

Skills level

ICAN

Taxation



The Institute of Chartered Accountants of Nigeria

Skills level

Taxation

CHAPTER

1

Introduction to Taxation

Contents

1. Purpose
2. Definitions of Tax
3. Objectives and Purposes of Taxation
4. Types of Taxes and Tax System
5. Basic Concepts in Taxation
6. Distinction between Taxes and Levies
7. Principles/Canons of Taxation
8. Sources of Nigerian Tax Laws
9. Nature and Types of Multiple Taxes
10. History of Nigerian Tax System
11. Chapter Review
12. Worked Examples

Published by
The Institute of Chartered Accountants of Nigeria
PC 16, Idowu Taylor Street
Victoria Island
Lagos, Nigeria
Email: info.ican@ican.org.ng
www.ican-ngr.org

ISBN 978-978-53303-6-6

© The Institute of Chartered Accountants of Nigeria, December 2014

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, without the prior permission in writing of The Institute of Chartered Accountants of Nigeria, or as expressly permitted by law, or under the terms agreed with the appropriate reprographics rights organisation.

You must not circulate this book in any other binding or cover and you must impose the same condition on any acquirer.

Notice

The Institute of Chartered Accountants of Nigeria has made every effort to ensure that at the time of writing the contents of this study text are accurate, but neither the Council of the Institute of Chartered Accountants of Nigeria, nor its management or employees shall be under any liability whatsoever for any inaccurate or misleading information this work could contain.

Skills level

Taxation



Foreword

The business environment has been undergoing rapid changes caused, in the main, by globalisation and advancement in Information Technology. The impact of these changes on the Finance function and the skills set needed by professional Accountants to perform their various tasks have been profound. These developments have made it inevitable for the Institute's syllabus and training curriculum to be changed to align its content with current and future needs of the users of Accounting services.

Although the Institute of Chartered Accountants of Nigeria (ICAN) traditionally changes its syllabus and training curriculum every five years, it had to embark on a comprehensive review of its 2010 Syllabus in 2012, that is, barely two years into the syllabus! Through a World Bank-sponsored twinning programme with the Institute of Chartered Accountants in England and Wales (ICAEW), the Project Implementation Committee, the Examinations and Students Affairs Committees worked assiduously to produce a new 3-level, 16-subject ICAN syllabus. As approved by the Council, Examinations under the new syllabus will commence with the November 2014 diet.

It is instructive to note that the last two syllabus review exercises were accompanied with the publication of study packs. Indeed, when the first and second editions of study packs were produced, the performances of professional examination candidates significantly improved. In an effort to consolidate on these gains and to further enhance the success rates of students in its qualifying examinations, the Council approved that a new set of learning materials (study packs) be developed for each of the new subjects. The Council also resolved to wholly finance the project since it was outside the scope of the World Bank grant. Although these learning materials may be regarded as the third edition, they are completely different in content, innovation and quality.

While ICAEW developed the Case Study learning material, eleven of the new learning materials were contracted to Emile Woolf International, UK. Also, renowned writers and reviewers which comprised eminent scholars and practitioners with tremendous

experiences in their areas of specialisation, were sourced locally to develop learning materials for four of the new subjects because of their local content. In effect, for the first time, there are now ICAN learning materials (study packs) for Case Study and Business Law. The 16 subjects are as follows:

FOUNDATION LEVEL

- | | | |
|----|-------------------------------------|-------------------|
| 1. | Quantitative Techniques in Business | EWI |
| 2. | Financial Accounting | EWI |
| 3. | Management Information | EWI |
| 4. | Business Law | Locally developed |
| 5. | Business and Finance | EWI |

SKILLS LEVEL

- | | | |
|-----|--------------------------------------|-------------------|
| 6. | Financial Reporting | EWI |
| 7. | Audit and Assurance | EWI |
| 8. | Taxation | Locally developed |
| 9. | Performance Management | EWI |
| 10. | Management, Governance and Ethics | EWI |
| 11. | Public Sector Accounting and Finance | Locally developed |

PROFESSIONAL LEVEL

- | | | |
|-----|--------------------------------|-------------------|
| 12. | Corporate Reporting | EWI |
| 13. | Advanced Audit and Assurance | EWI |
| 14. | Strategic Financial Management | EWI |
| 15. | Advanced Taxation | Locally developed |
| 16. | Case Study | ICAEW |

As part of the quality control measures, the output of the writers and reviewers were subjected to further comprehensive review by an editorial board.

Although the study packs were specially produced to assist candidates preparing for the Institute's Professional Examinations, we are persuaded that students of other professional bodies and tertiary institutions will find them very useful.

Isma'ila M. Zakari, BSc, mni, FCA
Chairman, Professional Examinations

Mr. Sunday A. Bammeke, BSc, FCA
Chairman, Students' Affairs

Skills level

Taxation

A

A c k n o w l e d g e m e n t

The Institute is deeply indebted to the underlisted locally-sourced rewriters, reviewers and members of the editorial board for their scholarship and erudition which led to the successful production of these new study packs. They are:

Taxation

- | | | |
|----|-----------------|----------------------|
| 1. | Enígbokan, Femi | Writer/Lead Reviewer |
| 2. | Clever, Tony | Writer |
| 3. | Kajola, Sunday | Writer |

Advanced Taxation

- | | | |
|----|-------------------|----------------------|
| 1. | Sobande, David | Writer/Lead Reviewer |
| 2. | Owoyele, Olusola | Writer |
| 3. | Egbedina, Olayide | Writer |

Public Sector Accounting and Finance

- | | | |
|----|----------------------|----------------------|
| 1. | Osonuga, Timothy | Writer/Lead Reviewer |
| 2. | Taiwo, Rafiu | Writer |
| 3. | Agbeyangi, Babatunde | Writer |
| 4. | Oladeji, Sunday | Reviewer |
| 5. | Aregbeyen, Omo | Writer |
| 6. | Adebayo, Ademola | Writer |

Business Law

- | | | |
|----|-----------------------|----------------------|
| 1. | Oladele, Olayiwola.O. | Writer/Lead Reviewer |
| 2. | Emiaso, Miakpo | Writer |
| 3. | Olaiya, Marian | Writer |
| 4. | Oresanya, Lekan | Writer |

The Institute also appreciates the services of its staff and the typesetter, Ogunbiyi Babatunde Julius, that provided secretarial support.

Editorial Board

Ismaila Muhammadu Zakari, B.Sc, FCA, mni

Sunday Abayomi Bammeke, B.Sc, FCA

Abel Aig. Asein, B.Sc, MSc, MBA, ACA

John Irabor Evbodaghe, MBA, FCA

I.B. Momoh, FCA

Folake Olawuyi, BA. M.Sc

2nd DVP/Chairman,

Council member

Deputy Registrar, Technical Services

Director, Examinations

Assistant Director, Prof. Exams

Assistant Director, Student Affairs

Rotimi A. Omotosho, FCA

Registrar / Chief Executive

Skills level

Taxation



List of Abbreviations

ARGP	Accelerated Revenue Generation Programmes
AGF	Attorney General of the Federation
ALUMSCO	Aluminium Smelter Company of Nigeria Limited
BOJ	Best of Judgement
BPE	Bureau of Public Enterprises
BIK	Benefits-in-kind
CITA	Companies Income Tax Act Cap C21 LFN 2004
CIT	Company Income Tax
CAMA	Companies and Allied Matters Act 2004
CGTA	Capital Gains Tax Act CAP C1 LFN 2004
CGT	Capital Gains Tax
CBN	Central Bank of Nigeria
CAC	Corporate Affairs Commission
EFCC	Economic and Financial Crimes Commission
ETA	Education Tax Act CAP E4 LFN 2004
EPZ	Export Processing Zone
FIRS	Federal Inland Revenue Service
FIRSB	Federal Inland Revenue Service Board
FEAP	Family Economic Advancement Programme
FCT	Federal Capital Territory
FII	Franked Investment Income
FTZ	Free Trade Zone
FGN	Federal Government of Nigeria
IA	Initial Allowance
IDA	Industrial Development (Income Tax Relief) Act
ITC	Investment Tax Credit
IT	Information Technology

JORA	Joint Revenue Association
JSRC	Joint State Revenue Committee
JTB	Joint Tax Board
LFN	Laws of the Federation of Nigeria
LFRC	Local Government Revenue Committee
MD	Managing Director
NNPC	Nigerian National Petroleum Corporation
NCS	Nigerian Customs Service
NPC	National Planning Commission
NEPC	Nigerian Export Promotion Council
NASB	Nigerian Accounting Standards Board
NNP	Net National Product (Net Investment = Gross Investment - Depreciation)
PITA	Personal Income Tax Act CAP P8 LFN 2004
PIT	Personal Income Tax
PAYE	Pay As You Earn
PPTA	Petroleum Profits Tax Act CAP P13 LFN 2004
PRA	Pension Reform Act 2004
PFA	Pension Fund Administrators
PPT	Petroleum Profits Tax
QCE	Qualifying Capital Expenditure
RMAFC	Revenue Mobilisation Allocation and Fiscal Commission
SAS	Statement of Accounting Standards
SIRS	State Internal Revenue Service
SIRSB	State Internal Revenue Service Board
SDA	Stamp Duties Act CAP S8 LFN 2004
SEC	Securities and Exchange Commission
TC	Tax Cases
TCC	Tax Clearance Certificate
TIN	Taxpayer's Identification Number
VAT	Value Added Tax CAP V1 LFN 2004
VATTC	Value Added Tax Technical Committee
WDV	Written Down Value
WHT	Withholding Tax
YOA	Year of Assessment
ZVATT	Zonal Value Added Tax Tribunal

Skills level

Taxation



Syllabus & Examination Questions Format

Examination Question Format

1. Each paper in Foundation level shall consist of two sections A and B
Section A: Shall comprise twenty (20) compulsory multiple-choice questions which shall cover the entire contents of the syllabus. This section shall make up 20% of the total marks.
Section B: Shall comprise six open-ended questions (essay, computational or scenario-based) carrying 20 marks each of which candidates will be required to answer any 4.
2. Skills and Professional levels shall comprise open-ended questions (essay, scenario-based or computational) only as follows:
Section A: One (1) compulsory question of 30 marks.
Section B: Three (3) questions of 20 marks each out of which a candidate is expected to attempt any two (2).
Section C: Three (3) questions of 15 marks each out of which a candidate is expected to attempt any two (2).

