ul>

Illustration on Excess Dividend	An extract from the financial statements of ABC Limited XYZ Limited for the year ended December 31, 2020, revealed the following:	Interest exempted from tax	<ul style="list-style-type: none"> <li>• Interest accruing to a person on foreign currency domiciliary account</li> <li>• Interest accruing to a person who is not resident in Nigeria as specified below:           <ul style="list-style-type: none"> <li>i. The interest on a loan charged on the public revenue of the Federation and raised in the United Kingdom.</li> <li>ii. The interest on a bond issued by the Government of the Federation to secure repayment of loan raised from the IBRD under the authority of the Railway Loan (International Bank) Act.</li> <li>iii. The interest on any money borrowed by the Government of the Federation or of a State on terms which include the exemption of interest from tax in the hands of a non-resident person.</li> <li>iv. Where the Minister of Finance so consents, the interest on any moneys borrowed outside Nigeria by a corporation established by a law in Nigeria upon terms which include the exemption of such interest from tax in the hands of any non-resident person.</li> <li>v. The interest on deposit accounts, provided the deposit into the account are transfers wholly made up of foreign currencies (funds) to Nigeria on or after 1st January 1990 through Government approved channels and the depositor does not become non-resident after making the transfer while in Nigeria.</li> </ul> </li> <li>• Interest on any loan granted by a bank on or after 1st Jan. 1997 to a person engaged in:           <ul style="list-style-type: none"> <li>i. <b><i>Agricultural trade or business</i></b></li> <li>ii. The fabrication of any local plant and machinery; and</li> <li>iii. As working capital for any cottage industry established by the person under the Family Economic Advancement Programme, if the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted</li> </ul> </li> <li>• <b><i>Interest on foreign loan in line with Third Schedule of the Companies Income Tax Act (see next page).</i></b></li> </ul>															
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; background-color: #336633; color: white; padding: 2px;"></th><th style="text-align: center; background-color: #336633; color: white; padding: 2px;">ABC Limited</th><th style="text-align: center; background-color: #336633; color: white; padding: 2px;">XYZ Limited</th></tr> <tr> <th style="text-align: center; background-color: #336633; color: white; padding: 2px;"></th><th style="text-align: center; background-color: #336633; color: white; padding: 2px;">₦</th><th style="text-align: center; background-color: #336633; color: white; padding: 2px;">₦</th></tr> </thead> <tbody> <tr> <td style="padding: 2px;">Total profit/(loss) for the year</td><td style="text-align: center; padding: 2px;">3,600,000</td><td style="text-align: center; padding: 2px;">(1,200,000)</td></tr> <tr> <td style="padding: 2px;">Retained earnings brought forward</td><td style="text-align: center; padding: 2px;">4,800,000</td><td style="text-align: center; padding: 2px;">2,000,000</td></tr> <tr> <td style="padding: 2px;">Dividend declared in 2020 paid in 2021</td><td style="text-align: center; padding: 2px;">4,200,000</td><td style="text-align: center; padding: 2px;">750,000</td></tr> </tbody> </table>		ABC Limited	XYZ Limited		₦	₦	Total profit/(loss) for the year	3,600,000	(1,200,000)	Retained earnings brought forward	4,800,000	2,000,000	Dividend declared in 2020 paid in 2021	4,200,000	750,000		
	ABC Limited	XYZ Limited																
	₦	₦																
Total profit/(loss) for the year	3,600,000	(1,200,000)																
Retained earnings brought forward	4,800,000	2,000,000																
Dividend declared in 2020 paid in 2021	4,200,000	750,000																
<b>Interest Income</b>																		
Interest Income	<p>The income from any interest on money lent by an individual, or executor, or a trustee, outside Nigeria to a person in Nigeria (including a person who is resident or present in Nigeria at the time of the loan) shall be deemed to be derived from Nigeria if:</p> <ul style="list-style-type: none"> <li>• There is a liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made.</li> <li>• The interest accrues in Nigeria to foreign company or person regardless of what form the payment takes and wherever the payment is made.</li> </ul>																	
Interest from a source outside Nigeria	<p>Where an individual is resident in Nigeria the interest accruing to him from a source outside Nigeria is liable to tax in Nigeria of such amount of interest brought into Nigeria subject to double taxation provisions.</p>																	
Relevant tax authority	<p>For interest paid by a Nigerian company to a Nigerian resident, the RTA shall be where he resides. For non-residents, the RTA shall be the FCT IRS.</p>																	

Kindly note, in line with the provisions of Finance Act, 2020, tax relief in respect of interest payable on loans granted to companies engaged in agriculture trade or business now limited to primary agricultural production. Also the Act reduced the moratorium period to qualify the interest on loan for tax exemption from 18 months to 12 months and the rate of interest restricted to the base lending rate at the time the loan was granted, refinanced or restructured;

**Provisions of Finance Act, 2019 on exemptions on interest on foreign loans**

With commencement of 2019 Finance Act, interest on foreign loans is no longer 100% tax exempt and the Third Schedule to CITA is amended as follows:

Repayment Period	Moratorium	Tax exemption allowed
Above 7 years	Not less than 2 years	70%
5-7 years	Not less than 18 months	40%
2-4 years	Not less than 12 months	10%
Below 2 years	Nil	Nil

**Illustration**

Loan interest payable in respect of a foreign loan granted to a Nigerian company in 2020 amounted to ₦1,000,000. The breakdown of the loan interest payable based on the terms contained in the loan agreement is as follows: Compute the loan interest exempted from tax.

Repayment Period	Grace period	Loan Interest (₦)
6 years	2 years	600,000
3 years	18 months	400,000
		1,000,000

**Royalty Income**

**Definition**

Royalty is a payment to an owner for the use of property, especially patents, copyrighted works, franchises or natural resources. A royalty payment is made to the legal owner of a property, patent, copyrighted work or franchise by those who wish to make use of it for the purposes of generating revenue or other such desirable activities. In most cases, royalties are designed to compensate the owner for the asset's use, and are legally binding.

**Royalty exempted from tax**

Royalty earned from abroad and brought into Nigeria shall be exempt from tax, provided that such income is brought in convertible currency and paid into a domiciliary account in a bank approved by the Federal Government.

**Rental Income**

**Definition**

The gain or profit arising from other person for the use or occupation of any property is chargeable to tax. Thus rental income is generally deemed to accrue to the recipient daily (i.e. from day to day) over those periods covered by the payment

**Rent received in advance**

If rent is received in advance, it will be spread over the period of the rent (provided the period is not more than 5 years). However, if rent received in advance covers a period that is more than 5 years, it will be spread for 5 years.

**Allowable expenses**

- Tenement rates or land use charge;
- Cost of collecting rent e.g. fees paid to a caretaker, estate agent, legal representative
- Cost of advertising for tenants;
- Any expenses incurred for repairs and maintenance of the building;
- Bad debt incurred;
- Interest on money borrowed and employed in acquiring or renovating the property;
- Commission paid to agent or caretaker;
- Insurance premium paid on the property; and Water rate.

**Disallowable expenses**

- Any expenses not incurred for the purpose of earning the rental income;
- Any expenditure of capital nature;
- Depreciation of the building; and
- Appropriation of profit including income tax, drawings, reserves, etc.

## Illustration on Rental Income

Mr. Bob Risky completed the construction of his building, a two wing duplex located in Gwagwalada, Abuja, on December 31, 2016. He rented out both flats with effect from January 1, 2017, through an estate agent and received rent for two years. He made available the following details of his income and expenses for the relevant period:

	2017	2018
	₦	₦
Rent received (Gross)	3,500,000	3,500,000
<b>Expenses:</b>		
Repairs and maintenance	220,000	450,000
Water rate	82,000	105,000
Agent's commission	350,000	350,000
Professional charges	100,000	150,000
Insurance	52,000	52,000
Caretaker's wages	18,000	22,000
Tenement rate	25,000	32,000

### Additional Information

- Capital allowances agreed with the relevant tax authority for 2018 and 2019 YOA were ₦480,000 and ₦120,000, respectively.
  - Repairs and maintenance comprised:
- |                                      |          |          |
|--------------------------------------|----------|----------|
| Depreciation                         | ₦100,000 | ₦85,000  |
| Repairs of tenant's bathroom         | 0        | ₦180,000 |
| Repairs of Mr. Bob Risky's residence | ₦120,000 | ₦185,000 |
- Tenement rate includes tenement rate of ₦5,000 and ₦20,000 paid on the private residence of Mr. Bob Risky for 2017 and 2018.

Compute the amount of rental income assessable to tax for the relevant tax years

The interest on loan relating to primary agricultural production included in the income of ABC Bank Limited for the year ended December 31, 2020, amounted to ₦5million.

The breakdown of the interest income based on the loan terms are as follows:

Repayment period	Moratorium period	Interest rate p.a. %	Agric loan Interest ₦
5 years	24 months	15	2,500,000
3 years	6 " "	20	800,000
2 years	18 " "	14	700,000
5 years	6 " "	35	1,000,000
			<u>5,000,000</u>

Base lending rate in respect of the facilities is 21% p.a.

### Required:

Compute the loan interest exempted from tax.

### Real estate investment companies (REICOs) income – Finance Act, 2019

- Sec. 19 (excess dividend tax) no longer applicable to distributions by REICOs to its shareholders.
- Section 23 – Exemption of dividend and rental income received by a REICO on behalf of its shareholders, if a minimum of 75% is distributed within 12 months.
- Section 24 – Distributions to REICO shareholders to be treated as allowable deductions

However, a REICO shall be liable to income tax on management fees and other income earned when less than 75% of Income is distributed to Shareholders and when dividend distribution is not made within 12 months. Dividend to shareholders is liable to 10% WHT Deduction by REICO.

### Franked Investment Income (FII)

Dividend received by a company after deduction of withholding tax at source by a paying company is regarded as franked investment income of the company receiving the dividend. Such income is not subject to further tax in the hands of the recipient company as the withholding tax deducted at source is the final tax. Where dividend received is distributed by the recipient company, it has a right to set off the withholding tax paid on the dividend received from the withholding tax payable on the redistributed dividend. This provision helps to prevent double taxation.



*COMPANY  
INCOME TAX &  
TET*

Introduction	<p>The principal law is the Companies Income Tax Act (CITA) as amended by the Finance Acts (FAs) 2019, 2020 and 2021. CITA imposes income tax on profits accruing in, derived from, brought into or received in Nigeria. It is payable by companies that are registered in Nigeria and non resident entities carrying on business or that have a Significant Economic Presence (SEP) in Nigeria.</p>
Rates	<p>Exempted - profits of Small companies (companies with annual gross turnovers of N25m or less).      20% - Medium sized companies (companies with gross annual turnovers greater than N25m but less than N100 million).      30% - Large companies (Companies with annual gross turnovers higher than N100m).</p>
Taxable Income	<p>A Nigerian company (company registered in Nigeria) is liable to tax on its worldwide income being its profits accruing in, derived from, brought into, or received in Nigeria.      Non-resident companies (NRCs) have historically been liable to tax on income derived from Nigeria, that is, income attributable to their Nigerian operations (through a fixed base, agency or single contract with offshore components and local installation).</p> <ul style="list-style-type: none"> <li>• <b><u>Digital, online or e commerce activities (“Digital SEP”)</u></b>: NRCs that earn annual revenues of N25m and above from remotely performing a range of digital activities to customers in Nigeria. Such companies will be required to file annual tax returns in Nigeria.</li> <li>• <b><u>Technical, Professional, Management and Consultancy services (“TPMC SEP”)</u></b>: NRCs that remotely provide the above mentioned services to customers in Nigeria. Withholding Tax (WHT) at 10% deducted by the customers is final tax for the foreign companies.</li> </ul>
Basis of assessment	<p>The basis of assessment for both resident and NRCs is the preceding year basis. This means tax is charged on profits for the accounting year ending in the preceding year of assessment. For example, if a company makes its accounts to 31 December each year, in the 2021 tax year, it will be assessed to tax on the profits computed for the accounting year ended 31 December 2020. Similar principles also apply on commencement and cessation of business. However, different rules apply when a company changes its accounting date.</p>
Filing requirements	<p>Filing requirements include a self assessment return in the prescribed form and the following supporting documents.</p> <ul style="list-style-type: none"> <li>• Audited accounts</li> <li>• Tax and capital allowance computation</li> <li>• A statement in writing containing the amount of profit for the year from each and every source.</li> </ul> <p>It is not compulsory for the accounts submitted by Small and Medium Companies (companies that earn annual turnovers less than NGN100m) to be audited.</p> <p>For NRCs required to submit tax returns under section 13(2) of CITA, the returns should include:</p> <ul style="list-style-type: none"> <li>• Global/home country audited financial statements, and a financial statement of their Nigerian operation attested by a certified Nigerian Accountant</li> <li>• Tax computation schedule</li> <li>• Statement of Nigerian profits, including the source</li> <li>• Self Assessment forms</li> </ul> <p>Self assessment forms must be signed by an authorised officer of the company.</p> <p>NRCs that create a TPMC SEP or earn only passive income (dividends, interest, royalty and rent) from Nigeria, are not required to submit tax returns, if WHT has been deducted on the income at 10%.</p>

Due date for filing	<p>Within 6 months of the company's accounting year end. However, a new company must file its returns within 18 months from the date of incorporation or 6 months after the end of its first accounting period, whichever is earlier.</p> <p>In practice, tax returns may be delayed until the first working day of the following calendar year for companies with financial year end dates between January and June. This is to align the tax returns with the relevant government fiscal year.</p>
Due date for payment of CIT and Self-Assessment Regulations	<p>Every company shall make payments of tax due on or before the due date of filing in one lump sum or in instalments. With respect to instalments, the taxpayer is expected to write, with evidence of the first instalment and obtain the approval of the revenue authority before making such instalment payments and the final instalments must be paid on or before the due date of filing. Where a company pays its tax 90 days before the due date of payment, such company shall be entitled to a bonus of:</p> <ul style="list-style-type: none"> <li>• 2% if such company is a medium sized company</li> <li>• 1% for any other company on the amount paid, which can be utilised as tax credit against the company's future tax payable.</li> </ul>
Offences and Penalties	<p><b>Late filing of returns</b>  Failure to file tax returns attracts a penalty of ₦25,000 for the first month in which the failure occurs and ₦5,000 for each subsequent month in which the failure continues. Upon conviction, the responsible officer of the company may be liable to a fine of ₦100,000 or 2 years imprisonment or both.</p> <p><b>Late payment or non payment of tax</b>  Penalty is 10% of the amount of tax payable and interest at the monetary policy rate (MPR) currently plus a spread to be announced by the Finance Minister. The FIRS published a public notice in July 2017 stating that the Finance Minister approved a spread of 5%. With the MPR generally around 11.5% in 2021, this translates to interest rate at about 16.5%. However, in practice, the tax authorities assume an MPR of about 14% and therefore, assess interest at 19%.</p> <p><b>Incorrect returns</b>  Penalty and Interest on any outstanding tax will accrue from the date the incorrect return was filed and payment made.</p>
Statute of limitations	The tax authority may issue additional assessment within six years from the relevant tax year. However, the limitation does not apply in the event of a fraud, wilful default or neglect by the company.
Adjusted Profit	<p>The audited financial statement of a company is used to determine its taxable profit. However, accounting profits are usually different from tax profits due to the inclusion or exclusion of certain items. Therefore, the accounting profit must be adjusted to arrive at a correct tax profit. The adjustments are usually in respect of:</p> <ul style="list-style-type: none"> <li>• Disallowable Expenditure</li> <li>• Allowable expenses omitted from the financial statement</li> <li>• Non-taxable income and</li> <li>• Omitted taxable income.</li> </ul>

**Allowable Expenses:** All expenses of a company that are wholly, exclusively, necessarily, and reasonably incurred in the production of the profits, are allowable deductions. They are:

- Subject to the provisions of seventh Schedule to this Act, any sum payable by way of interest on debt borrowed and employed as capital in acquiring the profits of a company
- Rent and premiums in respect of land or buildings occupied for the purpose of acquiring the profits;
- Repairs and renewal costs relating to the premises, plant, fixtures, etc., used in the business;
- Bad and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Revenue Service to have become bad or doubtful of collection;
- Contributions to approved pension, provident or other retirement benefits fund, society or scheme
- Salaries, wages or other remuneration paid to employees
- Cost to the company of any benefit or allowance provided for the senior staff and executives which shall not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry of Employment, Labour and Productivity and the Productivity, Prices and Income Revenue Service as the case may be
- The expenses proved to the satisfaction of the Revenue Service to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund. Section 22 allows for the deduction of the amount of reserve made out of profits for research and development subject to a ceiling of 10% of the total profits of the company before any deduction is made under this Section and Section 21 of the Act; Companies and other organisations engaged in research and development activities for commercialisation shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose.
- Rental charges in respect of residential accommodation occupied by employees of the company are allowed up to a maximum of 100% of the basic salary of employees
- Dividends or mandatory distributions made by a real estate investment company duly approved by the Securities and Exchange Commission to its shareholders
- Compensating payments which qualify as interest under the Act made by a lender to its approved agent or a borrower in a regulated securities lending transaction

## Disallowable Expenditure

- Capital repaid or withdrawn and any expenditure of a capital nature
  - Any sum recoverable under an insurance or contract of indemnity
  - Taxes on income or profits levied in Nigeria or elsewhere. In case of tax levied outside Nigeria on profits which are also chargeable to tax in Nigeria and double taxation relief is not available, such tax will be an allowable deduction
  - Payments to unapproved pension, provident, savings or widows and orphans society, fund or schemes
  - Depreciation of any asset; (capital allowances are granted instead)
  - All appropriations for profit: namely, dividends; general provision for bad and doubtful debts; write off of preliminary and formation expenses and expenses on issue or redemption of shares and other securities, etc.; Pre-production expenses to the extent to which they are not of capital nature will be allowable deduction as such have been incurred for the purpose of producing the company's profit
  - Any expense whatsoever incurred within or outside Nigeria involving related parties as defined under the transfer pricing regulations, except to the extent that it is consistent with the transfer pricing regulations
  - Any expense incurred in deriving tax exempt income, losses of capital nature and any expenses allowed as a deduction under Capital Gains Tax Act for the purpose of determining chargeable gains
  - Any compensating payment made by a borrower which qualifies as dividends under the Act to its approved agent or to a lender in a regulated securities exchange transaction;
  - Any compensating payment made by an approved agent which qualifies as interest or dividends under the Act to a borrower or lender in a regulated securities exchange transaction;
  - Any penalty imposed by any Act of the National or State House Assembly for violation of any statute; and
  - Any tax or penalty borne by a company on behalf of another person
- Where the liability for an allowed expense is subsequently waived or released or a refund is received for the amount paid, the amount which is so waived, released, or refunded is deemed to be the income of the company in the year in which the waiver, release or a refund is made or given.*

**Donations: CITA Section 21 stipulates, among other things, the conditions to be satisfied before any donation can be allowed. These are:**

- Donations must be made out of the profits of the company (Section 21(2)). Thus if a company makes a loss, whatever donations paid during that year should not be treated as allowable;
- Donations should not be expenditure of a capital nature except donations made to tertiary or research institute; (donations (whether of a revenue or Capital nature) made in respect of university and other tertiary or research institutions for research or any developmental purpose, or as an endowment out of profits of the period by a company, shall not exceed an amount which is equal to 15% of the total profits or 25% of the tax payable in the year of the donation, whichever is higher)
- For any year of assessment, the maximum amount allowable is limited to 10% of the total profits of the company before deducting the donations; and
- The donation must be made to any of the approved bodies.

#### ***Provisions of Finance Act, 2020 on donations***

Donations made by companies in cash or kind to any fund set up by the Federal Government or any State Government, or to any agency designated by the Federal Government or to any similar Fund or purpose in consultation with any Ministry, department or agency of the Federal Government, in respect of any pandemic, natural disaster or other exigency shall be allowed as deductions as follows:

- The cost of in-kind donations made to the Government and any designated agency shall be allowed as deductions; or
- Where companies have either procured or manufactured items for contribution, the cost of purchase, manufacture or supply of such in-kind contributions shall be allowed as deductions. However, the requisite documentation evidencing the donation and the cost thereof are provided to the relevant tax authority and demonstrated to be wholly, reasonably, exclusively and necessarily incurred in relation to the procurement, manufacture or supply of the in-kind contributions. Meanwhile, the amounts allowable for deduction, in respect of this donation in any year of assessment shall be limited to 10% of assessable profits after deduction of other allowable donations made by the company.

#### **Fifth schedule (section 21)**

**The funds, bodies and institutions in Nigeria to which donations may be made under section 21 of the Act are**

- The Boys Brigade of Nigeria
- The Boys Scouts of Nigeria
- The Girls Guides of Nigeria
- The Nigerian Red Cross
- The National Youth Council of Nigeria
- The Nigerian Youth Trust
- The Christian Council of Nigeria
- Islamic Education Trust
- Any hospital owned by the government of the federation or of a state or any university teaching hospital or any hospital which is carried on by a society or association otherwise than for the purpose of profits or gains, to the individual members of that society or association
- Any educational institution affiliated under any law with any University in Nigeria or established under any law in Nigeria and any other educational institution recognised by any Government in Nigeria
- The Institute of Medical Laboratory Technology
- The National Library
- A public fund established and maintained exclusively for providing money for the acquisition, construction, maintenance or equipping a building used or to be used as a school or college by the Government of the Federation or a state or by a public authority or by a society or association which is carried on otherwise than for the purpose of profit or gain to the individual members of that society or association.
- The National Braille Library of Nigeria
- Van Leer Nigerian Educational Trust
- The Institute of Chartered Accountants of Nigeria Building Fund
- Nigerian Accounting Standards Revenue Service
- Paterson Zochonis Nigeria Technical Education Trust Fund
- Educational Cooperative Society
- National Commission for Rehabilitation
- Any public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the civil war in Nigeria which ended on January 15, 1970

## Fifth schedule (section 21)

The funds, bodies and institutions in Nigeria to which donations may be made under section 21 of the Act are

- Southern Africa Relief Fund
- Any public fund established or approved by the government of the federation or any of the state governments in aid of or for the relief of drought or any other national disaster in any part of the federation
- The Cocoa Research Institute of Nigeria
- The National Council for Medical Research
- The National Science and Technology Development Agency
- The Nigerian Institute for International Affairs
- The Nigerian Institute for Oil Palm Research
- The Nigerian Institute for Trypanosomiasis Research
- National Science and Technology Fund.
- Any public institution or public fund (including the Armed Forces Comfort Fund) established or maintained for the comfort, recreation or welfare of members of the Nigerian Army, Navy or Air Force
- National Sports Commission and its State Associations
- The Nigerian Society for the Deaf and Dumb
- The Society for the Blind
- The Nigerian National Advisory Council for the Blind
- Associations or Societies for the Blind in Nigeria
- Training Centres and Residential Schools for the Blind in Nigeria
- Rotary International (PolioPlus programme)
- The Musical Society of Nigeria.
- Kewalram Chanrai Foundation Limited
- Afprint Foundation Limited
- University College Hospital Endowment Fund
- The Nigerian Museum
- Nigerian Conservation Fund

## Bad and doubtful debts

The salient matters to note with regard to the treatment of bad and doubtful debts for tax purposes are as follows

- They must relate to debts incurred in the ordinary course of the trade or business;
- They must be identifiable to specific debts. General reserves against bad and doubtful debts are not allowable deductions;
- Reserves no longer required are taxable (in the year that they are considered no longer necessary) if previously allowed
- Debts previously written off, allowed in tax computation, and later recovered are taxable as income for the year in which recoveries are made; and
- Necessary evidence must be provided at the request of the Revenue Service to prove that the debts have become bad or estimated to be doubtful of recovery

### Illustration:

The analysis of the bad debt provision account of Disciples Limited showed the following as at 31/12/17:

	₦
General provision for doubtful debt c/f	35,000
Specific provision for doubtful debt c/f	48,000
Bad debt written off	70,000
Loan to customer written off	22,500
General provision for doubtful debt b/f	(15,000)
Specific provision for doubtful debt b/f	(18,000)
Bad debt written off recovered	(59,000)
Statement of profit or loss	<u>83,500</u>

The amount N83,500 has been charged in the accounts for the year ended 31/12/17

Required:

Reconcile the account for tax profit adjustment purposes.

### Expenses incurred in deriving exempt income

Where a deductible expense is incurred for the purposes of generating both exempt and non-exempt income, only the portion that relates to the income assessable to tax shall be allowed as a deduction.

**Illustration:** Crystal Clear Limited generated a profit of N2,000,000 during the year ended December 31, 2020. It incurred deductible expenses of N250,000. Out of the business profit of N2,000,000, only N1,400,000 is assessable to tax. **Compute how much of the expenses will be allowed for deduction for income tax purposes.**

### Interest deductibility rules

Tax deduction for interest on foreign related party loans is restricted to 30% of a company's Earnings Before Interest Tax Depreciation and Amortisation (EBITDA). Annual interest expenses above this cap can be carried forward for a maximum of 5 years, after which they will be deemed to have lapsed.

A Nigerian subsidiary of a foreign company which is engaged in the business of banking or insurance is excluded from this rule. This rule shall apply to a Nigerian banking or insurance companies that are parents to foreign companies, where the Nigerian company paid interest to that foreign subsidiary.

A penalty of ten percent (10%) and interest at the Central Bank of Nigeria monetary policy rate plus a spread to be determined by the Minister or any adjustments made by the Service relating to excess interest charged in any year, is payable by any person who violates the provision of the seventh schedule to the Act.

The interest expenses must comply with the Income Tax (Transfer Pricing) Regulations 2018, before applying the interest deductibility rule, as this rule does not replace the transfer pricing rule.

For any interest expense to be allowable deduction, it must be directly incurred in respect of loan or debt obtained wholly, exclusively, necessarily and reasonably for the production of profits chargeable.

**Illustration:** Buea-Harry Nigeria Limited was incorporated on November 2, 2011, and it commenced business on April 4, 2012. TeaNooBoo (Canada) Limited is its subsidiary in Canada.

An extract of the financial statements of Buea-Harry Nigeria Limited for the year ended December 31, 2020, revealed the following:

N

Assessable profit	1,000,000
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Interests and depreciation deducted before arriving at the assessable profit of N1,000,000, are as follows:

Interest on loan paid to:

- Other creditors	500,000
- TeaNooBoo (Canada) Limited	750,000

Depreciation	300,000
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It was stated that out of the interest on loan paid to other creditors, N200,000 was in respect of a loan obtained in generating tax-exempt profits.

Required:

(a) Compute the interest deductible in the relevant assessment year.

(b) State how the excess interest not deductible in the relevant assessment year will be treated

## Taxable Income

- Any trade or business for whatever period of time such trade or business may have been carried on ;
- Rent or any premium arising from a right granted to any other persons for the use or occupation of any property;
- Dividends, interest, discounts, royalties, charges or annuities;
- Any source of annual profits or gain not falling within the preceding categories. The purpose is to ensure that no taxable profits escape the tax net of the Board; and
- Fees, dues and allowances (wherever paid) for services.

## Non-taxable Income

- Interest on a foreign loan granted on or after April 1, 1978, is exempted from tax within the limits prescribed in the Third Schedule to CITA 2004 (as amended).
- Interest on any loan granted by a bank on or after January 1, 1997, to a company engaged in:
  - (i) Primary agricultural production; or
  - (ii) Local fabrication of any plant and machinery; or
  - (iii) Providing working capital for any cottage industry established by the company under the Family Economic Advancement Programme (FEAP) provided moratorium is not less than twelve ( 12 ) months and interest is not more than base lending rate at the time the loan was granted, refinanced or otherwise restructured.
- Interest on a loan granted by a bank on or after April 1, 1980, for the purpose of manufacturing goods for export within the limits provided for in the Third Schedule to CITA (as above), provided a certificate issued by Nigerian Export Promotion Council (NEPC), is presented stating that the level of export specified has been achieved by the company (borrower).

NEPC, will issue export certificate only, where it is satisfied that not less than half of the goods manufactured, during the accounting period by the company (borrower) are sold outside Nigeria, and are not re-exported back to Nigeria. Additionally, not less than 75% of the export proceeds are repatriated to Nigeria through government approved channels

## Profits/income exempted from tax {section 23(1) of CITA (as amended)}

- The profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society
- The profits of any company being a co-operative society registered under an enactment or law relating to co-operative societies
- The profits of any company engaged in ecclesiastical or charitable activities of a public character in so far as such profits are not derived from a trade or business carried on by such company.

Section 21 of Finance Act, 2020, defines public character with respect to any organisation or institution as “organisation or institution

- (a) That is registered in accordance with relevant laws in Nigeria; and
- (b) Does not distribute or share its profit in any manner to members or promoters
  - The profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Service may prescribe
  - The profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union
  - Dividend distributed by a Unit trust
  - The profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria
  - The profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State
  - Dividend, interest, rent, royalty derived by a company from a country outside Nigeria and brought into Nigeria through government approved channels; and for the purpose of this subsection, “Government approved channel” means Central Bank of Nigeria (CBN), any bank or other body corporate appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act
  - The interest on deposit accounts of a foreign non-resident company, provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1 January 1990, through Government approved channels

## Profits/income exempted from tax {section 23(1) of CITA (as amended)}

- The interest on foreign domiciliary account in Nigeria accruing on or after January 1 1990
- Profits of a small company in a relevant assessment year provided that such company shall without prejudice to this exemption, comply with the tax registration and tax return filing stipulations of this Act and be subject to the provisions as regards time of filing, penalties for breach of statutory duties and all other provisions of this Act in all respects during the period which its profits are below the tax paying threshold
- Dividends received from small companies in the manufacturing sector in the first five years of their operations;
- The profits of any Nigerian company (other than companies engaged in the Upstream, Midstream or Downstream Petroleum operations) in respect of goods exported from Nigeria, if the proceeds of such exports are used for the purchase of raw materials, plant, equipment and spare parts, provided that tax shall accrue proportionately on the portion of such proceeds which are not utilised in the manner prescribed
- The profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplier
- The dividend and rental income received by a real estate investment company on behalf of its shareholders provided that:
  - a. A minimum of 75% of the dividend and rental income is distributed; and
  - b. Such distribution is made within 12 months of the end of the financial year in which the dividend or rental income was earned
- The profit of a company established within an export processing zone and free trade zone, provided that 100% production of such company is for export otherwise tax shall accrue proportionately on the profits of the company
- The compensating payments which qualify as dividends or interest under section 9(1)(c) of this Act, received by an approved agent from a borrower or lender on behalf of a lender or borrower in a Regulated Securities Lending Transaction.

The interest on loan relating to primary agricultural production included in the income of ABC Bank Limited for the year ended December 31, 2020, amounted to ₦5million.

The breakdown of the interest income based on the loan terms are as follows:

Repayment period	Moratorium period	Interest rate p.a. %	Agric loan Interest ₦
5 years	24 months	15	2,500,000
3 years	6 " "	20	800,000
2 years	18 " "	14	700,000
5 years	6 " "	35	<u>1,000,000</u>
			<u>5,000,000</u>

Base lending rate in respect of the facilities is 21% p.a.

### Required:

Compute the loan interest exempted from tax.

Tax or penalty borne by a company on behalf of another person	<p>Section 27(1)(1) of CITA (as amended) disallows any tax or penalty borne by a company on behalf of another person as an allowable deduction for tax.</p> <p>XYZ Company Limited hired a hall from ABC Nigeria Limited for the sum of N1,000,000, net of withholding tax, and decided to remit the withholding tax of N100,000 to the FIRS. XYZ Company Limited may deduct N1,000,000 as rent but N100,000 remitted to FIRS on behalf of ABC Nigeria Limited is not deductible.</p>
Tax Waiver on Bonds [Companies Income Tax (Exemption of Bonds and Short-term Government Securities) Order 2011]	<p>Income earned by companies from Federal Government bonds are exempt from CIT in line with the CIT Exemption Order. Income from other bonds and securities which were previously exempt, are now subject to CIT from 2 January 2022, they include:</p> <ul style="list-style-type: none"> <li>• Short term Federal Government of Nigeria Securities, such as Treasury Bills and Promissory Notes;</li> <li>• Bonds issued by State and Local Governments and their Agencies;</li> <li>• Bonds issued by corporate bodies including supra-nationals; and</li> <li>• Interest earned by holders of the Bond and Securities mentioned above</li> </ul>
Basis of computing company income tax	<ul style="list-style-type: none"> <li>• Normal Basis (using 0%, 20% and 30% for small companies, medium-sized companies and large-sized companies respectively).</li> <li>• Minimum tax basis</li> <li>• Turnover basis</li> <li>• Dividend basis</li> </ul>
Minimum tax basis: This is imposed where a company has no taxable profits, or the tax payable is less than the minimum tax computed.	<p>Minimum tax is generally computed at 0.5% of a company's annual <b>gross turnover less franked investment income</b>. Companies can enjoy a reduced minimum tax rate of 0.25%, for any tax returns filed for any 2 consecutive accounting periods between 1 January 2019 to 31 December 2021 as may be chosen by the taxpayer. This rate reduction is only granted where the relevant returns are filed before the filing due dates. "Gross turnover" means the gross inflow of economic benefits during the period arising in the course of the operating activities of an entity. This also includes sales of goods, supply of services, receipt of interest, rent, royalties or dividends.</p> <p>Section 80(3) of CITA (as amended) defines "franked investment income" as dividend received by one company from another after the deduction of withholding tax.</p> <p>The following should be noted:</p> <ul style="list-style-type: none"> <li>• Any dividend received without the deduction of withholding tax will not be deducted from gross turnover in the computation of the minimum tax liability;</li> <li>• Evidence of deduction of withholding tax deducted at source is a condition precedent before treating the dividend as franked investment income; and</li> <li>• Where the franked investment income did not form part of the gross turnover, it should not be deducted from same in computing minimum tax.</li> </ul> <p><b>A company is however exempted from minimum tax if it meets any of the following conditions:</b></p> <ul style="list-style-type: none"> <li>• It is within its first four calendar years of business.</li> <li>• It has annual gross turnover of less than N25 million in the relevant year of assessment (small companies)</li> <li>• It carries on primary agricultural trade or business.</li> </ul>

### Minimum tax illustration

Ijedodo Nigeria Limited has been in business for many years. An extract of the profit or loss account of the company for the year ended December 31, 2021, revealed the following

	₦	₦
Revenue/turnover from main business activities		25,000,000
Revenue from suspended operations	3,500,000	
Expenses on suspended operations	(2,400,000)	
Profit from suspended operations	1,100,000	1,100,000
Rent received (gross)		750,000
Dividend received from Onidodo Limited (gross)		2,400,000
Revenue from other operating activities	7,500,000	
Expenses on other operating activities	(2,800,000)	
Profit from other operating activities	4,700,000	4,700,000
Required:		
Compute the minimum tax payable		

### Turnover basis

The Federal Inland Revenue Service (FIRS) is given the discretionary power, by virtue of the provision of Section 30 of CITA, to assess and charge a company to tax on a fair and reasonable percentage of the gross turnover of the trade or business. The FIRS is entitled to exercise this power in any of the following circumstances where it appears to it that for any year of assessment, the company's trade or business has either:

- No assessable profits; or
- Assessable profits which in the opinion of the FIRS, are less than might be expected to arise from that trade or business; or
- The true amount of the assessable profit cannot be readily ascertained.

The implication of the above provision is that whatever is obtained by applying a fair and reasonable percentage, as may be determined by the FIRS, to the company's revenue, is deemed to be its assessable profit for the assessment year concerned.

Section 30(1)(ii) of CITA having been amended by Finance Act 2021, any company that transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any commerce, trade or activity, including electronic commerce, applications store, high frequency trading, electronic data storage, online adverts, participative network platform or online payments, to the extent that the company has significant economic presence in Nigeria, assess and charge that company for the year of assessment on such fair and reasonable percentage of that part of turnover attributable to that presence.

## Turnover Basis Illustration

Ojokoro (Nigeria) Limited is engaged in general merchandising. The following details were extracted from the tax returns submitted to the Federal Inland Revenue Service for assessment year 2020.

	₦'000
Revenue	100,000
Assessable profit	5,850
Balancing charge	<u>500</u>
	6,350
Unrelieved loss brought forward	<u>(1,200)</u>
	5,150
Capital allowance	<u>(2,500)</u>
Total profit	2,650
Companies income tax payable	
₦2,650,000 at 30%	₦795,000

A desk examination by the Inland Revenue officials revealed the following

- (a) Revenue was understated by ₦5million
- (b) Expenses were overstated by ₦1.5million

The tax official observed that the accounts submitted by the company were not reliable and that based on industry average, the gross profit percentage of about 10% revealed by the company's accounts was not reasonable. Accordingly, the Revenue decided to revise the companies income tax computation by applying a fair and reasonable percentage of 25% on the revenue.