UNITS

6

Purpose
<p>Professional accountants need to understand taxation principles and laws to support both compliance and effective basic professional advice. The emphasis is on a basic knowledge and application of tax legislation relating to employees, employers, trading, operating and local business activities in straightforward situations. Readers will be expected to be able to analyse the tax consequences of personal, corporate actions and activities.</p>

Content and competencies – overview

Grid	Weighting %
1. Introduction and Tax Administration	30
2. Personal Income	30
3. Business Income	30
4. Transactions	10
Total	100

Contents and Competencies		Chapter
1	INTRODUCTION AND TAX ADMINISTRATION	
	(a) Introduction to Taxation	
	i. Define, list and explain the objectives and purposes of taxation	1
	ii. Enumerate and explain the types of taxes and tax system	1
	iii. Define and explain the basic concepts in taxation	1
	♦ Tax base, tax yield, tax rate, tax incidence	1
	♦ Tax burden, tax impact, tax shift, tax effect	1
	iv. Distinguish between tax and other levies	1
	v. Define and explain the principles / canons of taxation	1
	vi. Distinguish, list and explain the following in relation to taxation in Nigeria.	
	♦ Types of taxes	1
	♦ Enabling Acts	2
	♦ Sources of the tax laws	1
	(b) Tax Administration in Nigeria	
	List, explain and contrast the roles, functions, compositions and powers of:	
	i. Joint Tax Board	2
	ii. State Board of Internal Revenue	2
	iii. Federal Inland Revenue Service and its Management Board	2
	iv. Joint State Revenue Committee	2
	v. Local Government Revenue Committee	2
	vi. Tax Appeal Tribunal	4
	(c) Assessments and Objections and Remittances	
	i. Distinguish between the Types of Assessments	
	♦ Government assessment	3
	♦ Self assessment	3
	♦ Other forms of assessments	3
	ii. Identify and explain Tax Objection and Appeals procedures covering the following:	
	♦ Time limit for objection and appeal	4
	♦ Contents of a notice of objection and appeal	4
	♦ Amendment of Assessment and refusal to amend	4
	♦ Appeals procedures and process: Tax Appeal Tribunal, Federal High Court etc.	4

Contents and Competencies		Chapter
	iii. Outline the basis for registration and filing of Returns with the FIRS, covering the following: <ul style="list-style-type: none"> ◆ Time within which to register ◆ Registration requirements and process ◆ Constituents of a tax return ◆ Due date for filing of tax returns ◆ Time within which to pay tax assessed. 	 3 3 3 3 3
	iv. State and explain the following in respect of Tax Clearance Certificate <ul style="list-style-type: none"> ◆ Definition and content ◆ List the conditions for granting a Tax Clearance Certificate ◆ Outline the transactions for which Tax Clearance Certificates are required ◆ State the procedure for processing Tax Clearance Certificates. 	 3 3 3 3
2 PERSONAL INCOME		
(a)	Taxation of Employment Income	
	i. Define employment, contract of service and contract for service	7
	ii. Distinguish between the types of employments: <ul style="list-style-type: none"> ◆ Nigerian employment; and ◆ Foreign employment 	7 7
	iii. Distinguish between employment, vocation and profession	7
	iv. Analyse and compute employment income <ul style="list-style-type: none"> ◆ Cash emolument ◆ Benefits-in-kind ◆ Taxable and tax free income ◆ Valuation of benefits-in-kind 	7 7 7 7
	v. State and explain the conditions for taxability of employment income	7
	vi. List and explain Allowable and Non-Allowable deductions including case laws	8
	vii. Compare and explain assessment and collection of employment taxes together with basic computation and explanation of the following: <ul style="list-style-type: none"> ◆ Pay As You Earn (PAYE) registration ◆ Basis of assessment ◆ Computation of PAYE ◆ Filing of returns; Employee and Employer ◆ Offences and Penalties 	7 7 7 7 7

Contents and Competencies		Chapter
	(b)	Taxation of Trusts, Settlements and Estates
		i. Define trust, settlements and estates
		10
		ii. Determine taxable income
		10
		iii. Determine income from the trust, settlement or trade
		10
		iv. Identify and explain allowable and non-allowable expenses
		10
		v. Compute tax liability in the hands of beneficiaries and trustees
		10
		vi. Identify relevant tax authority
		10
		vii. State and explain offences and penalties
		10
	(c)	Taxation of Investment Income
		i. Compute rent on property, including contractor-financed projects
		11
		ii. Explain the taxation savings
		11
		iii. State and explain the tax implications on dividends and interests
		11
		iv. Explain the basis of assessments and payment of taxes on investment incomes
		11
3 BUSINESS INCOME – TAXATION OF BUSINESS INCOME		
	(a)	Sole Traders
		i. Explain the meaning of a trade or profession; adventure in nature of trade; badges of trade.
		8
		ii. Compute Assessable profit of a trade or profession
		8
		◆ Identify taxable and non-taxable income
		8
		◆ Identify and explain allowable and non-allowable expenses.
		8
		iii. Determine basis period for assessment:
		◆ Definition and Types
		8
		◆ Outline and apply the rules for commencement, change of accounting date and cessation.
		8
		iv. Capital Allowance Computations
		◆ Define and outline types of capital allowances
		8
		◆ Define and explain types of Qualifying Capital Expenditure
		8
		◆ State and explain conditions for granting capital allowances
		8
		◆ Identify capital allowance rates and restrictions
		8
		◆ Compute balancing adjustments on disposal of qualifying capital expenditure.
		8

Contents and Competencies		Chapter
	v. Loss Relief <ul style="list-style-type: none"> ◆ Identify and explain types of reliefs and their treatments ◆ Outline and explain the treatments of losses under commencement and cessation of business 	15 15
(b)	Partnerships	
	i. Determine the taxable income of partners	9
	ii. Compute assessable profit of a partnership business	9
	iii. Identify and explain allowable and non-allowable expenses	9
	iv. Assess the tax treatment under admission and resignation of a partner	9
(c)	Limited Liability Companies	
	i. Identify the types of companies and chargeable profits	12
	ii. Identify persons liable	12
	iii. Compute Assessable Profit <ul style="list-style-type: none"> ◆ Outline and explain taxable and non-taxable income ◆ Outline and explain allowable and non-allowable expenses 	12 12 13
	iv. Evaluate the basis period of assessment <ul style="list-style-type: none"> ◆ Define and state types ◆ State and explain the rules of commencement, change of accounting date and cessation 	13 14 14
	v. Capital allowance computation <ul style="list-style-type: none"> ◆ Define and explain types of capital allowances ◆ Define and explain types of qualifying capital expenditure ◆ State and explain conditions for granting capital allowances ◆ Identify and apply the capital allowance rates and restrictions ◆ Compute balancing adjustments on disposal of qualifying capital expenditure 	14 14 14 14 14
	vi. Loss Relief <ul style="list-style-type: none"> ◆ Explain loss relief principles ◆ Identify and explain the treatment of losses under commencement and cessation of business 	15 15
	vii. Compute companies income tax, taking the following into consideration	

Contents and Competencies			Chapter
		<ul style="list-style-type: none"> ◆ Total profit ◆ Minimum tax ◆ Dividend distribution ◆ CIT rate ◆ Turnover basis 	16 16 16 16 16
	(d)	Taxation of Specialised Businesses	
		i. Outline and apply the tax provisions for real estate, agriculture, etc	19
		ii. Outline the tax provisions and compute tax on transportation and telecommunication businesses	19
		iii. Outline and explain circumstances and basis for turnover taxes	19
		iv. Identify and explain criteria which a taxpayer must meet to be eligible for small company relief	19
		v. State the basis for taxation of enterprises in free trade zones	19
		vi. Explain and apply the provisions of the Nigerian Information Technology Development Agency Act (NITDA) 2007.	19
	(e)	Tertiary Education Tax	
		i. Outline the objectives and basis of computation of tertiary education tax as provided in the enabling Act.	18
		ii. Explain the imposition, assessment and collection of the tax <ul style="list-style-type: none"> ◆ State the management and administration of the tertiary education tax fund ◆ State the composition and functions of the Board of Trustees. 	18 18
		iii. Explain the allocation and distribution of the tax	18
		iv. State the offences and penalties for non-compliance	18
4 TRANSACTIONS – TRANSACTION TAXES			
	(a)	Withholding tax	
		i. Define and explain the nature, objectives and administration of VAT	20
		ii. Outline the transactions / income subject to withholding taxes and rates	20
		iii. State the relevant tax authority for collection	20
		iv. Explain the filing of WHT Returns and list the contents and time frame	20
		v. Outline the provision relating to WHT refund, grounds and procedures	20