**Required:**

Re-compute the companies income tax liability for the 2020 assessment year

## Tax exemption of the profits of a small company

Section 23(1)(O) of CITA (as amended) states that "the profits of a small company in a relevant year of assessment are exempt from tax provided that:

(a) "Such company shall, without prejudice to this exemption, comply with the tax registration and tax return filing stipulations of this Act and be subject to the provisions as regards time of filing, penalties for breach of statutory duties and all other provisions of this Act in all respects during the period which its profits are below the taxpaying threshold; or

(b) They are dividends received from small companies in the manufacturing sector in the first five years of their operations".

It is pertinent to mention that for a small company to enjoy the tax exemption, it must meet the conditions as stipulated above.

Given the fact that a small company whose profit is exempt from tax under section 23(1)(O) of CITA (as amended) will not have assessable profit, hence it will not pay tertiary education tax in respect to those exempt profits.

Despite the exemption of profits of small companies from tax, a company doing business with a small company is expected to deduct withholding from relevant payments due to the company and remit same to FIRS. The foregoing notwithstanding, the small company may request for the refund of the withholding tax suffered

Tertiary Education Tax	<p>TET is payable by all Nigerian companies on assessable profits, that is, tax adjusted profits before deducting capital allowances and prior year tax losses. The relevant law is the Tertiary Education Trust Fund (Establishment etc.) Act 2011, as amended. The tax is payable at the rate of 2.5% with effect from 2022 YOA. Non-Resident Companies (NRCs) and all unincorporated entities are exempted from Tertiary Education Tax. Small companies (with annual turnovers of 25 million and below) are exempted from Tertiary Education Tax. Section 2(2) of the Act, having been amended by the Finance Act 2020, the tax is due and payable within 30 days after the FIRS has served notice of the assessment on a company.</p>
Objectives of TET Fund	<p>The Fund will be specifically used for the provision or maintenance of the following:</p> <ul style="list-style-type: none"> <li>• Essential physical infrastructure for teaching and learning;</li> <li>• Instructional material and equipment;</li> <li>• Research and publication;</li> <li>• Academic staff training and development; and</li> <li>• Any other need which, in the opinion of the Board of Trustees, is critical and essential for the improvement of quality and maintenance of standards in higher educational institutions.</li> </ul>
Management and Administration of TET Fund	<p>The Board of Trustees is vested with the management and administration of the fund. The Board of Trustees shall administer the tax imposed by the Act and disburse the amount in the fund to federal and state tertiary educational institutions.</p>
Compositions of the Board of Trustees	<p>The Board of Trustees shall consist of:</p> <p>(a) A chairman who shall –</p> <p>(i) Be a person with good knowledge in finance and administrative matters; and</p> <p>(ii) Have qualifications and experiences as are required to perform the functions of that office under the Act.</p> <p>(b) Six persons, each representing a geo-political zone in the country</p> <p>(c) A representative each of the following Federal Ministries, who shall not be below the rank of a Director</p> <p>(i) Education; and</p> <p>(ii) Finance.</p> <p>(d) A representative from the Universities;</p> <p>(e) A representative from the Polytechnics;</p> <p>(f) A representative from the Colleges of Education; and</p> <p>(g) The executive secretary of TETfund who shall be the Secretary to the Board of Trustees.</p> <p>This brings the total number of members of Board of the Trustees to thirteen persons</p> <p>Each member other than the ex-officio members, shall hold office for a term of four years in the first instance and may be eligible for re-appointment for a further term of four years and no more.</p> <p>The Board shall meet for the conduct of its ordinary meetings four times in a calendar year. Notwithstanding the foregoing, the Board may meet to conduct such other business as exigency demands</p>

Functions of BoT	<ul style="list-style-type: none"> <li>• Monitor and ensure collection of tertiary education tax by the FIRS and ensure transfer to the fund;</li> <li>• Manage and disburse the tax imposed by the Act;</li> <li>• Liaise with the appropriate ministries or bodies responsible for collection or safekeeping of the tax;</li> <li>• Receive requests and approve admissible projects after due consideration;</li> <li>• Ensure disbursement of funds to various public tertiary educational institutions in Nigeria;</li> <li>• Monitor and evaluate execution of the projects;</li> <li>• Invest funds in appropriate and safe securities;</li> <li>• Update the Federal Government on its activities and progress through annual and audited reports;</li> <li>• Review progress and suggest improvements within the provisions of the Act;</li> <li>• Do such other things as are necessary or incidental to the objects of the fund under the Act or as may be assigned by the Federal Government;</li> <li>• Make and issue guidelines from time to time to all beneficiaries on disbursements from the Fund on the use of monies received from the fund;</li> <li>• Regulate the administration, application and disbursement of monies from the Fund under the Act</li> </ul>
Allocation and distribution of TET	<p>The total tax collected in a year is disbursed in the ratio 2:1:1 amongst the universities, polytechnics and colleges of education, as shown below:</p> <ul style="list-style-type: none"> <li>• Universities - 50%              Polytechnics - 25%              Colleges of Education - 25%</li> </ul> <p>The Board of Trustees shall have power to give due consideration to the peculiarities of each geo-political zone in the disbursement and management of the tax imposed by this Act between the various levels of tertiary education.</p>
Disbursement of TET	<p>The FIRS is to pay tertiary education tax collected into the TETfund and shall when doing so, submit to the TETfund, in such form as the Board of Trustees of the TETfund shall approve, a return showing:</p> <p>(a) The name of the company making the payment;</p> <p>(b) The amount collected;</p> <p>(c) The assessable profit of the company for the accounting period; and</p> <p>(d) Such other information as may be required by the TETfund for the proper administration of the tertiary education tax.</p> <p>The board of trustees shall before the disbursement of the amount in the fund, set aside in each year, an amount not exceeding five percent of the total monies accruing to the Fund in the preceding year which shall be applied for:</p> <p>(a) The cost of administration and management of the fund;</p> <p>(b) The maintenance of any property acquired by or vested in the fund and generally to pay for services rendered to the fund;</p> <p>(c) For project monitoring; and</p> <p>(d) To meet all the needs of the fund necessary for the due administration and implementation of the purpose of this Act.</p>
Offences and Penalties	<ul style="list-style-type: none"> <li>• Failure to pay within 30 days of the service of notice attracts 5 percent of the sum assessed.</li> <li>• Failure to pay the tax and penalty as stated in above within a further period of two months from date of demand attracts ₦1,000,000 or imprisonment for six months for first offender and ₦2,000,000 or imprisonment for twelve months or to both fine and imprisonment for any director, manager or every person concerned in the management of the body corporate or firm or other association of individuals unless he proves that the act or omission for the offence took place without his knowledge, consent or connivance.</li> </ul>

**QUESTION 1**

Dadinkowa Nigeria Limited has been in business since 2009 as a manufacturer of sugar cubes. The company sources its sugar cane from the Northern part of the country.

However, due to activities of some miscreants which prevented some of the local farmers to go about their farming activities, the company has been facing a lot of issues in getting the needed raw materials for its operations since 2016.

The company has issues with tax authorities on the treatment of some items (such as allowing/disallowing donation and dividend received at will) in the financial statements submitted and annual returns filed. The high overhead cost, particularly energy cost, make the operating environment not encouraging. In order to address this unpleasant business situation, the board of directors of the company, at its special meeting held recently, decided to "close business operations" temporarily or in the long-run, relocate to a neighbouring country, if the situation does not improve in the coming financial year.

As the company's tax consultant, you were informed of the decision of the Board by the General Manager when you visited the company to obtain documents that you intend to use to conduct tax audit and file statutory tax returns in respect of the just concluded year. He was of the opinion that your professional advice will be highly needed as he did not want the organisation to go on temporary closure next year or relocate to another country. In the course of your discussion, you suggested ways by which issues raised by the Board could be addressed. The General Manager was pleased with your informal submissions and decided to inform the Managing Director. A meeting has been scheduled between the Managing Director and your firm next week.

The profit or loss account in respect of the operations of the company for the year ended December 31, 2021 is as follows:

**DADINKOWA NIGERIA LIMITED**  
**Statement of profit or loss for the year ended December 31, 2021**

	₦'000	₦'000
Turnover		382,500
Opening inventory	23,200	
Purchases	117,400	
Carriage inwards	5,900	
Closing inventory	<u>(31,100)</u>	
Less: Cost of goods sold		115,400
Gross profit		267,100
Miscellaneous income		<u>11,060</u>
		278,160
Deduct: Expenses		
Salaries and wages	89,500	
Rent and rates	12,300	
Electricity and lighting	26,650	
Transport and travelling	10,820	
Stamp duties for increase in share capital	1,500	
Auditor's remuneration	2,000	
Legal and professional fees	5,000	
Repairs and maintenance	2,100	
Allowance for doubtful debts	28,000	
Depreciation	35,600	
Interest on loan	6,000	
General and administrative expenses	48,470	
Donations and subscriptions	15,000	
Loss on disposal of foreign equity shares	<u>1,750</u>	<u>284,690</u>
Loss for the year		<u>(6,530)</u>

Extract from the company's statement of financial position as at December 31, 2021 revealed:

	₦'000
Non-current assets	600,400
Current assets	<u>312,200</u>
Total assets	<u>912,600</u>
Share capital	600,000
Reserves	87,600
Long-term borrowing	50,000
Liabilities due within 1 year	<u>175,000</u>
	<u>912,600</u>

The following additional information was made available:

	₦'000
(i) Miscellaneous income was made up of:	
Excess on revaluation of investment	770
Dividend received (net)	3,460
Other income	<u>6,830</u>
	<u>11,060</u>
(ii) Legal and professional fees included:	
Debt collection expenses	1,200
Tax consultant's professional fee	600
Renewal of short lease	1,900
Retainer fee	<u>1,300</u>
	<u>5,000</u>
(iii) Repairs and maintenance included:	
Improvement to industrial building	700
Repairs of industrial plant	300
Renewals of tools and implements	200
Construction of company's building gate	<u>900</u>
	<u>2,100</u>
(iv) Allowance for doubtful debts consisted of:	
General provision	17,400
Specific provision	12,900
Bad debt written off	10,200
Bad debt recovered	<u>(12,500)</u>
	<u>28,000</u>

(v) Interest on loan was paid on a facility obtained from a licensed Nigerian deposit money bank at commercial interest rate.

(vi) General and administrative expenses were made up of:

	₦'000
Vehicle running expenses	10,700
Insurance premium	12,200
Fine for driving offences	470
Other administrate expenses	<u>25,100</u>
	<u>48,470</u>

(vii) Donations and subscriptions

Included in donations was ₦12,000,000 paid to a fund created by the Federal Government for victims of communal crisis that took place where the company is situated.

(viii) The tax written down values of the qualifying capital expenditure (QCE) items as at December 31, 2020 were:

QCE	Year of Acquisition	Number of items	Amount
			₦'000
Industrial building	2016	1	84,000
Manufacturing industrial plants	2018	2	28,000
Motor vehicles	2019	2	14,000
Furniture and fittings	2019	10	2,700

(ix) Additions to QCEs during the year ended December 31, 2021 were:

QCE	Number of items	Amount
		₦'000
Motor vehicles	1	4,500
Furniture and fittings	3	1,200

(x) Unrelieved capital allowances brought forward were ₦15,200,000.

(xi) Unabsorbed losses from previous years were:

Tax year	Amount
	₦'000
2017	8,290
2018	4,380
2019	9,800
2020	13,600

**Required:**

As the company's Tax Consultant, you are to draft a report to the Managing Director for the scheduled meeting expected to hold next week. This is expected to address the following:

- a. Determination of the company's tax liabilities for the relevant tax year. (20 Marks)
  - b. Comment, in line with the provisions of Companies Income Tax Act Cap C21 LFN 2004 (as amended) on:
    - i. The treatment of donations made by the company during the year under review (5 Marks)
    - ii. Exemption of dividends from taxation (5 Marks)
- (Total 30 Marks)**

**SOLUTION 1**

OK & Co (Chartered Accountants)  
Igbogbo Road, Lagos

Date: .....

The Managing Director  
Dadinkowa Nigeria Limited  
Lagos.

Dear Sir,

**RE: COMPUTATION OF TAX LIABILITIES AND OTHER MATTERS THEREOF**

I refer to our discussion of April 12, 2022 on your request for computation of the company's tax liabilities for 2022 assessment year and advice on treatment of donations made during the year and dividends exempted from tax. I hereby present a report for your review before same is processed for filing with the tax authorities.

**(a) Determination of tax liabilities**

Financial records of the company for the year ended December 31, 2021 revealed an operating loss of ₦6,530,000. For tax purposes and in line with the provisions of Companies Income Tax Act 2004 (as amended), the profit or loss made by a corporate entity has to be adjusted. When this was done, the company made an adjusted profit of ₦54,145,000.

The company was able to relieve all the unabsorbed losses for the 2017, 2018, 2019 and 2020 tax years, which amounted to ₦36,070,000. However, only ₦18,075,000 out of ₦71,568,980 capital allowances available for relief was utilised, while the unutilised portion of ₦53,493,980 is deferred to next year for possible utilisation from profit.

Following from above, the company has zero total profit for the period under review. Section 13 of Finance Act 2020 stipulates that any company that falls into this category (zero or insufficient profit) has to pay a minimum tax. Thus, the company is liable to pay a minimum tax of ₦1,946,650. There is also tertiary education tax that is compulsory for companies operating in Nigeria to pay. The new rate is 2.5% of adjusted profit, which is ₦1,489,000. The total tax liabilities for the 2022 tax year is ₦3,435,650.

We suggest that every effort be put in place for filing of annual tax returns with the Federal Inland Revenue Service within the statutory time limit provided under the Act.

- (bi) The treatment of donations made by the company during the year under review
- The CITA 2004 (as amended) recognises the importance of donations made by corporate entity. However, for such donations to be allowed as expenses in the determination of total profit and subsequently tax liabilities payable in any year of assessment, it has to fulfill some conditions. These conditions are:
- It must be made to any of the funds, bodies, institutions in Nigeria contained in the Fifth Schedule to CITA;
  - It must be made out of profit;
  - It must not be of capital nature, except donations to a university or other tertiary or research institutions;
  - It must not exceed 10% of the company's total profits for an assessment year before any deduction for donation. In the case of donations to tertiary or research institution, up to 15% of total profit or 25% of tax payable in the year, whichever is higher;
  - Donations made by companies in cash or kind to any fund set up by the Federal Government or to any similar fund or purpose in consultation with any Ministry, department or agency of the Federal Government, in respect of any pandemic, natural disaster or other exigency shall be allowed as deduction provided that requisite documentation documenting the donations and the cost thereof are provided to the relevant tax authority; and
  - The amounts allowable for deduction in respect of the above, in any year of assessment shall be limited to 10% of assessable profits after deduction of allowable donations made by the company.

Based on the foregoing, it is evident that the ₦12 million donations made by the company to a fund established by the Federal Government for victims of crisis was to a recognised fund. However, the amount of the donation was in excess of 10% of the company's total profits for an assessment year before any deduction for donations. It is on the basis of the above that the tax authority will not regard the whole of ₦12 million donations made by the company as an allowable expense in the determination of tax liabilities for 2022 tax year.

The Revenue Service will only allow the amount of donations, which is restricted to 10% of assessable profits after such deduction. This is equal to ₦5,415,000.

(bii) Dividends exempted from taxation.

The CITA 2004 (as amended) clearly provides for treatment of dividend income. There is no inconsistency in its treatment. The following are dividends exempted from taxation:

- Dividends received by way of a bonus issue of shares;

- Dividends received from a pioneer company;
- Dividends received from a company subjected to tax under the PIA 2021;
- Dividends received from a foreign investment, provided such dividend is received through a domiciliary account;
- Dividends received net of withholding tax by a Nigerian company from another Nigerian company;
- Dividends received from small companies in the manufacturing sector in the first five years;
- Dividends received from investment in wholly export-oriented business;
- Dividends received from a unit trust scheme;
- Dividends received by a company from another one, provided that the equity participation on which the dividend is paid:
  - either wholly paid for in foreign currency or by assets brought to Nigeria; and
  - not less than 10% of the equity share capital of the company paying the dividend.

We hope that this report adequately represents the mandate assigned to us. Should you need further clarification on this, we will be glad to address it.

### QUESTION 1

Carrol Nigeria Limited, a medium- sized company, commenced business in 2011. The company has three subsidiaries, which are into manufacturing of household utensils and baby products. The fortunes of the company have been dwindling in the last three years due to high cost of imported raw materials, overheads, low patronage from customers and ever-increasing demands from the host communities on provision of social amenities.

As a result of this unfavourable business climate, the board in one of its meetings in 2016 decided to reduce the workforce and permanently close down one of its subsidiaries. Two of the staff in the Finance Department who are chartered accountants were affected. A young promising first degree holder, with limited knowledge in taxation and fiscal policy, was subsequently appointed as the Group Accountant.

In the last three years, the company has been facing challenges with the tax authorities on issues that bother on tax compliance. The Group Managing Director was embarrassed last month when the tax officer informed him that proper books or records of accounts necessary for the correct determination of tax liabilities were not kept by the company. In addition, gaps were noticed in the information provided in the company's annual returns filed and the Revenue Service is in the process of conducting back duty audit.

You have been approached by the Group Managing Director to help in finding solution to these challenges, which the company is presently facing. The Group Managing Director also provided you with some documents, which you may need in recomputing the company's income tax liabilities for the year ended December 31, 2020.

The statement of profit or loss for the year ended December 31, 2020, is as follows:

	₦'000	₦'000
Gross turnover		88,200
Less:		
Opening inventory	2,300	
Purchases	24,650	
Carriage inwards	1,050	
Closing inventory	(3,410)	
Factory salaries and wages	4,040	
Depreciation of factory plants	1,890	
Other factory overhead expenses	<u>4,480</u>	<u>35,000</u>
Gross profit		53,200
Other income		<u>2,500</u>
		55,700
Less:		
Administrative salaries	6,600	
Administrative expenses	7,750	
Pension fund contribution	1,120	
Motor running expenses	1,250	
Staff medical expenses	800	
Audit and professional fees	2,000	
Donation	750	
Transport and traveling	900	
Rent and rates	1,200	
Telephone	300	
Printing and stationery	950	
Repairs and maintenance	480	
Allowance for doubtful debts	1,000	
Depreciation of office equipment	2,640	
Miscellaneous expenses	<u>1,550</u>	<u>29,290</u>
Net profit		<u>26,410</u>

#### Additional information

- Other income included ₦320,000 realised from the disposal of the company's old plant.
- Administrative expenses included ₦250,000 paid to a legal practitioner for the defense and release of the company's driver who was caught by traffic officers for driving against traffic.
- 30% of motor running expenses was expended on the personal expenses of the Managing Director.
- 20% of the donation was paid to a fund created by the State Government for assisting victim of insurgents.
- Repairs and maintenance included ₦215,000 being the cost of erecting the company's gate that was destroyed during a protest by the youths in the area of company's operations.

- (vi) Allowance for doubtful debts comprised of general provision, ₦600,000 and specific provision, ₦400,000.
- (vii) Miscellaneous expenses included ₦450,000 incurred on the purchase of hamper gifts to the company's customers during Sallah and Christmas seasons.
- (viii) A check made on the documents given to the tax consultant revealed that the gross turnover was understated by ₦750,000.
- (ix) Below is the schedule of qualifying capital expenditure on property, plant and equipment.

Nature	Date of acquisition	Amount ₦'000
Factory building	September 8, 2016	3,800
Furniture and fittings	October 12, 2016	1,600
Motor van	June 19, 2018	4,200
Factory building	March 8, 2020	6,500
Furniture and fittings	April 15, 2020	2,000
Industrial plant	July 1, 2020	5,700
Motor van	December 20, 2020	4,240

- (x) Unutilised capital allowances brought forward was ₦1,500,000 and balancing charge of ₦155,000 realised on disposal of the old industrial plant.

**Required:**

As the company's tax consultant, you are to send a report to the Group Managing Director addressing the following areas:

- a. Provisions of the Companies Income Tax Act CAP C21 LFN 2004 (as amended) and Finance Act 2020 regarding maintenance of books or records of accounts (4 Marks)
- b. Back duty audit and its implications (4 Marks)
- c. Computation of the company's tax liabilities (with supporting schedules) for the relevant tax year (22 Marks)

**(Total 30 Marks)**

**SOLUTION 1**

**Shinny Tax Consultants**  
Plot 3, Junaid Avenue, Ilorin

March 19, 2021  
The Group Managing Director  
Carrol Nigeria Limited  
Kaduna

**RE: MAINTENANCE OF BOOKS OR RECORDS OF ACCOUNTS, BACK AUDIT AND COMPUTED TAX LIABILITIES**

We refer to our discussion and subsequent appointment as the company's tax consultant for the purpose of providing professional services on issues of concern to the company. Our comments are as follows:

- a. Provisions of Companies Income Tax Act (CITA) CAP C21 LFN 2004 (as amended) and Finance Act 2020 on maintenance of books or records of accounts

Maintenance of books or records of accounts is essential for correct assessment of a taxpayer (individual or corporate entity) to be made by the relevant tax authority. In order to give clarity and importance to this aspect, section 63, CITA 2004 (as amended) was expunged and substituted with a new one, Section 17, Finance Act 2020.

The new provisions in Finance Act 2020 include the following:

- i. Every company, including a company granted exemption from incorporation, shall, whether or not the company is liable to pay tax, maintain books or records of accounts, containing sufficient information or data of all transactions;
- ii. The books and records required to be maintained shall be in English language and shall, for the purposes of tax accounts, be consistent with the format that may be prescribed by the Revenue Service;
- iii. Where a record of a company is maintained in a language other than the English language, the company shall, on demand by the Revenue Service, produce, at its own expense, a translation in English language, which shall be certified by a sworn translator;
- iv. Any company that on request by the Revenue Service, fails to provide any record or book prescribed by this Act shall be liable to pay as penalty:
  - ₦100,000 in the first month in which the failure occurs; and
  - ₦50,000 for each subsequent month in which the failure continues.
- v. Where, in the opinion of the Revenue Service, a company fails or refuses to maintain books or records of accounts or adequate for the

- purposes of tax, the Revenue Service may, by notice in writing, require it to maintain such records, books and accounts as the Service considers adequate, in such form and language as may be specified in the notice;
- vi. Any direction of the Service made shall be subject to objection and appeal in like manner as an assessment; and
  - vii. Any book or record required to be kept shall be kept for a period of at least six years after the year of assessment in which the income relates.

b. Back duty audit and its implication

**Back duty:** The tax laws, CITA 2004 (as amended) (for companies) and PITA 2004 (as amended) (for individuals and unincorporated entities) provide that relevant tax authority may from time to time and as long as it wishes, carry out a back duty audit on a taxpayer. Back duty has the following features:

- i. During the course of the audit, the records of the taxpayer are checked to examine the truth in the information that was earlier provided in the annual returns or tax computations;
- ii. The objective of the back duty audit is to confirm that income has not been materially understated and that expenses have not been overstated;
- iii. It also seeks to determine whether all the expenses included in the tax computations are allowable for tax purposes; and
- iv. The audit will also verify the values of the qualifying capital expenditure so as to confirm that the basis of capital allowance computation is reliable.

**Implications of back duty audit are:**

- i. At the end of the audit, the findings of the tax computations are reviewed and compared with the tax computations earlier submitted and on which remittances were previously based. The shortfall on a yearly basis is determined and this forms the basis of an additional assessment.
- ii. An additional assessment arising from such an exercise is subject to the objection and appeal procedures.
- iii. The Service during the back duty audit may open the records of the company to the preceding years up to 6years or beyond.

c. Computation of the company's tax liability

The attached Appendices 1, 2 and 3 show the results of the adjusted profit, tax liability and capital allowance. The results indicate that the adjusted profit of the company for the year ended December 31, 2020 was ₦32,810,000.

The company was able to relieved its capital allowance, which amounted to ₦11,697,990, thereby having a total profit of ₦21,267,010.

In line with the provision of Finance Act 2019, the company being a medium-sized company was liable to pay companies income tax at the rate of 20%. This gives tax liability of ₦4,253,402.

Following the provision of Tertiary Education Trust Fund (Establishment, etc) Act 2011 (as amended), the company is liable to pay 2% of its assessable profit as tertiary education tax. This amounted to ₦659,300.

In order not to be sanctioned by the Revenue Service, you are advised to file your annual returns, which must include the audited financial statements and schedule of tax computations with the Revenue Service and payment made within the statutory period allowed.

Please do not hesitate to contact the undersigned, should you require further clarifications.

Yours faithfully,

Raheem Ojo  
Principal Partner  
For: Shinni Tax Consultants

### Gas Utilization Incentives

- Companies engaged in gas utilisation (downstream operations) may be granted the following incentives in respect of the gas utilisation operations of a company, subject to satisfactory performance of the business:
- Tax free period of up to 5 years, or 35% additional tax depreciation (investment allowance) in respect of gas infrastructure
- Investment allowance of 15% after the tax free period.
- Tax free dividend during the tax free period under certain conditions.
- Accelerated capital allowance after the tax free period as follows: An annual allowance of 90 per cent with 10 per cent retention, for investment in plant and machinery and an additional investment allowance of 15 per cent which shall not reduce the value of the asset

Qualifying companies can only enjoy this incentive once. Any new company formed by way of the reorganisation or other form of restructuring from a company which has already enjoyed this incentive, would no longer qualify..

Also, the section will not apply to companies that have claimed the incentives under the Industrial Development (Income Tax Relief) Act or the Petroleum Profit Tax Act in respect of the same qualifying capital expenditure.

### Provisions of Finance Act, 2019 on business sold or transferred

With implementation of Finance Act 2019 and effective 2020 year of assessment, where a company is sold or transferred to another related company, there will not be application of commencement and cessation rules.

The Finance Act, 2019, introduced the following:

- Qualifications for exemption from commencement and cessation rules in a business restructuring amongst related parties, require that they should be related for a period of at least one year prior to the restructuring;
- No disposal of assets post restructuring until after one year;
- No Value Added Tax (VAT) and Capital Gains Tax (CGT) on disposal of assets amongst related parties in a business restructuring; and
- Exemption will be withdrawn if disposals are made within one year of restructuring

Gas Utilization (Downstream Operations) is defined under Section 39(3) of CITA as the marketing and distribution of natural gas for commercial purposes, including the establishment of powerplants, liquefied natural gas plants, gas to liquid plants, fertilizer plants, and gas transmissions and distribution pipelines.



# *CAPITAL GAINS TAX*

Capital Gains Tax	CGT is chargeable on capital gains accruing to any person (company or individual) making a disposal of assets. The rate is 10% and assessed on AYB
Payment of CGT and Self-Assessment Returns	Every person that has disposed of a chargeable asset is required to compute and pay CGT as well as file the required returns not later than 30 June or 31 December of the year of disposal. This however does not apply to replacement of business assets.
Chargeable Assets	<ul style="list-style-type: none"> <li>• Options, debts and incorporeal property generally</li> <li>• Any currency other than Nigeria currency</li> <li>• Any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired</li> <li>• Shares (See note 1)</li> <li>• Goodwill</li> <li>• Copyrights</li> <li>• Buildings</li> <li>• Compensation for loss of office (see note 2)</li> <li>• Chattels etc.</li> </ul> <p><b>Note 1:</b> CGT will not apply on gains from the disposal of a Nigerian company's shares where the disposal proceeds are less than N100m in any 12 consecutive months, or to the extent that the proceeds are reinvested in acquiring shares in a Nigerian company within the same year of assessment. Shares disposed in a regulated Securities Lending Transaction are also exempt.</p> <p><b>Note 2:</b> CGT applies on payments exceeding ₦10m made to employees as compensation for loss of employment. The employer is obligated to deduct and remit the CGT to the tax authorities.</p>
Allowances	<p><b>Allowable Deductions</b></p> <ul style="list-style-type: none"> <li>• Initial cost of the asset including all costs incidental to the purchase</li> <li>• Cost of enhancing the value of the asset</li> <li>• Expenditure incurred in establishing, preserving or defending the title to, or right over the asset</li> <li>• Incidental expenses for the purpose of acquiring or disposing of the assets which includes <ul style="list-style-type: none"> <li>a) Cost of advertisement to find a seller during acquisition and advertisement cost to find a buyer during disposal.</li> <li>b) Fees, commissions or remuneration paid for professional services of surveyor or valuer, auctioneer, accountant, agent or legal adviser</li> <li>c) Cost of transfer or conveyance (including stamp duties)</li> <li>d) Cost reasonably incurred to make any valuation or apportionment required for the purpose of computing the capital gains including expenses in ascertaining market value where required.</li> </ul> </li> </ul> <p><b>Disallowable Deductions:</b> Sums allowable as a deduction in computing the profits or gains or losses of a trade for income tax purposes are not allowable deduction. Insurance premiums on the asset are not allowable as well.</p>

## Reliefs

### Rollover relief

This can be claimed where proceeds of disposal are used to purchase a new asset of the same class within 12 months before or after the disposal of the old asset. The classes of the assets eligible for relief are:

Class 1:

- 1A: ( i ) Building ( ii ) Land
- 1B: Plant or machinery which does not form part of the building

Class 2 - Ships

Class 3 - Aircraft

Class 4 - Goodwill

**Illustration:** Nonso Ltd disposed off its plant for ₦600,000 in 2007. The plant was actually acquired for ₦250,000 in 2002. A new plant was acquired to replace the disposed one within 8 months. Assuming the new asset costs (i) ₦750,000 (ii) ₦540,000 (iii) ₦200,000. What is the amount of relief obtained by Nonso Ltd?

### Assets outside Nigeria

In respect of assets outside Nigeria and

- (i) Disposed by non-resident individual, or (ii) Trustee of any trust or settlement, or (iii) A company whose activities are managed and controlled outside Nigeria:

CGT is chargeable on that part of the gains (if any) received or brought into Nigeria when they are so dealt with. This is what is termed 'remittance basis'. The amount of the gains chargeable is dependent on the whole or part which is remitted to Nigeria. If there is no remittance to Nigeria, there is no liability to Capital Gains Tax in respect of the disposals of those fixed assets.

Capital loss on disposal of any asset is not deductible from capital gains on disposal of any other asset even if both are of the same type

### Exemptions/Incentives

These include gains from disposal of

- Nigerian government securities.
- Life assurance policies.
- Main residence or dwelling house of an individual.
- Compensation for wrong or injuries suffered by an individual.
- Gains arising from takeovers, business combination or reorganisation (between related parties, where parties have been related for 365 days)
- Decorations awarded for valour or gallant conduct.
- Shares and compensation for loss of office are conditionally exempt (see "Chargeable Assets" section above) – Finance Act 2019 and 2020
- Investment held as part of superannuation fund or other retirement benefits scheme
- Land compulsorily acquired by an authority having and exercising such powers
- Interest in or the right under any policy of assurance or contract for a deferred annuity on the life of any person
- Capital gains accruing to a diplomatic body is exempted
- Assets acquired by way of gifts.

Exemptions/Incentives	<p>Gains accruing to:</p> <ul style="list-style-type: none"> <li>• An ecclesiastical, charitable or educational institution of a public character</li> <li>• Any statutory or registered friendly society</li> <li>• Any cooperative society registered under the cooperative societies law of the state</li> <li>• Any trade union registered under the trade unions act</li> <li>• Any local government council</li> </ul>
Hire purchase transactions	<p>Where a fixed asset is purchased under hire-purchase, the cost for tax purposes is the cash price of the asset. The hire-purchase charges which represent the interest charges are allowable deductions under Section 20 of CITA in arriving at the assessable profits.</p> <p>Thus, for capital gains tax purposes, if all the instalments have been paid before the date of disposal, it is the full cash price that is taken as the cost for Capital Gains Tax purposes. If the instalments have not been fully paid, the cost of the asset at the time of disposal will be the cash price portion of the instalments paid to the date of disposal</p>
Part disposal of assets	<p>Where a part of a whole asset is disposed, the issue is the correct determination of the cost of the part disposed which is calculated as:  <math display="block">A/(A+B) \times C</math></p> <p>A = Sales proceeds on the part disposed  B = Market value of the part not disposed  C = Cost of acquiring the whole asset</p> <div data-bbox="1095 606 2452 774" style="border: 1px solid black; padding: 10px;"> <p><b>Illustration:</b> Mrs. Rose acquired a box of trinket in Switzerland during a trip in 2005 for ₦590,000. During 2009, she disposed of the necklace for ₦350,000. The remaining items in the box were valued at ₦950,000. The cost of valuation was 5% while brokerage was paid at 2% of the sale. You are required to compute the capital gains arising from the disposal.</p> </div>
Consideration payable by Instalments	<p>When the consideration is payable by instalments over a period exceeding 18 months, the chargeable gain accruing on the disposal shall be regarded as accruing in proportionate parts in the year of assessment in which the disposal is made and in each of the subsequent years of assessment up to the assessment year in which the last instalment is payable in the proportion of the amount of the instalments payable in each of the years. Such chargeable gain shall be deemed to accrue on the last day of each of the year of assessments in which the instalments are received.</p> <p>The chargeable gain is calculated as: Amount paid on Instalment/Total amount payable X Total Capital Gains</p> <div data-bbox="468 1023 2401 1105" style="border: 1px solid black; padding: 10px;"> <p><b>Illustration:</b> Barrister Victor sold an antique material to Mr. Kunle. The sale proceed was ₦300,000 to be paid over 6 equal half-yearly instalment starting from April 1, 2008. The original cost of the antique was ₦60,000. Determine the capital gains and the relevant years of assessment.</p> </div>

<b>Connected Persons</b>	In tax practice, certain persons are treated as being so closely involved with each other that they have to be viewed as the same person or that transactions between them need to be treated differently from those 'at arm's length'. These persons are referred to as 'connected persons'. Transactions between such persons may be regarded as artificial or fictitious for the purpose of determining the tax liability arising therefrom. This implies that the Revenue can make whatever adjustments as it considers necessary to counteract the reduction of liability to tax that could otherwise result from such transactions. Where a person acquires an asset and the person making the disposal is connected with him, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction made otherwise than by way of a bargain at arm's length. The consideration shall be disregarded if less than the market value, and the consideration shall be deemed to be the market value.
<b>Assets located outside Nigeria</b>	Capital gains tax is payable on the gains arising on the disposal of assets situated outside Nigeria, so long as the proceeds are received in, or brought into Nigeria. The tax is due: (i) Where the disposal is by an individual who: <ul style="list-style-type: none"> <li>• Is visiting Nigeria temporarily with no intent to establish residence, and</li> <li>• spends more than 183 days out of a 12 month period, in Nigeria.</li> </ul> (ii) Where the disposal is by a Non-Nigerian Company, managed and controlled from outside Nigeria.
<b>Delayed remittances relief</b>	A person charged or chargeable for any year of assessment in respect of chargeable gains accruing to him from the disposal of assets situated outside Nigeria may claim that the following provisions of this section shall apply on showing that: (a) He was unable to transfer those gains to Nigeria; and (b) That inability was due to the laws of the country where the income arose, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and (c) The inability was not due to any want of reasonable endeavours on his part. Section 42(2) – If he so claims, then for the purposes of capital gains tax: (i) There shall be deducted from the amounts on which he is assessed to capital gains tax for the year in which the chargeable gain accrued to the claimant the amount as respects which the conditions in paragraphs (a), (b) and (c) of subsection (1) of this section are satisfied, so far as applicable, but (ii) The amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the said conditions cease to be satisfied:
<b>Assets lost or destroyed</b>	If a capital sum is received by way of compensation for the loss or destruction of an asset whether under a policy of insurance or not, a roll-over relief is available to the owner, if the amount is applied within three years of receipt in acquiring a replacement of the asset lost or destroyed

In April 2004, Dr. Mensah acquired a house at a cost of ₦60million. Other acquisition expenses incurred were ₦100,000 for legal fees and ₦200,000 valuation fee. On November 30, 2004, a duplex was constructed in the excess space at a cost of ₦12million.

On June 1 2005, the duplex was sold to Uncle Jimmy for ₦16 million. The actual market value was ₦20 million and the value of remaining property was ₦8 million. On 1 January 2006, Dr. Mensah sold the remaining property for ₦72 million after paying for the following expenses:

	₦
(a) Improvements prior to sale	1,000,000
(b) Estate Agency fees	400,000
(c) Legal fees	120,000
(d) Advertising	<u>240,000</u>
	<u>1,760,000</u>

**Required:**

Compute the capital gains tax for the relevant years of assessment.

- (4) Meltdown Construction Limited purchased a bulldozer on hire purchase on 1 February 2007 and paid a sum of ₦28,500,000 as a deposit on the purchase price. The cash price of the bulldozer at the time of purchase was ₦45,000,000, but Meltdown Construction Limited was allowed to pay the balance in twenty monthly instalments of ₦1,000,000 each with effect from March 1, 2007.