Contents and Competencies		Chapter
	vi. Explain the remittance of WHT to tax authorities	20
	vii. What are the administrative bottlenecks and problems of WHT?	20
	viii. What are the benefits of the withholding tax scheme?	20
(b)	Value Added Tax (VAT)	
	i. Define and explain the nature, objectives and administration of VAT	21
	ii. Explain taxable persons and taxable supplies of goods and services	21
	iii. Define and explain the basic concepts relating to VAT, such as input tax, output tax; exemption and zero rated supplies and services, reverse VAT, basic tax point, actual tax point and standard rate	21
	iv. Compute VAT liability, including the treatment of closing and opening stock	21
	v. Outline the obligation for Registration, records and accounts keeping and valid VAT invoice	21
	vi. Explain the requirements of filing of VAT returns and remittance of VAT liability	21
	vii. Explain the treatment of VAT on import of goods and services and exported services	
	viii. State the offences and penalties	21
	ix. Explain the provision on VAT recovery	21
(c)	Stamp Duties	
	i. Define the nature and objectives of stamp duties.	22
	ii. Outline the instruments chargeable.	22
	iii. State the relevant tax authority for collection.	22
	iv. Explain the types of stamps and the form of stamp duties.	22
	v. Explain the time limit for stamping and implications for non – stamping.	22
	vi. Discuss the recoverability of outstanding duties.	22
	vii. Outline the stamp duties rates and the basis of computation.	22
	viii. Explain the administration, territorial limits and the methods of stamping.	22
	ix. Explain the process of adjudication, the limits and appeals procedures.	22

Skills level

Taxation



Table of Contents

Title	i
Foreword	iii
Acknowledgement	v
List of Abbreviations	vii
Syllabus and Examination Questions Format	ix
Table of Contents	xvii
CHAPTER 1: INTRODUCTION TO TAXATION	1
1.0 Purpose	2
1.1 Definitions of Tax	2
1.2 Objectives and Purposes of Taxation	4
1.3 Types of Taxes and Tax System	5
1.4 Basic Concepts in Taxation	7
1.5 Distinction Between Taxes and Levies	8
1.6 Principles/Canons of Taxation	9
1.7 Sources of Nigerian Tax Laws	9
1.8 Multiple Taxes	11
1.8.1 Nature of Multiple Taxes	11
1.8.2 Types of Multiple Taxes	11
1.8.3 Collection of Multiple Taxes	11
1.8.4 Federal Government's Solution to Problem of Multiplicity of Taxes ..	12
1.8.5 The 1999 Constitution and Multiplicity of Taxes	12
1.9 History of Nigerian Tax System	13
1.10 Chapter Review	15
1.11 Worked Examples	15
1.11.1 Questions	15
1.11.2 Suggested Solutions	15
CHAPTER 2: ADMINISTRATION OF TAXES	19
2.0 Purpose	20
2.1 Nature of Tax Administration	20
2.3 Organs of Tax Administration	21
2.3.1 Federal Inland Revenue Service Board	21

2.3.2	Joint Tax Board (JTB)	23
2.3.3	State Board of Internal Revenue (SBIR)	24
2.3.4	Local Government Revenue Committee	26
2.3.5	Joint State Revenue Committee (JSRC)	27
2.4	Tax Jurisdictions	27
2.5	Taxes And Levies Imposed And Collected By Each Tier of Government	27
2.5.1	Taxes to be collected by the Federal Government	28
2.5.2	Taxes and Levies to be collected by State Governments	28
2.5.3	Taxes and Levies to be collected by Local Governments	29
2.6	Registration of Taxpayers	29
2.6.1	Incorporated Companies	29
2.6.2	Others	30
2.7	Filing of Tax Returns	30
2.7.1	Relevant documents for filing Companies income tax returns	30
2.8	Chapter Review	30
2.9	Worked Examples	31
2.9.1	Questions	31
2.9.2	Suggested Solutions	31
CHAPTER 3: RETURNS, ASSESSMENTS AND COLLECTION PROCEDURES.....		37
3.0	Purpose	38
3.1	Filing of Tax Returns	38
3.1.1	Nature of Tax Returns	38
3.1.2	Time Limit for Filing Tax Returns, Audited Accounts	38
3.1.3	Penalty for Non-Compliance	39
3.1.4	Incentive Bonus for Early Filing of Tax Returns	39
3.1.5	Other Returns	39
3.2	Assessment Procedures	40
3.2.1	Best of Judgement (BOJ) Assessment	40
3.2.2	Additional Assessment	40
3.2.3	Back Duty Assessment	41
3.2.4	Service of Notice of Assessment	41
3.2.5	Final and Conclusive Assessment	41
3.3	Collection Procedures	41
3.3.1	Provisional Tax	41
3.3.2	Time Limit for Paying Tax	41
3.3.3	Currency of Payment of Tax.....	42
3.3.4	Penalty for Late Payment of Tax	42
3.3.5	Enforcement Procedures	43
3.4	Tax Clearance Certificate	44
3.4.1	Introduction and Nature of Tax Clearance Certificate	44
3.4.2	Objective and Relevance of Tax Clearance Certificate	44
3.4.3	Penalties.....	45
3.4.4	Problems of Tax Clearance Certificate	45
3.5	Chapter Review	46
3.6	Worked Examples	46
3.6.1	Questions	46
3.6.2	Suggested Solutions	47
CHAPTER 4: OBJECTIONS AND APPEAL PROCEDURES		51
4.0	Purpose	52

4.1	Objection to Tax Assessment	52
4.2	Contents of a Notice of Objection	52
4.3	Procedure For Raising Objection to Tax Assessment	52
	4.3.1 Receipt of Notice of Objection	52
	4.3.2 The Tax Appeal Tribunal	53
	4.3.3 Hearing before the Tax Appeal Tribunal	55
	4.3.4 Appeals before the Federal High Court	56
4.4	Chapter Review	56
4.5	Worked Examples	57
	4.5.1 Questions	57
	4.5.2 Suggested Solutions	57
CHAPTER 5:	DETERMINATION OF RESIDENCE	61
5.0	Purpose	62
5.1	Introduction	62
5.2	Determination and Importance of Residence	62
	5.2.1 Resident Individual	62
	5.2.2 Non Resident Individual	62
	5.2.3 Residence and Nationality	62
	5.2.4 Place of Residence	63
	5.2.5 Principal Place of residence	63
	5.2.6 Residence of Different Categories of Individuals	63
5.3	Meaning of Income	64
	5.3.1 Earned Incomes	64
	5.3.2 Unearned Incomes	65
	5.3.3 Corporation Sole	65
5.4	Resolving Dispute Over Residence Rule Application	66
5.5	Chapter Review	67
5.6	Worked Examples	67
	5.6.1 Questions	67
	5.6.2 Suggested Solutions	68
CHAPTER 6:	RELIEFS AND ALLOWANCES	73
6.0	Purpose	74
6.1	Introduction	74
6.3	Reliefs and allowances and Tax Exempt Deductions	74
6.3	Rate of Tax and Ascertainment of tax liability	76
6.4	Minimum Tax	77
6.5	Explanatory Notes on Reliefs and Allowances Old Tax Free Allowances Versus Consolidated Relief Allowance	77
6.6	Chapter Review	78
6.7	Worked Examples	78
	6.7.1 Questions	78
	6.7.2 Suggested Solutions	80
CHAPTER 7:	TAXATION OF EMPLOYMENT INCOME	85
7.0	Purpose	86
7.1	Introduction	86
7.2	Types of Employment	87
7.3	Distinction between Employment, Vocation and Profession	88

7.3.1	Employment	88
7.3.2	Vocation	88
7.3.3	Profession	88
7.4	Employment Income	89
7.5	Taxation of Income from Employment	91
7.6	Operation of Pay-As-You-Earn (PAYE) Regulations	93
7.7	Itinerant Worker	97
7.8	Non-Resident Individuals	97
7.9	Bonus for Early Filing of Self-assessment Return	98
7.10	Chapter Review	98
7.11	Worked Examples	99
7.11.1	Questions	99
7.11.2	Suggested Solutions	101
CHAPTER 8: TAXATION OF A SOLE TRADERS/SELF EMPLOYED INDIVIDUALS		107
8.0	Purpose	108
8.1	Introduction	108
8.2	What Constitutes A Business?	108
8.3	What Constitutes A Trade?	108
8.4	Badges of Trade	109
8.5	Sole Proprietor	109
8.5.1	Basis for computing assessable income	109
8.5.2	Change of Accounting Date	110
8.5.3	New Trades	110
8.5.4	Cessation of Trade	111
8.5.5	Receipts and Payments after Cessation of Business or Trade	111
8.5.6	Deductions Allowed	111
8.5.7	Deductions allowed will include:	112
8.5.8	Deductions Not Allowed	113
8.5.9	Capital Allowances	113
8.6	Loss Relief	116
8.6.1	Current Year Loss Relief (Section 36(2) (a)	116
8.6.2	Carry forward Loss Relief (Section 36(2)(b)	116
8.6.3	Treatment of Losses under Commencement and Cessation of Business	117
8.7	Chapter Review	118
8.8	Worked Examples	118
8.8.1	Questions	118
8.8.2	Suggested Solutions	121
CHAPTER 9: TAXATION OF PARTNERSHIP INCOME		127
9.0	Purpose	128
9.1	Introduction	128
9.2	Partnership Agreement	128
9.3	Registration of Partnership Agreement with The Relevant Tax Authority	129
9.4	Relevant Tax Authority	129
9.5	Taxable Income of Partners	130
9.6	Allowable and Non-allowable Expenses	130
9.7	Assessable Income of Partners	130

9.8	Partnership Loss	130
9.9	Change In Partnership	130
	9.9.1 Admission of a Partner	130
	9.9.2 Retirement of a Partner	131
	9.9.3 Amalgamation of Partnership	131
	9.9.4 Conversion into a Limited Liability Company	131
9.10	Chapter Review	132
9.11	Worked Examples	132
	9.11.1 Questions	132
	9.11.2 Suggested Solutions	136
CHAPTER 10:	SETTLEMENTS, TRUSTS AND ESTATES	143
10.0	Purpose	144
10.1	Introduction	144
	10.1.1 Settlement	144
	10.1.2 Trust	144
	10.1.3 Estate	144
10.2	Definitions	144
10.3	Persons Chargeable	145
10.4	Basis Period	146
10.5	Relevant Tax Authority	146
10.6	Computed Income	146
10.7	Capital Allowance - Deceased Individuals	146
10.8	Losses	147
10.9	Discretionary Payments	147
10.10	Infants' Income Under A Settlement	147
10.11	Special Provisions as to Settlement on Unmarried Children	147
10.12	Accounts of the Estate	149
10.13	Assessable Income And Tax	149
10.14	Payment of tax	151
10.15	Chapter Review	151
10.16	Worked Examples	152
	10.16.1 Questions	152
	10.16.4 Suggested Solutions	154
CHAPTER 11:	TAXATION OF INVESTMENT INCOME	159
11.0	Purpose	160
11.1	Introduction	160
11.2	Basis of Assessment	160
11.3	Dividend Income	160
	11.3.1 Nigerian Dividend	160
	11.3.2 Undistributed Profit of a Nigerian Company deemed to be Dividend	161
	11.3.3 Territory in which Dividend Paid by a Nigerian Company Arises ..	161
	11.3.4 Dividend Exempted from Tax	161
11.4	Interest Income	161
	11.4.1 Interest from a Source outside Nigeria	162
	11.4.2 Territory in Which Interest Paid by a Nigerian Company Arises	162
	11.4.3 Interest Exempted from Tax	162
11.5	Rental Income	163

	11.5.1 Rent Received in Advance	163
	11.5.2 Allowable Rental Expenses	163
	11.5.3 Disallowable Expenses	164
11.6	Royalty Income	164
	11.6.1 Royalty Exempted from Tax	164
11.7	Chapter Review	164
11.8	Worked Examples	164
	11.8.1 Questions	164
	11.8.2 Suggested Solutions	166
CHAPTER 12: ASCERTAINMENT OF COMPANIES PROFITS/ LOSSES		169
12.0	Purpose	170
12.1	Introduction	170
12.2	Persons Chargeable to Companies Income Tax	171
12.3	Allowable and Disallowable Deductions	172
	12.3.1 Allowable Expenses	172
	12.3.2 Disallowable Expenses Section 27 CITA 2004)	173
	12.3.3 Waivers or Refunds of Liability or Expenses	174
12.4	Non-taxable And Taxable Income	174
	12.4.1 Non-taxable Income	174
	12.4.2 Taxable Income	177
12.5	Chapter Review	177
12.6	Worked Examples	178
	12.6.1 Questions	178
	12.7.2 Suggested Solutions	179
CHAPTER 13: ASCERTAINMENT OF ASSESSABLE/ TOTAL PROFITS		181
13.0	Purpose	182
13.1	Introduction	182
13.2	Basis of Assessment	182
	13.2.1 Subsisting Business	182
	13.2.2 Basis of Assessment on Commencement of Business	183
	13.2.3 Basis of Assessment on a Change of Accounting Date	188
	13.2.4 Basis of Assessment on Ceasation of Business	191
	13.2.5 Ascertainment of Total Profits	196
13.3	Chapter Review	197
13.4	Worked Examples	197
	13.4.1 Questions	197
	13.4.2 Suggested Solutions	199
CHAPTER 14: CAPITAL ALLOWANCES		203
14.0	Purpose	204
14.1	Definition and Types of Capital Allowances	204
14.2	Definition and Types of Qualifying Capital Expenditure	205
14.3	Conditions to be satisfied for granting Capital Allowances	206
14.4	Capital Allowance Rates And Restrictions Under CITA	206
14.5	Basis Period For Capital Allowances	207
	14.5.1 Basic Principles	207
	14.5.2 Overlapping Basis Period	209
	14.5.3 Basis Period when there is Gap	214

	14.5.4 Carry-back of Capital Allowances on Cessation of Business	220
14.6	Computation of Balancing Adjustments on Disposal of Qualifying Capital Expenditure	224
	14.6.1 Balancing Charge	224
	14.6.2 Balancing Allowance	225
14.7	Chapter Review	225
14.8	Worked Examples	225
	14.8.1 Questions	225
	14.8.2 Suggested Solutions	225
CHAPTER 15: LOSS RELIEF	229	
15.0	Purpose	230
15.1	Introduction	230
15.2	Types of Loss Reliefs	230
	15.2.1 Current Year Loss Relief	230
	15.2.2 Carry Forward Loss Relief	230
15.3	Rules on Loss Relief	231
15.4	Chapter Review	233
15.5	Worked Examples	233
	15.5.1 Questions	233
	15.5.2 Suggested Solutions	233
CHAPTER 16: COMPUTATION OF COMPANIES INCOME TAX.....	237	
16.0	Purpose	238
16.1	Normal Basis For Computing Companies Income Tax Payable	238
16.2	Other Bases of Computing Companies Income Tax Payable	239
	16.2.1 Minimum Tax Basis - Section 33 CITA	239
	16.2.2 Turnover Basis – Section 30 CITA	242
	16.2.3 Dividend Basis – Section 19 CITA	244
16.3	Chapter Review	246
16.4	Worked Examples	246
	16.4.1 Questions	246
	16.4.2 Suggested Solutions	250
CHAPTER 17: ACCOUNTING FOR TAXES	259	
17.0	Purpose	260
17.1	Nature of Tax Account	260
17.2	Postings into the Tax Account	260
17.3	Disclosure of Taxes in the Financial Statements	261
17.4	Presentation of Tax Account in the Financial Statements	261
17.5	Chapter Review	261
17.6	Worked Examples	262
	17.6.1 Questions	262
	17.6.2 Suggested Solutions	263
CHAPTER 18: TERTIARY EDUCATION TAX	265	
18.0	Purpose	266
18.1	Objectives	266
18.2	Basis of Computation	266
18.3	Assessment and Collection	267

18.4	Management and Administration of the TETFund	267
18.5	Composition and Functions of the Board of Trustees	268
	18.5.1 Composition	268
	18.5.2 Functions	268
18.6	Allocation of Distribution of the Tax	269
18.7	Offences and Penalties	270
18.8	Chapter Review	270
18.9	Worked Examples	271
	18.9.1 Questions	271
	18.9.2 Suggested Solutions	271
CHAPTER 19:	TAXATION OF SPECIALISED COMPANIES	273
19.0	Purpose	274
19.1	Tax Provisions for Real Estate, Agriculture etc	274
	19.1.1 Real Estate	274
	19.1.2 Agriculture	275
19.2	Taxation of Foreign Air and Sea Transport Companies	276
	19.2.1 Foreign Air and Sea Transport	276
	19.2.2 Taxation of foreign company engaged in cable undertakings (Telecommunication)	280
19.3	Taxation of Insurance Companies	281
	19.3.1 Introduction	281
	19.3.2 Determination of Assessable Profit and Tax Liability	282
	19.3.3 Additional Information to be Filed by Insurance Business	285
19.4	Taxation of Authorised Unit Trust Schemes	286
	19.4.1 Introduction	286
	19.4.2 Taxation of Unit Trust Income	286
19.5	Turnover Tax	286
19.6	Small Company Relief	287
19.7	Taxation of Enterprises in Free Trade Zones	287
19.8	Provisions of the Nigerian Information Technology Development Agency Act (NITDA) 2007	288
19.9	Chapter Review	288
19.10	Worked Examples	288
	19.11.1 Questions	288
	19.11.2 Suggested Solutions	294
CHAPTER 20:	WITHHOLDING TAX	303
20.0	Purpose	304
20.1	Nature of Withholding Tax	304
20.2	Withholding Tax Enabling Laws	304
20.3	Rates, Tax Remittances And Tax Authorities	305
	20.3.1 Table of Withholding Tax Rates	305
	20.3.2 Penalty for Late Remittance and Non-deduction of Withholding Tax from Payments	305
20.4	Withholding Tax Rate and Double Taxation Relief	306
20.5	Operation of the Withholding Tax System	306
20.6	Currency of Deduction	307
20.7	Payment Schedule	307
20.8	Withholding Tax Credit Notes	307

20.9	Payment Certificate and Treasury Receipt	308
20.10	Refunds and Set-offs	308
20.11	Dual Role of Ministries, Parastatals and Other Agencies of Government...	308
20.12	Rights and Obligations of Taxpayers	309
20.13	Advantages and Disadvantages of Withholding Tax.....	309
	20.13.1 Advantages	309
	20.13.2 Disadvantages	309
20.14	Chapter Review	310
20.15	Worked Examples	310
	20.15.1 Questions	310
	20.15.2 Suggested Solutions.....	311
CHAPTER 21:	VALUE ADDED TAX	315
21.0	Purpose.....	316
21.1	Introduction.....	316
21.2	Administration of VAT	316
21.3	Exempt Items	316
	221.3.1 Goods Exempt.....	316
	221.3.2 Services Exempt	317
21.4	Zero-rate Goods and Services.....	317
21.5	Reverse VAT	317
21.6	Basic Tax Point	317
21.7	Actual Tax Point	318
21.8	Imported Goods	318
21.9	Types of VAT	318
21.10	Registration for VAT	318
	21.10.1 Taxable Person	318
	21.10.2 Government Ministries, etc, as Agents of the Board	319
	21.10.3 Non-resident Companies.....	319
21.11	Preparation of VAT Accounts	319
21.12	Returns, Remittances, Recovery and Refund of Tax	320
21.13	Value Added Tax Technical Committee	321
21.14	VAT Tribunal	321
21.15	Offences and Penalties	325
21.16	VAT Enforcement and Practice	328
	21.16.1 VAT Visits	328
	21.16.2 VAT Drive.....	328
	21.16.3 VAT Audit and Investigation	328
21.17	Benefits and Demerits of VAT	328
	21.17.1 Merits.....	328
	21.17.2 Demerits	329
21.18	Definitions of Concepts	329
21.19	Chapter Review	332
21.20	Worked Examples	333
	21.20.1 Questions	333
	21.20.2 Suggested Solutions.....	334
CHAPTER 22:	STAMP DUTIES	337
22.0	Purpose.....	338
22.1	Introduction	338