**Required:**

Calculate the capital gains tax for the relevant year of assessment, assuming that the bulldozer was sold for:

- (i) ₦48,400,000 after the payment of instalments on December 3, 2007.
- (ii) ₦49,600,000 after the payment of instalment on September 5, 2008.

Best Manufacturing (Nig.) Limited is engaged in the production of building materials in Ota, Ogun State. Due to sudden power surge at night, one of the two factories got burnt before fire fighters arrived the scene.

The factories were comprehensively insured with MACON Insurance Company Plc. The management decided to move the factory from Ota to Lagos State. Concerted efforts were made to acquire land for a new factory in Ejigbo and the factory in Ota that was not burnt which cost ₦1,800,000 six years earlier, was sold for ₦4,200,000 in March 2007. The amount formed part of the cost of construction of the new factory at Ejigbo which was completed in November 2007, at a cost of ₦5,600,000.

In 2008, for the Ota factory costing ₦3,700,000, the insurance company paid ₦5,900,000 to Best Manufacturing (Nig.) Ltd. Out of the compensation received, ₦4,600,000 was spent on the construction of the new factory in Ejigbo whilst the balance was put in a fixed deposit account to yield interest.

Best Manufacturing (Nig.) Ltd has just appointed you as the company's Tax Consultants.

**Required:**

Advise the management on:

- (a) The capital gains (if any) arising from the events
- (b) The capital gains tax payable
- (c) How the company can reduce the capital gains tax payable.

- (5) White Cleaners Ltd. is involved in dry cleaning business. The company acquired a building for the business within Shonibare Estate, Maryland, in the year 2011 at a cost of ₦25,000,000. It also acquired dry cleaning equipment and a generating set at the costs of ₦5,000,000 and ₦3,500,000 respectively.

The wrong location of the company coupled with the poor performance of equipment some of which were refurbished but wrongly believed to be new resulted in low patronage. The company resolved to make a new start in the year 2013 by selling off everything to use the proceeds to augment the acquisition of new ones.

The building was sold for ₦30,000,000 while the equipment and generating set were sold for ₦3,500,000 and ₦4,300,000, respectively.

A new building was acquired on Victoria Island for the same business at ₦65,000,000 while the equipment and new generating sets were acquired for ₦7,500,000 and ₦3,000,000 respectively.

**You are required to compute:**

- (a) The capital gains
- (b) The roll-over relief available (if any)
- (c) Capital gains tax payable
- (d) The costs on which capital allowances will be granted to the company based on the newly acquired assets.

Janid Investment Limited sold its two buildings situated on Lagos-Badagry Expressway, Amuwo, Lagos and another in Ibadan.

The building in Lagos was compulsorily acquired by the State Government in June 2008 in the course of the dualisation of the road. A compensation of ₦25,000,000 was paid for the building which originally cost the company ₦2,500,000. Fearing that the same predicament might befall the Ibadan building, the company quickly sold the building for ₦15,500,000 on 6 July 2008. Its original cost was ₦850,000. Sales expenses amounted to ₦3,250,000.

The company normally makes accounts to December 31, each year and the properties which were sold and purchased were reflected in the accounts to December 31, 2008. The company decided to move to Ogun State where between September and November 2008, it acquired a new site and erected another business building at a cost of ₦20,500,000.

**Required:**

- (a) Compute the capital gains tax liability for the relevant year of assessment.
- (b) State one other alternative open to Janid Investments Limited in discharging its capital gains tax liability and the time limit for exercising the option.

**QUESTION 3**

Disposal of assets is an important concept in the determination of capital gains tax payable. Section 6 of Capital Gains Tax Act 2004 (as amended) specifically provides that a disposal of assets by a person occurs where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum. In the same vein, Section 2 (4) of Finance Act 2020 states the period for filing of self-assessment returns and when payment of the tax computed in respect of chargeable assets disposed is to be made.

Nice-One Nigeria Limited, a manufacturing concern, with head office in Calabar and branches in Ikeja, Kano and Abuja, has been in business for several years, reporting its accounts to December 31 of every year. The extracts from the books of accounts of the company during the year ended December 31, 2021, revealed the following transactions:

(i) **Disposal of an option**

On February 1, 2021, the company sold an option on a piece of land in Ikeja for the sum of ₦8,500,000 to Eco-Raheem Limited, which subsequently exercised the right by purchasing the land for ₦32,200,000.

(ii) **Acquisition of asset in exchange for debt**

On March 15, 2021, one of the company's debtors in Calabar, Mr. Baba Tee, reached an agreement with the company by exchanging his piece of land, which was valued at ₦15,000,000, for the debt of ₦13,500,000. The company, on May 7, 2021, disposed of the land for ₦18,000,000. Incidental expenses incurred towards the disposal of the land was ₦250,000.

(iii) **Disposal of a building**

The company has a staff estate, which comprises five buildings in its Abuja branch. In order to source for funds to construct a new staff estate in Kano, the company, on August 12, 2021, sold one of its buildings in the Abuja estate for ₦110,000,000. The cost of acquisition of the five buildings in the estate was ₦250,000,000. The cost of acquisition of the building sold was

₦75,000,000, while the remaining buildings unsold were professionally valued at ₦240,000,000. The company also incurred for the purpose of the disposal of the building, ₦400,000 on building repairs and professional valuers' fee of ₦1,100,000.

(iv) **Disposal of industrial plants**

One of the company's industrial plants in Kano branch, which cost ₦4,500,000, was disposed of on September 15, 2021, for ₦6,000,000. A new plant was bought for the purpose of the company's operations the following month for ₦8,000,000. During the installation of the new plant, it was found out that the plant could not efficiently satisfy the requirements of the company and it was subsequently sold on December 2, 2021 as "second-hand" for ₦7,300,000. The company incurred the sum of ₦25,000 as disposal expenses.

The Managing Director of the company is of the opinion that issues around the transactions undertaken by the company in the financial year are "technical", which only competent professional accountants, with experience in tax matters, can conveniently handle. Accordingly, your firm of accountants was contacted to help provide tax advice on each of the above transactions.

**Required:**

You have been directed by your firm's Head (Tax Matters) to take charge of the assignment and submit a report to him by the close of work in three days.

Your report should specifically cover:

- a. The principles of disposal as provided for in Section 6 of Capital Gains Tax Act 2004 (as amended) (3 Marks)
- b. Computation of capital gains tax payable and when the tax due is to be paid to the relevant tax authority for the following stated transactions:
  - i. Disposal of an option in Ikeja branch (2 Marks)
  - ii. Acquisition of asset in exchange for debt in Calabar head office (3 Marks)
  - iii. Disposal of a building in Abuja branch (4 Marks)
  - iv. Disposal of industrial plants in Kano branch (8 Marks)

**(Total 20 Marks)**

BB Philip & Co (Chartered Accountants)  
Maiduguri Road, Calabar

INTERNAL MEMO

Date: .....

From: Assistant Tax Manager  
To: Head (Tax Matters)

Subject: Re: Tax Issues on Disposal of Assets by Nice-One Nigeria Limited

I refer to our client's request on provision of Capital Gains Tax Act 2004 (as amended) on principles underlying disposal of chargeable assets and determination of capital gains tax payable on various disposals during the year ended December 31, 2021. I hereby present a report for your review before same is presented to the client.

(a) The principles of disposal as provided for in Section 6 of Capital Gains Tax Act 2004 (as amended) are:

- i. Where any capital sum is derived by way of compensation for any loss of office or employment;
- ii. Where any capital sum is received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of, assets;

- iii. Where any capital sum is received in return for forfeiture or surrender of rights, or for the refraining from exercising rights; and
- iv. Where any capital sum is received as consideration for use of exploitation of any asset.

(b) Computation of capital gains tax payable and when the tax due is to be paid to the relevant tax authority for each of the following transactions:

- (i) **Disposal of an option:** The capital gain is the actual amount received from disposal of an option. This is ₦8,500,000 and capital gains tax payable is at the rate of 10%, which is ₦850,000 (see attached appendix I).
- (ii) **Acquisition of asset in exchange for debt and subsequent disposal of the asset:** The amount of debt will be regarded as cost of acquisition. The capital gains derived is ₦4,250,000 and capital gains tax payable is ₦425,000 (see attached appendix II).
- (iii) **Disposal of a building in an estate:** This is a case of full disposal as the cost of acquisition of the building is known. It is not a partial disposal. From appendix III, the capital gains is ₦33,500,000 and capital gains tax payable is ₦3,350,000 (see appendix III).
- (iv) **Disposal of old industrial plant, re-investment in new one and subsequent disposal:** For re-investment in new plant within 12 months of disposal, the client is entitled to roll-over relief. Based on computation as shown in appendix IV, the company enjoyed full roll-over relief and no capital gains arose from the disposal of the old plant. Since the new plant purchased was resold, capital gains of ₦775,000 was realised and ₦77,500 is to be paid as capital gains tax.

Thank you

Julie Tosin

QUESTION 4

Colends Nigeria Limited, Abeokuta, is a manufacturer of plastic materials. The company is well known for prompt payment of taxes as at when due. The cordial relationship between the company and the Federal tax authorities is about to be breached as a result of disagreement in the classification of some transactions made by the company. The tax authorities considered those transactions to be artificial or fictitious, while the Managing Director, who is not an accountant, felt otherwise.

The company is in the process of re-organising its operations so as to compete favourable with its contemporaries, particularly with the implementation of Africa Continental Free Trade Area Agreement (ACFTA) by some African countries.

The following transactions were concluded by the company during the financial year ended December 31, 2020:

- (i) Land and building acquired for ₦70 million on March 6, 2015 were sold for ₦125 million. Advertisement cost was ₦500,000, while the estate agent received as commission 5% of the sale proceeds;
- (ii) Plant and machinery, which originally cost ₦28 million were sold for ₦32 million to one of its subsidiaries, Colmas Limited. The market value of the assets sold was ₦40 million;
- (iii) A saloon motor vehicle acquired for ₦5 million in 2017 was sold to the General Manager of the company for ₦3.5 million. The market value of the car was put at ₦5.5 million; and
- (iv) A giant generator that was acquired in 2018 for ₦12 million was disposed of for ₦15 million. The cost of disposal amounted to ₦200,000.

At a recent meeting of the board, the following transactions were approved and management completed implementation of the decision in December 2020:

- Acquisition of a vast acreage of land and a building in the outskirt of the city-centre for the purpose of the business for ₦100 million;
- Purchase of a modern plant and machinery for the sum of ₦50 million;
- A saloon motor vehicle was purchased for ₦10 million; and
- A brand new generator that cost ₦20 million was acquired.

Colends Nigeria Limited has just appointed you as its tax consultant.

**Required:**

Draft a report to the Managing Director of the company explaining:

- a. Connected persons and artificial transactions (4 Marks)
  - b. The tax implications, if any, on transactions executed by the company in accordance with the provisions of Capital Gains Tax Act Cap C1 LFN 2004 (as amended) (16 Marks)
- (Total 20 Marks)

SOLUTION 4

ToksBlaqy & Co (Tax Consultants)  
20, Camp Road, Abeokuta

January 22, 2021

The Managing Director  
COLEND'S Nigeria Limited  
Abeokuta

Dear sir,

**RE: CONNECTED PERSONS, ARTIFICIAL TRANSACTIONS AND TAX COMPUTATION**

We refer to your memo dated January 10, 2021 and our meeting with the company's management on January 12, 2021, seeking our services as tax consultants to help address the above subject matter. We have completed our assignment and our comments are as follows:

a. Connected persons and artificial transactions

These are explained as follows:

- i. In tax practice, certain persons are treated as being so closely involved with each other that they have to be viewed as the same person or that transactions between them need to be treated differently from those "at arm's length". These persons are referred to as "connected persons";
- ii. Transactions between such persons may be regarded as artificial or fictitious for the purpose of determining the tax liability arising there from;
- iii. The Revenue Service can make whatever adjustments as it considers necessary to counteract the reduction of liability to tax that could otherwise result from such transactions;
- iv. Section 23 of Capital Gains Tax 2004 (as amended) provides that where a person acquires an asset and the person making the disposal is connected with him, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction made otherwise than by way of a bargain at arm's length;
- v. The consideration (amount paid) shall be disregarded if less than the market value and the effective consideration shall be deemed to be the market value; and
- vi. By applying the provisions of the law to the transactions made by the company, the disposal of the company's plant and machinery to one of its subsidiaries and saloon motor vehicle to the General Manager are clearly artificial transactions as the company's subsidiary and the General Managers are connected to the company. This is the main reason why the Revenue Service rejected the proceeds received by the company (from plant and machinery, ₦32million and saloon motor

vehicle, ₦3.5 million) and chose instead, the market values of ₦40million and ₦5.5 million for the two assets, respectively.

b. Tax implications on transactions executed are:

- i. Section 32 of Capital Gains Tax Act 2004 (as amended) makes provision for specific classes of asset that qualify for roll-over relief. The relief is granted to a taxpayer that applied consideration received from disposal of old asset used only for the purposes of trade in acquiring a new asset similar to the one disposed;
- ii. The amount of the roll-over relief is deducted from capital gains before the determination capital gains tax payable;
- iii. All the assets disposed, except motor vehicle, are part of the classes of asset that qualified for roll-over relief; and
- iv. Schedule 1 provides the details of the tax implications on transactions executed.

The company is liable to pay:

- ₦1,825,000 as capital gains tax on land and building;
- ₦Nil on plant and machinery;
- ₦50,000 on saloon motor vehicle; and
- ₦Nil on generator.

This gives total tax payable of ₦1,875,000.

Kindly get in touch with us if you need further clarifications.

Yours faithfully

Abiodun Bambam  
Senior Tax Consultant  
For: ToksBlaqy & Co (Tax Consultants)

**QUESTION 5**

DD Nigeria Limited, a private limited liability company, was incorporated in March 2010. The company produces highly successful spring water. The Board of Directors of the company comprises a non-executive Chairman, his wife as the Managing Director and the Chairman's childhood friend. For the day-to-day running of the business, the Managing Director is being assisted by the Production Manager, Sales/Marketing Manager, Administrative Officer and Accounting Officer (a diploma graduate).

The company has a track record of steady growth in profitability and market share. In a bid to cut down its cost of raw materials, particularly polythene, the Board at its recent meeting decided to acquire a polythene company in the neighbourhood that is witnessing dwindling fortunes due to insufficient funds to finance its working capital. The Board has also lost confidence in the Accounting Officer as his poor knowledge in tax related matters was brought to the fore during recent visit to the company by officials of the Federal Inland Revenue Service.

The Managing Director has approached your firm of tax consultants to help provide professional advice on tax matters in respect of some transactions and activities that occurred in the last one year.

**Records of the following transactions were made available to you:**

- (i) The company purchased plant and machinery at a cost of ₦5,000,000 on April 1, 2019. Plant was later disposed on September 15, 2019 for ₦3,500,000. The undisposed machinery was valued at ₦4,300,000. Incidental expenses incurred on disposal was ₦250,000.
- (ii) The company sold an acre of land, which was acquired on May 22, 2018, at a cost of ₦6,750,000 for ₦12,500,000 on October 19, 2018. In the following month, the company bought another land, which was to be used for the purpose of the business, for ₦15,000,000 to replace the one sold. It was however, subsequently disposed for ₦18,000,000 in June 2019.
- (iii) Part of the industrial building (where the production unit is located) was damaged in October 2020 during a protest by some youths in the area. The company, in November 2020, received ₦2,200,000 as compensation under policy of insurance. The company has intention of utilising the fund for acquisition of another building.

**Required:**

As the tax consultants to DD Nigeria Limited, draft a report to the Managing Director of the company explaining and providing computations (where necessary) on the:

- a. Capital gains tax liability for the relevant tax year in respect to transaction (i) above. (5 Marks)
- b. Relief available (if any) and tax liability due in respect to transaction (ii) above. (9 Marks)
- c. Tax implications on the compensation under policy of insurance received on the damaged industrial building. (2 Marks)
- d. Treatment of gains arising from business re-organisation in line with the provision of Section 49, Finance Act 2019, which amended Section 32, Capital Gains Tax Act Cap C1 LFN 2014. (4 Marks)

**(Total 20 Marks)**

24 Abbey Plaza,  
Ikeja Lagos

April 10, 2021

The Managing Director  
DD Nigeria Limited  
Colmas Road, Alabama  
Abeokuta

Dear Sir,

**RE: CAPITAL GAINS TAX ON DISPOSAL OF CHARGEABLE ASSETS**

I refer to your mail of April 5, 2021, requesting for our advice on tax matters in respect of transactions relating to the above subject-matter. We wish to comment as follows:

**(a) Disposal of plant on September 15, 2019**

This is a partial disposal of plant from entire plant and machinery which was acquired for ₦5,000,000. The cost apportioned to the plant is ₦2,243,590, as per the attached appendix I.

There is chargeable gain of ₦1,006,410, being the difference between the consideration of ₦3,500,000 received and the cost of the plant. The chargeable gain will be liable to capital gains tax at 10% resulting to tax liability of ₦100,641, as per the attached appendix II.

**(b) Disposal of land in May 2018 and June 2019**

(i) **Roll-over Relief:** A relief is available in the capital gains tax (CGT), where the consideration received from disposal of class of asset is re-invested in the acquisition of another asset of same class. The relief is known as roll-over relief. Where roll-over relief is applicable, the capital gains tax on the chargeable gain arising on the disposal of the old asset will be deferred until the new asset is eventually disposed.

(ii) The disposal of the company's existing acre of land for ₦12,500,000 to acquire a new acre of land for ₦15,000,000 will result to the grant of a full roll-over relief of ₦5,750,000 (see appendix III) on the disposal of the existing land and the capital gains tax will only be payable when the new land is eventually disposed.

(iii) The cost of the new acre of land will be its carrying cost (₦9,250,000), which is the original cost of the new land (₦15,000,000) less chargeable gain rolled over on the old land (₦5,750,000).

- (iv) There is no capital gains tax payable on disposal of the old land because of the full roll-over relief claimed on it.
- (v) The CGT of ₦875,000 is due on the disposal of the new land in 2019 year of assessment as per the attached appendix IV.

**(c) Tax implication on the compensation under policy of insurance received on the damaged industrial building**

- (i) Where an asset is lost or destroyed but compensation is received under a policy of insurance and the capital sum received by way of compensation is utilized to purchase another asset in replacement of those lost or destroyed within 3 years, roll-over relief shall be available.
- (ii) The ₦2,200,000 compensation received under policy of insurance from part of the industrial building damaged constitutes disposal and the compensation shall be deemed to be consideration received from such disposal.
- (iii) The intention of the company to utilize the compensation for acquisition of another building will qualify DD Nigeria Limited for roll-over relief on the old (damaged) building provided the new building is acquired within three years after the disposal of the old building.

**(d) Treatment of gains arising from business re-organization (S.49, Finance Act 2019)**

- (i) Effective 2020 year of assessment, any gains on asset transferred in a related-party business reorganization shall be treated as assets specifically exempted from Capital Gains Tax subject to minimum holding test.

Minimum holding test requires that:

- (ii) The acquired company that transferred its asset must be member of the group for at least 365 days prior to the date of the reorganization; and
- (iii) The acquiring company to hold the underlying asset transferred for 365 days and above after the date of the transaction.

If the minimum holding conditions are not fulfilled, the exemption shall be withdrawn.

Attached appendix (I)-(IV) is for your information. Kindly get back to us in case you require further clarification.

Yours faithfully,

Sunny Kajoo  
Principal Partner



# *TAXATION OF SPECIALIZED BUSINESSES*

## COMPANIES ENGAGED IN SHIPPING OR AIR TRANSPORTATION, CABLE AND WIRELESS BUSINESS (TELECOMMUNICATION)

Introduction	<p>The business operation of air and sea transportation as well as cable undertakings may be carried on by companies incorporated in Nigeria called a Nigerian company or other companies known as non-Nigerian companies.</p> <p>The taxation of these businesses is contained in sections 14 – 15 of CITA CAP C21 LFN 2004. According to the Act, where a company other than a Nigerian company carries on the business of transport by sea or air, and ship or aircraft owned or chartered by it, calls at any port or airport in Nigeria, its profit or loss deemed to be derived from Nigeria shall be the full profit or loss arising from carriage of passengers, mails, livestock, or goods, shipped, or loaded into an aircraft or ship in Nigeria.</p> <p>Incomes exempted are those in respect of passengers, mails, livestock, or goods which are:</p> <ol style="list-style-type: none"><li>Loaded on routes outside Nigeria, but terminating in Nigeria; and</li><li>In transit in Nigeria, that is, brought to Nigeria for trans- shipment or connecting flight.</li></ol>
Key Terms	<ul style="list-style-type: none"><li><b>Cable undertakings:</b> This involves the transmission of messages by cable or by any form of wireless apparatus.</li><li><b>Nigerian company:</b> A company is resident in Nigeria under the extant law if it is incorporated or registered in Nigeria. This means that the taxpayer is liable to tax on the income or profits accruing in, derived from, brought into, or received in Nigeria</li><li><b>Non-Nigerian company:</b> This is a company that is not registered or incorporated in Nigeria, but which derives income or profits from Nigeria. A non-resident corporation or individual is liable to tax only on the profit or income deemed to be derived from Nigeria.</li><li><b>Trans-shipment:</b> This is the shipment of goods or containers to an intermediate destination, then to another destination. One possible reason for transhipment is to change the means of transport during the journey, known as transloading.</li></ul>
Methods of computing and assessing profits liable to tax	<p><b>Method 1- Proportional Profit (Adjusted profit/depreciation ratio basis)</b></p> <p>This basis is adopted where the Federal Inland Revenue Service is satisfied that the tax authority of the foreign company's country of origin computes and assesses a company which operates ship, aircraft, or cable undertakings on a basis not materially different from that prescribed by CITA. The Federal Inland Revenue Service would also certify:</p> <ol style="list-style-type: none"><li>the ratio of profit or loss, before any allowance by way of depreciation, of an accounting period to the total sums receivable in respect of the carriage of passengers, mails, livestock or goods; and</li><li>the ratio of allowance by way of depreciation for that period to that same total, then the full profits or loss of that period shall be taken to be the proportion of the total sums receivable in Nigeria, by applying the first mentioned ratio to that total and in place of any allowance to be given by applying the second-mentioned ratio to the same total.</li></ol> <p><b>Computational Steps:</b></p> <p>Determine the Global Income; Determine the Nigerian Income; Compute the Global Adjusted Profit; Compute the Adjusted Profit Ratio (APR); Compute the Depreciation Ratio; Compute the Nigerian Adjusted Profit; Compute the Capital Allowance Relief; Determine Total Profit, Determine Tax Payable</p>

## Method 2 – Fair Percentage

This method is only used where the Federal Inland Revenue Service is not satisfied as to the conditions listed under Method 1. Under this method, the FIRS is given the discretionary power, to determine the profits derived from Nigeria, by applying a fair percentage on the full sum receivable in respect of carriage of passengers, mails, livestock, and goods shipped or loaded in Nigeria.

Other points to note

- Where method 2 above is used, the foreign company shall be entitled to require that its assessment revised and re-computed based on method 1.
- The request in (a) above will be valid only if made by the company within six (6) years after the end of the relevant assessment year to which it relates and on production from its home country's tax authority, of appropriate certificate to the satisfaction of the revenue.

### Minimum Tax

In any case, the minimum tax payable by a company engaged in air or sea transport business shall not be less than two percent (2%) of the full sum receivable in respect of carriage of passengers, mails, livestock, or goods shipped or loaded into an aircraft in Nigeria. The full sum receivable should however exclude taxes such as VAT and other levies such as airport or passenger tax, which are collected by the airline on behalf of others

### Illustration 20.2

Ultimate Limited is a Canadian foreign company engaged in cable undertakings in Nigeria.

Its worldwide management accounts for the year ended September 30, 2012, revealed the following:

	₦'000	₦'000
Income from cable messages terminating in Nigeria	200,000	
Income from cable messages routed through Nigeria	150,000	
Income from cable messages originating in Nigeria	<u>100,000</u>	<u>450,000</u>
Less:		
Salaries and wages	180,000	
Depreciation	90,000	
Overhead expenses	85,000	
Purchase of equipment	<u>39,000</u>	<u>394,000</u>
<b>Net profit</b>		<b><u>56,000</u></b>

#### Notes:

- Federal Inland Revenue Service is satisfied that tax is computed and assessed in Canada, the country of the foreign company, on the same basis as Nigeria;
- Canadian tax authority has certified the adjusted profit and Depreciation allowance ratios.
- Included in overhead expenses are disallowable items totaling N23 million.

#### Required:

- Compute the company's adjusted profit
- Determine the adjusted profit ratio and depreciation ratio
- Compute the total profits and Income tax payable in Nigeria

QUESTION 6

Chief Bonny Chizaram is the Chairman/CEO of Chizaram group of companies. The conglomerate operates in several states of Nigeria. The group's areas of business interest spans across supply of building materials, transport and banking.

In 2012, at the instance of the Chairman, the group decided to diversify its business into some African Countries by floating Obi Airlines Limited which was incorporated in Ethiopia.

On May 25, 2016, as Chief Chizaram was in the executive lounge of Muritala Mohammed International Airport, Lagos, awaiting departure, he met his long-time friend and business colleague, Chief Roger Menkiti, who is also an entrepreneur.

During their discussion, Chief Menkiti wanted to know how beneficial it would be to him should he decide to invest in Ethiopia. His areas of concern are mainly Companies Income Tax and Tertiary Education Tax payable in Nigeria assuming he decided to start an Airline business in Ethiopia.

Meanwhile, the financial results of Obi Airlines Limited for the year ended December 31, 2015 are as shown below:

	₦	₦
Income from passenger flights on other routes		213,668,750
Income from cargo loaded into aircraft on other routes		218,280,000
Income from passenger flights from Nigeria		54,401,275
Income from cargo loaded into aircraft from Nigeria		<u>49,938,180</u>
		536,288,205
<b>Deduct:</b>		
Depreciation	1,974,125	
Staff salaries	14,373,968	
General provision	215,050	
Other expenses	<u>579,913</u>	
	17,143,056	
<b>Net Profit</b>	<u>519,145,149</u>	

Additional information included the following:

(i) Capital allowances were agreed with the relevant authority at 110% of depreciation charged.

(ii) Other expenses include disallowable expenses of ₦425,000.

As the Tax Consultant, you are required to prepare computations showing:

a. Total Profits of Obi Airlines Limited for Nigerian tax purposes. (12 Marks)

b. Companies Income Tax Liability for the relevant year of assessment (2 Marks)

c. Tertiary Education Tax Liability (1 Mark)

(Total 15 Marks)

QUESTION 6

Pategi and Abu are brothers based in Hackettstown in New Jersey, United States of America. In 2009, the two brothers and ten other African-Americans incorporated a Company, Pategi Telecommunications Limited whose major line of business is telecommunications. The company has a representative office in Share, Kwara State, Nigeria. In the year ended December 31, 2014, the following transactions were extracted from the books of accounts of the company:

- (i) Number of minutes of Telecommunication transactions:  
minutes
- |                                  |                  |
|----------------------------------|------------------|
| U.S. to other parts of the World | 1,705,000        |
| U.S. to Nigeria                  | 374,000          |
| Nigeria to U.S.                  | 426,250          |
| Nigeria to Canada                | 550,000          |
| U.S. to Canada through Nigeria   | <u>794,750</u>   |
|                                  | <u>3,850,000</u> |
- (ii) The world-wide expenses incurred include the following:
- |                             | ₦                 |
|-----------------------------|-------------------|
| Refurbishment               | 7,150,000         |
| Rent                        | 1,100,000         |
| Depreciation                | 25,991,563        |
| Salaries and Wages          | 4,065,188         |
| Other disallowable expenses | 9,658,000         |
| Administrative expenses     | <u>4,820,750</u>  |
|                             | <u>52,785,501</u> |
- (iii) The average charge for messages applicable during the year under review is \$0.50 per minute. The applicable rate of exchange is ₦198 to \$1.00.
- Required:**  
Advise the company on the total tax liabilities for the relevant year of assessment. (Total 15 Marks)

## TAXATION OF BANKS

<b>Introduction</b>	Banks are liable to tax under the provisions of the Companies Income Tax Act Cap C21 LFN 2004 (as amended). The basis of assessing banks to tax is the same as for other companies under the CIT Act. Therefore, banks are subject to tax like any other company on their total profit. However, there are some specific provisions that are somewhat peculiar to banks that are important to be discussed. These provisions include:
<b>Exempted interest on loans</b>	<ul style="list-style-type: none"><li>Interest on loan granted for primary agricultural production shall be exempted from tax provided the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise restructured;</li><li>Interest on loan for fabrication of any local plant and machinery provided the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise restructured;</li><li>Any interest on loan to a company engaged in providing working capital for any cottage industry provided the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise; and</li><li>Interest on loan granted for the purpose of manufacturing goods for export provided that a certificate is issued by the Nigerian Exports Promotions Council stating that the level of export specified has been achieved by the company. In addition, the Nigerian Exports Promotions Council must certify that the goods exported are not less than 50% of the goods produced and that they were not re-exported to Nigeria. The loan exempted shall be subject to Table 2 Schedule 3 of CITA 2004 (as amended).</li></ul>
<b>Other exempt income</b>	<ul style="list-style-type: none"><li>Government bonds: interest received by banks on federal and state government development loan stocks or bonds are exempted from tax.</li><li>Foreign placement: Interests earned by banks on foreign placements and brought into Nigeria in convertible currency are exempted from tax.</li><li>Dividend income: dividend income treated as franked investment income.</li></ul>
<b>Disallowable Bank Expenses or Provisioning</b>	<ul style="list-style-type: none"><li>Increase in provision on performing loans</li><li>Increase in provisions on other assets or account receivable;</li><li>Increase in provisions on advance under finance lease;</li><li>Increase in provisions for diminution in the value of investments;</li><li>Increase in provisions for off balance sheet engagement;</li><li>Increase in provisions for gratuity; and</li><li>Unrealised exchange loss.</li></ul>

## TAXATION OF INSURANCE COMPANIES

### Introduction

Taxation of insurance companies is covered by Section 16 CITA Cap C21 LFN 2004 (as amended). This section deals with the taxation of both Nigerian and Non-Nigerian companies engaged in insurance business. It also distinguishes between life business and non-life business. With effect from 1995, where a company carries on both Life and non-life insurance business, the income from each source would be taxed separately. Like any other company, dividend received by insurance companies is treated as Franked investment income, it is therefore exempted from tax.

Furthermore, where an insurance company carries on a composite business i.e. life class and a general class insurance business, the funds and books of account of one class shall be kept separate from the other as though one class does not relate to the other class and the annual tax returns of the two classes of insurance business be made separately.

For each class of insurance business, where there are more than one type of insurance (products) in the same class, they form one type of business and the loss of one shall be allowed against the income from another type of insurance business but the loss shall be available to be carried forward against profit from the same class of insurance business, and to such loss can be carried forward or maximum of 4 years.

However, with effect from January 2020, the above restriction is now removed and insurance companies can now carry forward their loss indefinitely.

## FORMAT – LIFE INSURANCE BUSINESS FOR NIGERIAN AND NON-NIGERIAN COMPANY

### Determination of assessable profit and tax liability of life business

- (i) **Nigerian company:** The assessable profit and tax liability of a Nigerian company carrying on life insurance business is determined as follows:

	₦	₦	₦
Investment income			xx
Other income			xx
Actuarial revaluation surplus distributed			<u>xx</u>
Gross income			xx
 Deduct:	₦	₦	₦
• i. General reserves	xx		
Add life fund a/c	<u>xx</u>	xx	
less net liabilities on policies	<u>(x)</u>	x	
ii. Special reserve The higher of: 1 % of gross premium OR 10% of net profit	x		
	<u>x</u>	x	
iii. Other allowable management expenses	x		<u>(x)</u>

#### **Assessable profit**

Less capital allowance

Total profit

Tax payable shall be the higher of:

Tax paid as per total profit computed; and

Tax paid on 0.5% of gross income

xx

(x)

x

#### Notes:

Annual transfer to special reserves would depend on whether the total reserves are equal to or higher than the minimum statutory paid up capital.

Also, the above minimum tax of 0.5% on gross income has been reduced to 0.25% on gross income for tax returns prepared and filed for any year of assessment falling due on any date between January 1, 2020 and December 31, 2021, both days inclusive.

- (ii) **Non-Nigerian company:** The assessable profit of a non-Nigerian company carrying on life assurance business is determined as follows:

	₦	₦
Investment income (see working1)		x
Less Agency commission in Nigeria	x	
Allowable expenses in Nigeria	x	
Fair proportion of head office expenses	x	<u>(x)</u>
<b>Assessable profit</b>		<u>x</u>

#### Working

Investment income:

#### Premium receivable in Nigeria

x    Global investment income Global

1

premium receivable  
of the company

## FORMAT – NON-LIFE INSURANCE BUSINESS FOR NIGERIAN AND NON-NIGERIAN COMPANY

### **Non-life insurance business**

- (i) Nigerian company: The assessable profit and tax liability of a Nigerian company carrying on non-life insurance business is determined as follows:

	<b>N</b>	<b>N</b>	<b>N</b>
Gross premium			x
Less premium returned on cancelled policies			(x)
Net premium			xx
<b>Add:</b>			
Investment income	x		
Fees and commission income	x		
Rent received	x		
Estimated insurance claims for previous year, for example, re-insurance claims	x	x	
<b>Gross income</b>		xx	
Less non-taxable income (if any)		(x)	
Net income		xx	
<b>Less:</b>			
Reserve for unexpired risk calculated on time apportionment basis	x		
Re-insurance premium paid	x		
Commission	x		
Other allowable management expenses	x		
 <b>Insurance claims and outgoings:</b>			
Actual total claims expenses (a)	x		
Add estimated total claims expenses (b)	x		
Total claims and outgoings claimable (a + b)	x	x	(x)
 <b>Assessable profit</b>			xx
Less loss b/f (if any)		x	
Add balancing charge (if any)		xx	
Less capital allowance		x	
<b>Total profit</b>		xx	

Tax payable shall be the higher of:

Tax @ specified rate of total profit computed, taking into consideration the gross premium ; or  
Tax on 0.5% of gross premium

### Notes:

- Under non-life business, any unutilised part of both the actual and the estimated claims and outgoing expenses in any year, shall be added back to the profits of the following year.
- The above minimum tax of 0.5% on gross premium has been reduced to 0.25% of gross income for tax returns prepared and filed for any year of assessment falling due on any date between January 1, 2020 and December 31, 2021, both days inclusive.

- (ii) **Non-Nigerian company:** Where a non-Nigerian company engaged in non-life insurance business in Nigeria, the assessable profit would be determined just like that of the Nigerian company. However, only premium received in Nigeria will be taken into consideration. Also, only expenses incurred in Nigeria will be allowed as deduction including a fair proportion of Head Office expenses.

For a Non-Nigerian insurance company to be liable to tax in Nigeria, it must have a permanent establishment in Nigeria. "Permanent establishment" in relation to an insurance company means a branch, management or a fixed place of business in Nigeria, but does not include an agency in Nigeria unless the agent has, and habitually exercises a general authority to negotiate and conclude contracts on behalf of such company.

Where an insurance company carries on a life class and a general class insurance business, the funds and books of account of one class shall be kept separate from the other as though one class does not relate to the other class and the annual tax returns of the two classes of insurance business be made separately.

For each class of insurance business, where there are more than one type of insurance (products) in the same class, they form one type of business and the loss of one shall be allowed against the income from another type of insurance business but the loss shall be available to be carried forward against profit from the same class of insurance business, and such loss can be carried forward for a maximum of 4 years.