22.2	Forms of Stamp Duties	338
22.3	Administration of Stamp Duties	339
22.4	Commissioner of Stamp Duties	339
22.5	Territorial Limits	340
22.6	Provision Applicable to Instruments	340
22.8	Methods of Stamping of Instruments and Adjudication	340
	22.8.1 Methods of Stamping	340
	22.8.2 Adjudication	340
	22.8.3 Benefits of Adjudication	340
	22.8.4 Limitations of Adjudication Process	341
22.9	Stamping of Instruments after Execution	341
22.10	Lost Instruments	342
22.11	Instruments not Properly Stamped	342
22.12	Transactions Attracting Stamp Duties	342
22.13	Exempted Instruments	342
22.14	Implications for Non-stamping of Instruments	343
22.15	Definitions of Terms	343
22.16	Chapter Review	344
22.17	Worked Examples	344
	22.17.1 Questions	344
	22.18.2 Suggested Solutions	345
<i>APPENDIX I: GLOSSARY OF TERMS</i>		<i>351</i>
<i>APPENDIX II: STUDY AND EXAMINATION TECHNIQUES</i>		<i>355</i>
<i>APPENDIX III: BIBLIOGRAPHY</i>		<i>361</i>
<i>INDEX</i>		<i>363</i>

1

INTRODUCTION TO TAXATION

1.0 PURPOSE

At the end of this chapter, readers should be able to:

- (a) define and identify the objectives of Taxation;
- (b) understand the basic concepts in Taxation;
- (c) distinguish between Taxes and Levies;
- (d) identify the various sources of Nigerian tax laws; and
- (e) explain the nature and types of multiple taxes.

1.1 DEFINITIONS OF TAX

The Government of Nigeria, like others in different parts of the world, has legislative powers to impose on its citizens, any form of tax and at whatever rate it deems appropriate.

A perusal of the Nigerian Tax Laws shows that no attempt has been made to define the term “tax”.

However, the Oxford Advanced Learner’s Dictionary defines ‘tax’ as:
“Money that has to be paid to the government so that it can pay for public services”.

Black Law Dictionary defines tax as:
“Monetary charge imposed by the Government on persons, entities or property, levied to yield public revenue”.

Thomas Cooley defines taxes as:
“Enforced proportional contributions from persons and property, levied by the State, by virtue of its sovereignty, for the support of government and for all public needs”.

In simple terms, 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.

Other definitions can be gleaned from judicial precedents.

In *MATHEW v CHIKORY MARKETING BOARD OF VICTORIA AUSTRALIA*, Latham C.J. defined tax as – *“a compulsory exaction of money by a public authority for public purposes, or taxation is raising money for the purpose of Government by means of contributions from individual persons”*.

In the American case of *UNITED STATES v BUTLER*, Justice Roberts stated – *“A tax in the general understanding of the term and as used in the Constitution, signifies an exaction for the support of the government”*.

Borrowing from the magnum opus of Chris Whitehouse and Elizabeth Stuart – Buttle, tax has three basic features, namely: *a compulsory levy, imposed by government or local authority; and for public purpose or to encourage social justice*. The authors admitted that *“to describe the main features of a tax is not, however, to define the concept. A tax is not a voluntary payment but a compulsory pecuniary burden placed on taxpayers for the good of the society”*.

The most important thing is that it is a pecuniary burden laid upon individuals or persons or property to support the government and is a payment exacted by legislative authority.

Although, tax under any jurisdiction is discriminatory in that it is assessed on persons or property based on profits/income or gain, the benefit conferred on the citizens is without reference to the contributions of individual taxpayers.

The flip side of the resource allocation dimension of a sound taxation policy is its role in promoting investment as well as ensuring a healthy economy through the creation of new wealth. An indirect assessment of this parameter is the level of investment and taxation, which is often used as a driver for savings and as a tool for securing competitive advantages, to aid economic development in an increasingly interdependent world. The tone of stock markets around the world, changes, with the movement of fiscal policy and on the analysts' reading of the strategic consequences, which are of essential consideration, by the providers of capital.

In conclusion, 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.

1.2 OBJECTIVES AND PURPOSES OF TAXATION

In most countries of the world, the primary objective and purpose of taxation is essentially to generate revenue or raise money for government expenditure on social welfare.

Apart from this, the use of taxation as an instrument of economic regulation or control for the purpose of discouraging certain forms of anti-social behaviour is also discernible from tax legislation in this century. Thus, it has been stated that the importance of taxation lies primarily in its ability to raise capital for the public sector, for the development and growth of the economy and also in assisting in the regulation of the consumption pattern, resulting in economic stabilization and effective redistribution of income.

Today, taxes have an important role to play especially in any government's economic and social policy.

The following major objectives should be taken into consideration whenever the government is designing a tax policy:

- (a) **Revenue generation:** The primary objective of taxation is to raise money to meet government expenditure. Thus, taxation has always been employed to raise sufficient revenue to satisfy the needs of the government, such as in the provision of services like defence, law and order, health services and education. Revenue from taxation can also be spent on capital projects, otherwise called capital expenditure, creating a social and economic infrastructure, which will improve the social life of the people and also enable the economy of the country to grow. Thus, the most important objective of any tax reform today should be to raise more revenue to the government.
- (b) **Redistribution of income and wealth:** This can be looked at from two angles. The first is the doctrine that taxation should be based on the ability to pay, so that the burden of taxation ought to be heavier for rich men than for the poor, with the taxes collected being used to pay for social services for the less fortunate. This is achieved by the graduation or "progressiveness" of the rates at which the taxes are levied.
 - (i) This objective sees the present distribution of wealth as being unjust and so attempts to reverse the situation by fixing taxes at concessionary rates in favour of the poor.
 - (ii) High taxes on the income and wealth of the rich can produce either incentive or disincentive effects. Sometimes, a taxpayer's spendable income is reduced through taxation, so he is compelled to work harder in order to maximise his income. Taxes that produce incentive effects therefore increase productivity. On the

other hand, a high marginal tax rate can produce a disincentive effect which makes the worker take to leisure rather than to extra work. This disincentive effect is an indication of economic inefficiency and waste.

- (c) **Management of the economy:** Taxation is important in the planning of savings and investments and by harmonising it with development strategy and changing economic structure. The government can use taxation as a powerful fiscal weapon to plan and develop a country.
- (i) A tax system can also provide the government with effective and flexible instruments for the day-to-day management of the economy.
 - (ii) Consequently, taxation can be used to achieve specific economic objectives of a nation. It can also be designed in such a way as to direct private investment in line with national needs and priorities. The tax system can be used to regulate or discourage particular activities of citizens, which are thought to be undesirable on social grounds, such as drinking alcohol, smoking or betting (often referred to as demerit goods). In Nigeria, the Government, often times introduces tax incentives and attractive tax reliefs, as an instrument to woo and induce local and foreign investors into the areas of manufacturing of goods, export processing, oil/gas exploration and utilisation and provision of utilities.
- (d) **Harmonisation of economic objectives:** Harmonisation of diverse trade or economic objectives of different countries can be achieved through a good tax system. For example, tax system can be employed by member states of Economic Committee of West African States (ECOWAS) so as to achieve the philosophy of the single market (free movement of people and goods) within the region.
- (e) Finally, taxation is a device to improve gross national income, induce economic development and influence favourable balance of payments with other countries.

1.3 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. For instance, the progressive tax concept can be explained using the current personal income tax table as follows:

Taxable Income (Naira)		Tax Rate (%)
First	300,000	7
Next	300,000	11
Next	500,000	15
Next	500,000	19
Over	1,600,000	21
Above	3,200,000	24

It is a tax, whose objective is the redistribution of income from the well to do, to the less privileged.

(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

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.

1.4 BASIC CONCEPTS IN TAXATION

There are some basic concepts in taxation which will assist the reader in having better understanding of taxation. Some of these concepts are discussed below:

(a) Tax Base

This is a measure upon which the assessment or determination of tax liability is based. It is that portion of a taxpayer's income or property which is expected to suffer tax.

(b) Tax Yield

This is the return in form of tax revenue derived from the administration of tax on taxpayers.

(c) Tax Rate

It describes the burden ratio (usually expressed as a percentage) at which a business or person is taxed. For example, the Valued Added Tax rate is 5% on vatable goods and services.

(d) Tax Incidence

It is an economic term for the division of a tax burden between buyers and sellers. It does reveal the person that will pay the tax liability. For instance, if the government decided to impose an increased tax rate on cigarettes, the producers may increase the sale price by the full amount of the tax. If the consumers still purchased cigarettes on the same amount after the price increase, it will be said that the tax incidence fell entirely on the buyers.

(e) Tax Burden

This is the amount of income, property or consumption tax levied on an individual or business. Tax burdens vary depending on a number of factors including income level, jurisdiction, and current tax rates. Income tax burdens are typically satisfied by deductions from an individual's pay slip each time he or she is paid.

- (f) **Tax Impact**
This is the effect of a tax on the production or consumption of the product being taxed. For example, the tax impact of raising the levy on tobacco might be a reduction in tobacco sales.
- (g) **Tax Shift**
This is also referred to as tax swap. It is a change in taxation that eliminates or reduces one or several taxes and establishes or increases others while keeping the overall revenue the same.
- (h) **Tax Effect**
This is a general term that describes the consequences of a specific tax scenario with respect to a particular tax-paying entity.

1.5 DISTINCTION BETWEEN TAXES AND LEVIES

The definition of tax provided by Nightingale (1997) can best be used to differentiate taxes from levies. Nightingale described tax as a, “*compulsory contribution imposed by the government even though taxpayers may receive nothing identifiable in return for their contribution, they nevertheless have the benefit of living in a relatively educated, healthy and safe society*”.

From this definition, one can affirm that tax is not levied in return for any specific service rendered by the government to the taxpayer. However, levies are paid to the government in return for specific services by government to the taxpayer. For example, a fee (such as court fee) is a payment to defray the cost of the service undertaken by the government, primarily in the public interest, but conferring a special advantage on the taxpayer. Another form of levies is fines and penalties. This is not imposed to collect revenue but serves as a punishment for those who go against the laws of the land (example, traffic offenders).

It follows, therefore, that while all forms of taxes can be described as levies since they constitute imposition, not all levies can be properly described as tax. For the purpose of illustration, while the tax imposed by Section 9 (1) of the Companies Income Tax Act CAP C21 LFN 2004 on profits of companies, accruing in, derived from, brought into or received in Nigeria can be rightly described as tax, the penalty and fine imposed by Section 85 (1) CITA can at best be described as a levy and not tax.

Tax, like levy, is involuntary in the sense that its compliance is compulsory but not intended to be punitive as a levy. Tax must be charged and exacted pursuant to legislative authority, that is, supported by a particular written law and if there is an invalid tax law, a charge cannot suffice for tax.

If it is backed by a particular valid tax law, it is a tax irrespective of whether it is described as levy or tax.

1.6 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 inconvenient 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 system.

1.7 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:

(a) Customary Laws

These are the Native Laws and Customs, governing the taxation of incomes, goods and properties of persons or communities within an ethnic group. Included under this heading, is the Islamic law which is the basis of Moslem laws that are usually applicable in the Northern part of Nigeria.

Examples of taxes collected under the customary Laws are:

- (i) *Ishakole*: Payable in Yoruba Land, to titular heads of communities or Obas on the produce from farm land.

- (ii) *Osusu- Nkwu*: Applicable in the Eastern part of Nigeria
- (iii) *Zakkat*: Tax payable by adherents of the Islamic faith, on their wealth, which has been in their possession for a full year. Such wealth includes money, properties, etc.

The Islamic Law provides the basis for determining the amount of tax payable and to whom payable.

(b) Statute Laws

These are tax legislations passed by Acts of the National and State Assemblies and bye-laws by Local Government authorities in a democratic government or Decrees or Edicts under a military Government. These legislations confer necessary powers on the taxing authorities to impose taxes on the citizens, that is, individuals, companies, trusts, settlements, etc.

Examples of such tax legislations are:

- (i) The Personal Income Tax (Amendment) Act 2011
- (ii) The Companies Income Tax Act CAP C21 LFN 2004 (as amended)

(c) Case Laws

This is the doctrine of *Stare decisis*, that is, judicial precedents. Under this doctrine, judgements pronounced by superior courts of records, namely: High Courts, Appeal Courts, and the Supreme Court, on principles of tax laws and their interpretations of the provisions of tax statutes, are binding on the lower courts.

In view of the fact that Nigerian tax laws had their origin from the English tax laws, it would not be out of place to state, that the principles of English common law pronounced upon by the Judges in England and interpreted by them, also form another source of Nigerian tax laws.

This position is buttressed by the decision in the case of ADERAWOS TIMBERS TRADING CO.LTD V FEDERAL INLAND REVENUE SERVICE BOARD (1966) LL.R 195, (1969) ALL NLR 247.

In this case, it was held that the decisions of English Courts can be invoked for the purpose of interpreting Nigerian tax statutes where the expression and terms used are similar and substantially the same as those used in English Statutes.

- (d) **Circulars issued by and practices of the Inland Revenue.**
- (e) **Opinions of tax experts and authors insofar as the courts take judicial notice of them.**

(f) **Budget and pronouncement of relevant ministries**

(g) **The Constitution of the Federal Republic**

1.8 MULTIPLE TAXES

1.8.1 Nature of 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.

1.8.2 Types of Multiple Taxes

The type of taxes introduced and collected by the Local Governments; vary from one Local Government to the other.

Some of these taxes are:

- (a) Entertainment tax
- (b) Road Tax
- (c) Permit for closure of streets
- (d) Refuse collection tax
- (e) Market taxes and levies
- (f) Loading and offloading levies.

The list is endless as some Local Governments are on record as having over 100 taxes/levies.

1.8.3 Collection of Multiple Taxes

The greatest problem of multiple taxes is that of its enforcement and use of unorthodox collection procedures and methods.

Some of these procedures/methods are:

- (a) Mounting of Roadblocks
Collection agents mount roadblocks and put spikes on the road to force motorists to stop at the approach to the roadblocks. They demand from the motorists evidence of payment of taxes/levies and in the course of carrying out this function, they impound tyres, motor jacks and at times

rough handle persons who are unable to pay the taxes/levies demanded for, at such roadblocks on the spot. Such nuisance seriously affects inter-city commerce and slows down economic activities to the detriment of the country.

(b) **Use of Revenue Agents/Consultants**

The use of revenue agents/consultants was popular with the State and Local Government tax authorities. While some State tax authorities employ external tax consultants for the audit, assessment and collection of tax under the Accelerated Revenue Generation Programmes (ARGP), the Local Governments collect revenue under the aegis of the Joint Revenue Association (JORA).

While under the ARGP, especially under the past Military regimes, the collection of taxes from companies was enforced, using the law enforcement agents to coerce taxpayers into paying assessed tax, the Local Government agents in their own case harassed road users, especially branded vehicles in order to ensure payment of tax/levies.

1.8.4 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.

1.8.5 The 1999 Constitution and Multiplicity of Taxes

The 1999 Constitution of the Federal Republic of Nigeria seeks to eliminate multiple taxation at all levels of government as provided for in Part II, Paragraphs 7 to 10, which state as follows:

- (a) In the exercise of its powers to impose any tax or duty on:
- (i) Capital gains, incomes or profits or persons other than companies; and
 - (ii) Documents or transactions by way of stamp duties.
- The National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it, shall be carried out by the Government of a State or other authority of a State.

- (b) Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 thereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one State.
- (c) A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council.
- (d) Where a Law of a House of Assembly provides for the collection of tax, fee or rate or for the administration of such Law by a local government council in accordance with the provisions hereof, it shall regulate the liability of persons to the tax, fee or rate in such manner as to ensure that such tax, fee or rate is not levied on the same person, in respect of the same liability by more than one local government council.

1.9 HISTORY OF NIGERIAN TAX SYSTEM

The history of taxation in Nigeria dates back to the pre-colonial era. Before the colonisation of the different entities which were later amalgamated under the name Nigeria. There were different systems of taxation, existing in the forms of, compulsory services, contribution of goods, money, labour, etc, amongst the various kingdoms, ethnic groups and tribes, controlled by the *Obas, Emirs, Ezes, Attahs, Ohinoyis* and *Amanyabos*, in order to sustain the Monarchs. The deportation of King Jaja of Opobo in 1893, due to his opposition to imperialist taxation, is illustrative of this point. The traditional rulers imposed taxes, in one form or the other, on their subjects.

These taxes took the form of “Zakkat”, levied on Moslems for educational, charitable and religious purposes; “Kudin-kasa”, a form of agricultural tax on the utilisation of land (equivalent to present day land Ground Rent), “Shuka-shuka” levied on the ownership of cattle based on the number of cattle, “Ishakole” – contribution of farm products, as a form of land tax, in exchange for the use of land for agricultural purposes, payable to Obas, Chiefs, Family/Community heads, “Owo-ori”, that is, individual taxes payable in cash or kind in return for services, War-Tax, payable by a vanquished Community to the victorious one after a war, Community Tax payable by all adults within a community to execute projects beneficial to the community. “Osusu Imachi-Nkwu” (levies for palm fruits) taxes, are payable by those who harvest palm fruits and who are expected to contribute certain sums or a proportion of the palm fruits and palm kernel oil. In Rivers and Bayelsa States, block hunting and fishing are also other forms of taxation, whereby male adults offer assets in form of canoes, boats, nets and other fishing equipment, to fish jointly, while

the female sell the harvested fish and the sales proceeds are used in financing community projects.

Nigerian taxation in its present form is traced to the establishment of a British colony in Lagos on August 6, 1861 and subsequent amalgamation of the Southern and Northern Protectorates of Nigeria in 1914.

During the colonial era, the imposition of any type of tax on the citizens (individuals and corporate) took the form of promulgation of laws by the colonial authority.

Examples of such laws include:

- (a) Proclamation law 1914, applicable to the whole of Nigeria;
- (b) Native Law Ordinance Cap 74 of 1917 applicable to Western Nigeria. This law was re-enacted in Eastern Nigeria in 1929. One of the features of this law, was that for the first time, it imposed taxes on women, resulting in the Aba women's riots of 1929;
- (c) Non-natives Protectorates Tax Ordinance of 1931 later consolidated with subsequent amendments in 1939. This Ordinance was later repealed and incorporated into the Taxation Ordinance, No 4 of 1940 and subsequently re-enacted as the Income Tax Ordinance, 1943.

The above tax laws were administered on individuals and corporate entities by tax controllers, that is, District Officers, in the districts, provinces and regions.

In order to achieve uniformity in the system of taxation throughout the geographical entity called Nigeria, the colonial Government set up the Raisman Commission in 1958. This Commission recommended the introduction of uniform basic income tax principles, for application in all the regions of Nigeria. The recommendation was accepted by Government, which incorporated same, into the 1960 Constitution of the Federal Republic of Nigeria. This led to the promulgation of the Income Tax Management Act, 1961 and The Companies Income Tax Act, 1961.

These legislations were later repealed and re-enacted as The Personal Income Tax Act CAP P8 LFN 2004 and The Companies Income Tax Act CAP C21 LFN 2004, respectively. As a result of the reassessment carried out by the Law Review Commission, these laws have been reviewed and codified, and are included in the Laws of the Federal Republic of Nigeria 2004, with some amendments in 2011 (see Personal Income Tax (Amendment) Act 2011).

1.10 CHAPTER REVIEW

This chapter defines and explains the nature and objectives of taxation. It deals extensively with history of Nigerian Tax system and laws which dates back to 1861, when the British colony was established.