## FORMAT – REINSURANCE BUSINESS

## **Reinsurance business**

The assessable profit and tax liability of a company carrying on reinsurance business is determined as follows:

	N	N	N		
Gross premium			x		x
Less premium returned on cancelled policies			(x)		x
Net premium			xx		xx
Add:					
Investment income		x			x
Fees and commission income		x			x
Rent received		x			xx
Estimated insurance claims for previous year, for example, re-insurance claims	x		xx		
Gross income			xx		
Less non-taxable income (if any)			(x)		
Net income			xx		
Less:					
Reserve for unexpired risk calculated on time apportionment basis		x			
Re-insurance premium paid		x			
Commission		x			
Other allowable management expenses		x			
Insurance claims and outgoings:					
Actual total claims expenses (a)	x				
Add estimated total claims expenses (b)	x				
Total claims and outgoings claimable (a + b)	x	x	(x) xx		
<b>Add: Transfer to general reserve</b>					
(i) General reserve < minimum authorised Capital 50% of gross profit	x				
Or					
(ii) General reserve ≥ minimum authorised capital					
Restricted to 25% of gross profit	x		(xx)		
				Add balancing charge (if any)	x
				Less capital allowance	x
				<b>Total profit</b>	xx
				Tax payable shall be the higher of: Tax @ specified rate of total profit computed, taking into consideration the gross income; or Tax paid on 0.5% of gross premium	
				<b>Notes:</b>	
				<ul style="list-style-type: none"> <li>Under re-insurance business, any unutilised part of both the actual and the estimated claims and outgoing expenses in any year, shall be added back to the total profit for the following year.</li> <li>The above minimum tax of 0.5% has been reduced to 0.25% for tax returns prepared for any year of assessment falling due on any date between January 1, 2008 and December 31, 2010.</li> </ul>	

Notes

- Under re-insurance business, any unutilised part of both the actual and the estimated claims and outgoing expenses in any year, shall be added back to the total profits of the following year.
  - The above minimum tax of 0.5% has been reduced to 0.25% for tax returns prepared and filed for any year of assessment falling due on any date between January 1, 2020 and

## Key Terms

- **Unexpired risk:** This is a reserve account opened at the discretion of the insurer if it believes the amount of funds kept in the unearned premium reserve account set by law is not sufficient to cover the amount of risk perceived. However, section 20 of the Nigeria Insurance Act makes it mandatory for a general insurance business to maintain a reserve account for unexpired risk. Furthermore, the Act provides that the provisions for unexpired risks be calculated on a time apportionment basis of the risks accepted in the year.
- **Claims:** An insurance claim is a formal request by a policyholder to an insurance company for coverage or compensation for a covered loss or policy event. An insurance claim can also be said to be a formal request to an insurance company asking for a payment based on the terms of the insurance policy.
- **Outgoings:** These are all expenses save claims incurred by an insurance company e.g. rent, lease, repairs and maintenance and other operating expenses
- **Gross premium:** means the total premiums written, received and receivable excluding unearned premium and premiums returned to the insured.
- **Reinsurance expense:** These include the amount owed to the insurer by the reinsurer for claims and claims-related expenses, the amount owed for estimated losses that have occurred and been reported, the amount of incurred but not reported losses, and the number of unearned premiums paid to the reinsurer.
- **Investment income:** for the purpose of taxation of a life insurance company under CIT Act section 6 means income derived from investment of shareholder's funds.
- **Actuarial revaluation certificate:** In accordance with the provisions of Section 29 of the Insurance Act, an actuarial valuation is an investigation conducted once every three years by an actuaries into the financial position of a life insurance business. The investigation which is expected to be done in accordance with applicable valuation regulations, includes: (a) a valuation or revaluation of the assets and liabilities of the insurer; and (b) a determination of any excess over those liabilities of the assets representing the funds maintained by the insurer.

Therefore, an actuarial revaluation certificate is a certificate issued by an actuarial at the end of every subsequent investigation into the financial position of a life insurance business.

- **Underwriting profits:** is a term used in the insurance industry. It consists of the earned premium remaining after losses have been paid and administrative expenses have been deducted. It does not include any investment income earned on held premiums.
- **Premium:** is an amount paid periodically to the insurer by the insured for covering his risk.
- **Total premium:** is the total sum paid either periodically or annually to the insurer by the assured for all policies undertaken i.e. both general policies and life policies.
- **Total profits:** is the profits liable to tax i.e. company income tax.
- **Fees:** these are additional premium charge added to a policy by the agent or broker to service an insured policy. They are usually considered as other income.

## TAXATION OF INSURANCE COMPANIES

<p><b>Recent Changes</b> <b>Introduced by Finance Act 2019, 2020 and 2021</b></p>	<p>(i) <b>Investment income - section 16(6) of CITA (as amended)</b> “Investment income” for the purpose of taxation of a life insurance company means “income derived from investment of shareholders’ funds”.</p> <p>(ii) <b>Gross premium and gross income - section 16(13) of CITA (as amended)</b> For the purpose of section 16(12) – minimum tax computation: “Gross premium” means “the total premiums written, received and receivable excluding unearned premium and premiums returned to the insured”; and “Gross income” means “total income earned by a life insurance business including all investment income (excluding franked investment income), fees, commission and income from other assets but excluding premium received and claims paid by reinsurers”. Gross income may also include other incomes, such as annuities, commission received, rent, as well as surplus arising from actuarial revaluation of the reserve for the unexpired risk account or life fund account transferred to profit or loss account for distribution.</p>
<p><b>Minimum tax payable</b></p>	<p>Section 16(12) of CITA (as amended), provides that the tax payable by any insurance company for any year of assessment shall not be less than: 0.5% of the gross premium for non-life insurance business; and 0.5% of gross income for life insurance businesses. Provided, that all applicable minimum tax under this section shall be reduced to 0.25% for tax returns prepared and filed for any year of assessment falling due on any date between January 1, 2020 and December 31, 2021, both days inclusive.</p>
<p><b>Others</b></p>	<p>(i) Based on section 16(8) of CITA (as amended), any insurance company other than a life insurance company shall be allowed for deductions from its premium, the following reserves for tax purposes:</p> <ul style="list-style-type: none"><li>• Reserve for unexpired risks calculated on a time apportionment basis of the risks accepted in the year instead of the old basis determined on a percentage consistently adopted by the company; and</li><li>• Outstanding claims and outgoings, an amount equal to the total estimated amount of all outstanding claims and outgoings, provided that any amount not utilised towards settlement of claims and outgoings shall be added to the total profits of the following year instead of the old provision which was based on a percentage (25%) of total premium.</li></ul> <p>(ii) Based on section 16(9)(c) of CITA (as amended), a life insurance business shall now deduct all normal allowable business outgoings from its investment income and other incomes, and no restriction on a certain percentage (20%) of gross income shall be available as total profit of the company for tax purposes.</p> <p>(iii) An insurance company that engages the services of an insurance agent, a loss adjuster and an insurance broker shall include in its annual tax returns, a schedule showing the names and addresses of insurance agent, a loss adjuster and an insurance broker, the date their services were employed and terminated and payments made to them. An insurance company is expected to maintain the details and schedule of policies and risks accepted in a given year, and the computation of unexpired risks associated with them. The schedule should comprise the name of the policy holder, type of policy, period of the policy, amount of the premium and expired risk computed therefrom. A schedule detailing the specific items making up the estimated amount of outstanding claims and outgoings shall be prepared, by insurance companies.</p> <p>Insurance companies shall maintain a schedule of estimated claims and outgoings that constitute the amount deducted every year</p>

## TAXATION OF INSURANCE COMPANIES

An extract of the returns filed by Apple Insurance Plc, a company engaged in non-life business for 2021 and 2022 assessment years, revealed the following:

	<b>Assessment year</b>	
	<b>2022</b>	<b>2021</b>
	<b>N'000</b>	<b>N'000</b>
Reserve for un-expired risk brought forward	50,000	43,000
Reserve for un-expired risk carried forward	65,000	50,000
Estimated claims and outgoings	4,200	3,000
Actual claims and outgoings for the year	2,500	2,800
Net profit before claims	12,000	11,000
Total premium written	125,150	122,000
Premium paid on reinsurance	11,400	11,200
Premium returned to insured	8,200	7,100

**Required:**

Compute the following for 2021 and 2022 assessment years:

- (a) The un-expired risk that is attributable to the risk accepted in each year
- (b) Assessable profits
- (c) The gross premium liable to minimum tax.

Zen Insurance Co. Plc is a company engaged in both life and other insurance businesses. The draft IFRS account of the company for the year ended December 31, 2020, disclosed the following information:

**(a) Statement of profit or loss  
For year ended December 31, 2020**

	<b>Life</b>	<b>Non-life</b>	<b>Reinsurance</b>	<b>Total</b>
	<b>#'000</b>	<b>#'000</b>	<b>#'000</b>	<b>#'000</b>
Gross premium written	22,000	150,000	78,000	250,000
Gross premium income	22,000	150,000	78,000	250,000
Re-insurance premium	0	(58,000)	0	(58,000)
Net premium income	22,000	92,000	78,000	172,000
Fees and commission income	2,500	6,300	4,200	13,000
Net underwriting income	24,500	98,300	82,200	135,000
Claims expenses	(12,500)	(24,000)	(21,000)	(57,500)
Re-insurance claims	6,000	15,000	0	21,000
Change in contract liabilities	700	(2,300)	0	(1,600)
Net claims expenses	(5,800)	(11,300)	(21,000)	(38,100)
Underwriting expenses:				
Acquisition expenses	(300)	(1,400)	(990)	(2,690)
Maintenance expenses	(1,550)	(4,330)	(1,800)	(7,680)
Total underwriting expenses	(1,850)	(5,730)	(2,790)	(10,370)
Underwriting profit/(loss)	16,850	81,270	58,410	156,530
Investment income	5,800	12,600	13,700	32,100
Other operating income	1,800	3,800	2,400	8,000
Total investment income	7,600	16,400	16,100	40,100
Impairment charges	(450)	(1,330)	(1,080)	(2,860)
Net fair value gain / loss on investment properties	220	680	340	1,240
Net operating income	7,370	15,750	15,360	38,480
Expenses:				
Administrative expenses	(3,900)	(18,000)	(9,500)	(31,400)
Other operating expenses	(880)	(1,100)	(1,420)	(3,400)
Total expenses	(4,780)	(19,100)	(10,920)	(35,800)
Result of operating activities	19,440	77,920	62,850	160,210
Interest expenses	(3,600)	(7,500)	(4,800)	(15,900)
Profit or (loss) before taxation	15,840	70,420	58,050	160,210

## TAXATION OF INSURANCE COMPANIES

**(b) Statement of financial position**  
For the year ended December 31, 2020

	Life Business	Non-life business	Reinsurance Business	Total
	#	#	#	#
<b>Assets:</b>				
Cash and cash equivalent	900,000	1,660,000	1,220,000	3,780,000
Financial assets	1,600,000	2,800,000	2,300,000	6,700,000
Trade receivable	28,000	52,000	44,000	124,000
Other receivables	1,400	4,600	750	6,750
Investment in subsidiary	0	3,500	0	3,500
Intangible assets	22,000	14,900	26,000	62,900
Property, plant and equipment	1,200,000	3,550,000	2,400,000	7,150,000
Statutory deposits	<u>300,000</u>	<u>500,000</u>	<u>400,000</u>	<u>1,200,000</u>
<b>Total assets</b>	<b>4,051,400</b>	<b>8,585,000</b>	<b>6,390,750</b>	<b>19,027,150</b>
<b>Liabilities:</b>				
Insurance contracts				
Liabilities	1,300,000	5,280,000	1,520,000	8,100,000
Investment contract				
Liabilities	800,000	1,180,000	1,020,000	3,000,000
Trade payable	11,200	18,800	16,000	46,000
Other payables	600	1,200	130	1,930
Employee benefit				
Liabilities	<u>520</u>	<u>680</u>	<u>550</u>	<u>1,750</u>
<b>Total liabilities</b>	<b>2,112,320</b>	<b>3,480,680</b>	<b>2,556,680</b>	<b>11,149,680</b>
<b>Equity</b>				
Issued and paid-up share capital				1,200,000
Share premium				1,800,000
General reserve				2,600,000
Contingency reserve				400,000
Retained earnings				<u>1,877,470</u>
Shareholders' funds				<u>7,877,470</u>
<b>Total liabilities and reserves</b>				<b>19,027,150</b>

Additional information:

- (i) The company distributed ₦ 3,500,000 surplus arising from actuarial revaluation of life fund.

**Required:**

1. Compute the company's tax liability for the relevant tax year.

- (ii) Administrative expenses include depreciation:

Life business	Non-life business	Reinsurance business
₦'000	₦'000	₦'000
960	1,200	1,050

- (iii) Premium written from non-life business and reinsurance business include ₦ 15,000,000 and ₦ 13,600,000 from general insurance.

- (iv) Net liability on life policies as at December 31, 2020, was ₦1,298,000.

- (v) Capital allowances agreed with the relevant tax authority are as follows:

Life business	Non-life business	Reinsurance business
₦'000	₦'000	₦'000
250	800	650

- (vi) Investment income includes:

Life business	Non-life business	Reinsurance business	
₦'000	₦'000	₦'000	
Dividend (gross)	1,200	3,000	5,500
Interest on fixed	3,300	7,600	6,900
Deposit			
Debenture interest	<u>1,300</u>	<u>2,000</u>	<u>1,300</u>
	<u>5,800</u>	<u>12,600</u>	<u>13,700</u>

- (vii) The provision for unexpired risk includes:

Life business	Non-life business	Reinsurance business	
₦'000	₦'000	₦'000	
Balance b/f	900	3,000	1,220
Balance c/f	1,300	5,280	1,520

- (viii) The balance of the life fund account as at December 31, 2012, was ₦1,100,000.

- (ix) The minimum authorised capital of the company is the same as the paid up capital.

- (x) The estimated claims and outgoings omitted in arriving at the profit before tax for the year is as detailed below:

	Life business	Non-life business	Reinsurance business
	₦'000	₦'000	₦'000
Estimated claims	<u>14,500</u>	<u>35,000</u>	<u>30,500</u>
	<u>14,500</u>	<u>35,000</u>	<u>30,500</u>

## TAXATION OF UNIT TRUST SCHEME

Introduction	A unit trust scheme means any arrangement made for the purpose of providing facilities for the preparation of the public as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any property whatsoever. The provision of Section 17 of CITA CAP C21 LFN 2004 as amended, shall, in respect of the income arising to the trustees of an authorised unit trust, have effect: (a) As if the trustees were an investment company; (b) As if the rights of the unit holders were shares in the company; and (c) As if any income accruing to the trustees available to be paid to the unit holders were dividends on such shares.
Definition and Objectives	A unit trust scheme is a scheme that allows investors with little fund but with similar investment objectives to pool their funds together and thereafter invest the fund in a portfolio of securities or other assets that would be of beneficial interest to the investors. A unit trust scheme is a form of a collective investment scheme whose operation is regulated by the Investment and Securities Act (ISA), 2007. The objectives of a unit trust scheme are: (1) To encourage and pool the savings of the low and middle income group for investment purposes. (2) To enable the low and middle income group to share in the benefits and prosperity of the industrial development in the country
Applicability of provisions on dividend payment to profits accruing to trustees of unit trusts	Since CITA treats a unit trust scheme as a company and the unit holders as shareholders, the profits earned by the unit trust is subject to tax in the hand of the trustee. Also, any income distributed to the unit holders are treated as dividend since the right of such unit holders are deemed to be shares in the unit trust scheme. Therefore, while the dividend paid to a corporate unit holders i.e. an incorporated companies is exempted from withholding tax, that paid or payable to individual unit holders is liable to withholding tax at 10% under the PIT Act

### FORMAT

Thus, the taxable profit is arrived at as follows:

Investment Income	N	N
Other taxable income	X	XX
Deduct: Management expenses	X	
Trustee's remuneration	X	
Other allowable expenses	X	(X)
Assessable/Adjusted profit	XX	
Less Capital allowance (absorbed)	(X)	
Taxable profit	XX	

### Question 6

ASWANI Group Limited received an approval from the Securities and Exchange Commission to float a Unit Trust Scheme in April, 2009. The unit trust scheme was subsequently registered and commenced business on 1st January, 2010 in the name of Aswani Unit Trust Scheme. The following records were disclosed for the year ended 31<sup>st</sup> December, 2010.

	N	N
Investment Income		31,829,500
Less: Management Expenses	10,250,000	
Depreciation	3,250,000	
Remuneration of manager	3,182,950	
Other expenses	7,341,550	24,024,500
Net Profit		<u>7,805,000</u>

The following additional information was provided:

- a) Management expenses include
  - (i) Loss on investment disposed N 1,750,000
  - (ii) Preliminary expenses N 1,455,000
  - (iii) Donation to ICAN Building fund N 1,250,000
  - (iv) Subscription to association of Unit Trust Managers N 500,000
  - (v) Fine for late filling of returns N 480,000
- b) Capital allowance on assets was N 9,384,750
- c) Other expenses include:
  - (i) Special reserve for future investment N 500,000
  - (ii) New computer system N 368,500

You are required to compute the tax liability of the unit Trust Scheme for the first year of assessment.

## TAXATION OF PRIMARY AGRICULTURAL PRODUCTION

### Introduction

Agribusiness can be defined as the sector involved in the production, processing and distribution of agricultural goods and services, and it includes all related activities. The business has moved positively towards meeting consumer demands by controlling production and distribution processes.

Section 11(4) of CITA (as amended) defines “primary agricultural production” as:

- (i) “Primary crop production comprising the production of raw crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop product;
- (ii) Primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock product;
- (iii) Primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product; and
- (iv) Primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate or final processing of any other manufactured or derivative fish product.

### Tax Incentives

Small and medium-sized companies engaged in primary agricultural production shall be granted:

- (i) Pioneer status for an initial period of 4 years and an additional period of 2 years, subject to satisfactory performance; and
- (ii) A reduction in import duty on tractors from 35% to 5%.

To enjoy these tax incentives, these companies are expected to apply to the President through the Minister for Trade, Industry and Investment.

### Other Incentives

- Companies in the agro-allied business do not have their capital allowance restricted. It is granted in full i.e. 100%.
- Exclusion from minimum tax computation
- Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment are exempt from VAT
- Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes shall be exempt from VAT

The following are the capital allowances rates applicable to agricultural businesses:

	Initial Allowance	Annual Allowance
	%	%
Plant: Agric Production	95	Nil
Plantation equipment	95	Nil
Research and development	95	Nil
Ranching and Plantation	30	50

## TAXATION OF PRIMARY AGRICULTURAL PRODUCTION

**AGRO ALLIED LIMITED** is an agricultural company, which commenced business on July 1, 2015. It is engaged in cattle ranching plantations and poultry business and prepares its financial statements to June 30, of every year. Its recent financial statements showed the following results:

	Year ended June 30		
	2016 N	2017 N	2018 N
<b>Revenue:</b>			
Plantation crops	-	-	24,000
Cattle ranching proceeds	190,000	638,000	636,000
Total revenue	190,000	638,000	660,000
<b>Expenses:</b>			
Preliminary expenses	50,000	50,000	50,000
Purchase: Cockrels	28,000	4,000	-
Poultry feeds	171,000	134,900	151,620
Wages and salaries	100,000	131,000	135,000
<b>Depreciation:</b>			
- Plant and machinery	30,000	31,500	31,500
- Office furniture and fittings	28,640	30,280	30,280
Drugs and medicines for animals	26,500	28,200	29,000
Interest on bank loan	-	34,200	36,000
General expenses	83,000	83,440	103,000
Increase in closing inventory: (animals and crops for resale)	-	(8,400)	(10,200)
Net profit/(loss)	<u>(326,960)</u>	<u>118,880</u>	<u>103,800</u>
	<b><u>190,000</u></b>	<b><u>638,000</u></b>	<b><u>660,000</u></b>

### Other additional information

Preliminary expenses amounted to ₦400,000, and it is to be written off in equal annual amounts over a period of eight (8) years, commencing from the year ended June 30, 2016.

Break down of the preliminary expenses is as follows:

	₦
(i) Stamp duties and registration expenses	30,000
(ii) Cost of initial clearing and cultivation of land for Plantation	70,000
(iii) Cost of nursery plants purchased from Ministry of Agriculture	130,000
(iv) Another nursery plants purchased from an Institute of Agriculture	91,440
(v) Cost of labour and technical expertise on the first planting operation on plantations	56,060
(vi) Gratifications to local chiefs and heads of families, so as to attract labourers to the farm	<u>22,500</u>
	<b><u>400,000</u></b>

The following details were extracted from the company's register of property, plant and equipment:

	Cost N	Date of purchase
<b>Assets:</b>		
Motor vehicles	30,500	July 2015
Agric tractor	27,000	June 2018
Equipment used in spraying plantations	60,000	January 2018
Office furniture	45,000	August 2015
Building (Administrative block)	71,000	December 2018

There was no disposal of any assets within the period.

**Required:** Compute the company's tax liabilities, if any, for the relevant years of assessment.

## REAL ESTATE INVESTMENT COMPANIES (REIC)

Definitions	<p><b>Real estate investment company (REIC)</b> means a company duly approved by the Securities and Exchange Commission to operate as a real estate investment scheme (REIS) in Nigeria. A REIC is essentially a REIS that is constituted as a company and investors purchase shares in the company.</p> <p><b>Real estate investment schemes (REIS)</b> mean any company, trust or other such corporate structures approved and regulated by the Securities and Exchange Commission, which is primarily engaged in and invests in income generating real estate asset or real estate related asset and is expected to distribute not less than 75% of its income within 12 months or receipt of the income.</p> <p><b>Real Estate Investment Trust (REIT)</b> means a real estate investment scheme (REIS) created by a trust deed between a Fund Manager and a Trustee wherein the investors are unit holders and beneficiaries of the trust.</p> <p><b>Real estate</b> means income generating property consisting of land or building (including special purpose vehicle (SPV) holding such income generating land and building).</p>
Relevant Regulatory Provisions	The Nigerian Security and Exchange Commission is the regulator of investments and securities in Nigeria and it derives its powers from the Investment and Securities Act 2007 i.e. ISA 2007. Therefore the relevant regulatory provisions for operating a REIS in Nigeria are: (a) Section 154 of ISA 2007; (b) Section 160 of ISA 2007; (c) The Securities and Exchange Commission Rules 2017; and (d) Other extant laws and regulations.
Nature of business of REIS	REIS are investment vehicles which pool funds from investors comprising individuals, companies, pension funds, associations, etc. for investments in real estate as an asset class. REIS are usually established to acquire, develop and hold portfolios of real estate assets, and do not generally hold single assets. They primarily engage in and invest in income generating real estate asset or real estate related asset.  REIS are sometimes structured to invest in specific property types whilst others focus their investments based on geographic location.
Income of REIC	There are four broad classifications for the income of REIC, namely: (i) Rental income; (ii) Dividend from another REIC; (iii) Gains from disposal of assets; and (iv) Others, for example, fees and other income not related to REIS.
Gains from disposal of assets, fees and other income not related to REIS	These incomes are not tax exempt as they are taxable in accordance with the provisions of the relevant tax laws Section 9 (1) (f) and (g) of CITA (as amended)

## REAL ESTATE INVESTMENT COMPANIES (REIC)

<b>Exemption of Dividend and Rental Income by a REIC from tax</b>	<p>Section 23 (1) (s) of CITA (as amended) specifically exempts dividend and rental income received by a REIC under REIS from further tax in the hand of the company. The implication of this is that the gross amount of each of these incomes is treated as non-taxable income because the income is regarded as received on behalf of its shareholders.</p> <p>Therefore, to compute the assessable profits of a company i.e. a REIC, rental and dividend income are to be deducted from the profits, if already included in it. However, to qualify for this exemption, the REIC must ensure the following:</p> <ul style="list-style-type: none"><li>(a) A minimum of 75% of dividend and rental income received is redistributed as dividend to the shareholders; and</li><li>(b) Such distribution is made not later than 12 months after the end of the financial year in which the dividend or rental income was earned.</li></ul> <p>Note: any rental or dividend income not distributed is chargeable to tax.</p>
<b>Section 24(1)(k) of CITA (as amended)</b>	<p>Dividends or mandatory distributions made by a REIC to its shareholders under REIS are allowable deduction for tax purposes. Given the fact that dividend or mandatory distribution made by a REIC to its shareholders is an expense relating to an exempt income, it shall not be allowed as a deduction in computing the company's assessable profits.</p> <p>It is pertinent to state that rental or dividend income received by a REIC will be treated as a taxable income, if the conditions stated in section 23(1)(s) of the Act is not met.</p>
<b>Section 80 of CITA (as amended)</b>	<p>Any distribution or dividend paid to a REIC pursuant to REIS shall not be subject to deduction of withholding tax. Based on the foregoing, such payment shall not be regarded as franked investment income unless when such payment is made to a REIC is not under a REIS</p>
<b>Section 80 (5)(6) of CITA (as amended)</b>	<p>A REIC is expected to withhold tax at the rate of 10% and remit same to the relevant tax authorities when a distribution or dividend is paid except such shareholder is a REIC under a REIS</p>
<b>Section 19 of CITA</b>	<p>This section relates to dividend as a basis for computing companies income tax due to no total profits or total profits are less than the amount of dividend paid. Rental and dividend income made by a REIC distributed to its shareholders under a REIS are exempt from section 19 of CITA. Put differently, the rental and dividend income redistributed to its shareholders shall be deducted from the total dividend paid in order to arrive at the net amount of dividend to be considered for the purposes of section 19 of this Act.</p> <p>It is apposite to state that for a dividend paid out by a REIC to be considered a redistribution under a REIS, the redistribution to shareholders must not be less than 75% of the rental or dividend income, and such redistribution must be done not later than 12 months after the end of the financial year in which the rental or dividend income was received by the REIC</p>

## REGULATED SECURITIES LENDING TRANSACTIONS (SEC LENDING) IN NIGERIA

Definitions	<ul style="list-style-type: none"> <li>• <b>Regulated securities lending transaction:</b> Section 105 of CITA (as amended) define a regulated securities lending transaction to means any securities lending transaction conducted pursuant to rules made by the Securities and Exchange Commission.</li> <li>• <b>Borrower</b> means an approved borrower in a regulated securities lending transaction</li> <li>• <b>Compensating payments</b> means any payments made in lieu of interest or dividend pursuant to a regulated securities lending transaction.</li> <li>• <b>Dividend</b> means compensating payments received by a lender from its authorized agent or borrower in a regulated securities lending transaction if the fundamental transaction giving rise to the compensating payment is a receipt of dividends by a borrower or any shares or securities received from its approved agent or a lender in a regulated securities lending transaction.</li> <li>• <b>Lender</b> means an approved lender in a regulated securities lending transaction.</li> <li>• <b>Approved agent</b> means any person approved by the SEC to function as an intermediary for the conduct of a regulated lending transaction</li> </ul>
Relevant Regulatory Provisions	<p>The operation of SEC lending in the Nigerian capital market is regulated by the provisions of the Investment and Securities Act, Securities and Exchange Commission Rules 2013 (as amended) and other extant laws and regulations.</p> <p>Furthermore, the taxation of SEC lending transactions is influenced by the provisions of CITA (as amended) and other relevant tax laws</p>
Explanation of regulated SEC lending transactions in Nigeria	<p>Regulated securities lending transaction is an arrangement where a lender enters into an agreement with an agent, for depositing securities for the purposes of lending, through the lending agent, in accordance with SEC rules, and the borrower enters into a separate agreement with the lending agent for the purposes of borrowing of the securities. This also includes an arrangement where the borrower deposits collateral with the lender, through the agent as a security for the borrowed securities.</p> <p><b>Note:</b> Any direct agreement between the lender and the borrower for the lending and borrowing of securities will not qualify for a SEC lending.</p>
Types of Income under a SEC Lending	<ul style="list-style-type: none"> <li>(a) Dividends;</li> <li>(b) Interests;</li> <li>(c) Securities lending fees or any other right or reward arising from the securities loaned;</li> <li>(d) Bonus;</li> <li>(e) Rights; and</li> <li>(f) Redemption benefits.</li> </ul>
Relevance of Stamp Duties Act to SEC Lending	<p>The following documents and transactions are exempt from stamp duties:</p> <ul style="list-style-type: none"> <li>• All documents issued by the SEC in relation to a SEC Lending;</li> <li>• Shares, stocks or securities returned to a lender or its recognised agent by a borrower in accordance with the rules of SEC Lending;</li> <li>• Receipts given by any person under a SEC Lending; and</li> <li>• Shares, stocks or securities transferred by a lender to its agent or borrower in furtherance of a SEC Lending.</li> </ul>

## REGULATED SECURITIES LENDING TRANSACTIONS (SEC LENDING) IN NIGERIA

### Taxation of a SEC lending based on the provisions of CITA (as amended)

**Dividend and interest received:** The relevant provisions of the Act as they apply to dividend and interest received are as follows:

**Section 9 of CITA (as amended):** Under section 9(1) (c) of the Act, gross dividend and interest received by a lender and borrower, being income, are taxable.

**Section 23 of CITA (as amended):** Despite the provision of section 9 (1) (c) of CITA which regards gross dividend and interest received by a lender and borrower as taxable, section 23(1)(t) and (u) of the Act, provides that dividend received by a lender from a borrower or by an agent from a borrower under SEC Lending is a franked investment income, hence it is not subject to further tax in the hand of the lender.

Given the provisions of section 23(1) of the Act, interest received by an agent from a lender under SEC lending is tax exempt in the hand of the agent.

**Section 24 of CITA (as amended):** Interest paid by a lender to an agent or a borrower under a SEC Lending is an allowable deduction under section 24(1)(l) of the Act.

**Section 27 of CITA (as amended):** Dividend generated by a borrower, and paid to an agent or lender under SEC Lending will not be an allowable deduction to the borrower in accordance with section 27(1) (l) of the Act.

**Section 78 of CITA (as amended):** The interest received by a borrower from a lender is liable to withholding tax deduction as provided under section 78 of the Act.

Where the borrower receives beneficial interest from the lender through the agent, the responsibility to deduct withholding tax rests with the agent. Where the agent remits interest to the borrower, the agent is to deduct withholding tax.

**Section 80 of CITA (as amended):** Under this section of the Act, payment of a dividend from a borrower to an agent shall not be subject to deduction of withholding tax.

**Fees, rights, bonuses and other benefits:** Under section 9(1)(h) of CITA, rights, bonuses, profits, fees and other benefits received by a borrower or lender under a SEC Lending are taxable income.

### Income received by an individual under a SEC Lending

Given the fact that the above stated exemptions and concessions provided in CITA relate to persons taxable under CITA, dividend and interest received under SEC Lending by individuals are not tax exempt.

## EXEMPTION OF THE PROFITS OF A NIGERIAN COMPANY FROM TAX IN RESPECT OF GOODS EXPORTED FROM NIGERIA

### Goods Exported

In line with the provision of section 23(q) of CITA, the profits of any Nigerian company in respect of goods exported from Nigeria is exempted from tax provided that the proceeds from such exported goods are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts.

The Finance Act, 2019 amended the criteria for tax exemption of profit in respect of goods exported from Nigeria by inserting a paragraph stating that tax shall accrue proportionately on the portion of proceeds from exported goods that are not utilised exclusively for the purchase of raw materials, plant, equipment and spare parts.

## TAXATION OF ENTERPRISES IN FREE TRADE ZONES

### Introduction

All companies including foreign ones and individuals operating in any export processing zone or free trade zone in Nigeria are exempted from tax on their profits provided that the undertaking is 100% export oriented

The manufacturing companies shall include assembling or processing of goods for export provided the value of exported goods is not less than 75 per cent of the total turnover during the assessment year. This is a tax incentive to encourage the manufacturing of exporting goods so as to diversify the economy and improve the revenue base of the government. This would also provide job opportunities for unemployed people in the country. Companies operating in free trade zones will be exempted from taxes only when they comply with tax filing and returns obligations to the FIRS under section 55(1) of CITA (as amended).

### Export Processing Zone Allowance

An export processing zone allowance is granted to a company, which has incurred expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an export processing zone. The rate is 100% capital allowance in any assessment year but the company will not be entitled to an investment allowance. Only the tax written down value of the assets shall be carried forward at the end of the tax holidays.

The profit or gains of a 100 percent export oriented undertaking established within and outside an export free zone shall be exempt from tax for the first three consecutive assessment years provided that:

- a. The undertaking is 100 percent export oriented;
- b. The undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;
- c. It manufactures, produces and exports articles during the relevant year and the export proceeds form 75 per cent of its turnover;
- d. The undertaking is not formed by transfer of machinery or plants previously used for any purpose to the new undertaking or where machinery or plant previously used for any purpose is transferred does not exceed 25 per cent of the total value of the machinery of the undertaking; and
- e. The undertaking repatriates at least 75 per cent of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria.

## TAXATION OF ENTERPRISES IN FREE TRADE ZONES

### Other Incentives

Approved enterprises within the zones shall be entitled to the following incentives:

- Legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within the zones;
- Repatriation of foreign capital investment in the Zones at any time with capital appreciation of the investment;
- Remittance of profits and dividends earned by foreign investors in the zones;
- No import or export licenses' shall be required;
- Up to 25% of production may be sold in the customs territory against a valid permit and on payment of appropriate duties;
- Rent-free land at construction stage; thereafter rent shall be as determined by the authority;
- Up to 100% foreign ownership of business in the zones allowable; and
- Foreign managers and qualified personnel may be employed by companies operating in the zones.

## NATIONAL INFORMATION TECHNOLOGY DEVELOPMENT LEVY (NITDL)

### Introduction

Section 12 (2a) of the National Information Technology Development Agency Act, 2007 provides for a levy of one percent (1%) of the profit before tax of companies and enterprises enumerated in the Third Schedule to the Act with an annual revenue of ₦100,000,000

### Specified companies liable to pay NITDL

- Cyber companies and internet providers;
- GSM service providers and all telecommunication companies;
- Pension managers and pension related companies;
- Banks and other financial institutions; and
- Insurance companies.

### NITDA Act

The NITDA Act 2007 provides for the establishment of a governing board for the National information technology development agency. The governing board is to have overall control over the agency.

#### Composition of the NITDA governing board

The NITDA governing board shall consist of the following members:

- (a) A chairman;
- (b) A representative each of:
  - (i) The Federal Ministry of Science &Technology;
  - (ii) The Ministry of Communication;
  - (iii) The Federal Ministry of Education;
  - (iv) The Standards Organisation of Nigeria; and
  - (v) The Nigerian Society of Engineers
- (c) Four persons to represent the affiliate professionals' bodies of the computer registration of Nigeria;
- (d) Two persons with cognate experience in information technology to represent the academic staff union of universities, and the academic staff union of polytechnics;
- (e) Six persons who are experts in the area of information technology appointed by the President from each of the six geo-political zones of Nigeria; and
- (f) The Director-General of the agency who shall be the secretary of the Board

The President, on the recommendation of the Minister, shall appoint the Chairman and members of the Board, other than the ex-officio members.