Different classification of taxes grouped into direct and indirect as well as the distinction between Taxes and Levies were also explained. The issue of tax multiplicity, which is the bane of taxpayers in Nigeria, was adequately discussed.

1.11 WORKED EXAMPLES

1.11.1 Questions

- (1)(a) Differentiate (with examples) between direct and indirect taxes.
- (b) Write brief notes on:
 - (i) Progressive tax
 - (ii) Proportional tax
 - (iii) Regressive tax
- (2) "Tax, fee, fines and penalties are one way or the other similar but are not the same".

Required:

- (a) Define tax, fee, fines and penalties.
- (b) What feature(s) distinguish tax from other public charges.
- (3) State and discuss any FOUR major sources of tax laws in Nigeria.
- (4) State any THREE objectives of Taxation.

1.11.2 Suggested Solutions

- 1(a) **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 taxpayer bears the burden of the tax liability. Examples of direct taxes include Personal income tax, Companies income tax, Capital gains tax, Petroleum profits tax and Tertiary education tax.

Indirect taxes: These 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. Thus, the taxes are borne by a person other than the one from whom the tax is collected. Examples include Value added tax, Stamp duties, Excise duties and Customs duties.

The major distinction between the two different types of taxes boils down to the person who will bear the full weight of the tax. If it the burden can be shifted to another person, then it is an indirect tax, otherwise it is a direct tax.

- b(i) **Progressive tax:** This form of tax is graduated as it applies higher rates of tax as income increases.
- (ii) **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 tax payer with income of N1,000,000 pays tax of N200,000.
- (iii) **Regressive tax:** Under this type of tax, the tax payable decreases as the taxpayer's income (or tax base) increases. This system may not be suitable for developing countries as it yields low revenue. It may also lead to political or social reaction. This type of tax is not commonly applied.

- 2(a) **Tax:** This is a compulsory exaction of money by a public authority for public purposes from her citizens.
Fee: This is a payment to defray the cost of each recurrent service undertaken by the government, primarily in the public interest, but conferring a measurable special advantage on the fee payer. Examples are court fee, registration fee of a property and marriage fee.

Fines and penalties: These are levies not imposed to collect revenue but to punish a person for infringement of state law, such as traffic offenders.

- (b) Fees, fines and penalties are similar to tax but they are not taxes. Taxes are compulsory payments demanded by the government on her citizens and the taxpayer may not claim any benefits from the amount paid from the government. On the other hand, a person that pays fee, such as marriage fee, will receive his or her benefit from the government.
- (3) The major sources of Nigerian tax laws are:
(a) Customary Laws
These are the Native Laws and Customs, governing the taxation of incomes, goods and properties of persons or communities within an ethnic group. Included under this heading, is the Islamic law which is the basis of Moslem laws that are usually applicable in the Northern part of Nigeria. Examples of taxes collected under the customary Laws are: *Ishakole*: Payable in Yoruba Land, to titular heads of communities or Obas on the produce from farm land; *Osusu- Nkwu*: Applicable in the

Eastern part of Nigeria and *Zakkat*: Tax payable by adherents of the Islamic faith, on their wealth, which has been in their possession for a full year. Such wealth includes money, properties, etc.

(b) Statute Laws

These are tax legislations passed by Acts of the National and State Assemblies and bye-laws by Local Government authorities in a democratic government or Decrees or Edicts under a military Government. These legislations confer necessary powers on the taxing authorities to impose taxes on the citizens that is, individuals, companies, trusts, settlements, etc.

Examples of such tax legislations are:

The Personal Income Tax (Amendment) Act 2011

The Companies Income Tax Act 2004

(c) Case Laws or court judgements

This is the doctrine of *Stare decisis*, that is, judicial precedents. Under this doctrine, judgements pronounced by superior courts of records, namely: High Courts, Appeal Courts, and the Supreme Court, on principles of tax laws and their interpretations of the provisions of tax statutes, are binding on the lower courts.

In view of the fact that Nigerian tax laws had their origin from the English tax laws, it would not be out of place to state, that the principles of English common law pronounced upon by the Judges in England and interpreted by them, also form another source of Nigerian tax laws.

This position is buttressed by the decision in the case of ADERAWOS TIMBERS TRADING CO.LTD V FEDERAL INLAND REVENUE SERVICE BOARD (1966) LL.R 195, (1969) ALL NLR 247.

In this case, it was held that the decisions of English Courts can be invoked for the purpose of interpreting Nigerian tax statutes where the expression and terms used are similar and substantially the same as those used in English Statutes.

- (d) Circulars issued by and practices of the Revenue.
- (e) Opinions of tax experts and authors insofar as the courts take judicial notice of them.
- (f) Budget and pronouncement of relevant ministries
- (g) The Constitution of the Federal Republic

- (4) The objectives of taxation include the following:
- (a) Revenue generation so as to meet the needs of the government particularly in provision of infrastructure and public goods.
 - (b) To redistribute income or wealth in order to reduce poverty, inequality and promote social welfare in the society
 - (c) For social function, such as discouraging the consumption of demerit or harmful goods like alcohol and cigarettes. This is done to reduce external costs (health risks and pollution) to the society.
 - (d) Harmonisation of economic objectives: Harmonisation of diverse trade or economic objectives of different countries can be achieved through a good tax system. For example, tax system can be employed by member states of Economic Committee of West African States (ECOWAS) so as to achieve the philosophy of the single market (free movement of people and goods) within the region.
 - (e) Management of the economy. Taxation is important in the planning of savings and investments and by harmonising it with development strategy and changing economic structure, the government can use taxation as a powerful fiscal weapon to plan and develop a country.

Skills level

Taxation

CHAPTER

2

Administration of Taxes

Contents

1. Purpose
2. Nature of Tax Administration
3. Organs of Tax Administration
4. Tax Jurisdictions
5. Taxes and Levies Being Imposed and Collected by Each Tier of Government
6. Registration of Taxpayers
7. Filing of Tax Returns
8. Chapter Review
9. Worked Examples

2

ADMINISTRATION OF TAXES

2.0 PURPOSE

After studying this chapter, readers should be able to understand:

- (a) organs of Tax Administration: Federal, States and Local Governments;
- (b) composition, Jurisdiction and Functions of the Tiers of Tax Authority and the Joint Tax Board;
- (c) taxes imposed and collected by the tiers of government; and
- (d) registration of Taxpayers and Filing of Returns.

2.1 NATURE OF TAX ADMINISTRATION

The administration of taxation in Nigeria is vested in various tax authorities depending on the type of tax under consideration.

Broadly, there are three tax authorities, namely;

- (a) Federal Inland Revenue Service Board,
- (b) State Board of Internal Revenue, and
- (c) The Local Government Revenue Committee.

The enabling law in respect of each type of tax will normally contain a provision as to the body charged with the administration of the tax.

For this purpose, the various enabling tax laws are as follows:

- (i) Companies Income Tax Act, Cap.C21, LFN 2004, (as amended), which imposes tax on the incomes of companies other than corporation soles and companies engaged in petroleum operations (upstream operations).
- (ii) Petroleum Profits Tax Act, Cap.P13, LFN 2004, which imposes tax on the profits of companies engaged in petroleum operations.
- (iii) Tertiary Education Trust Fund (Establishment) Act, 2011, which imposes Education tax on the Assessable profits of companies registered in Nigeria.
- (iv) Personal Income Tax Act, Cap. P8 LFN 2004 and Personal Income Tax (Amendment) Act, 2011, which impose tax on incomes of individuals and unincorporated soles.
- (v) Value Added Tax Act, Cap. V1, LFN 2004, (as amended), which imposes tax on the supply of goods and services (except those specifically exempted or zero rated), made by incorporated companies and other business organisations.
- (vi) Stamp Duties Act, Cap. S8 LFN 2004, which charges duties on specified instruments listed in the Act.

- (vii) Capital Gains Tax Act Cap. C1 LFN 2004, which imposes tax on capital gains arising from the disposal of chargeable assets.

2.3 ORGANS OF TAX ADMINISTRATION

2.3.1 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 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.

2.3.2 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.

2.3.3 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:

S/No	Section of PITA	Details of Power
		Power to:
1	2	Determine the persons on whom to impose tax.
2	6	Assess a non-resident individual who carries on business or trade partly in Nigeria.
3	7	To assess and charge a person to tax based on a fair and reasonable percentage of the turnover of his trade or business.
4	17	Adjudge a transaction as artificial.
5	46	Call for further returns.
6	47	Call for returns, books, documents and information.
7	50	Appoint a person as agent for purposes of tax collection.
8	53	Enter and search premises.
9	54	Assess a person on a best of judgment.
10	55	Raise additional assessments.
11	57	Serve notice of assessment on a taxable person.
12	78	Sue for and recover tax as a debt in a court of competent jurisdiction.
13	86	Have a representative member on the Joint Tax Board
14	99	Commence prosecution for an offence.
15	102	Collect tax conferred only on duly authorized officials of a State Internal Revenue Service.
16	103	Enter any house or premises and request for information.
17	104	Distrain a taxpayer for non-payment of tax.

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.

2.3.4 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 Councillors 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.

2.3.5 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.

2.4 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. This aspect is fully discussed in chapter 3 of this Study Pack.

2.5 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:

Tier of Government	No of Taxes Collectible
Federal	8
State	11
Local	20

2.5.1 Taxes to be collected by the Federal Government

- (a) Companies income tax;
- (b) Withholding tax on Companies, residents of the FCT and non-resident individuals;
- (c) Petroleum profits tax;
- (d) Value added tax;
- (e) Education tax;
- (f) Capital gains tax on Companies, residents of FCT and non-resident individuals;
- (g) Stamp Duties on Corporate bodies and residents of FCT; and
- (h) Personal income tax on:
 - (i) Members of the Armed Forces of the Federation of Nigeria;
 - (ii) Members of the Nigerian Police Force;
 - (iii) Residents of the FCT; and
 - (iv) Staff of the Ministry of External Affairs and non-resident individuals.