The Chairman and other members of the Board, other than ex-officio members shall each hold office:

For a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more

## TAX PROVISIONS OF THE NATIONAL AGENCY FOR SCIENCE AND ENGINEERING INFRASTRUCTURE (NASENI) ACT, 1992 (AS AMENDED)

Introduction	<p>In 1992, National Agency for Science and Engineering Infrastructure was established. The agency shall be a body corporate with perpetual succession and a common seal, and may sue or be sued in its corporate name.</p> <p>The major functions of the Board of the Agency includes:</p> <ol style="list-style-type: none"> <li>1. Formulate policies and advise the Federal Government on:           <ul style="list-style-type: none"> <li>• The establishment by the public and private sectors, of a national science and engineering infrastructure; and</li> <li>• The exploitation, acquisition, conservation and stockpiling strategic materials;</li> </ul> </li> <li>2. Receive and consider proposals, recommendations and suggestions by the Technical Advisory Committee and by other bodies and persons or subjects relating to the functions of the Agency;</li> <li>3. Consider and approve the capital development plans of the Agency, and consider and award contracts which lie within its competence</li> </ol>
Fund of the Agency	<p>(a) The Agency shall establish a fund from which shall be defrayed all expenditure incurred by the Agency for the purposes of this Act.</p> <p>(b) There shall be paid and credited to the fund, as amended by section 37 of the Finance Act 2021, the following</p> <ul style="list-style-type: none"> <li>(i) "1% of the Federation Account;</li> <li>(ii) Levy or profit before tax of commercial companies and firms with turnover of N100,000,000 and above covering the banking, mobile telecommunications, ICT, aviation, maritime, oil and gas sectors which shall be:           <ul style="list-style-type: none"> <li>• At the rate of 0.25%;</li> <li>• Collected by the Federal Inland Revenue Service (FIRS); and</li> <li>• Credited to the account of the Agency;</li> </ul> </li> <li>(iii) Contributions from the organised private sector;</li> <li>(iv) Foreign aid and assistance from bilateral and multilateral agencies;</li> <li>(v) Fees charged for services rendered by the Agency; and</li> <li>(vi) All sums accruing to the Agency by way of gifts, endowments, bequests or other voluntary contributions by persons and organisations".</li> </ul>
Board of the Agency	<p>(a) The President as chairman;</p> <p>(b) A full-time executive vice-chairman, who shall be a person with good knowledge of science and technology, to be appointed by the President;</p> <p>(c) The Minister of the National Planning Commission or his representative;</p> <p>(d) The Governor of the Central Bank of Nigeria or his representative;</p> <p>(e) The Minister of Science and Technology or his representative;</p> <p>(f) The Minister of Works and Housing or his representative;</p> <p>(g) The Minister of Agriculture and Rural Development or his representative;</p> <p>(h) The Minister of Health or his representative;</p> <p>(i) The President or Chairman, as the case may be, or a representative of:</p> <ul style="list-style-type: none"> <li>• The Nigerian Academy of Science;</li> <li>• The Nigerian Society of Engineers;</li> <li>• The Council of Registered Engineers of Nigeria;</li> <li>• The Manufacturers Association of Nigeria;</li> <li>• The National Association of Small Scale Industrialists;</li> <li>• The Nigerian Association of Chambers of Commerce</li> <li>• Industry, Mines and Agriculture;</li> </ul>

<b>Introduction</b>	<p>Nigeria Police trust fund levy was introduced to the Nigerian tax system in 2019 by virtue of the provisions of the Nigeria Police Trust Fund (Establishment) Act, 2019 that was enacted in 2019.</p> <p>The objective of the Act is “to provide a legal framework for management and control of the special intervention fund established under section 3 of the Act for the training and retraining of personnel of the Nigeria Police Force and for the provision of state of the art security equipment and other related facilities for the enhancement of the skills of the personnel of the Nigeria Police in the handling of operational equipment and machineries”.</p> <p>The Trust Fund is to operate for six years from the commencement of the Act and is expected to cease at the expiration the period unless it is extended by an Act of the National Assembly for any further period.</p> <p>The Act established a fund known as the Nigeria Police Trust Fund which is a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name</p>
<b>Nigeria Police Trust Fund Composition</b>	<p>The Trust Fund shall consist of:</p> <ul style="list-style-type: none"> <li>(a) An amount consisting of 0.5% of the total revenue accruing to the Federation Account;</li> <li>(b) A levy of 0.005% of the net profit of companies operating in Nigeria;</li> <li>(c) Any take-off grant and special intervention fund as may be provided by the Federal, State and Local Government of the Federation;</li> <li>(d) Such money as may be appropriated to meet the objective of the Act by the National Assembly in the budget;</li> <li>(e) Aids, grants and assistance from international, bilateral and multilateral agencies, non-governmental organisations and the private sector;</li> <li>(f) Grants, donations, endowments, bequests and gifts, whether of money, land or any other property from any source; and</li> <li>(g) Money derived from investment made by the Trust Fund.</li> </ul>
<b>Objectives of the Fund</b>	<ul style="list-style-type: none"> <li>• For meeting the training and re-training needs of the personnel of the Nigeria Police Force and its auxiliary staff within and outside Nigeria</li> <li>• For the enhancement of the skills of the personnel of the Nigeria Police Force and its auxiliary staff for improved proficiency in the use of operational equipment and machineries</li> <li>• For the overall improvement, performance and efficiency in the discharge of the duties and responsibilities of the Nigeria Police Force</li> <li>• For the purchase of equipment, machineries, including operational vehicles for the Nigeria Police Force</li> <li>• For the construction of police stations, provision of living facilities, such as quarters or barracks for the Nigeria Police Force</li> <li>• To finance the procurement of books, instructional materials, training equipment for use at Police Colleges and such other similar training institutions</li> <li>• To meet the cost of participation by the personnel of the Nigeria Police Force at seminars and conferences relevant to, or connected with, policing or intelligence gathering</li> </ul>
<b>Assessment, collection and enforcement of the payment of the levy</b>	<p>Section 4(3) of the Nigeria Police Trust Fund (Establishment) Act as amended by the Finance Act 2021, states that “the Federal Inland Revenue Service shall assess, collect, account and enforce the payment of the levy. The levy is 0.005% of the net profit of companies operating business in Nigeria</p>

## Tax provisions of non-governmental organisations (NGOs) in Nigeria and other obligations and exemptions as specified under the relevant tax legislations

Introduction	<p>In 2021, the FIRS issued an information circular on “guidelines on the tax treatment of non-governmental organisations (NGOs), to provide clarifications on the application of the provisions of CITA, PITA, CGT and VAT Acts on the income, operations and activities of NGOs.</p> <p>An NGO as defined by FIRS “is a not-for-profit association of persons incorporated as a company limited by guarantee under PART A of the Companies and Allied Matters Act (CAMA) 2020 or registered under PART C of the Act, or under any other law in force in Nigeria, or registered under the laws of a foreign jurisdiction and approved as such in Nigeria”. The object of such entities is to provide a given public good, not to carry on business for the purpose of making profits for the distribution to their members.</p> <p>For the avoidance of doubt, NGOs include organisations, institutions and companies engaged in ecclesiastical, charitable, benevolent, literary, scientific, social, cultural and sporting activities of a public character. Additionally, any co-operative society registered under any law within the federation is expected to receive similar treatment as an NGO</p>
Registration with FIRS for tax purposes	<p>NGOs are expected to register for tax purposes, obtain tax identification number (TIN) and file the following documents with the FIRS:</p> <ul style="list-style-type: none"><li>(a) A copy of registration certificate issued by Corporate Affairs Commission (CAC) in Nigeria or other instruments of incorporation issued to the foreign NGO or any other document evidencing exemption from incorporation in Nigeria;</li><li>(b) Certified true copy (CTC) of memorandum and articles of association, constitution or rules and regulations governing the NGO;</li><li>(c) List and profiles of the trustees/board members nominated; and</li><li>(d) Other relevant documents that may be required at the time of registration</li></ul>
Designated medium tax offices (MTOs) of FIRS	<p>The FIRS has designated the following medium tax offices in geo-political regions for the registration of NGOs for tax purposes:</p> <ul style="list-style-type: none"><li>(a) MTO Lagos Island, in Lagos state;</li><li>(b) MTO Abuja for North-Central geopolitical region and FCT;</li><li>(c) MTO Kano for North-East and North-West geo-political regions;</li><li>(d) MTO Enugu for South-East geo-political region;</li><li>(e) MTO Port Harcourt for South-South geo-political region; and</li><li>(f) MTO Ibadan for South-West geo-political region</li></ul>
Filing of tax returns	<p>Section 55(1) of CITA (as amended) provides that every NGO shall file tax returns annually and such a return shall contain.</p> <ul style="list-style-type: none"><li>(a) The audited accounts, together with the tax computations and a written true and correct statement specifying the amounts of its computed surplus from each and every source in accordance with the relevant provisions of CITA;</li><li>(b) Such particulars in the required form for the purpose of the Act relating to such profits, allowances, reliefs and deductions;</li><li>(c) A signed declaration by a trustee, director, secretary or any authorised person of the organisation stating that the information as contained in the return is true and correct; and</li><li>(d) The period for filing returns shall be as stipulated in the relevant tax laws</li></ul>

## Tax provisions of non-governmental organisations (NGOs) in Nigeria and other obligations and exemptions as specified under the relevant tax legislations

<b>Company Income Tax</b>	<p>Based on the provision of section 23(1)(C) of CITA (as amended), the profits of any company engaged in ecclesiastical or charitable activities of a public character shall be tax-exempt provided that such profits are not derived from any trade or business carried on by such organisation or association.</p> <p>For the avoidance of doubt, the income exempted from tax include subscription fees by members, donations, grants, zakat, offerings, tithes, funds realised from launchings, etc.</p> <p>However, it should be noted that income or profits of such organisations liable to tax include:</p> <ul style="list-style-type: none"> <li>(a) Profits arising from trade or business carried on, such as proceeds from sale of goods or merchandise , provision of consultancy, professional or other services for a fee; and</li> <li>(b) Investment income, such as interest, rent, royalty, dividend or similar income.</li> </ul> <p>The above notwithstanding, an NGO has the responsibility to deduct WHT on contracts awarded to suppliers and contractors, including other qualifying payments and remit amounts deducted to the relevant tax authorities in the currency of transaction.</p>
<b>Personal Income Tax</b>	<p>It is the responsibility of an NGO under the PAYE obligation to deduct tax at source from salaries and other emoluments of employees, directors, officers, etc. and remit same to the relevant tax authorities in the currency of payment of the emoluments</p>
<b>Capital Gains Tax</b>	<p>Based on the provision of section 26 of the Capital Gains Tax Act (CGTA) Cap CI LFN 2004 (as amended), where the following two conditions are jointly fulfilled, the gains from the disposal of chargeable assets of NGOs are exempted from tax.</p> <ul style="list-style-type: none"> <li>(a) The gains are not derived from the disposal of asset acquired in relation to any trade or business carried on by the organisation; and</li> <li>(b) The gains are used purely for the purpose of the activities of the organisation.</li> </ul>
<b>Value Added Tax</b>	<p>The VAT Act (as amended) provides that VAT on goods purchased by NGOs for use in humanitarian donor-funded projects is at zero rate. Similarly, any service procured or consumed by NGO is liable to VAT at the prevailing rate, save where such service is exempt under the VAT Act.</p> <p>The above notwithstanding, VAT shall be applied at the prevailing rate where an NGO procures contracts or purchases goods not directly used in humanitarian donor-funded projects.</p> <p>NGOs shall self-account for VAT and remit same to the FIRS where goods or services are procured from persons not liable to VAT or from non-resident suppliers.</p> <p>NGOs shall charge VAT on all taxable goods and services supplied and remit same to the FIRS as and when due. The returns shall be filed with FIRS on or before the 21st day of the month following that in which the purchase or supply was made</p>
<b>Donations (5<sup>th</sup> Schedule of CITA)</b>	<p>Any NGO that is interested to be listed under the fifth schedule to CITA (as amended) is at liberty to supply to the Minister of Finance for enlistment through the FIRS</p>
<b>Other statutory responsibilities of NGOs</b>	<p>NGOs are required to:</p> <ul style="list-style-type: none"> <li>(a) Maintain accurate record of employees; and</li> <li>(b) Maintain proper books of accounts.</li> </ul> <p>Non-compliance with the requirements stated above, attracts penalties under the extant tax laws</p>



# *TAXATION OF EMPLOYMENT INCOME*

The PITA defines employment to include any appointment or office whether public or otherwise for which remuneration is payable and employee and employer shall be construed accordingly.

#### DISTINCTION BETWEEN A CONTRACT OF EMPLOYMENT AND CONTRACT FOR EMPLOYMENT

The Labour Act 1994, defines a contract of employment (also referred to as contract of employment) as “any agreement whether written or verbal, expressed or implied, whereby one person agrees to serve the employer as a worker”

A contract for employment is an agreement whereby a person is engaged as an independent contractor, such as a self-employed person or vendor engaged for a fee to carry out an assignment or a project for the company. In a contract for employment, there is no employer-employee relationship in the contract and the self employed person is not covered by the Labour Act. An individual under a contract of employment is commonly referred to as an employee, while an individual under a contract for employment is referred to as an independent contractor or self-employed person.

#### DISTINCTION BETWEEN EMPLOYMENT, VOCATION AND PROFESSION

Employment is an agreement between an employer and an employee that the employee will provide certain services on the job and in the employer's designated workplace to facilitate the accomplishment of the employer organization's goals and mission in return for compensation. The agreement may be verbal, implied or an official employment contract.

Vocation is a specified occupation or profession or trade for which a person is specially drawn or for which he or she is specially trained, suited or qualified.

Profession refers to an occupation that requires specialized education, knowledge or training and ethics. Professions are ideally made up of people with high ethical standards who have special knowledge and skills.

#### Further distinction among employment, vocation, and profession:

a. Employment is an agreement between an employer and an employee in which the employee is required to provide certain service on the job in a workplace in return for compensation i.e. salary and other emoluments. Vocation and profession are specified

occupation or profession or trade to which a person is specially drawn or for which he or she is suited, trained, or qualified.

- b. Employment income includes any salary, wages, fee, and allowance including compensations, bonuses, premiums, benefits, or other perquisites. Vocation and profession income include gains or profits, fees, etc.
- c. Employment can be exercised under a contract of service, while vocation and profession can be exercised in a contract for service.
- d. Employment can be ended at the prerogative of the employer or the employee. Vocation and profession would usually come to an end at the end of a contract or upon the delivery of a service.

#### DETERMINATION AND IMPORTANCE OF RESIDENCE

In personal taxation, determination of residence is vital, for the purpose of identifying the relevant tax authority of a taxpayer. The First Schedule of PITA provides details for the determination of residence.

##### Resident Individual

An individual is regarded as resident in Nigeria in an assessment year if he:

- a. Is domiciled in Nigeria;
- b. Sojourns in Nigeria for a period or periods in all amounting to 183 days or more in a 12-month period;
- c. Serves as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria.

##### Non Resident Individual

A non-resident individual is a person who is not domiciled in Nigeria or who stays in Nigeria for less than 183 days in a 12-month period but derives income or profit from Nigeria. A non-resident individual becomes liable to tax in Nigeria from the day he commences to carry on trade, business, vocation or profession in Nigeria. In the case of employment income, he is liable to tax in Nigeria when he becomes a resident.

##### Place of Residence

“Place of residence” in relation to an individual, means a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest-house or other place at which he is temporarily lodging, unless no more permanent place is available for his use on that day.

## **Principal place of residence**

"Principal place of residence" in relation to an individual with two or more places of residence on a relevant day, not being both within any one territory means:

- a. In the case of an individual with no source of income other than a pension in Nigeria, that place or those places in which he usually resides;
- b. In the case of an individual who has a source of earned income other than a pension in Nigeria, that place or those places which on a relevant day is nearest to his usual place of work; and
- c. In the case of an individual who has a source or sources of unearned income in Nigeria, that place or those places in which he usually resides.
- d. In the case of an individual who works in an office or operational site of a Company or other body corporate, the place of which the branch office or operational site is situate; provided the operational site shall include oil terminals, oil platforms, flow stations, factories, Quarries, Construction sites with a minimum of 50 workers etc.

## **TYPES OF EMPLOYMENT**

Paragraph 1 of the sixth schedule to PITA 2004 (as amended) specifies two types of employments as follows:

- a. Nigerian employment means any employment, not being a foreign employment, the duties of which are wholly or partly performed in Nigeria. An individual who holds a Nigerian employment on the first day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day or, as the case may be, on the day on which he enters upon the full duties of that employment in Nigeria;
- b. Foreign employment means an employment the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria. An individual who holds a foreign employment on the first day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences, as the case may be.

## **Conditions for taxation of income from employment**

The gain or profit from an employment shall be deemed to be derived from Nigeria if:

- a. The duties of the employment are wholly or partly performed in Nigeria unless:
  - i. The duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria.
  - ii. The employee is not in Nigeria for a period or periods amounting to an aggregate of 183 days inclusive of annual leave or temporary period of absence.
  - iii. The remuneration of the employee is liable to tax in that other country, under the provisions of the avoidance of double taxation treaty with other countries.
- b. The employer is in Nigeria or has a fixed base in Nigeria.
- c. The gain or profit from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether they are received in Nigeria or not.
- d. The gains or profits from any employment, the duties of which are wholly or mainly performed in Nigeria shall be deemed to be derived from Nigeria during any period of leave of the employee from the employment, and any period of his temporary absence on duty from Nigeria.

## **EMPLOYMENT INCOME**

Employment income includes any salary, wages, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain.

## **TYPES OF EMPLOYMENT INCOME**

- a. Cash emolument: Cash emoluments are the remuneration an employee receives from the employer in cash. Cash emoluments include salary, wages, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits, share of profits received by an employee.
- b. Benefits-In-Kind (BIK): Benefits-in-kind mean those expenses incurred by an employer in the provision of benefits to the employee. Such benefits often include furnished living accommodation, gardener/stewards (domestic servants), use of official car for private purpose by employees, installation of air conditioners or generator in employee's residences. These benefits are regarded as part of the employee's taxable income if these relate to services rendered by the employee.

Benefits-in-kind will also include such benefits which are actually provided to the spouse, family, servant, dependent or guest of the employee.

#### Valuation of Benefits-in-Kind

The following are the general rules for quantifying benefits-in-kind:

##### a. The Use of Assets:

- Owned or Acquired By The Employer: Where assets (e.g. motor vehicles, furniture and fittings, plant and machinery, etc.) acquired and owned by an employer are provided for the exclusive use of the employee, the employee is deemed to have derived an income equal to:

5% of the assets cost if known; or

5% of the market value at date of acquisition where cost is not known (to be determined by the tax authorities).

- Rented or Hired By The Employer: If an employee is provided with asset for which the employer pays a hire or rental charges, the employee is deemed to have derived an income equal to the annual amount of the rent or hire expended by the employer on the asset. However, where an employee has made any refund in respect of the asset rented or hired by the employer for the employee's benefit, the employee shall be deemed to have derived income equal to the difference between the amount incurred by the employer and any amount refunded by the employee.

- Provision of Residential Accommodation: If an employer provides residential accommodation for the benefit of an employee anywhere in Nigeria and the employee pays no rent for the premises or pays a rent which is less than the annual value of the premises, the employee is deemed to have derived income each year equal to the annual ratable value of the premises. The annual ratable value of any premises is that value as determined by the relevant tax authority for purpose of local rate.

- Domestic Staff Paid By the Employer: Where an employer engages the service of domestic staff (such as driver, steward, washman, housemaid, gardener, etc) for the exclusive benefit of an employee, the cost incurred in form of salary by the employer for the use of the domestic staff by the employee shall be deemed as income in the hands of the employee and taxed accordingly.

Note: The income of a domestic staff shall only be deemed as income in the hand of the employee only where the domestic staff is not a permanent employee of the employer i.e. a contract staff.

#### Benefits to Employees Exempted From Tax

The following expenses of the employer for the benefit of the employee are not regarded as BIK and are therefore not taxable in the hands of the employee:

- Expenses in connection with the provision of meal in any canteen for all staff or provision of non-assignable luncheon voucher.
- Expenses connected with the provision of uniforms, overalls and other protective clothing; and
- Expenses connected with employee's change of residence as a result of change in his employment (e.g. transfer).

#### ITINERANT WORKER

Itinerant worker means an individual irrespective of his status, who works at any time in any state during a year of assessment (other than as a member of the armed forces) for wages, salaries or livelihood by working in more than one State and work for a minimum of twenty (20) days in at least three (3) months of every assessment year. In the case of an itinerant worker, tax may be imposed for any year by any State in which the itinerant worker works for a minimum of twenty (20) days in at least three (3) months of every assessment year.

#### RELIEFS AND ALLOWANCES

- Consolidated Relief Allowance (CRA): CRA is granted at the higher of N200,000 or 1% of gross income plus 20% of gross income.
- National Housing Fund Contribution: The NHF Act provides that a Nigerian earning an income of ₦3,000 and above per month in either public or private sector shall contribute 2.5% of his basic monthly salary to the Fund. Employers who fail to deduct or remit are liable to pay a penalty of ₦50,000 while self-employed persons are to pay ₦5,000 or one year imprisonment or both. The employer is to remit to Federal Mortgage Bank of Nigeria within one month of making the deduction.
- National Health Insurance Scheme: The Act provides that an employer who has a minimum of ten employees may, together with every person in his employment, pay contribution under the scheme, at such rate and in such manner as may be determined, from time to time, by the Governing Council of the Scheme. In the public sector (Federal), the employer is expected to pay 3.25%, while the employee pays 1.75% which translates to 5% of the employee's consolidated salary. For private sector and other tiers of government, employer is expected to pay 10% while the employee pays 5% representing 15 of the employee's basic salary. The employer may decide to pay the entire contribution.

- a) Life Assurance Premium: A deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse, or for a contract for a deferred annuity on his own life or the life of his spouse;
- e) National Pension Scheme: The Pension Reform Act 2004 establishes a uniform contributory pension scheme for payment of retirement benefits of employees. The scheme applies to all employees in both the public sector and private sector who are in employment in an organisation in which there are 5 or more employees. The rate of contribution to the scheme shall be a minimum of 7.5% of employee's monthly emolument (i.e. Basic salary, Housing Allowance and Transport Allowance) as contribution for employer and minimum of 7.5% contribution for employee in both the public and private sector except the Military in which case a minimum of 12.5% contribution for the employer and a minimum of 2.5% for the employee. However, contributions made by an employee to the Scheme shall be tax-deductible. A new Pension Reform Bill was signed into law by President Goodluck Jonathan on 1st July, 2014 to replace the old Pension Reform Act, 2004. The new pension law introduced several key changes including:

- Increase in the minimum contribution into the scheme as follows: Employers are now required to contribute a minimum of 10% of their employees' monthly emolument and employees are to contribute a minimum of 8%.
- A private sector entity would now be subject to the scheme where it has 15 or more employees.
- The Act now imposes a 10 years jail term for persons found guilty of misappropriating pension funds.

- f) Gratuities: Gratuity is money paid to an employee who is retiring or leaving his employer after several years of service.

#### MINIMUM TAX

Where there is no Chargeable income for an individual or where the tax payable on the Chargeable income of that individual is less than 1 per centum of his Total income, the individual shall be charged to tax at the rate of 1 per centum of his Total income. In essence, minimum tax at the rate of 1% of Total income shall be payable where:

- The taxpayer has no taxable income because of large personal reliefs; or
- Taxable income produces tax payable lower than minimum tax; or
- Earned income does not exceed N300,000.

**Exemption of minimum wage earners from the payment of personal income tax**  
Section 37 of PITA, 2004, having been amended by the Finance Act, 2020, employees earning the national minimum wage or less from any employment are no longer liable to pay tax or monthly PAYE deduction.

#### PAYE (Pay As You Earn)

**Registration:** An employer shall register with the relevant tax authority for the purposes of deducting income tax from his employees with or without formal notification or direction by the relevant tax authority.

#### Operation of PAYE regulations:

- a. Deduction of tax: The employer shall within six months of the commencement of these regulations or within six months of commencing a business, deduct tax from emoluments of his employees and remit to the relevant tax authority. An employer who fails to register within the time specified, commits an offence and is liable on conviction to pay ₦25,000 in addition to the payment of arrears of the tax due.
- b. Records of deductions: An employer shall record either on the tax deduction card or in such other form as may be authorized by the relevant tax authority, the following particulars regarding emoluments of his employees, that is:
  - i. The month of payment
  - ii. The amount of emolument
  - iii. The contribution by the employee to an approved pension fund
  - iv. The cumulative net emoluments in relation to the said date
  - v. The cumulative free emoluments in relation to that date
  - vi. The cumulative taxable emoluments in relation to that date
  - vii. The corresponding cumulative tax
  - viii. The tax, if any, deducted or repaid on making the payment.
- c. Certificate of deduction of tax: The employer shall make on the prescribed form two copies of the said certificate and deliver them to the employee on the date on which the employment ceases. On the commencement of another employment, the employee shall deliver the two copies of the certificate to the new employer who shall insert on one copy of the certificate the address of the employee (if different from the existing entry made by the former employer), any number used to identify the employee, and the date on which the employment commences and shall send that copy to the collector of taxes for the tax deductions while the employer retains a copy.

d. Death of an employee: On the death of an employee in respect of whom a tax deduction card has been issued, the employer shall send to the collector of taxes the certificate (relating to cessation of employment) and shall insert thereon the name and address of the personal representative of the deceased employee. If any emoluments are paid by the employer to the deceased employee's next of kin, the employer shall, in making such payment, deduct tax.

e. Remittance of tax deducted: Within ten days of the end of every month, an employer shall pay to the nearest tax office or to any bank (as may be prescribed or designated by the relevant tax authority) all taxes deducted under these regulations. The tax officer shall give the employer a receipt on the prescribed form the total amount paid. If an employer fails to deduct and remit on/before the deadline, he has commits an offence and will be liable to pay 10% of the amount not deducted or remitted plus interest at the ruling rate in addition to the tax due.

#### **Filing of returns: Employers and employees**

- a) Employers: Not later than 31st day of January of each year, an employer is required to file a return with the relevant tax authority of all emoluments paid to employees in its employment in the preceding year. The return shall show total emoluments paid to the employees, tax relief (if any) and the total tax deducted from the employee. The return specified shall be accompanied by a statement and a declaration on Form H1 or any other form approved or prescribed by the relevant tax authority. Any employer who contravenes this provision shall be liable on conviction to a penalty of ₦500,000 in case of a body corporate and ₦50,000 in case of an individual.
- b) Employees: For each year of assessment, a taxable person (employee inclusive), shall without notice pr demand, file a return of income in the prescribed form and containing the prescribed information with the tax authority of the state in which the taxable person is deemed to be resident together with a true and correct statement in writing containing: the amount of income from every source, and such particulars as by the return may be required for the purpose of this Act. The taxable person shall file with the relevant tax authority the returns within 90 days from the commencement of every year of assessment.

Notwithstanding that a tax authority requires a taxable person to file a return containing the amount of his income for each year of assessment, no return of income shall be filed by a person whose only source of income in any year of assessment is employment in which he earns ₦30,000 or less from the source.

#### **Basis of assessment**

The basis of assessment used by the relevant tax authority for the determination of personal income tax liability of an individual shall be on actual year basis. It is however pertinent to note that in determining the gross income of an individual, income from employment is based on actual year basis, while unearned incomes are based on preceding year basis.

#### **Offences and penalties**

**Penalty for failure to deduct tax:** This is clearly stated in Section 74 of Personal Income Tax Act 2004.

Any person or body corporate who, being obliged to deduct tax under sections 69, 70, 71 or 72 of PITA 2004, as amended, by the Personal Income Tax (Amendment) Act, 2011, fails to deduct or having deducted, fails to remit such deductions to the relevant tax authority within 30 days from the date the amount was deducted or the time the duty to deduct arose, shall be liable to a penalty of an amount of 10% of the tax not deducted nor remitted plus interest at the prevailing monetary policy of the Central Bank of Nigeria.

**Employer to be answerable to tax deducted:** In line with Section 82 of Personal Income Tax Act 2004 (as amended), in the event of failure by the employer to make the deduction, or properly to account therefore, the amount thereof together with a penalty of 10% per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority.

## Determination of personal income tax

(a) In computing the personal income tax liability of an employee, the following format can be used as a guide:

	N	N
<b>Earned income:</b>		
Employment income	x	
Gratuity	x	
Income from trade or other sources [see (b) below]	x	xx
 <b>Unearned income:</b>		
Dividend (gross)	x	
Rental income (gross)	x	
Interest (gross)	x	
Royalties (gross)	x	xx
Total income		xx
Non-taxable incomes	x	
Income on which no further tax is payable	x	(xx)
 <b>Tax exempt items:</b>		
National housing fund contribution	x	
National pension fund contribution	x	
National health insurance scheme contribution	x	
Life assurance premium	x	
Gratuity	x	(xx)
Gross income		xx
 <b>Consolidated relief allowance (CRA)</b>	(x)	
Chargeable income	xx	

### Question 1

Mr. Uzoka Emeka was employed by Abraka Limited as Director, Commercial West and Central Africa with effect from March 1, 2011. He entered Nigeria on the date his employment became effective and remained in Nigeria till August 25, 2011. He returned to Nigeria on January 15, 2012, and remained in Nigeria till July 31, 2012.

Required:

Explain the basis for the taxation of the income earned by Mr. Uzoka Emeka in Nigeria for the relevant tax years.

### Question 2

Mr. Abass works with Federal Ministry of Works, Abuja. He lives in a self-contain flat in Gwagwalada and travel every weekend to see his first wife and children in Kaduna. He also visits and stays with his second wife and children in Nyanya, Nassarawa State on Thursdays and Fridays of every week.

Required:

Determine the tax authority to which Mr. Abass would be liable to tax in a year of assessment.

### Question 3

Mallam Sule Yusuf is an employee of Temidire Limited. His salary is N500,000 per annum. He is married with five children. The first two are from his first wife and the remaining from the second wife. The two wives live with him. The eldest child is now a university graduate and teaches in a secondary school in Kaduna while the remaining children are university students. Mallam Sule Yusuf has a life assurance policy with Jabu Insurance Limited. The sum assured is N250,000 and he pays a premium of N2,500 per month. He also contributes N1,000 monthly to a pension scheme approved by the Joint Tax Board. The following information is made available:

- The company pays N180,000 per annum on his accommodation and provides him with an official car which has a market value of N2,000,000.
- He spent N6,000 on his aged father and N7,000 on his aged mother. Both have no source of income due to old age.
- He was retired on 31 December 2021 and was paid a gratuity of N300,000.
- He was also paid a lump sum of N100,000 for loss of office.

Required:

Compute his tax liability for the relevant year of assessment.

#### Question 4

Mr. Wasiu was employed by Siu Bank Limited as Head of banking operations, effective 1 June 2021. The details of his salary are as follows:

	N
Basic Salary per annum (p.a.)	48,000,000
Housing Allowance	12,000,000
Transport Allowance	2,000,000
Utility Allowance	800,000
Meal Allowance	500,000
Leave Allowance	4,800,000
Clothing Allowance	2,000,000

Mr. Wasiu was provided with official car. The cost of the car is N7,500,000. He was also provided with a driver and a private personal assistant and was paid N300,000 and N500,000 per annum respectively. Prior to joining Siu Bank Ltd, Mr. Wasiu was on annual salary of N32,000,000 while working with Caban Bank Plc. He resigned from the bank, effective 31 May 2021.

Additional information:

- (a) Mr. Willi Willi is married with 6 children, all of school going age. He maintains his aged parent who lives with him in Lagos.
- (b) He paid life insurance premium of N2,800,000 in 2020 and N3,000,000 in 2021 on his life.
- (c) His employers deducted and remitted on his behalf the following mandatory deduction of N4,900,000 and N1,166,667 for NHF and pension respectively for 2013.
- (d) He paid NHIS premium of N350,000 in 2021 to a health service provider to provide medical cover for himself and his family.

Required:

Compute the tax liability of Mr. Willi Willi for the relevant assessment year

#### Question 5

Alhaji Oriowo Oriola is married with seven children. Details about his children are as follows:

- (a) Ziza Oriola is 23 years and a Lecturer in one of the private tertiary institutions.
- (b) His daughter, Mrs Zazu Idiaraba, is a housewife and married to Mr Water Idiaraba, a protocol officer, in the Ministry of Youths and Sports.
- (c) Zize is an undergraduate in Ladoke Akintola University of Technology and is aged 18 years.
- (d) Zuzu is a student in Nick Secondary School and her age last birthday was 13 years.

(e) Ziel is in one of the elitist private schools as a student. She is 8 years old.

(f) Zini is in Command Secondary School and is 16 years old.

(g) Zulu is three years old.

Other information are as follows:

- (i) He took out a life insurance policy for which he pays annual premium of N400,000.
- (ii) His employer deducted N2,137,500 and N712,500 for pension and NHF respectively from his salary and remit same on his behalf in compliance with the Pension Reforms Act and NHF Act.
- (iii) His aged parents live with him. They have no income of their own.
- (iv) He is an employee on a salary of N28,500,000 per annum. In addition, his employer provided him with an official car and accommodation at the company's guest house. The cost of his official car is N5,000,000 and the construction cost of the guest house is N38,000,000. However, the relevant tax authority determine the local rate on the property to be N320,000.

Required:

Compute Alhaji Oriowo Oriola's Personal income tax payable for 2021 year of assessment.

#### Question 6

Mr. Ezekiel Hezekiah retired from the Public Sector of Lagos State Government on 31 March 2021. He subsequently secured employment with Last Bank Nigeria Plc as a Marketing Manager, effective 1 July 2021.

The following information has been provided by Mr. Hezekiah:

- (a) Salary - 1 January to 31 March 2021: N360,000 per month
- (b) New employment: N2,640,000 per annum.
- (c) Pension income, effectively 1 April 2021: N720,000 per annum.
- (d) Transport allowance - new employment: N80,000 per annum.
- (e) Rent allowance - new employment: N240,000 per annum.
- (f) Contribution to National Housing Fund and National Pension Scheme: 21/2 % and 71/2% of Consolidated gross income respectively.
- (g) Rental income received (Gross)

	N
3/3/2020	250,000
9/8/2020	380,000
20/7/2019	180,000
2/12/2019	75,000

(h) Mr. Hezekiah is married and has four children, aged between 2 and 19 years. All except one named Izkaba aged 19 are still in school.

(i) Mr. Hezekiah has a life assurance policy on his life with a sum assured of N5,000,000 and annual premium of N350,000.

(j) His aged parents live with him. They have no income of their own.

Required:

Compute the Personal income tax payable by Mr. Hezekiah for the relevant year of assessment.



# *TAXATION OF SOLE TRADER*

The taxation of a sole trader will arise on the preceding year basis. A sole trader includes a legal practitioner who runs a chamber, a chartered accountant who runs a firm or an architect who runs a studio. The term "business" as defined by the Act, includes a trade, profession or vocation. It follows therefore that every trade, profession or vocation is a business and this makes the concept of business very wide.

In the computation of tax liability of a sole trader, the audited financial statement is to be considered so as to examine whether or not the expenses included before arriving at the profit or loss would be admitted for tax purpose.

In determining whether or not an expense is to be admitted for tax purpose, then it must be shown that such an expense has been wholly, reasonably, exclusively and necessarily incurred for the purpose of the trade or business.

**Wholly:** This means that the expense must have been incurred solely for the purpose of the trade or business.

**Reasonably:** This means that relative to the totality of the financial statement, it must appear to be reasonable.

**Exclusively:** It will appear that the distinction between "wholly" and "exclusively" is thin. But it is important to stress that where an expense is incurred purely and only for the business, it can be deemed to be exclusive for the business.

**Necessarily:** This means that the expense must be necessary for the generation of income.

#### **ALLOWABLE EXPENSES**

- Bad debt written off
- Provisions for bad debt of a specific nature
- Contribution to pension fund approved by JTB
- Interest on loan obtained for the purpose of the business
- Rent and premium in respect of land and building for the purpose of the business
- Legal expenses which include:
  - General legal advisory services
  - Retainer fee
  - Renewal of short-term lease
  - Any cost of protection or defending the business

- Rent of accommodation for staff provided it does not exceed annual basic salary.
- Any other expenses that WREN incurred for the business

#### **DISALLOWABLE EXPENSES**

- Depreciation
- Expenditure of a capital nature
- Any private or personal expenses (drawings)
- Contribution to pension fund not approved by JTB
- Donation
- Legal expenses including
  - Cost of renewing a long term lease
  - Cost of acquiring a new lease whether long or short
  - Cost of defending a traffic offence
  - Cost of defending a tax appeal
- Any withdrawal of capital
- Any sum recoverable under an insurance or contract of indemnity

#### **Question 1**

Dominion Enterprises commenced on January 2, 2020, and makes up accounts to March 31, every year.

The assessable profits as provided are as follows:

	N
Jan 2, 2020 to Mar 31, 2020	41,300,050
Apr 1, 2020 to Mar 31, 2021	52,750,000

Before the commencement of business, the company acquired the following capital expenditure:

	N
Motor vehicles	2,500,000
Office equipment	420,000
Furniture and fittings	390,000

#### **Required:**

Compute the gross income of the business that is assessable for the relevant assessment years.

Dr. Eniola Ajayi, who resides in Lagos, has been trading for several years. The statement of profit or loss of her business for the year ended December 31, 2021, is as shown below:

	₦	₦
Gross profit		50,000,000
Profit on sale of vehicle		<u>1,200,000</u>
		51,200,000
Less: Expenses		
General administration	3,000,000	
Staff salaries	12,219,500	
Stationery and printing	800,000	
Postage and telephone	400,000	
Electricity	700,000	
Entertainment	250,500	
Vehicle repairs and maintenance	455,000	
Bank charges	800,000	
Donations	4,500,000	
Periodical and technical journals	80,000	
Audit and accountancy fee	2,500,000	
Defalcation and embezzlement	1,200,000	
Repairs and renewals	85,000	
Depreciation	5,010,000	
VAT paid on equipment	2,800,000	
Bad and doubtful debts—Specific	<u>200,000</u>	<u>(35,000,000)</u>
<b>Net Profit</b>		<b><u>16,200,000</u></b>

You are provided with the following additional information:

- (a) Legal expense of ₦360,000 formed part of staff salary instead of capital Items
- (b) Donations made to The Boys Scout of Nigeria
- (c) She agreed with the inspector of taxes that one third of vehicle repairs and maintenance related to private use
- (d) Further examination of accounts revealed that salary of ₦ 800,000 was paid to an unknown person
- (e) The Chief Accountant perpetrated 75% of the defalcation
- (f) Allowable expenses of ₦ 230,000 have been omitted from the accounts
- (g) Repairs and renewals comprised of:

	₦
Partitioning of new office	30,500
Repairs to plant and machinery	25,000
Repairs of office roof	<u>29,500</u>
	<b><u>85,000</u></b>

- (h) Agreed capital allowances on qualifying capital expenditure amounted to ₦7,500,000.

**Required:**

- (a) Compute the gross income of Dr. Eniola for the relevant tax year.
- (b) State three conditions that must be met before donations can be allowed as an expense.

Dr. Zuba Zuniga has been the sole proprietor of his business for several years. His detailed statement of profit or loss for the year ended December 31, 2021, is as follows:

<b>Revenue</b>	₦	₦
Gross trading profit		30,000,000
Dividend (gross)		2,500,000
Rental income (gross)		800,000
Profit on sale of non-current assets		<u>1,200,000</u>
		34,500,000
 Less: Expenses:		
Salaries and wages		3,500,000
General expenses		1,600,000
Finance costs		900,000
Rates and electricity		500,000
Repairs and maintenance		2,500,000
Depreciation		4,800,000
Bad debt		<u>2,000,000</u>
<b>Net profit</b>		<u>(15,800,000)</u>
 <b>Additional information:</b>		₦
(i) Salaries and wages include:		
Salary paid to Mrs Zuniga who is a full time employee of the company		350,000
Wages to Mrs Zuniga's house maid		50,000
Salaries of other employees		<u>3,100,000</u>
		<u>3,500,000</u>

(ii) General expenses include:	
Subscription of trade magazines	200,000
Cost of company branded gifts	750,000
Fines paid for traffic offence committed by Mrs. Zuniga	100,000
Stationery	250,000
Hire of generator set for Mr. Zuniga's private residence	<u>300,000</u>
	<u>1,600,000</u>

- (iii) Finance cost include ₦ 200,000 in respect of Mr. Zuniga's private loan.
- (iv) Mr. Zuniga has a life insurance policy on his life for which he pays an annual premium of ₦ 350,000.
- (v) Mr. Zuniga made contribution of ₦ 150,000 to National Health Insurance Scheme (NHIS) during the year.
- (vi) Mr. Zuniga has 3 children and also maintained his aged parent.
- (vii) Capital allowance agreed with the relevant tax authority is ₦ 5,500,000.

**Required:**

- (a) Compute adjusted profit for the relevant tax year
- (b) Compute the tax liability and tax payable by Mr. Zuniga for the relevant tax year.  
(WHT rate on dividend and rent is 10%)



# *BASIC ETHICAL ISSUES IN TAXATION*

Chartered Accountants have a responsibility to act in the public interest and comply with ethical standards. They must also observe high standards of professional conduct and may face disciplinary action if they bring discredit to the profession. The ICAN Act aims to maintain these standards and provides guidelines for specific areas.

The International Ethics Standards Board for Accountant (IESBA) is an independent standard-setting body under IFAC that develops and issues high-quality ethics standards for professional accountants worldwide. Its mission is to serve the public interest, promote good ethical practices, and foster international debate on ethical issues. IFAC aims to strengthen the accountancy profession and promote adherence to high-quality professional standards for the development of strong international economies.

The fundamental principles of ethics as specified by the IESBA are:

- a. **Integrity:** A professional accountant shall comply with the principle of integrity, which requires an accountant to be straightforward and honest in all professional and business relationships. Integrity implies fair dealing and truthfulness. A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information contains materially false or misleading statement.
- b. **Objectivity:** A professional accountant shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others. A professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the accountant's professional judgment regarding that activity.
- c. **Professional competence and due care:** A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation and act diligently and in accordance with applicable technical and professional standards.
- d. **Confidentiality:** A professional accountant shall comply with the principle of confidentiality, which requires an accountant to respect the confidentiality of information acquired as a result of professional and business relationships. The principle of confidentiality imposes an obligation on all professional accountants to refrain from:

- Disclosing outside the firm or employing organization confidential information acquired as a result of professional and business relationships without proper and specific authority or unless there is a legal or professional right or duty to disclose; and
- Using confidential information acquired as a result of professional and business relationships to their personal advantage or the advantage of third parties.

- e. **Professional Behaviour:** A professional accountant shall comply with the principle of professional behavior, which requires an accountant to comply with relevant laws and regulations and avoid any conduct that the accountant knows or should know might discredit the profession. A professional accountant shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles.

#### **The conditions when information on taxpayers may be disclosed**

Confidentiality must be maintained by tax practitioners even after a client relationship ends. Prior experience may be used, but confidential information cannot be disclosed as it could result in professional misconduct. Exceptions exist, and a tax consultant may disclose information on a client under certain circumstances. The following are circumstances where a tax consultant may disclose information on a taxpayer when:

- a. Disclosure is permitted by law
- b. Disclosure is authorised by the client, that is, the taxpayer;
- c. Disclosure is required by law, for example:
  - Production of documents or other provision of evidence in the course of legal proceedings; or
  - Disclosure to the appropriate public authorities of infringements of the law that come to light; and
- d. There is a professional duty or right to disclose, when not prohibited by law; for example
  - To respond to an inquiry or investigation by a member body or regulatory body such as ICAN, CITN, etc.;
  - To protect the professional interests of a professional body, that is, ICAN, CITN, etc. in legal proceedings; or
  - To comply with technical standards and ethics requirements.

## **Significance of legal and ethical issues in preparation of returns and in reporting**

Professional accountants in tax practice must take note of legal and ethical issues when preparing tax returns. Non-adherence could lead to following consequences from the professional body:

- Imposition of Fines
- Suspension from membership of the Institute for a period of time
- Expulsion from membership of the Institute
- Withdrawal of Certificate and Licence to Practice
- Reprimand
- Payment of costs associated with the investigations and meetings

## **Designing ethical safeguards against threats from employers, clients, government agencies and other stakeholders**

A professional accountant in public practice shall not knowingly engage in any business, occupation, or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.

Compliance with the fundamental principles may potentially be threatened by a broad range of circumstances and relationships.

Threats fall into one or more of the following categories:

- a. **Self-interest** - The threat that a financial or other interest will inappropriately influence the professional accountant's judgment or behavior. For instance, a firm having undue dependence on total fees from a client.
- b. **Self-review** - The threat that a professional accountant will not appropriately evaluate the results of a previous judgment made or service performed by the professional accountant, or by another individual within the professional accountant's firm or employing organization, on which the accountant will rely when forming a judgment as part of providing a current service.
- c. **Advocacy** - The threat that a professional accountant will promote a client's or employer's position to the point that the professional accountant's objectivity is compromised.
- d. **Familiarity** - The threat that due to a long or close relationship with a client or employer, a professional accountant will be too sympathetic to their interests or too accepting of their work.
- e. **Intimidation** - The threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the professional accountant. For instance, a firm

being threatened with dismissal from a client engagement.

## **Safeguards against threats:**

Safeguards are actions or other measures that may eliminate threats or reduce them to an acceptable level. They fall into two broad categories:

- a. Safeguards created by the profession, legislation or regulation - This includes:

- Continue professional development requirement
- Professional standards
- Corporate governance regulations

- b. Safeguards in the work environment - This include:

- Leadership and transparency
- Recruitment procedures for high caliber staff

## **Practical process to address tax laws violation by professional accountants in tax practice**

When a professional accountant in tax practice becomes aware of a non-compliance or suspected noncompliance with provisions of tax laws, the following process/ steps are to be taken.

- Become aware (see it, but do not seek it)
- Obtain an understanding of the matter
- Address the issue with management and those charged with governance
- Communicate the matter to the entity's external auditor
- Consider whether further action is needed in the public interest e.g. disclosing to authorities or withdrawing from the engagement
- Documentation i.e. the matter, result of discussion with management or those charged with governance, actions taken

## **Case Study 1: Ethical Dilemma in Accounting Practice**

John is a Chartered Accountant who works for a small accounting firm that provides tax and accounting services to clients. One of the clients, a successful business owner, has approached John with a request to prepare financial statements that show lower profits for tax purposes. The client has offered a significant bonus to John if he can achieve this outcome.

John is aware of the five fundamental principles of ethics in accounting, namely, integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. He knows that his actions must be in compliance with these principles.

**Integrity:** John's integrity is challenged as he is being offered a significant bonus to manipulate financial statements for the client's benefit. He must ensure that his actions are in line with his professional and personal values.

**Objectivity:** John's objectivity is important as he must be impartial and not influenced by personal interests, biases or undue influence. He should not compromise his professional judgement by accepting the client's offer of a bonus.

**Professional competence and due care:** John must ensure that he has the necessary skills, knowledge, and expertise to provide reliable and high-quality services to his clients. He should consider the potential legal and ethical implications of his actions and avoid engaging in activities that could harm the reputation of the accounting profession.

**Confidentiality:** John must maintain the confidentiality of client information, and not disclose any confidential information acquired or received during the professional relationship with the client, unless there are exceptional circumstances.

**Professional behaviour:** John must act in a manner that upholds the reputation of the accounting profession and does not engage in activities that could damage the public's trust in the profession. He should also comply with the professional standards and ethical guidelines set by the accounting regulatory bodies.

In this scenario, John must apply the fundamental principles of ethics to resolve the ethical dilemma. He should decline the client's offer of a bonus and explain that it would be unethical and illegal to prepare financial statements that do not reflect the

true financial position of the business. John should also discuss with his firm's management and seek their advice on how to proceed with the client's request.

In conclusion, ethical dilemmas are common in accounting practice, and it is crucial that accounting professionals uphold the five fundamental principles of ethics. They should act with integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour, and seek guidance from regulatory bodies and management when faced with ethical dilemmas.

## **Case Study 2: Ethical Dilemma in Accounting Practice**

Sarah is a Certified Public Accountant (CPA) who works for a large accounting firm. She is responsible for auditing the financial statements of a client, a publicly-traded manufacturing company. As she begins the audit, she faces several ethical dilemmas that challenge her objectivity and professional judgment.

**Self-Interest Threat:** Sarah is the lead auditor for the manufacturing company and has a financial interest in the company's stock. She also owns stock options that will become valuable if the company's stock price rises. Sarah's financial interest in the company could influence her judgment and create a self-interest threat.

**Self-Review Threat:** The manufacturing company has engaged Sarah's accounting firm to provide tax consulting services. Sarah is also responsible for reviewing the work of her colleagues who are providing the tax services. This creates a self-review threat as Sarah could overlook potential errors in the tax services provided by her colleagues.

**Advocacy Threat:** The manufacturing company's management has requested that Sarah help them in defending a lawsuit that has been filed against the company. This creates an advocacy threat as Sarah may be seen as advocating for the interests of the client rather than maintaining her independence and objectivity.

**Familiarity Threat:** Sarah has audited the manufacturing company for several years, and she has developed a close relationship with the client's management. This creates a familiarity threat as Sarah may be more inclined to overlook potential issues or weaknesses in the company's financial statements.

**Intimidation Threat:** Sarah's manager has been pressuring her to complete the audit within a tight deadline. This creates an intimidation threat as Sarah may be more likely to overlook potential issues to meet the deadline or to avoid conflict with her manager.

In this scenario, Sarah must identify and mitigate the ethical threats to maintain her objectivity and independence. She should disclose her financial interest in the manufacturing company to her manager and recuse herself from any decision-making related to the client's stock options. Sarah should also ensure that she reviews her colleagues' work with objectivity and independence, and she should not advocate for the client in the lawsuit.

Sarah should maintain professional skepticism and conduct a thorough audit to identify any potential issues with the manufacturing company's financial statements. She should also communicate any potential issues to the client's management and her firm's management.

In conclusion, ethical dilemmas are common in accounting practice, and it is crucial that accounting professionals identify and mitigate the ethical threats to maintain their independence and objectivity. They should be aware of the self-interest threat, self-review threat, advocacy threat, familiarity threat, and intimidation threat, and seek guidance from regulatory bodies and management when faced with ethical dilemmas.



# *TAXATION OF PARTNERSHIP INCOME*

Partnership is a business that subsists between two or more persons carrying on business with the aim of making profit. However, section 19(2)(b) of the CAMA allows a partnership of more than twenty persons to be formed in Nigeria provided it is for the purpose of carrying on practice as legal practitioners or chartered accountants.

#### PARTNERSHIP AGREEMENT

The following are some of the matters usually dealt with in a partnership agreement:

- a) Amount to be contributed by each partner as capital.
- b) The rate of interest payable, if any, on capital.
- c) Salary, if any, payable to a partner.
- d) The rate of interest payable on loan provided by any partner to a partnership.
- e) Profit and loss sharing ratio.
- f) The rate of interest on drawings made by a partner.

However, where no fixed terms are agreed upon by the partners or the partnership agreement is not in writing, then the content of the partnership deed of the Partnership Agreement of 1890 would guide the conduct of the partners in the partnership business and they include:

- a) Each partner is to contribute the same amount of capital;
- b) No partner is entitled to interest on capital;
- c) No partner shall be entitled to Salary;
- d) Profits and losses are to be shared equally; and
- e) A partner who advances the partnership shall be entitled to an interest of 5% per annum on such an advance.

#### RELEVANT TAX AUTHORITY

The relevant tax authority in relation to a partnership for a year of assessment is the tax authority of the territory in which the principal office or place of business of the partnership in Nigeria is situated on the first day of that year, or is first established during that year.

#### TAXABLE INCOME OF PARTNERS

The income of a partner from a partnership in Nigeria shall be deemed to be derived from the territory of the relevant tax authority, in relation to that partnership. Income taxable in the hand of partner shall include: Salary to a partner; Leave passage; Interest on capital; and Share of profit or loss.

#### ALLOWABLE AND NON-ALLOWABLE EXPENSES

Allowable and non-allowable expenses to a partnership business are the same as those dealt with under chapter 8. Please refer to chapter 8 for the allowable and disallowable expenses.

#### PARTNERSHIP LOSS

Where upon the computation of the assessable gain or profit of partners from the partnership there results a loss, the loss shall be shared among the partners in accordance with the partnership agreement and thereafter set off against the other income of the partners (i.e. current year loss relief). Any unrelieved loss shall be carried forward and set off against future profit of the partners (i.e. carried forward loss relief).

#### CHANGE IN PARTNERSHIP

A change in the composition of a partnership business shall include the following:

1. Admission of a Partner: Where a new partner is admitted into a partnership, he is deemed to have commenced a new business, hence the applications of the commencement rule. However, where a partner resigns from another partnership business in the same or similar trade before forming or joining a new one, he is deemed to be in continuous business, hence there will be no application of the commencement rule. In other words, he will be assessed on a preceding year basis.
2. Retirement of a Partner: Where an existing partner retires, resigns or dies, he is deemed to have ceased business, hence the applications of the cessation rule. Where however, a partner retires or resigns from a partnership in the same or similar trade to join another one, the cessation rule shall not be applicable. In other word, he will be assessed on a preceding year basis.
3. Amalgamation of Partnership: In a situation of amalgamation of two or more partnerships, there would be no application of the commencement or cessation rule. The qualifying capital expenditure transferred to the new partnership is deemed to have been transferred at its tax written down value, hence there would be no computation of balancing adjustment; only annual allowance is claimable.
4. Conversion into a Limited Liability Company: Cessation rules apply in a situation in which a partnership is converted into a limited liability company as the old partnership is deemed to have ceased business. In the same vein, the commencement rules apply to the new company. All the qualifying capital

expenditure transferred is deemed transferred at the agreed values and there would be computation of balancing adjustment. However, in computing capital allowances on the assets transferred, initial allowance is not allowed and the capital allowance claimable would take into account the duration of time the asset has been with the previous owners.

#### Question 1

Erewa, Sola and Wole have been in partnership as medical practitioners for about seven years. The operational result of the partnership for the year ended 30 June 2013 was as follows:

	N	N	N
Gross Profit			40,200,000
Deduct:			
Salaries and wages		13,550,000	
Transport and travelling		1,600,000	
Insurance		350,000	
Rent and rates		800,000	
Office expenses		1,400,000	
Professional fees		3,000,000	
Bad debt provisions		650,000	
Staff loan written off		270,000	
Depreciation		7,800,000	
Interest on Loan by Erewa		455,000	
Interest on Capital Accounts:			
Erewa	225,000		
Sola	315,000		
Wole	360,000	900,000	(30,775,000)
Net Profit for the year			9,425,000

Other relevant information is as follows:

- (i) Bad debts provision was based on 20% of debts over 9 months old.
- (ii) Office expenses include a donation of N800,000 to an old people's home.
- (iii) Capital allowances agreed with the Revenue was N9,500,000.
- (iv) Only Erewa is married with two children below 16 years of age.
- (v) Partners' profit sharing ratio is Erewa - 5, Sola - 7 and Wole - 8

You are required to compute:

- (a) The Adjusted income of the partnership for tax purposes;
- (b) The chargeable income of each partner for tax purposes; and
- (c) The tax payable by each of the partners.

#### Question 2

Dejo, Akanbi and David have been in partnership for many years, providing specialized engineering services to the oil sector. Accounts are made to 31 December each year. The following are the adjusted profits for:

	N
Year ended 31 December 2009	1,440,000
Year ended 31 December 2010	1,650,000
Year ended 31 December 2011	2,400,000
Year ended 31 December 2012	2,200,000

Additional information is provided as follows:

- (i) Partners are to share profits in the ratio 1:2:1

- (ii) Salaries are drawn in this order:

Dejo	N360,000
Akanbi	N240,000
David	N180,000

- (iii) Interest on Capital is 6%

- (iv) The Capital account of each partner is:

Dejo	N150,000
Akanni	N300,000
David	N210,000

- (v) On 31 May 2011, Dejo retired and Dandy was admitted on 1 June of same year, on a salary of N180,000 per annum. He brought in a capital of N210,000 and was to have the sharing ratio which Dejo used to enjoy.

You are required to:

- (a) Compute each partner's income from the partnership business for 2011 year of assessment.
- (b) Itemise the rules of commencement in respect of partnership income.

Question 3

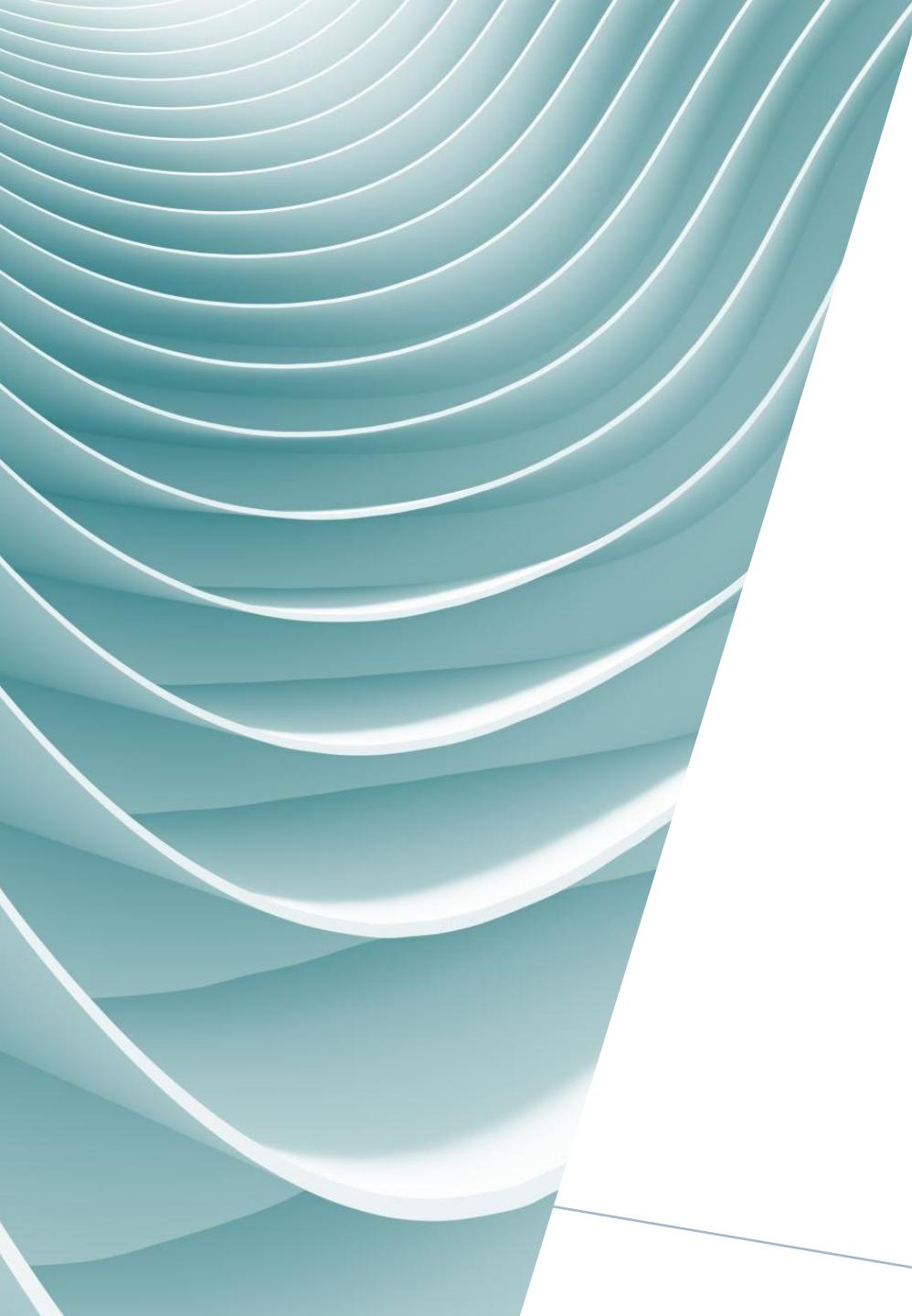
Professor Wachukwu and Dr. Orlando are partners in a Legal firm based in Calabar. The firm of Worland & Associate Legal Practitioners renders legal and secretarial services. The Statement of Profit or Loss of the firm for the year ended 31 December 2013, disclosed the following details:

	N	N
Legal Fees		33,000,000
Fees for Secretarial services	9,500,000	
Sundry incomes	4,500,000	
Interest on fixed deposit	2,800,000	16,800,000
49,800,000		
Expenses:		
Salaries	3,200,000	
Office rent	2,200,000	
Sundry expenses	1,200,000	
Depreciation	4,800,000	
Finance cost	900,000	
Administrative expenses	200,000	
Repairs and maintenance	700,000	(13,200,000)
Net Profit		36,600,000
Additional information:		
(i) Salary includes salaries paid to the partners:		
Professor Wachukwu	N550,000	
Dr. Orlando	N400,000	
(ii) Sundry expenses include N30,000 paid to Dr. Orlando's personal driver as salary for the year.		
(iii) Finance cost is made up of:		
Interest on loan to the firm	300,000	
Bank charges	150,000	
Interest on Partners private loan:		
Professor Wachukwu	150,000	
Dr. Orlando	100,000	
Interest paid to Professor Wachukwu on loan to the firm	200,000	
(iv) Repairs and maintenance is made up of:		
Maintenance of partners' residence:		
Professor Wachukwu	200,000	
Dr. Orlando	200,000	
Office repairs	300,000	

- (v) Both partners are married with 3 children all of school going age. Professor Wachukwu maintain his aged parent and incurred N30,000 annual on his parents.
- (vi) Dr. Orlando paid life insurance premium of N2,800,000 annually on his life and that of his spouse.
- (vii) Sundry income includes profit on sale of non-current assets amounting to N980,000.
- (viii) Capital allowance agreed with the relevant tax authority amounted to N6,400,00.
- (ix) Profits and losses are to be shared equally.

Required:

Compute the assessable income and tax liability of the partners for the relevant tax year.

A large, abstract graphic on the left side of the page features a series of concentric, wavy bands in a teal or light blue color. These bands are separated by thin white lines and curve outwards from the bottom left corner towards the center of the page.

# *VALUE ADDED TAX*

Value Added Tax (VAT) is an indirect tax based on the consumption of some specified goods and services. It was introduced into the Nigeria tax system through VAT Decree No 102 of 1993 which repealed the Sales Act of 1986 and it became effective 1 Jan 1994. Recent amendments to the VAT Act was through the finance act 2019. The burden of VAT is borne solely by the final consumer. The rate of VAT in Nigeria is currently 7.5%.

### GENERAL FEATURES OF VAT IN NIGERIA

- VAT is a consumption tax designed primarily to tax private individuals, corporate bodies, NGOs and Government through its Ministry, Departments and Agencies (MDAs) when they consume VATable goods and services
- It is a multi-stage tax which applies wherever goods and services are supplied by a producer
- The tax is levied on the value gained by the products or service before being sold. It is applied at several points in the production and distribution chain until the item reaches the final consumer
- The tax is at a flat rate of 7.5%
- It has a wide coverage as it applies to all goods and services including import unless those items exempt from the tax
- It has a built-in self-assessment mechanism that allows a business to claim credit for the tax paid on its input and calculate the tax liability on its output.

### ADVANTAGES OF VAT

- It serves as a significant source of revenue to the government
- It is difficult to evade because the tax is paid whenever VATable goods are purchased
- It encourages the exportation of Nigerian goods since exported goods and services are zero-rated
- The yield from VAT could be used to estimate growth rate of the economy because it will reveal the consumption pattern
- It improves fairness and tax system since the consumer pays in line with their ability to buy goods and services
- VAT is easy to collect since it is being paid at the point of consumption of goods and services
- It favours the marginalized masses because it does not affect the basic needs of life
- VAT provides employment opportunities for young graduates as the FIRS VAT Directorate are adequately staffed

### DISADVANTAGES OF VAT

- There is problem of ineffective administration of VAT as it requires enormous paperwork and adequate record keeping when compared to sales tax
- There is higher cost of administration to government as higher number of tax officials is needed to administer VAT
- VAT computation entails a lot of arithmetic, and this makes it tedious
- It imposes economic hardship on the marginalized masses because traders may take advantage of the situation to inflate the prices of goods
- It can lead to double tax on the workers as they pay PAYE and still pay VAT on goods bought
- Businesses incur additional cost of keeping VAT records and processing information required for the payment of tax and for claiming refund from the FIRS
- Most Oil and Gas Companies and Government's Ministries, Departments and Agencies deduct VAT at source without remitting such to FIRS thereby increasing the burden of contractors and suppliers.

### Administration of VAT

Section 7 of the Act specifically states that the VAT shall be administered and managed by the Federal Inland Revenue Service Board (formerly FBIR). The Board may do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in accordance with the provisions of the Act.

#### Goods

Goods have been defined by section 46 of Value Added Tax Act – as amended by Finance Act, 2020, to mean “all forms of tangible properties, movable or immovable, but does not include land and building, money or securities”

#### “Services” means:

- (i) “Anything, other than goods or services provided under a contract of employment; and
- (ii) Includes any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security”.

#### Exported service

A service will be regarded as exported service under the following conditions:

- (a) The service must be provided by a Nigerian resident to a non-resident; and
- (b) The non-resident person to whom the service is provided must be outside Nigeria when the service is consumed.

## **Taxable persons**

A taxable person is a person who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of services, wholesaler, supplier of goods including mining and other related activities or person exploiting tangible or intangible property for the purpose of obtaining income there from by way of trade or business or includes a person and an agency of government acting in that capacity.

## **Taxable supplies**

Section 46 of VAT Act (as amended) states that “any transaction for sale of goods or the performances of a service for a consideration in money or money’s worth” is regarded as taxable supplies.

## **When goods and services shall be deemed to be supplied in Nigeria in accordance with section 2 of VAT Act – as amended by Finance Act, 2020**

Essentially, these are goods and services liable to value added tax at the prescribed rate. Goods and services shall be deemed to be supplied in Nigeria if:

### **(a) In respect of goods:**

- (i) These goods shall be physically present in Nigeria at time of supply, imported into Nigeria, assembled in Nigeria, or installed in Nigeria; or
- (ii) The beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right is situated, registered or exercisable in Nigeria.

### **(b) In respect of services:**

- (i) The service is rendered in Nigeria by a person physically present in Nigeria at the time of providing the service;
- (ii) The service is provided to and consumed by a person in Nigeria, regardless of whether the service is rendered within or outside Nigeria or whether or not the legal or contractual obligation to render such service rests on person within or outside Nigeria; and
- (iii) The service is connected with existing immovable property (including the services of agents, experts, engineers, architects, valuers, etc) where the property is located in Nigeria)

### **(c) In respect of an incorporeal:**

- (i) The exploitation of the right is made by a person in Nigeria;
- (ii) The right is registered in Nigeria, assigned to or acquired by, a person in Nigeria regardless of whether the payment for its exploitation is made within or outside Nigeria; or

(iii) The incorporeal is connected with a tangible or immovable asset located in Nigeria.

## **Registration and deregistration for value added tax (VAT)**

### **Registration for VAT**

- (i) Section 8 of the VAT Act, having been amended, all taxable persons are mandated to register immediately for the tax upon commencement of business.

### **(ii) Government ministries, etc., as agents of the board**

Every government ministry, statutory body and other agency of government shall register as agents of the FIRS for the purpose of collection of tax under this Act. Every contractor transacting business with a government ministry, statutory body and other agency of the federal, state or local government shall produce evidence of registration with the FIRS as a condition for obtaining a contract.

### **(iii) Non-resident companies – section 10 of VAT Act (as amended)**

The Act specifies that a non-resident company that carries on business in Nigeria shall register for the tax with the FIRS and obtain Tax Identification Number (TIN), using the address of the person with whom it has a subsisting contract, as its address for purposes of correspondence relating to the tax.

A non-resident company shall include the tax in its invoice and the person to whom the goods or services are supplied in Nigeria shall remit the tax in the currency of the transaction.

For a non-resident company which has a fixed base in Nigeria, it must register for the tax using the address of the fixed base, issue VAT invoice, file return, remit the tax, submit itself to tax examinations, etc.

A non-resident person who makes a supply of taxable goods or services in Nigeria may appoint a representative for the purposes of its tax obligations.

## **Deregistration for VAT – section 8 (3) of VAT Act (as amended)**

A taxpayer who permanently ceases business is expected to notify the Service of such cessation within 90 days for the purposes of deregistration.

Where taxable supplies are made after the date of cessation, such supplies will be deemed to have been made on the day immediately preceding cessation.

Where the taxpayer fails to notify the Service on cessation of business, penalties for failure to file returns will continue to apply.

## **Exemptions**

The following goods and services are exempted from VAT:

(a) Goods exempt

These include:

- (i) All medical and pharmaceutical products;
- (ii) Basic foods items;
- (iii) Books and educational materials;
- (iv) Baby products;
- (v) Plant, machinery and goods imported for use in the export processing zone or free trade zone; provided that 100% production of such company is for export otherwise tax shall accrue proportionately or the profits of the company;
- (vi) Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations;
- (vii) Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes;
- (viii) Oil exports erroneously written as "All exports";
- (ix) Fertilizers locally produced, agricultural and veterinary medicine;
- (x) Vegetable oil;
- (xi) Motorcycle (CKD) / Bicycle (SKDs) and their spare parts;
- (xii) Corporate bonds and securities (10 yrs from 2012);
- (xiii) Life insurance;
- (xiv) Locally manufactured sanitary towels, pads or tampons;
- (xv) Commercial aircrafts, commercial aircraft engines and commercial aircraft spare parts; and
- (xvi) Commercial and residential rent.

(b) Services exempt

These include:

- (i) Medical services which means healthcare related services for both humans and animals rendered by a qualified health practitioner, excluding cosmetology, spa, gymnasium and similar services;
- (ii) Services rendered by micro-finance banks, people's banks and mortgage institutions;
- (iii) Plays and performances conducted by educational institutions as part of learning;
- (iv) All exported services;
- (v) Shared passenger- transport service which is made available for public use but this does not include hired or rented vehicles or transportation apparatus for private use;

(vi) Training and education organized by not- for- profit or public educational institutions;

(vii) Tuition relating to nursery, primary, secondary and tertiary education;

(viii) Airline transportation tickets issued and sold by commercial airlines registered in Nigeria; and

(ix) Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.

## **Zero-rate supplies and services**

Certain goods and services are classified as zero-rate. These goods and services are within the ambit of VAT Act, but the applicable rate is 0%.

These include:

- (a) Non oil exports;
- (b) Goods and services purchased by diplomats; and
- (c) 'Humanitarian donor funded project includes project undertaken by non- government organisations, religious and social clubs or societies recognised by law whose activity is not for profit and in the public interest.

## **Obligation for records and accounts keeping, valid VAT invoice and preparation of VAT accounts**

A person who is registered with the FIRS for the purpose of the tax (i.e. VAT) is obligated to keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act.

A taxable person who fails or refuses to register with the FIRS within the specified timeline shall be liable to pay as penalty an amount of:

- (a) N50,000 for the first month in which the failure occurs; and
- (b) N25,000 for each subsequent month in which the failure continues.

A taxable person who is registered for tax is also obligated to issue valid VAT invoice as well as maintain VAT accounts at all times. Therefore, if a taxable person fails to issue tax invoice or issue an invalid tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of 50 per cent of the cost of the goods or services for which the invoice was not issued.

Also, a taxable person who fails to keep proper records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of N2,000 for every month in which the failure continues.

## **Requirements for filing of VAT returns, and remittances of VAT liability – section 16 of VAT Act (as amended)**

A taxable person shall render to the FIRS, on or before the 21st day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner, as the Federal Inland Revenue Service (FIRS) may, from time to time determine. A person who imports taxable goods into Nigeria shall render returns on all the taxable goods imported by him into Nigeria.

A taxable person shall, on rendering a return:

- (a) If the output tax exceeds the input tax, remit the excess to the FIRS; or
- (b) If the input tax exceeds the output tax, be entitled to a refund of the excess tax from the FIRS, on production of such documents, as may be required of him from time to time. An importer of taxable goods shall, before clearing those goods, pay to the FIRS the tax due on those goods.

The Nigerian Customs Services shall, before releasing taxable goods to its importer, demand the Value Added Tax Compliance Certificate issued by the FIRS on those goods.

## **Limitation of the scope of input tax**

The input tax allowed as deduction from output tax is limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product, on which the output tax is charged. Consequently, input tax:

- (a) On any overhead, service, and general administration of any business which otherwise can be expended through the statement of profit or loss; and
- (b) On any capital item and asset, which is to be capitalized along with cost of the capital item and asset are not allowed as a deduction from output tax.

Every ministry, statutory body or any other agency of government and oil & gas companies shall, at the time of making payment to a contractor, remit the tax charged on the contract to the FIRS.

The remission shall be accompanied with a schedule, showing the name and address of the contractor, invoice number, gross amount of invoice, amount of tax and the month of return.

## **Self-account provision – Section 14 of VAT Act (as amended)**

A self-account provision for all supplies for which VAT was not charged was introduced by the amendment of section 14 (3) of the Value Added Tax Act.

The self-account provision imposed a duty to withhold and remit VAT on a taxable person to whom a supply is made in Nigeria where:

- (a) The supplier is a person exempt from charging VAT under the Act or otherwise failed to charge VAT; or
- (b) The supplier is a foreign company without a fixed base (permanent establishment) in Nigeria, whether or not VAT is included in the invoice.

The taxpayer is expected to remit the tax due in the currency of transaction on or before the 21st day of the month immediately following the month of transaction, using a schedule in the form prescribed by the Service.

## **Treatment of VAT on imported and exported goods and services**

### **(a) VAT on imported goods and services**

(i) On imported goods VAT will be charged on non-exempted imported goods into Nigeria and it is based on government assessment via Nigeria Custom Service.

There are basically four points of VAT payments for imported goods. They are through:

- Nigeria Customs Service (NCS)
- Nigeria Port Authority (NPA);
- Shipping companies or airlines; and
- Clearing and forwarding agents.

The VAT assessment payable through Nigeria Customs Service (NCS) is usually calculated via the summation of the following:

- Cost, insurance and freight (CIF) value of goods imported;
- Import duty value;
- Sur-charge; and
- Any other charges which are collectable by the Nigeria Customs Service. The total sum above is multiplied by VAT rate of 5% to arrive at the VAT payable on import.

(ii) On imported services: VAT is payable on services received from outside Nigeria if such services are supplied to a Nigerian customer.

**(b) VAT on export:** - All exported goods and services are exempted from VAT. This is in line with the concept of destination principle, which allows for value added taxes to be retained by the country where the taxed product is being sold/consumed.

## Treatment of VAT on sale and transfer of assets amongst related parties in business reorganisation and restructuring – section 45 of VAT Act (as amended)

Assets employed in trade or business sold or transferred, where a trade or business carried on by a company is sold or transferred to a Nigerian company in order to achieve a better organisation of that trade or business or to transfer its management to Nigeria, are exempted from VAT.

The conditions precedent for the entities to qualify for this concession are as follows:

- (a) The companies must have been related for not less than a consecutive period of 365 days before the reorganisation; and
- (b) The Service must be convinced that one company has control over the other or some other companies are members of a recognised group of companies.

The VAT exemption granted shall be withdrawn if the assets transferred in the reorganisation are further disposed within 365 days after the reorganisation.

It should be noted that the VAT not paid on assets further disposed within 365 days after the reorganisation, shall be treated as due for penalty and the interest shall be charged accordingly.

## Types of VAT

The three variants of VAT are:

### (a) The gross products variant

This allows deductions for all purchases of raw materials and components. Tax is levied on all sales with no deduction for business inputs. No deduction is made for capital goods, such as, plant and machinery and depreciation.

### (b) The income tax variant

This allows deductions for purchases of raw materials and components plus depreciation on capital goods. The economic base of income variant is the net national product, that is, net investment (gross investment minus depreciation) is taxed.

### (c) The consumption variant

With the consumption variant of VAT, the economic base is equivalent to total private consumption. Here, deductions are made for all business purchases and capital assets. Of all the three variants of VAT, the consumption variant is popular and widely used by many countries including Nigeria.

## VAT recovery

Any tax, penalty or interest that remains unpaid after the period specified for payment may be recovered by the FIRS through proceeding in the Value Added Tax Tribunal. A taxable person who is aggrieved by an assessment made on the person may appeal to the Value added Tax Tribunal.

Appeal from the Value Added Tax Tribunal shall be made to the Federal Court of Appeal.

## VAT compliance threshold – section 15 of VAT Act (as amended)

Based on the provisions of the Finance Act, 2019, only taxable persons with taxable supplies of N25million and above are required to charge, collect, remit the tax and file monthly returns to the Federal Inland Revenue Service.

It should be noted that any taxable person can voluntarily register, charge, collect, remit the tax and file monthly VAT returns if it has not achieved the 25million threshold in respect of taxable supplies but such a person needs to notify the Federal Inland Revenue Service.

Any taxable person who expects to achieve the N25million threshold at a future date within the calendar year is at liberty to immediately commence to charge, collect, remit the tax and file monthly VAT returns.

Where a taxable person achieves taxable supplies of N25million and above in a year, he is expected to file monthly VAT returns even though part or whole of same is exempt from VAT.

## Value Added Tax Technical Committee

There is a Committee known as, the Value Added Tax Technical Committee comprising:

- (a) The Chairman of the Federal Inland Revenue Service (as the Chairman);
- (b) All directors in the Federal Inland Revenue Service;
- (c) The legal adviser to the Federal Inland Revenue Service;
- (d) A director in the Nigeria Customs Service; and
- (e) Three representatives of the state governments who are members of the Joint Tax Board.

### Functions

The functions of the VAT Technical Committee shall be to:

- (a) Consider all the tax matters that require professional and technical expertise and make recommendations to FIRS;
- (b) Advise FIRS, on its duties in administering the tax; and
- (c) Attend to such other matters as FIRS may from time to time refer to it.

### **Powers of state governments to collect consumption tax**

On October 3, 2019, in the case between the Registered Trustees of Hotel owners and Managers Association of Lagos (Hotel owners) v Attorney General of Lagos State (AG Lagos), the Federal High Court sitting in Lagos ruled that Lagos State has the powers to charge and collect consumption tax from hotel, restaurants and event centres within the State.

Based on the 1999 Constitution, tax is in the purview of any state government and the provisions of the VAT Act in respect of this tax are inconsistent with the Constitution and the Taxes and Levies Act, and are therefore, of no legal effect.

The Court also ruled that the Taxes and Levies Act amended in 2015, was enacted after the VAT Act of 1993, its provisions should prevail, having tacitly repealed the provisions of the VAT Act concerning hotels, restaurants and event centres.

Despite conflicting court judgements pre-2019 in respect of the powers of a State to charge and collect consumption tax, the Supreme Court in 2019, upheld the constitutional powers of Lagos State Government to enact the Consumption Tax Law in the case between Attorney General of the Federation v Attorney General of Lagos State.

To date, the Federal Government is restrained by a Federal High Court in Lagos from collecting VAT on transactions which are covered by the Consumption Tax Law, until there is a judgment of a superior court.

Olabisi Limited is a manufacturing outfit based in Mowe, Ogun State.

The company sold its valuable products to a wholesaler, Ake Enterprises, for ₦2,000,000. The wholesaler in turn sold the products to a retailer, Mrs. Ojelade, for ₦3,500,000, who finally sold to consumers for ₦4,200,000.

Assume there was no closing inventory at each stage of the transactions.

**Required:**

Compute total VAT payable to Federal Inland Revenue Service.

Jonathan Ekpudu Trading Company is registered for value added tax (VAT) scheme. The accounting records of the company revealed the following information for the year ended December 31, 2018:

	₦
Revenue (VAT inclusive)	30,400,500
Purchase of raw materials (VAT inclusive)	20,140,650
Transport & travelling (VAT exclusive)	1,215,800
Vehicle running expenses (VAT exclusive)	850,420
Office equipment (VAT inclusive)	2,100,500
Furniture & fittings (VAT exclusive)	1,500,000
Motor vehicle (VAT inclusive)	2,000,600
Audit & accountancy fees (VAT inclusive)	150,000
Bank charges (VAT inclusive)	185,050
Miscellaneous expenses (VAT exclusive)	550,500

**Required:**

Compute the VAT payable by Jonathan Ekpudu Trading Company for the year ended December 31, 2018; and give reasons. Ignore penalties and interest.

Mr. James Clark, the accountant of XYZ Limited, resigned his appointment on December 31, 2018. The company was unable to file its VAT returns as and when due. The tax inspectors visited the company on January 2, 2021, to remind the directors of the need to regularise the filing of monthly VAT returns.

The company filed monthly VAT returns relating to transactions up to December 31, 2019, but failed to file those returns on all transactions for the year ended December 31, 2020.

**Required:**

Compute the penalties payable by the company for failing to file returns on transactions relating to the year ended December 31, 2020.

XYZ Nigeria Limited was incorporated many years ago and it commenced business in February 2015. The company is engaged in the importation and sale of chemical products.

The Chief Accountant of the company resigned in May 2018, and in a chance meeting with the Managing Director, he intimated you that the management of the company would want to ascertain the VAT remittable to the relevant tax authority based on the following financial transactions which took place in June 2018:

	₦
(i) The total value of taxable supplies (goods and services) including exempted/zero – rated supplies and VAT	18,600,000
(ii) Value of exempted/zero – rated supplies included in (a) above	4,800,000
(iii) VAT on domestic supplies/purchases for which invoicing requirements have been met	110,300
(iv) VAT on import	285,600
(v) VAT on purchases not wholly used in making valuable supplies	62,000
(vi) VAT paid on equipment	97,500
(vii) VAT on professional fees paid	48,000
(viii) Bank charges (VAT inclusive)	93,000

All the goods were received and sold during the month.

**Required:**

Compute the VAT remittable to the relevant tax authority in July, 2018.

Shode-Abiala Ventures Limited is a small scale producer of chemicals. The company bought materials worth ₦4,000,000 during the year 2018 from its major supplier, Seun Limited.

Additional sum of ₦1,250,000 was incurred in the process of converting the materials to finished goods. Total revenue (VAT inclusive) of ₦7,650,000 was recorded during the year which represents 75% of the total cost of finished products.

**Required:**

Determine the total VAT payable for the year ended December 31, 2018.

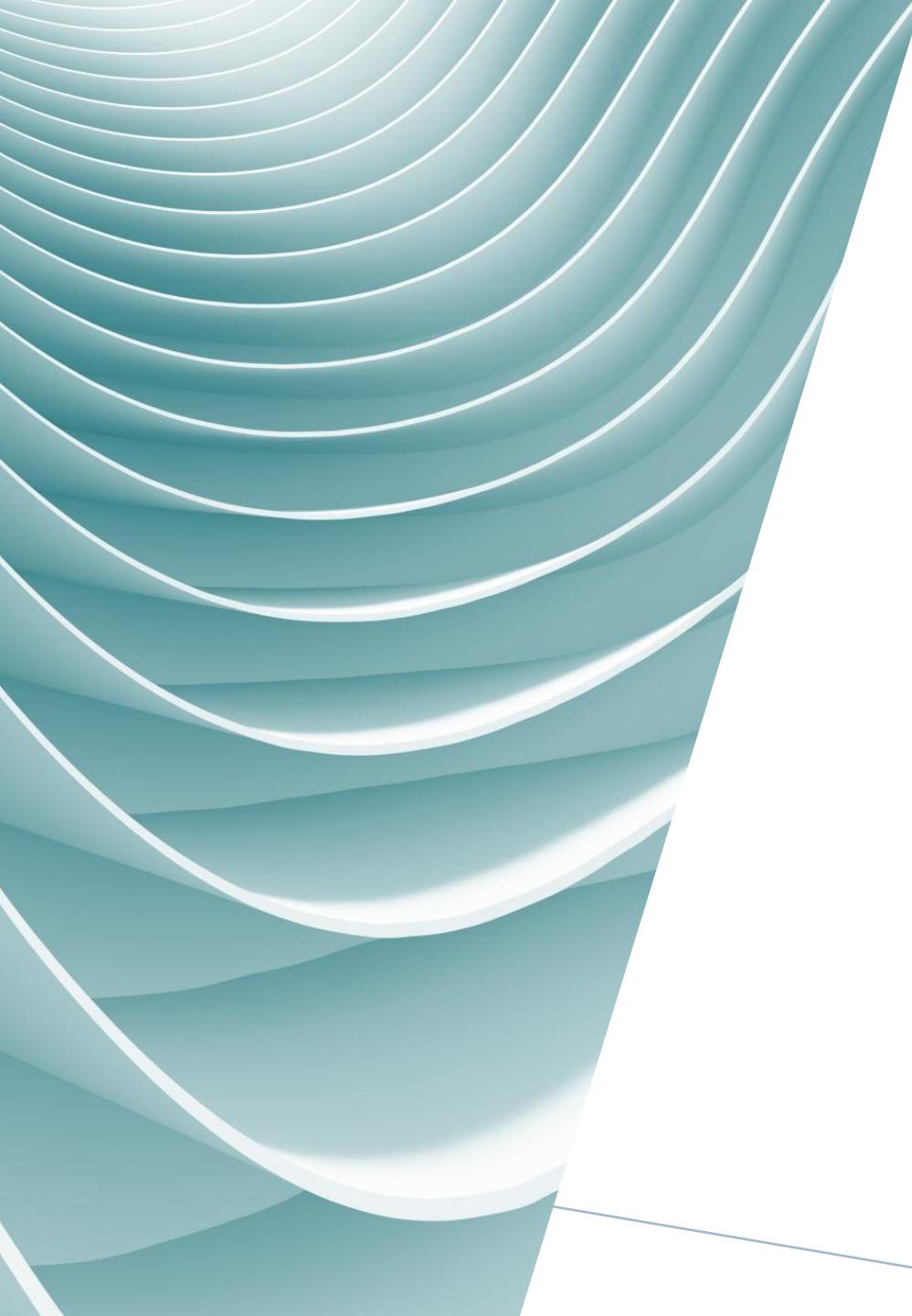
Logudu Suites Limited is a company engaged in hospitality services. The company prepared its financial statements up to 31<sup>st</sup> December of every year and it is a registered Value Added Tax (VAT) agent with Federal Inland Revenue Services (FIRS). VAT accounts in its 2019 ledger showed:

**VAT ACCOUNTS**

	₦'000	₦'000
VAT paid on materials for Kitchen	1,320	
VAT charged on food and drinks	2,310	
VAT charged on accommodation	3,225	
VAT paid on drink for resale	150	
VAT charged on other services	1,365	
VAT paid on furniture and equipment for room	188	
VAT paid on legal and professional services	68	
Amount remitted to FIRS	3,000	
Balance as at 31 <sup>st</sup> December	<u>2174</u>	<u>6,900</u>
	<u>6,900</u>	<u>6,900</u>

**Required:**

- Compute the total amount of VAT due to FIRS for 2019 tax year (6 Marks)
- Determine the balance remittable for the year (1½ Marks)
- State FIVE tangible items exempted from Value Added Tax (VAT) (5 marks)  
(Total 12½ Marks)



# *STAMP DUTIES*

Stamp duties are duties basically on instruments (defined to include every written document). Stamp duties are governed by Stamp Duties Act Cap S8, LFN 2004, which provides for the levying of stamp duties on certain matters specified in the Act, effective April 1, 1993.

The primary objective of stamping of documents is specifically mentioned in Section 22(4) of the Stamp Duties Act, 2004. It states that, ‘An instrument executed in Nigeria or relating wheresoever’s executed, to any property situate or to any matter or thing done or to be done in Nigeria, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force in Nigeria at the time when it was first executed.’

Stamp duty is managed by the Commissioners of Stamp Duties. An instrument must be sent to the Commissioner of Stamp Duties for adjudication since the process for determining formally, the correct duty is by adjudication. An appeal lies from the decision of the Commissioner of Stamp Duties to the High Court, with rights of appeals as for ordinary tax cases.

#### **Instruments and receipts liable to stamp duties**

- a. All written or printed dutiable instruments or receipts which include Leases, contract notes, bills of lading, agreements, duplicates and counterparts, marketable securities, mortgages, notarial acts, policies of insurances, receipts, settlements, share warrants, warrants for goods, appraisement, instrument of apprenticeship, bank notes, bills of exchange and promissory notes, conveyances of sale, other conveyances, exchange partition or division, letters of powers of attorney and voting papers, capital of companies.
- b. All electronic dutiable instruments or receipts (that is, in the form of electronic media content, electronic documents or files, e-mails, short message service (SMS), instant messages (IM), any internet-based messaging service, website or cloud-based platform, etc;
- c. All printed receipts (including POS receipts, fiscalised device receipts, automated teller machine (ATM) print-outs and other forms of written or printed acknowledgement; and
- d. All electronically generated receipts and any form of electronic acknowledgement of money for dutiable transactions

*The scope of instruments liable to stamp duties was expanded by amending section 2 of the Stamp Duties Act, to include “electronic documents”. The amendment further accommodates “electronic stamping” and electronic denoting” of documents.*

#### **Instruments exempted**

Instruments that are specifically exempted are as follows:

- a. Those relating to agreements between the Federal Government and other foreign governments;
- b. Instruments relating to reconstruction and amalgamation; subject to specified condition under section 104(1) of the Act;
- c. Transactions and sales of properties of a company under liquidation arising from a compulsory winding up by a court or creditors’ voluntary winding up;
- d. Based on Central Bank circular number CBN/GEN/DMB/O2/006 dated January 15, 2016, titled “Currency and Remittance of Statutory Charges or Receipts to Nigerian Postal Service under the Stamp Duties Act”, the following transactions are exempted from stamp duties:
  - i. Transactions relating to savings accounts holders, salary accounts or students savings accounts;
  - ii. Payments and deposits for self to self-transactions whether inter or intra-bank; and
  - iii. Payments for goods supplied or services rendered if the amount is under N1,000, payment of salaries or wages, pensions, gratuities, etc
- e. Section 56 of the Finance Act, 2019, exempts the following “exempt receipts” and “general exemptions” from stamp duties:
  - (i) Exempt receipts: Receipts given by any person in a regulated securities lending transaction carried out under regulation issued by the Securities and Exchange Commission
  - (ii) General exemptions which include the following:
    - Shares, stocks or securities transferred by a lender to its approved agent or a borrower in furtherance of a regulated securities lending transaction;
    - Shares, stocks or securities returned to a lender or its approved agent by a borrower in pursuant to a regulated securities lending transaction; and
    - All documents relating to a regulated securities lending transactions carried out under regulations issued by the Securities and Exchange Commission; and
- f. Share transfer based on FIRS information circular on “clarifications on the provisions of the Stamp Duties Act” No: 2020/05 dated April 29, 2020.

## **Relevant tax authorities for collection – section 4 of SDA Act (as amended)**

The relevant tax authorities for collection of stamp duties are FIRS and the relevant state tax authority (RSTA). While FIRS collect stamp duties on instruments executed between two companies or a company and an individual, RSTA collects stamp duties on instruments executed by two or more individuals.

## **Types and forms of stamp duties**

There are two forms of stamp duties. These are:

**(a) Fixed duties:** These are duties that do not vary with the consideration for the document being stamped.

Examples of instruments being assessed by fixed duties are:

- (i) Power of Attorney (POA);
- (ii) Certificate of occupancy (C of O);
- (iii) Appointment of receiver;
- (iv) Memorandum of understanding (MOU);
- (v) Joint venture agreements (JVA);
- (vi) Ordinary agreements receipts;
- (vii) Guarantor forms; and
- (viii) Proxy forms.

**(b) Ad-valorem:** These are duties that vary with the amount of consideration and are in accordance with a scale prescribed by the Act. The Commissioner of Stamp Duties or adjudicator will need to know the amount involved in the transaction. This will enable him determine the appropriate duty to be paid.

Examples of instruments that are assessed based on ad-valorem basis are:

- (i) Deed of assignment;
- (ii) Sales agreement;
- (iii) Tenancy or lease agreement;
- (iv) Insurance policies;
- (v) Contract agreements;
- (vi) Vending agreement;
- (vii) Charter – party;
- (viii) Contract notes;
- (ix) Legal mortgage and debenture loans;
- (x) Share capital of companies; and
- (xi) Promissory notes.

## **Electronic document received in Nigeria**

Documents, receipts or instruments executed outside Nigeria but received in Nigeria must be presented for stamping in accordance with sections 7(3)(a), 23(3) and 47 of the SDA, within:

- (i) 10 days in the case of charter parties;
- (ii) 30 days in the case of instruments subject of ad valorem stamp duties; or
- (iii) 21 days in any other instance.

For an electronic document, receipt or instrument executed outside Nigeria to be regarded as received in Nigeria, it must be:

- (i) Retrieved or accessed in or from Nigeria;
- (ii) Stored or an electronic copy of it is also stored on a device (including a computer, magnetic storage, etc) and brought into Nigeria; or
- (iii) Stored or an electronic copy of it is also stored on a device or computer in Nigeria.

## **Illustration**

Mango Ltd and Orange Ltd carried out a transaction in Togo, using electronic records. These records were stored on a server in Togo or a cloud facility.

Orange Ltd using an electronic device in Nigeria was able to view a copy of the electronic records stored in Togo.

Required:

Were the electronic records received in Nigeria?

## **Suggested solution**

Orange Ltd having assessed the electronic instrument which comprises the electronic records in Nigeria, same is regarded as received in Nigeria.

## **Modes of denoting stamp duties – section 5 of SDA Act (as amended)**

The stamping of duties can be effected through the under listed methods:

- (i) Affixing printed adhesive stamps issued by the Service on instruments;
- (ii) Electronic tagging;
- (iii) Employing a die impressed on an instrument as an adhesive stamp;
- (iv) Issuance of stamp duties certificates;
- (v) Direct electronic printing or impression on the instrument; and
- (vi) Any other form of acknowledgement of payment for stamp duties adopted by the Service.

### **Illustration**

In response to the amount sent by Mr. James, an employee of Circular Limited, the Chief Accountant of Apex Limited sent a message to him on his WhatsApp, which reads "this is to acknowledge the receipt of the sum of N200,000".

**Required:**

Is stamp duty payable based on the message?

### **Solution**

The WhatsApp message sent by the Chief Accountant of Apex Limited to Mr. James evidencing the receipt of N200,000, constitutes a receipt, hence stamp duty is payable.

Mr. James is expected to inform the relevant Stamp Duties Commissioner or FIRS using the e-stamp duty platform. Thereafter, FIRS raises an assessment and stamp duty certificate, or an acknowledgement is issued after the payment of the appropriate stamp duties.

### **Commissioner of Stamp Duties**

Section 6 of the Stamp Duties Act, 2004, provides for the appointment of Commissioners of Stamp Duties by the relevant Civil Service Commission. The commissioners have the care and management of the duties to be taken under this Act.

The functions of a Commissioner of Stamp Duties are:

- (a) He is the administrative head;
- (b) Assessments: He has the duties of assessing documents on appropriate duties and imposing penalties where applicable;
- (c) Stamping or embossments: This can be by way of embossment with dies, affixing adhesive stamps, affixing postage stamps in lieu of adhesive stamps and printing on the instrument;
- (d) The custody of dies and stamps: These are security materials being kept by the commissioner to avoid misuse or loss; and
- (e) Adjudication: A commissioner may be required to express opinion on the amount of duty to be paid on any executed instrument.

### **Process of adjudication, the limits and appeals procedure**

#### **(a) Adjudication**

This is the process of determining the correct amount of duty by the Commissioner of Stamp Duties. A document will be duly stamped and adjudicated only when the applicable duty has been paid.

#### **Benefits of adjudication**

- (i) It is the first step in disputing the views of stamp duties office of the correct amount of duty;
- (ii) It shows the document is genuine;
- (iii) It satisfies the statutory requirement; and
- (iv) It makes instrument once adjudicated, admissible for all purposes notwithstanding any objection as to the duty to be paid.

#### **(b) The limits**

- (i) Where a court has ruled that an instrument has not been duly stamped, subsequent adjudication cannot retrospectively make it duly stamped; and
- (ii) The process cannot prejudice rights that have been asserted before adjudication.

#### **(c) Appeals procedure**

This is a judicial review of the adjudication process. Where any person is aggrieved by an assessment of the Commissioners of Stamp Duties, an appeal lies to the High Court by way of case stated but only after the adjudication and payment of duty.

Any aggrieved person may within twenty days after the date of the assessment and on the payment of the duty, appeal against the assessment to the High Court of the State in which the assessment was made.

He may require the commissioner to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him. The commissioner shall then state and sign a case and deliver such to the aggrieved person. Such a person then files this within seven days in the high court to enable the court to hear the case.

Upon hearing the case, the court shall determine the question submitted and if the instrument in question is in the opinion of the court chargeable with any duty, the Court shall assess such a duty.

If it is decided by the court that the assessment of the commissioner is wrong, the court shall assess the correct amount of duty, and:

- (i) If the amount assessed is less than the duty already paid, the Court shall order a refund of the excess amount together with any penalty or fine which might have been paid, with or without cost; and
- (ii) If the amount assessed is more than the duty already paid, the shortfall, together with any fine or penalty shall be paid with or without costs immediately or within such a time that the court may permit.

Note that the Revenue may not sue to recover the shortfall of any higher duty assessed by the court because the instrument, in such circumstance, is simply treated as not duly stamped until the shortfall is paid.

#### **Time limit for stamping and implications of non-stamping – section 12 of SDA Act (as amended)**

Every instrument first executed in Nigeria, which by law may be or is required to be stamped with an adhesive stamp, shall be stamped on or before its first execution, and such stamp shall be cancelled by the person by whom the instrument is first executed and, at the time of such execution.

Provided that where an instrument is prepared or attested by or executed before a commissioner of oaths, a justice of the peace or a notary public, such stamp shall be cancelled by such commissioner of oaths, justices of the peace or notary public at the time of its first execution.

The following are the implications of non-stamping of instruments require to be stamped:

- a) Such an instrument, which is not duly stamped in accordance with the law in force at the time it was first executed, shall not be given in evidence. This disadvantage cannot be remedied by an agreement between the parties in a case;
- b) Such an instrument is not admissible whether directly or for collateral purpose. The secondary evidence of the instrument is not admissible either; and
- c) Cross-examination upon an unstamped document is not allowed.

It is important to note, however that there are exemptions to the above rules. An unstamped or improperly stamped instrument may be admissible under the following conditions:

- a) Where a criminal proceeding is being held. This is also applicable before a rent tribunal or a proceeding before the Commissioner of Stamp Duties;
- b) Where it is imperative to refresh the memory of a witness;
- c) Where it is necessary to prove an act of bankruptcy;
- d) Where a plaintiff is trying to prevent a transaction from being implemented if it is believed that the agreement is void;
- e) Where the instrument may be admitted subject to an undertaking that the instrument would be stamped later; and
- f) Where it may be used to prove fraud.

#### **Recoverability of outstanding duties**

Based on the provisions of sections 110 – 117 of Stamp Duties Act, FIRS can initiate proceedings for the recovery of any duty imposed by the Act, and any fines and penalties arising from failure to pay or remit duties.

It is pertinent to state that proceedings for the recovery of the aforementioned amounts may be commenced within five years from when the liabilities arose.

It is pertinent to state that FIRS clarified stamp duty on rent or lease as follows:

- (i) 0.78% for a lease term less than 7 years;
- (ii) 3% for a lease term between 7 to 21years; and
- (iii) 6% for a lease term above 21years.

#### **Lost instruments**

- (a) A lost instrument is presumed to have been duly stamped but where there is a proof that it has not been stamped it remains unstamped.
- (b) When a duly stamped instrument has been lost, a replica may by concession be stamped free of charge or if a replica has been stamped, it may be required that the original duty be repaid.
- (c) Claims for stamping of a replica, where an original has been lost, should be sent to the stamp duties office at which the lost document was originally stamped.
- (d) A lost instrument cannot be presented for stamping on payment of the necessary penalties outside the statutory time limit.

#### **Instruments not properly stamped**

An instrument is considered to be improperly stamped where it does not carry the correct duty. An instrument which is not properly stamped is still effective because the failure to stamp an instrument is not a criminal offence. However, an improperly stamped instrument is inadmissible in a court of law.

## **Mode of calculating ad-valorem duty – section 10 of SDA Act (as amended)**

Where an instrument is chargeable with ad-valorem duty in respect of:

- (a) Any money in any foreign currency; or
- (b) Any stock or marketable security, the duty shall be calculated on the value on the date of the instrument, of the money in United States dollars according to the current rate of exchange, or of the stock or security according to the average price thereof.

Where an instrument contains a statement of current rate of exchange, or average rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it shall, so far as regards the subject matter of the statement, be deemed duly stamped, unless it is shown that the statement is untrue, and that the instrument is in fact, insufficiently stamped.

## **Stamping of instruments after execution – section 23 of SDA Act (as amended)**

Any unstamped or insufficiently stamped Instrument, may be stamped with an impressed stamp at any time within forty days from the first execution thereof, upon payment of the duty or unpaid duty only but after that time, the said Instrument may only be stamped upon payment of the unpaid duty and a penalty of twenty naira (N20), and also by way of further penalty, where the unpaid duty exceeds twenty naira, or interest on such duty, at the rate of ten percent per annum, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

In respect of ad-valorem duty, in addition to the unpaid duty, the person must pay a penalty of N20 and a sum equal to the unpaid duty unless there is a reasonable excuse for the delay.

It is however noted that instruments presented for stamping within 40 days following execution may not have a penalty imposed on it.

## **Duty on contracts**

It is the responsibility of any corporate body or Ministry, department or agency (MDA) to charge stamp duty at a rate of 1% of the contract value excluding value added tax (VAT) on all contracts issued to third party vendors. Thereafter, the stamp duties collected should be remitted to the Service.

## **Electronic money transfer levy**

Section 89A of the Stamp Duties Act (as amended) states that:

- (a) "There is imposed a levy, to be referred to as the Electronic Money Transfer Levy, on electronic receipts or electronic transfer for money deposited in any deposit money bank or financial institution, on any type of account to be accounted for and expressed to be received by the person to whom the transfer or deposit is made;
- (b) The levy shall be imposed as a singular and one-off charge of N50 on electronic receipts or electronic transfers of money in the sum of N10,000 or more;
- (c) The Minister of Finance shall, subject to the approval of the National Assembly, make regulations for the imposition, administration, collection and remittance of the levy; and
- (d) Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this section, shall, on the basis of derivation, be distributed as follows:
  - (i) 15% to the Federal Government and the Federal Capital Territory, Abuja; and
  - (ii) 85% to the State Governments.

## **Collection of stamp duty on rent payable to a landlord**

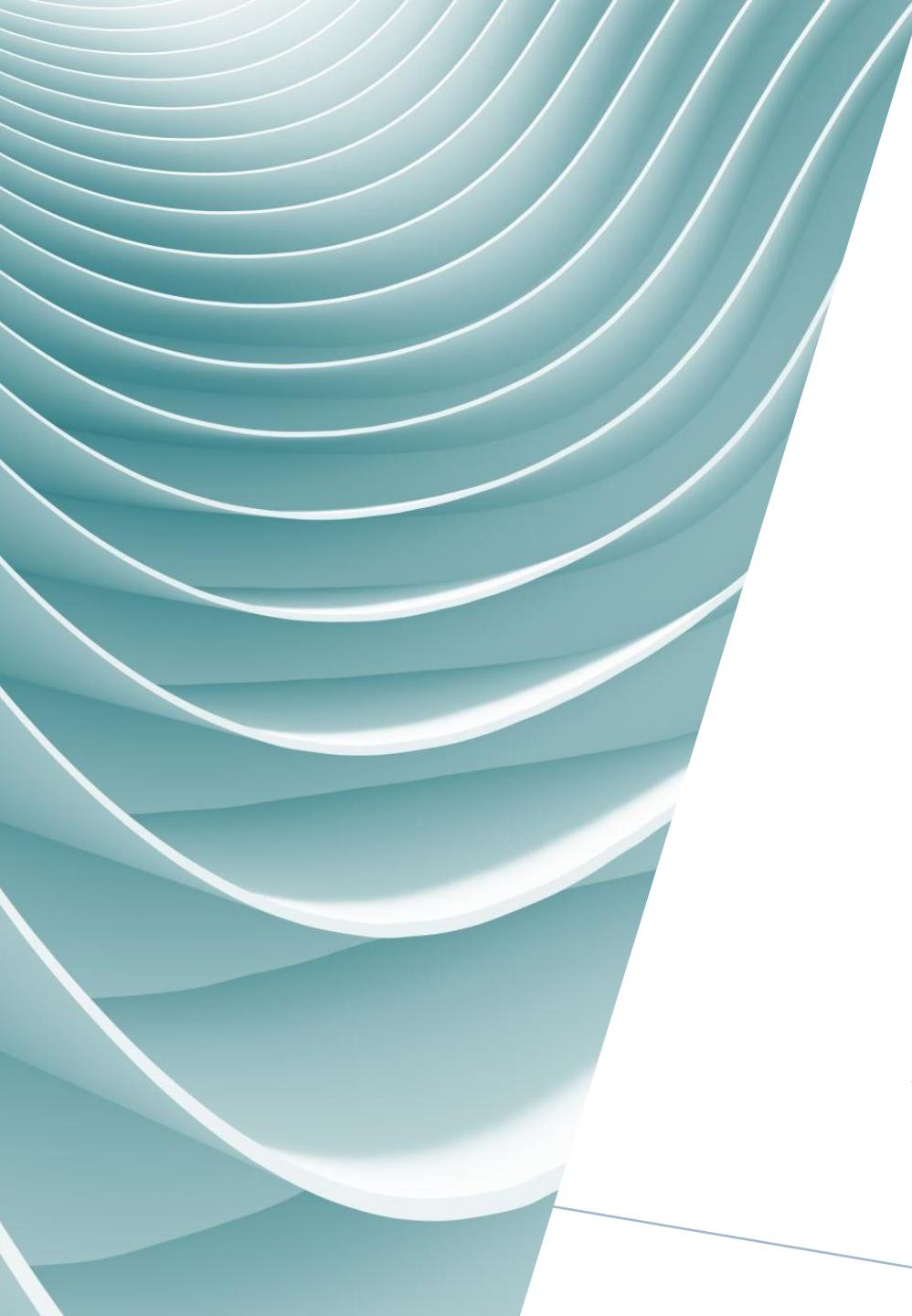
It is the responsibility of the tenant to pay stamp duties and remit to the FIRS office nearest to the tenant or at the tenant's bank. The tenant should fix the stamp duty imprimatur on the tenancy agreement before it is signed with the property owner.

Landlords are not collecting agents.

## **Consequences for non-compliance with the provisions of the Stamp Duties Act (SDA)**

Based on FIRS circular number 2020/05 dated April 29, 2020, in respect of clarifications on the provisions of the Stamp Duties Act, the following consequences may result from noncompliance with the provisions of the SDA:

- (a) Prosecution of offences under the Acts;
- (b) Payment of penalties of various degrees;
- (c) Inability to use the relevant instrument as evidence in court or other judicial or quasi-judicial proceedings; and
- (d) Enforcement actions.

A large, abstract graphic on the left side of the page features a series of concentric, wavy lines in a teal color. These lines are set against a white background and create a sense of depth and motion. The wavy pattern is continuous across the width of the slide.

# *CUSTOMS AND EXCISE DUTIES*

The Nigerian Customs Service (NCS) is one of the major revenue generating agencies for the Federal Government of Nigeria. The instrument that regulates the NCS has not undergone a major overhaul since 1958.

It should be noted that the Senate in May 2017, passed the Nigerian Customs Service Management Bill 2017 but the bill was not assented to by the President as at the end of the 8th Assembly.

### **Establishment of Nigerian Customs Service Board**

The establishment of the Nigerian Customs Service Board, which is under the control of the Federal Ministry of Finance, is contained in section 1 of the Nigerian Customs Service Board Act Cap. C45 LFN 2004 (as amended). The Board shall be responsible for the administration of the Customs and Excise Management Act.

#### **Membership of the Board**

The Board shall comprise:

- (i) The Minister of Finance, who shall be the chairman;
- (ii) The Comptroller-General of Customs, who shall be the deputy chairman;
- (iii) All the Deputy Comptrollers-General;
- (iv) One person to be appointed from the Federal Ministry of Finance;
- (v) One person to be appointed from the Federal Ministry of Commerce;
- (vi) One person to be appointed from the Federal Ministry of Industry;
- (vii) One person to be appointed from the Federal Ministry of Transport;
- (viii) The legal adviser to the Nigerian Customs Service Board, who shall also head the legal division of the service to be appointed from the Federal Ministry of Finance;
- (ix) Two other persons to be appointed from any two of the following institutions, that is,

- \* Commercial banks;
- \* Reputable economic or trade consultancy firms;
- \* The universities;
- \* The Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;
- \* The Manufacturers Association of Nigeria; and
- (x) The Chairman of the Federal Inland Revenue Service.

Note: The Minister of Finance shall appoint the persons mentioned in (iv) to (vii) and (ix) above, after due consultation with the appropriate Ministry or institution.

### **Functions of the Board**

The Board shall be responsible for:

- (i) Formulating the general policy guidelines for the Nigerian Customs Service; and
  - (ii) Administering the Customs and Excise Management Act and accordingly, the Board shall-
- Subject to the general control of the Minister, control and manage the administration of the customs and excise laws; and
  - Collect the revenues of customs and excise and account for them in such manner as the Minister shall from time to time, direct.

### **Powers of the Board**

The Board shall have power-

- (i) To appoint persons to hold or act in all the offices in the Service, including power to make appointments on promotion or transfer and to confirm appointments; and
- (ii) To dismiss and exercise other disciplinary control over persons appointed pursuant to (i) above.

### **Rates**

On the recommendation of the Tariff Technical Committee of the Ministry of Finance, the President of Nigeria, by order, can impose, vary or remove any import or excise duty- Section 13(1) of Customs, Excise Tariff, etc (Consolidation) Act Cap. C49 LFN 2004 (as amended).

The customs duties are levied on goods coming into the country at varying rates from 5% to 75% of import value at each port of entry (airport, land border, sea port or inland waterway).

### **Basis of computation**

The primary basis for the customs value of goods shall be the transaction value. The transaction value is the price actually paid or payable for the goods when sold for export to the Federal Republic of Nigeria adjusted, when necessary, in accordance with the provisions of this Act.

However, where the customs value of the imported goods cannot be determined under the provisions of this Act, the customs value shall be the transaction value of similar goods sold for export to Nigeria and exported at or about the same time as the goods being valued.

An alternative way of determining the customs value of goods if such goods cannot be sufficiently determined is by using reasonable means which is consistent with the principles and general provisions of the World Trade Organisation's Agreement on Implementation of Article VII of General Agreement on Trade and Tariff 1994 and on the basis of data available in Nigeria.

In line with the powers granted to the President by the Customs, Excise Tariff, etc (Consolidated) Act, 2004 (as amended), the President approved an increase in the excise duties on tobacco (including cigarettes) and alcoholic beverages (beers, stouts, spirits and wines), effective June 4, 2018. The increase, however, was introduced in phases over a 3-year period (2018-2020).

Also, the suspension of excise on other goods (such as soaps, detergents, recharge cards, perfumes, tissue paper and polythene bags) that the NCS was assessing in the past has been sustained.

#### Tariff regime on tobacco and alcoholic beverages

Product	Rates (₦)			
	2017	2018 *	2019	2020
Tobacco	20% ad-valorem rate	20% + ₦1 per stick (₦20 per pack of 20 sticks)	20% + ₦2 per stick (₦40 per pack of 20 sticks)	20% + ₦2.90 per stick (₦58 per pack of 20 sticks)
Beer and stout	20%	30k per centilitre (cl)	35k per cl	35k per cl
Wines	20%	₦1.25 per cl	₦1.50 per cl	₦1.50 per cl
Spirit	20%	₦1.50 per cl	₦1.75 per cl	₦2 per cl

The 1st Schedule to the Customs, Excise Tariff, etc (Consolidation) Act 2004, was amended by the Finance Act 2020 by inserting and replacing as the case may be, the following duties and levies:

- (a) Duty on tractors (HS Headings 8701), from 35% to 5%;
- (b) Duty on motor vehicles for the transport of more than ten persons (HS Headings 8702), from 35% to 10%;
- (c) Levy on motor vehicles for the transport of persons [cars] (HS Headings 8703), from 30% to 5%; and
- (d) Duty for motor vehicles for the transport of goods (HS Headings 8704), from 35% to 10%.

Provided that vehicles exempt from applicable duties and levies shall continue to enjoy such exemptions.

Paragraph 1 of the Second Schedule to the Act was amended by section 39 of Finance Act 2020. It states that “airlines registered in Nigeria and providing commercial air transport services are entitled to duty-free importation of their aircrafts, engines, spare parts and components whether purchased or leased”.

#### Excisable items

Goods liable to excise duty are specifically provided for in Part III, Section 21 of the Customs, Excise Tariff, ETC (Consolidated) Act. These are:

- (a) Goods imported and those manufactured in Nigeria and specified in the fifth schedule to this Act shall be charged with duties of excise at the rates specified under the duty column in the said schedule –  
Provided that this subsection shall not apply to:
  - (i) Goods that are not locally produced in Nigeria; and
  - (ii) Raw materials that are available in Nigeria.
- (b) Telecommunication services provided in Nigeria shall be charged with duties of excise at the rates specified under the duty column in the Schedule as the President may by Order prescribe pursuant to section 13 of this Act.
- (c) A landing charge corresponding to the excise duty imposed on any goods manufactured in Nigeria, has been included in the customs duty in the customs duty rates column of the first schedule.

The Customs Service states over 5,924 items which cover agricultural, chemicals, industrial, tobacco, alcoholic, building, electrical, antiques (of over 100 years) and other manufactured products.

## **Prohibitions and restrictions on imports and exports**

In Section 55 of the Nigeria Customs Service Management Act, 2017, the President may by order:

- (a) Prohibit the importation or exportation of any specified good;
- (b) Prohibit the importation or exportation of all goods or any specified goods except as provided in the order; and
- (c) Subject to any specified exceptions, prohibit the importation or exportation of all goods except with the general or special permission in writing of a specified authority or authorities.

Imports and exports shall where applicable, be subject to prohibition and restriction relating to:

- (i) Public security, public morals and public policy;
- (ii) Prevention or relieve of critical shortages of foodstuffs;
- (iii) The protection of the health and life of humans, animals or plants;
- (iv) The protection of the environment;
- (v) The protection of national treasures possessing artistic, historic or archaeological value;
- (vi) The protection of industrial or commercial property, including controls on drug precursors and goods infringing intellectual property rights;
- (vii) Currency;
- (viii) Fishery conservation; and
- (ix) Prohibition authorised by the World Trade Organisation (WTO) agreements.

Goods prohibited under any law or regulation found within the customs territory shall *prima facie* be deemed to have been imported illegally and the Customs Service shall take appropriate enforcement measures in respect of such goods.

## **Provisions relating to the furnishing of information by manufacturers and keeping of books**

For efficient service delivery, CEMA 2004 (as amended), provides that:

- (a) The Customs Service has power to require from an excise trader to:
  - (i) Produce for inspection, as and when required by a custom notice in writing, all invoices and other books or documents, including electronic records, in the trader's possession that are or may be relevant to goods liable to excise tax purchased or sold by the trader during the 12-month period, or any part of thereof, preceding the date the notice is served;

- (ii) Furnish answers to an authorised customs officer's questionnaire regarding the description, quantity, weight, volume, purchase price, selling price, consignor, consignee, destination, or other matter relating to the excisable goods; and
- (iii) Produce any evidence that a customs officer may reasonably require in support of the trader's responses.

(b) Any person directly or indirectly involved in the carrying out of customs formalities or in the application of customs controls shall, at the request of the Customs Service and within any specified time limit, provide the Customs Service with the required documents and information, in the prescribed form, and provide all the assistance necessary for the completion of the customs formalities and controls;

(c) The lodging of a goods declaration, or notification or any other decision, shall render the person concerned responsible for:

- (i) The accuracy and completeness of the information given in the declaration, notification or application;
- (ii) The authenticity of any documents lodged or made available; and
- (iii) Where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations.

(d) Where the declaration or notification is lodged, the application is submitted or information is provided by a customs representative of the person concerned, the customs representative shall also be subject to the obligations in this section.

(e) A declarant or a person who is directly or indirectly involved with the importation or exportation of goods, or acts as a customs representative, or is directly or indirectly involved with the storage or transport of imported or exported goods, free zones, or any customs control, shall keep all documents, information and data related to customs matters for seven calendar years from the date the transaction occurred or the documents, information and data were created.

(f) When an appeal from a customs determination or ruling has been lodged, all parties to the appeal shall keep all documents, information and data related to the appeal for 3 years after the appeal procedure is finally resolved.

S/N	Offence	Penalty
1	Releasing specific confidential information regarding risk management, such as risk registers, risk profiles and other risk assessment data pertaining to traders, goods or transactions to unauthorised persons	A person who contravenes this provision commits an offence and liable on conviction to a term of imprisonment for 2 years or to a fine of ₦1,500,000, or to both
2	Failure to make report in such form and manner the Customs Service may direct of every ship, goods carried, vehicle entering Nigeria	The person that fails to make the report as required shall be liable to a fine of ₦5,000,000. Any goods not duly reported may be detained by the proper officer until so reported or the omission is explained to the satisfaction of the Customs Service
3	Failure to provide list of imported goods unloaded from ship, aircraft or vehicle within the approved time limit to the appropriate officer	If any person fails to comply with this provision, he shall be liable to a fine of ₦1,000,000
4	Where any imported goods remain unclear at the expiration of 14 days from the date of completion or discharge of the importing ship, aircraft or vehicle, the proper officer may direct the person administering the area to remove or store such goods to the Government warehouse or any other suitable place. Failure to comply with this directive within 24 hours constitute an offence	Liable to a fine of ₦500,000 and the proper officer may cause all or any such goods to be removed to a Government warehouse or such other place as he may approve
5	Goods are subject to prohibition or restriction	The Customs Service shall with the order of court, direct the disposal or destruction of such goods
6	Abandoned goods, seized or confiscated goods	The Customs Service shall with the order of court, direct the disposal or destruction of such goods

Mr. Larry Obinna, a licenced importer and exporter of alcoholic drinks, imported the following items from the United Kingdom through one of Nigerian sea ports on October 13, 2018:

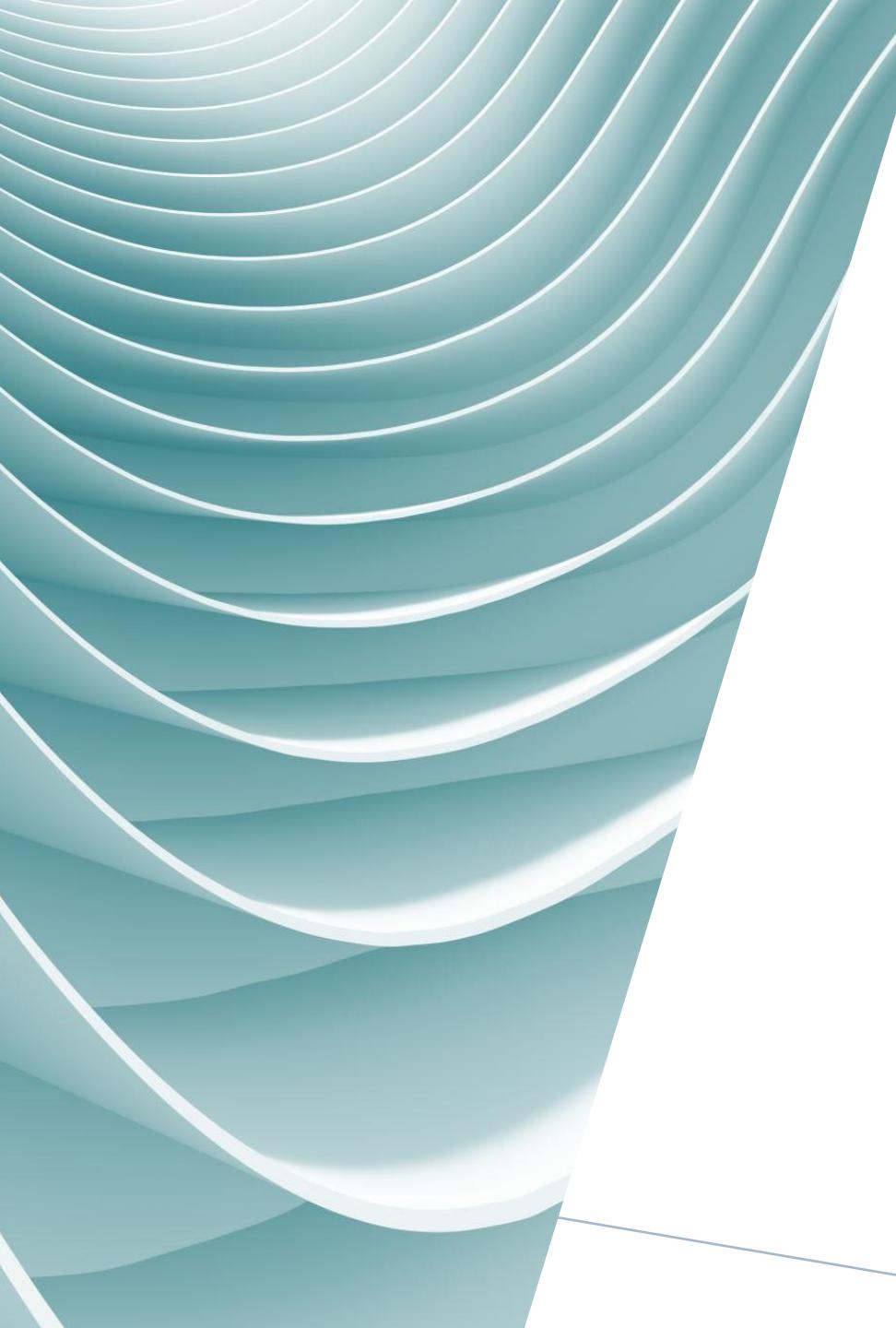
Item	Quantity (bottles)	Price (£) (per bottle)	Value (£)
ABC super wine	2,700	12.00	32,400
XYZ standard spirit	3,000	14.50	43,500
PQR action stout	6,000	5.00	30,000
<b>• 105,900</b>			

The following additional information is available:

- (a) A bottle of any of the items contains 25 centilitre liquid;
- (b) The exchange rate is assumed to be N490 to £1; and
- (c) Duties payable per centilitre for the items are as follows:
  - (i) ABC super wine - N1.25
  - (ii) XYZ standard spirit - N1.50
  - (iii) PQR action stout - N0.30

**Required:**

Determine the import duties payable to the Nigeria Customs Service by Mr. Larry Obinna on items imported.

A large, abstract graphic on the left side of the page features a series of concentric, wavy bands in a teal or turquoise color. These bands are separated by thin white lines and curve outwards from a central vertical axis. The overall effect is reminiscent of a stylized, modern architectural facade or perhaps a series of stacked, curved panels.

# *LUXURY TAX*

Whether it seems timely or a little too late, Nigeria seems to be keen on measures to make the “rich” pay more and therefore address redistribution of wealth through taxation of luxury items.

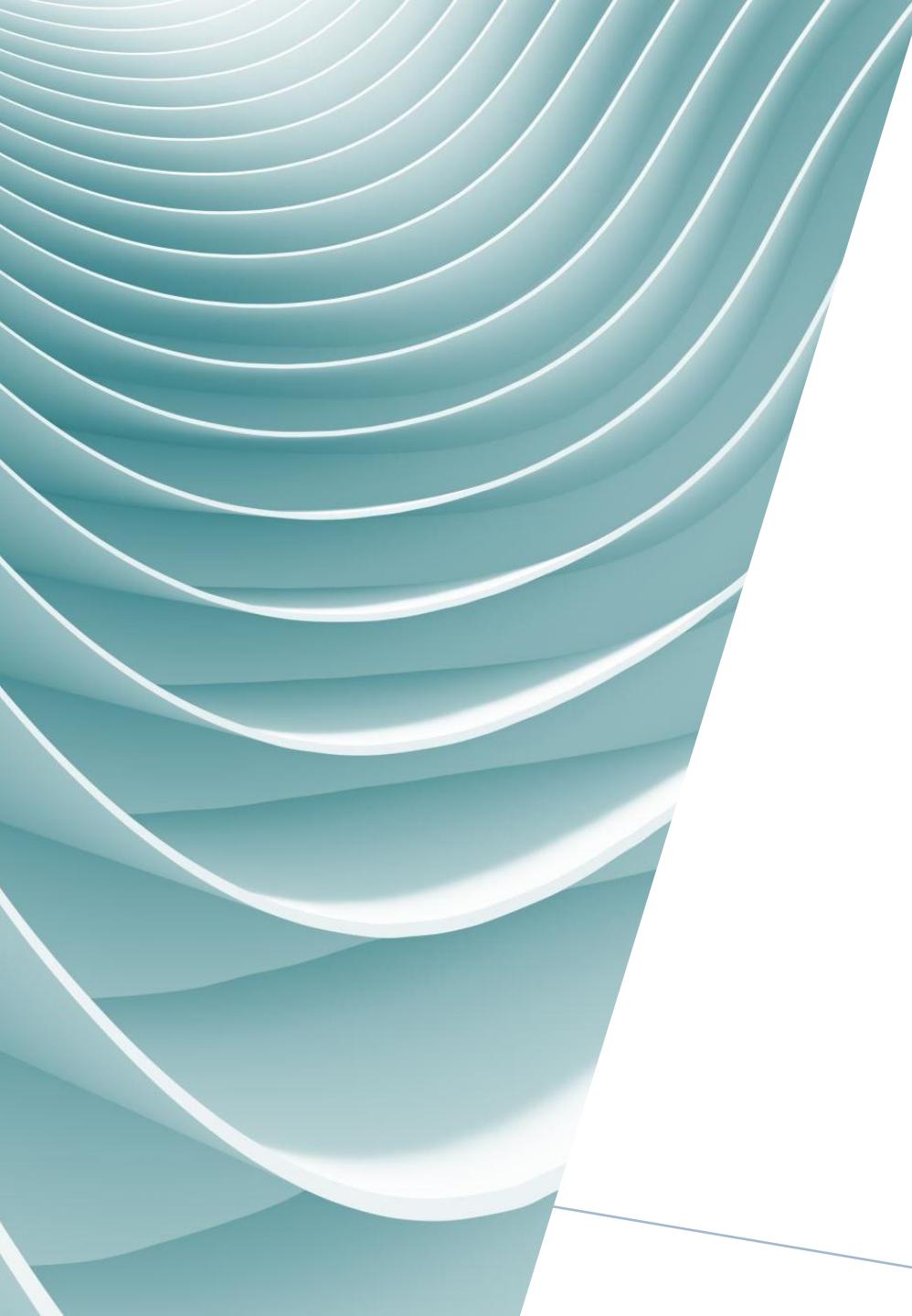
Generally, luxury tax is a tax on luxury goods and services i.e. goods and services that are not essential and consumed by only a niche. It could be implemented through a sales tax system, value added tax system, or customs duty system of taxation. It typically affects the wealthy as opposed to the vast majority of the populace because the wealthy are the most likely to purchase luxury items.

In recent times, the Nigerian government has been showing interest in this form of taxation as a response to the declining revenues from oil and to deal with social imbalance. In November 2014, the past administration announced plans to introduce luxury taxes in the form of surcharges on items such as private jets, luxury yachts, luxury cars, business class/first class tickets on airlines etc. the plan at the time included the following:

- 10% import surcharge on new private jets;
- 39% import surcharge on luxury yachts;
- 5% import surcharge on luxury cars;
- Undisclosed surcharge on business and first-class plane tickets;
- 3% luxury surcharge on champagnes, wines and spirits; and a
- 1% Federal Capital Territory (FCT) mansion tax on residential properties valued at ₦300 million and above.

The goal of the new taxes was to raise up to ₦10.56 billion in 2015 as additional revenue for the government and ₦480 billion within the three years following its implementation. However, the goals were never achieved due to lack of implementation. The Federal Inland Revenue Service attempted to implement but their enforcement faced stiff resistance and eventually it was abandoned particularly due to lack of a legal instrument backing the implementation.

Now, the imposition of a luxury tax mechanism has been reactivated. The administration of President M. Buhari has announced plans as part of economic recovery and growth to increase the VAT rate on some luxury items. Although affected items and rates were not stated, the minister of finance disclosed that the increase will not affect basic food items.



# *TAXATION OF TRUSTS, SETTLEMENTS AND ESTATES*

**Estate:** Estate is the aggregate of the properties possessed by a person, including his/her goods, money etc. or other types of property Settlement

**Trust:** Trust relates to equitable obligation, binding a person, called the Trustee, to deal with a property, over which he/she has custody (which is called the trust property), for the benefit of persons (beneficiaries) of which he/she may be one.

**Settlement:** This is a means by which enjoyment of an Estate or part of it is transferred to another person, either through a disposition, trust, or covenant, agreement, arrangement or transition of assets by reference to a Trust, for the benefit of persons specified.

**Annuitant:** This is a person receiving an annuity i.e. an annual payment from an estate.

**Beneficiary:** a person who receives income from a settlement, trustor estate.

**Legatee:** a person who receives a gift of personal property by will. Legatee can be either:

- **A Specific Legatee:** a person named in a will to receive a particular thing
- **A Residual Legatee:** is a person who receives the residue (i.e. the remainder; what is left) of the personal property after specific legacies have been settled.

**Administration Period:** This is the period between the date of death and the date in which the executor is able to set up the Trust or distribute the residue of the Estate.

**Settlor:** This is a person who settles property on trust law for the benefit of beneficiaries

**Executor:** This is a person charged with protecting a deceased person's property until all debts and taxes have been paid and with seeing that the remaining assets are properly distributed to beneficiaries.

**Basis Period**

The income assessable to tax in the hand of any legatee, trustee, executor, annuitant etc shall be on the preceding year basis.

**Total Income:** This is the aggregate of all sources of income derived by the estate, trust or settlement in any particular year of assessment. It is against the total income that expenses are deducted.

**Computed Income:** The Computed income of a Settlement, Trust or Estate is simply the difference between the Total income and allowable expenses. Allowable expenses include authorized payments like the fees payable to the trustee, legatee, annuitant, but excludes amount payable to the beneficiaries. After the deduction of allowable expenses, unrelieved losses brought forward shall be deducted in arriving at the computed income. Also, the income of the trust or settlement includes any gain or profit from a trade, business, profession or vocation or a rent or premium.

**Capital Allowance:** It is treated in the normal way on QCE acquired by the estate, trust or settlement. It is treated as follows:

- No balancing allowed or balancing charge shall be computed
- QCE is deemed to have been transferred at the TWDV
- No initial allowance on transferred assets
- Annual allowance is based on unexpired tax life
- In the case of disposing any previously transferred assets, the balancing adjustment to be determined should be computed with reference to the total allowance previously granted to the transferor and the estate, trust or settlement.

**Treatment of Losses:** Where a loss is incurred, such a loss is available to be relieved against the profit of subsequent years of assessment.

**Treatment of the Income of an Infant Beneficiary:** Where the beneficiary from an estate, trust or settlement is an infant, the position of the law is that such an infant is not chargeable to tax. But the fact that the infant is not chargeable to tax does not mean that the income derived by the infant from the estate, trust or settlement shall be exempted from tax. The general principle is that where an infant derives an income from an estate, trust or settlement, such an income is deemed to have been earned by the trustee, parent or guardian of the infant.

**Discretionary Payments:** This is the payment that is usually made at the discretion of the trustee or executor. It is a fixed sum that is paid on annual basis. The discretionary payment may also be fixed in the deed setting up the trust. Any amount received as discretionary payment by a beneficiary is chargeable to tax in his hands. Discretionary payments are made from computed incomes.

**Distributions to Beneficiaries:** Upon the making of discretionary payments from computed incomes, the remainder of computed income or net distributable income is obtained. Distributions are usually made from this remainder. Where only a portion of the remainder is distributed, the undistributed portion is deemed to be an income in the hand of the trustee. Amount distributed to a beneficiary is chargeable to tax in his hands.

#### Question 1

Mr. Akwa created a Trust for his four children: Ade, Baruwa, Chidi and Dafur. The records of the Trustee for the year ended 31 December 2010, revealed the following information:

	N
Profit from trading activities	980,000
Interest received on Fixed deposits	270,000
Rent from Property (gross)	620,000
Other Income	163,000

Other relevant information includes:

- (i) Dafur is to get a Fixed Annuity of N35,000 per annum.
- (ii) The remuneration of the Trustee is fixed at N20,000 per annum, plus 2.5 per cent of Computed income.
- (iii) The allowable expenses of the Trustee amounted to N25,000.
- (iv) The Trustee made the following discretionary payments: Ade - N40,000, Baruwa - N30,000, Chidi - N20,000 and Dafur - N15,000
- (v) Capital Allowance agreed for the business of the Trustee was N22,000.
- (vi) Half of the Net Distributable Income of the Settlement is to be shared equally among the beneficiaries.

You are required to:

- (a) Explain the terms "Settlement", "Trust", and "Estate".
- (b) Calculate the income of the Settlement chargeable to Tax in the hands of each of the beneficiaries.
- (c) Calculate the amount of undistributed Income of the Settlement assessable to Tax in the hands of the Trustee.

Alhaji Istiaq Ahmad created a Trust for his children: Zainab, Abass and Halima before he died in 2008. As at 31 December 2012, the following information was extracted from the records of the Trustee:

Adjusted trading profits for the year ended 31 December 2012	N 24,000,000
Rental income (gross) 2012	11,000,000
Profit on sale of assets	4,500,000
Other miscellaneous income	10,000,000
Donation to the social club of the deceased	2,500,000
The following information is also relevant:	
Fixed annuity to a beneficiary- Zainab	1,200,000
Fixed remuneration for the Trustee	800,000
- Trustee remuneration - 5% of Total Computed Income	4,400,000
- Other expenses	

The Trust provides discretionary payments to the children towards their maintenance and education as follows: Zainab N2,400,000, Abass N2,300,000, Halima N2,500,000.

Capital allowance was agreed at N2,400,000. It is stipulated in the Trust that the beneficiaries are to share half of the distributable income equally. N3,000,000 of other expenses are not tax deductible.

Required: Calculate:

- (a) The Net Computed Income
- (b) The amount each beneficiary will include in his/her income tax returns in the relevant year of assessment.

Question 3

Baba Ali Musa is the Trustee of a Settlement made by late Mallam Junaid Dikko in favour of his four children, grandchildren and others. He submitted the following information to the Zamfara State Board of Internal Revenue for assessment purposes for the fiscal year 31 December 2013.

	N
Interest received	2,000,000
Dividend (Gross)	8,000,000
Rental income	6,000,000
Business profit	18,000,000
Miscellaneous income	3,200,000
Trustee's remuneration:	
• Fixed	450,000
• 2% of Gross Income	
Fixed annuity to grandchildren:	
Aminat	50,000
Danladi	30,000
Admin expenses	2,600,000

Additional information:

(i) Trustee made discretionary payment in line with the Trust deed to the beneficiaries as follows:

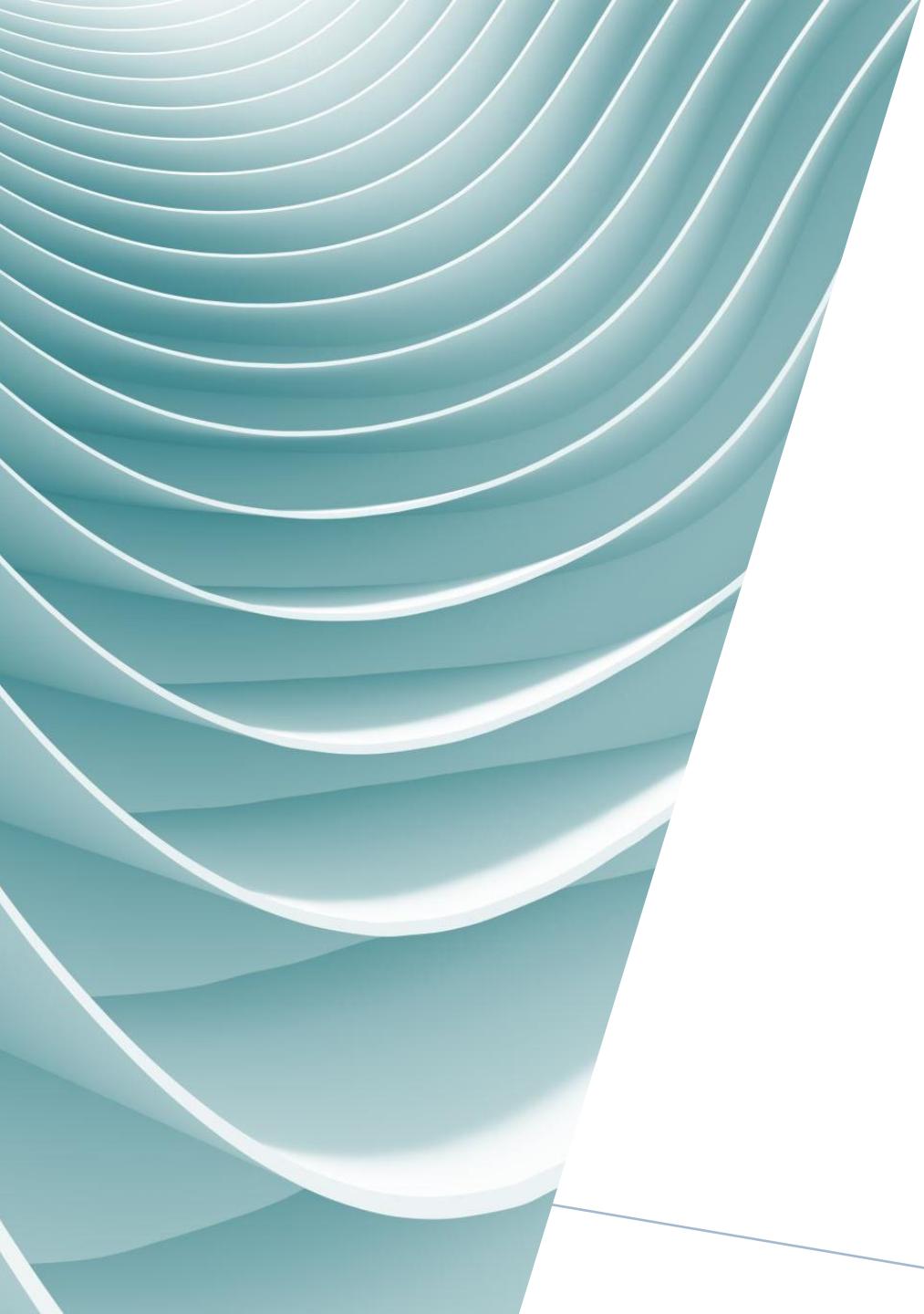
	N
Wakilu	150,000
Aishat	200,000
Illyasu	250,000
Badamasi	180,000

(ii) Each beneficiary is entitled to 1/6th share of 2/3rd of the distributable income.

(iii) Capital allowance agreed with relevant tax authority - N4,200,000.

Required:

- Compute the Net income assessable in the hand of the trustee.
- Assessable income in the hand of each beneficiary.



# *APPLICATION OF INFORMATION TECHNOLOGY IN TAXATION*

## Overview of the technological impact on tax practice and administration

Tax practitioners are independent firms licensed to provide tax-related services to their clients, while tax administration refers to revenue agencies or authorities with the mandate to assess, collect and account for taxes on behalf of the government.

### Tax practitioners provide independent services to their clients which include:

- Preparation of tax records
- Computation of end of year tax liabilities
- Filing of tax returns
- Advisory to clients on tax matters
- Compliance with tax legislations
- Resolution of tax disputes; and
- Management of tax audit and investigation.

Tax administrators are public authorities empowered to assess, collect and account for taxes for a recognised jurisdiction. Their roles include, but not limited to:

- Registration and education of taxpayers
- Receiving tax returns filed by taxpayers
- Assessing taxpayers (individual and entities)
- Collecting, maintaining records and accounting for taxes paid
- Managing and processing tax refunds applications
- Conducting routine tax audits, investigations, etc.
- Managing and enforcing tax debt recovery; and Advising on the review of tax legislations and regulations

### Elements of Tax Practice



## The effects of technology on modern tax administration in Nigeria

In 2006, the Federal Inland Revenue Service (FIRS) deployed the first tax portal (Webportal) which was implemented to automate and streamline taxpayers' registration and other tax administration processes. In 2014, an Integrated Tax Administration System (ITAS) known as SIGTAS was implemented though it appears its deployment was stalled.

Recently, the FIRS announced the adoption and deployment of a locally developed tax management solution known as TAXPRO MAX. This system has the capacity to handle different aspects of tax administration including:

- E-registration
- E-assessment
- E-payments
- E-filing
- E-tax calculator
- E-TCC
- E-reporting
- E-tax audit

### New technologies for tax practice and administration

Two different future trends in tax that both rest on information technology are:

- a) **Increasing use of digital technology** – Tax professionals will use increasingly sophisticated technologies to enhance their traditional ways of serving clients. This is already happening today across the globe; and
- b) **A radical shift (total takeover)** – Here, technology does not simply streamline and optimise that traditional approach, it actively displaces the work of traditional tax professionals.

Digital transformation inspired by unprecedented pace of technological advancement is disrupting nearly every industry, and taxation is no exception. Some of the new technologies disrupting the taxation industry and their impact include:

- a. **Cloud Technology:** Cloud technology impacts tax practice in the following ways:

- Tax management software hosted in the cloud (check out cloud service providers);
- Storage and retrieval of tax transaction data in the cloud;
- Access and analyse tax data anytime, anywhere and on any device;
- Present results in robust dashboards; and
- Collaboration and exchange of information between tax authorities and/or taxpayers.

**b. Data Analytics Technology:** Data analytics technology impacts tax in the following ways:

- The use of statistical power of modern machines to analyse volumes of data and gain better business insight;
- Identify and predict tax risk factors and anomalies; and
- Improved business and tax advisory services due to deeper insight.

This equally offers accountants and tax auditors some advantages:

- Check transactions at source
- Review complete set of data (100 per cent check)
- Predictive analytics (assist in risk assessment); and
- Evaluation of programmed tax controls.

**c. Artificial intelligence and robotics:** Artificial intelligence (AI) is already in use for optical character recognition (OCR), and voice recognition and can easily be adapted in other areas of tax compliance.

AI-enabled applications such as Chatbot and ChatGPT can deal with more complex tasks, such as answering subtle taxation queries.

This technology offers the following, among others:

- Zero data entry
- Responding to queries
- The machine can be made to learn from tax auditor's conclusion and uses it on future scenarios; and
- Identify patterns in both structured and unstructured transactions data – which ones are "normal and abnormal".

**d. Social Media Technology:** Social media is a medium to build relationships which can easily be used by tax practitioners to:

- Gain visibility and exposure;
- Be recognised as experts;
- Build their online network; and
- Keep the clients informed and provide better and prompt customer service.

**e. Mobile App Technology:** Mobile apps are useful to tax practitioners in the following ways:

- Mobile accounting provides tax practitioners many benefits, such as on-demand data and information, even if they are on the go; and
- Starting a laptop or computer every time you want to work, and then go online is a waste of time when you can get all the information with just a single tap.

**f. Blockchain Technology:** Distributed ledgers provided by blockchain technology, serves tax practitioners as follows:

- Decentralisation and distribution of shared database;
- All parties to a business transaction are involved in recording and validation from inception. This includes involving the tax authorities;
- No reconciliation needed; and
- No tax audit required.

By storing blocks of information that are identical across its network, the blockchain:

- Cannot be controlled by any single entity – decentralised to all nodes;
- Offers no single point of failure;
- Provides enhanced security through its immutable ledger;
- Provides enhanced transparency of transactions; and
- Is faster and cost effective.

#### **Impact of new technologies for tax practice and administration**

The use of some of these technologies in tax practice and administration brings the following benefits:

- (a) Customer satisfaction: There would be enhanced perception of overall tax practice and administration performance;
- (b) Lower cost of compliance: Members of staff of the tax authority would be able to focus on more valuable activities;
- (c) Data error is minimised: Improvement in the quality of taxpayers' information; and
- (d) Improved voluntary compliance: The compliance level of most taxpayers is bound to improve which would in turn impact positively on revenue generation.

For tax practising firms, the following benefits could be derived:

- (a) Time savings – speed and accuracy of data entries and processing;
- (b) Cost savings in the long run;
- (c) Focus on higher level jobs that machines cannot handle;
- (d) Mobility of service; and
- (e) Increased capacity to serve multiple clients.

## The challenges of technology adoption in tax practice and administration include:

- (a) Low computer literacy level;
- (b) Poor internet facility;
- (c) Possible cyber threat;
- (d) High implementation cost;
- (e) Lack of technical know-how; and
- (f) Challenge of data validation – garbage-in; garbage-out

## Taxes applicable to technology-based transactions

E-business and e-commerce have become the order of the day across the globe as most economic transactions are today executed online real-time. Some good examples of e-commerce transaction are:

- Online shopping;
- Online movies;
- Internet banking;
- Online ticketing and reservation;
- Auction sites;
- Journal subscription; and
- Online betting and gaming.

Electronic commerce refers generally to all forms of transactions relating to commercial activities, including both organisations and individuals that are based upon the processing and transmission of digitised data, including text, sound and visual images." (Source – OECD)

"Electronic Commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic fund transfer, electronic share trading ... direct consumer marketing, and after-sales service. It involves both products and services." (Source – European Commission)

## Difference between e-commerce and e-business

Most often, the terms "e-business" and "e-commerce" are used interchangeably; however, they are not synonymous. E-commerce refers to buying and selling online, while e-business encompasses all business conducted online. Therefore, e-commerce can be viewed as a subset of e-business.

Below are the differences between e-commerce and e-business.

E-Commerce	E-Business
1 E-commerce involves commercial transactions done over the internet.	E-business is conduct of business process on the internet.
2 E-commerce is use of electronic transmission medium that caters for buying and selling of products and services	In addition, e-business also includes the exchange of information directly related to buying and selling of products.
3 Thus, those activities when essentially involve monetary transactions are termed "e-commerce"	In addition, it includes activities like procurement of raw materials or goods, customer education, looking for suppliers etc.
4 E-commerce usually requires the use of just a Website.	E-business involves the use of CRM's, ERP's that connect different business processes
5 E-commerce involves the mandatory use of internet	E-business can involve the use of internet, intranet or extranet.
6 E-commerce is narrower concept and restricted to buying and selling.	E-business is a broader concept that involves market surveying, supply chain and logistics management and using data mining.

One wonders if the players in the digital space such as Google; Apple; Microsoft; Facebook; Jumia; Konga; etc pay the right amount of taxes to the various jurisdictions where their services are consumed. Do they have physical presence in all the countries where their services are taken?

Generally, income generated from technology-based transactions are not exempted from income taxes. Most of the traditional tax types such as VAT, WHT, CIT and PIT are equally applicable to technology-based transactions, such as e-commerce transactions.

Some multinational companies now prepare their financial statements that clearly show transactions from digital business as a separate line.

However, due to the problem of no physical presence of most of the digital companies, many countries appear to introduce special taxes based on the concept of significant economic

presence (SEP) in line with Organization for Economic Cooperation and Development (OECD) framework. As at October 14, 2020, Austria, France, Hungary, Italy, Poland, Spain, Turkey, and the United Kingdom (UK) had implemented a digital service tax (DST). Belgium, the Czech Republic, and Slovakia have published proposals to enact a DST, and Latvia, Norway, and Slovenia have shown intentions to implement same.

The UK's DST is charged at 2% on gross UK-generated revenues of large businesses providing a social media service, search engine, or online marketplace to UK-based users. The tax was applied to revenues generated from April 1, 2020. France has since imposed its own 3% tax on digital revenue for large tech companies – in effect singling out the U.S. tech giants – but has said it would withdraw the tax in favor of an international solution being negotiated under the auspices of the OECD.

In late February 2021, the US removed the stumbling block to global deal on digital tax as the Joe Biden's administration dropped the insistence on 'safe harbour' for companies adopted during the Donald Trump's administration, opening door to agreement with other countries. The OECD has predicted that an acceptable international agreement on digital service tax is likely to be reached by mid-2021.

Based on the provisions of Finance Act, 2019, which came into force on February 3, 2020, Nigeria established a new legal framework that would allow her to levy tax on the income of non-resident technology companies (NRTC) whose business activities constitute Significant Economic Presence (SEP) in Nigeria, to the extent that these companies do not already have a separate local entity incorporated. Electronic transactions were made subject to stamp duties.

The Federal Government of Nigeria (FGN) on Friday, May 29, 2020 published the Companies Income Tax (Significant Economic Presence) Order, 2020 ("the Order") in its Official Gazette No. 21, Vol 107 of February 10, 2020.

The Order provides that a non-resident company shall have a SEP in Nigeria in any accounting year, where it derives N25 million or more as annual gross turnover or its equivalent in other currencies from any or combination of some specific activities. The second sub-category includes DCs that:

- Use a Nigerian domain name;
- Register a website in Nigeria; or
- Have a purposeful and sustained interaction with persons in Nigeria by customising their digital platforms to target persons in Nigeria (localization test).

An example of the latter is where the company reflects the prices of its products in naira or provides options for billing and payment in naira.

Some countries have equally put in place policies for the regulation of cryptocurrencies and make such transactions taxable.