2.5.2 Taxes and Levies to be collected by State Governments

- (a) Pay As You Earn (PAYE);
- (b) Withholding tax on individuals;
- (c) Capital Gains tax on individuals;
- (d) Stamp Duties on Investments executed by individuals;
- (e) Pools betting, Lotteries, Gaming and Casino Taxes;
- (f) Road taxes; and
- (g) 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.
- (h) Development Levy (individuals only), not more than N100.00 per annum on all taxable individuals;
- (i) Naming of street registration fees in State Capital;
- (j) Right of Occupancy Fees on Lands owned by the State in urban cities of the state; and
- (k) Market taxes and levies where state finance is involved.

2.5.3 Taxes and Levies to be collected by Local Governments

- (a) Shops and kiosks rates;
- (b) Tenement rates;
- (c) Marriage, birth and death registration fees;
- (d) Slaughter slab fees;
- (e) On and off Liquor Licence Fees;
- (f) Street naming registration fee except in State capital;
- (g) Right of occupancy Fees on Lands in rural areas (exclusive of those collectable by Federal and State Governments);
- (h) Market Taxes and Levies excluding any market where state finance is involved;
- (i) Motor Park Fees;
- (j) Domestic animal Licence Fees;
- (k) Bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck;
- (l) Cattle tax-payable by cattle farmers only;
- (m) Road Closure Levy;
- (n) Radio and Television Licence fees (other than Radio and Television Transmitter);
- (o) Radio Licence fees (to be imposed by the Local Government of the State in which the car is registered);
- (p) Illegal parking fees;
- (q) Public convenience sewage and refuse disposal fees;
- (r) Customary burial ground permit fees;
- (s) Religious places establishment permit fees; and
- (t) Signboard and Advertisement permit fees.

2.6 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 SIRS of the States where their employees and suppliers are resident for PAYE and Withholding tax purposes.

2.6.1 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.

2.6.2 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.

2.7 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.

2.7.1 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:
 - (i) Capital allowances computation;
 - (ii) Income tax computation, including minimum tax where applicable);
 - (iii) Relevant schedules to the financial statements e.g. fixed assets, debtors, creditors; and
- (g) Duly completed FIRS self assessment forms for Income and Education Taxes.
- (h) Evidence of payment of tax in full or a part of an agreed payment by instalment plan.

2.8 CHAPTER REVIEW

This chapter identifies the organs of tax administration as well as the composition and functions of the Federal Inland Revenue Service, State Internal Revenue Service, Joint Tax Board, Federal and State Technical Committees. It also discusses taxes being imposed and collected by the 3-tier of government and issues relating to registration of taxpayers, filing of returns.

2.9 WORKED EXAMPLES

2.9.1 Questions

- (1) Write short notes on composition and duties of:
 - (a) Federal Inland Revenue Service Board
 - (b) State Board of Internal Revenue

- (2) In respect of Act 21, taxes and levies (Approved list for collection) 1998, briefly explain the following taxes and levies and the authorities responsible for their assessments and collection:
 - (a) Tenement rate
 - (b) Pools betting and lotteries, gambling and casino taxes
 - (c) Tertiary Education tax
 - (d) Personal income tax on members of the Armed Forces

- (3) What are the composition and functions of the Joint Tax Board and state what constitutes a quorum in the Board's meeting?

- (4)
 - (a) State the composition of the Technical Committee of the Federal Inland Revenue Service Board.
 - (b) List any THREE powers and duties of the Technical Committee of the Federal Inland Revenue Service Board.
 - (c) List any FIVE taxes and levies imposed and collected by State Governments.

2.9.2 Suggested Solutions

(1)(a) Composition of the FIRSB

The Federal Inland Revenue Service Board comprises:

- (i) Executive Chairman – who shall be a person within the Service, to be appointed by the President;
- (ii) Six members with relevant qualifications and expertise, to be appointed by the President to represent each of the six geo-political zones;
- (iii) A representative of the Attorney-General of the Federation;
- (iv) The Governor of the Central Bank of Nigeria or his representative;
- (v) A representative of the Minister of Finance not below the rank of a Director;
- (vi) 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;
- (vii) 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;

- (viii) The Comptroller-General of the Nigerian Customs Service or his representative, not below the rank of Deputy Comptroller-General;
- (ix) Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director; and
- (x) The Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.

Duties of FIRSB

The Board Shall:

- (i) Provide the general policy guidelines relating to the functions of the Service;
- (ii) 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;
- (iii) Review and approve the strategic plans of the Service;
- (iv) Employ and determine, the terms and conditions of service including, disciplinary measures of the employees of the Service;
- (v) Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and
- (vi) Do such other things, which in its opinion, are necessary to ensure the efficient performance of the functions of the Service under the Act.

(b) Composition of SBIR

The Internal Revenue Service Board for each state comprises:

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

Functions of the State Board of Internal Revenue

The State Board of Internal Revenue shall be responsible for:

- (i) Ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant laws;
- (ii) 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;

- (iii) 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;
- (iv) 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
- (v) Appointing, promoting, transferring and imposing discipline on employees of the State Internal Revenue Service.

(2) (i) Tenement Rate

It is the tax paid on the rateable value of any property situated in a Local Government Area.

It is collectible by the Local Government where the property is situated.

- (ii) Pools betting and lotteries, gaming and casino taxes
These taxes are payments made by owners of casino and gambling centres for engaging in such activities.

The taxes are collectible by the State Government in which the office is situated.

- (iii) Tertiary Education tax

It is tax imposed on Assessable Profits of companies registered in Nigeria. The tax is 2% of Assessable Profit of the company.

The Federal Inland Revenue Service is responsible for the assessment and collection of the tax.

- (iv) Personal Income Tax on members of the Armed Forces

This is the tax payable by members of the armed forces on their income. The tax is collectible by the Federal Inland Revenue Service on behalf of the Federal Government.

(3) Composition of the JTB

- (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.
- (4) (a) **Composition of the Technical Committee of FIRSB**
- (i) The Executive Chairman of FIRS as Chairman of the committee;
 - (ii) All Directors and Heads of departments of the FIRS;
 - (iii) The Legal Adviser to FIRS; and
 - (iv) 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.

- (b) **Powers and duties of the Technical Committee Federal Inland Revenue Service Board**
 - (i) To consider all tax matters that requires professional and technical expertise and make recommendations to the Board;
 - (ii) To advise the Board on any aspect of the functions and powers of the FIRS; and
 - (iii) To attend to such other matters as may from time to time be referred to it by the Board.
- (c) **Taxes and Levies to be collected by Local Governments**
 - (i) Shops and kiosks rates;
 - (ii) Tenement rates;
 - (iii) Marriage, birth and death registration fees;
 - (iv) Slaughter slab fees;
 - (v) On and off Liquor Licence Fees;

- (vi) Street naming registration fee except in State capital;
- (vii) Right of occupancy Fees on Lands in rural areas (exclusive of those collectable by Federal and State Governments);
- (viii) Market Taxes and Levies excluding any market where state finance is involved;
- (ix) Motor Park Fees;
- (x) Domestic animal Licence Fees;
- (xi) Bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck;
- (xii) Cattle Tax-payable by cattle farmers only;
- (xiii) Road Closure Levy;
- (xiv) Radio and Television Licence fees (other than Radio and Television Transmitter);
- (xv) Radio Licence fees (to be imposed by the Local Government of the State in which the car is registered);
- (xvi) Illegal parking fees;
- (xvii) Public convenience sewage and refuse disposal fees;
- (xviii) Customary burial ground permit fees;
- (xix) Religious places establishment permit fees; and
- (xx) Signboard and Advertisement permit fees.

Skills level

Taxation

CHAPTER

3

Returns, Assessments and Collection Procedures

Contents

1. Purpose
2. Filing of Tax Returns
3. Assessment Procedures
4. Collection Procedures
5. Tax Clearance Certificate
6. Chapter Review
7. Worked Examples

RETURNS, ASSESSMENTS AND COLLECTION PROCEDURES

3.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) appreciate the need for assessment of incomes of companies, returns and tax collection procedures;
- (b) understand assessment procedures of companies;
- (c) know the procedures for filing annual tax returns, audited accounts, etc; and
- (d) understand the nature, objectives, relevance and related problems of tax clearance certificates.

3.1 FILING OF TAX RETURNS

3.1.1 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.

3.1.2 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.

3.1.3 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.

3.1.4 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.

3.1.5 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:

(c) **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.

- (d) **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.

3.2 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.

3.2.1 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.

3.2.2 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.

3.2.3 Back Duty Assessment

Where a taxpayer or its representative has committed fraud, wilful 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, wilful 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.

3.2.4 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.

3.2.5 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.

3.3 COLLECTION PROCEDURES

3.3.1 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.

3.3.2 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 at 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 instalments, not exceeding six, as the FIRS may approve.

An application to FIRS for instalmental payment of tax shall be accompanied by proof of payment of the first instalment to a designated bank.

3.3.3 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.

3.3.4 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.

3.3.5 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) Distrain on the taxpayer's goods, other chattels, bonds or other securities; and
- (b) Distrain 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.

In order 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.

3.4 TAX CLEARANCE CERTIFICATE

3.4.1 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.

3.4.2 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 licence;
- (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;

- (g) Application for approval of building plans;
- (h) Application for trade licence;
- (i) Application for transfer of real property;
- (j) Application for import or export licence;
- (k) Application for agent licence;
- (l) Application for pools or gaming licence;
- (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.

3.4.3 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).

3.5.4 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.

3.5 CHAPTER REVIEW

In this chapter, the need for incorporated companies to file tax returns, the nature/composition of such returns as well as the time limits prescribed by the Act, for filing the returns are discussed. Chapter also details incentives and penalties, for early filing and failure/delay in filing, respectively. The Assessment and collection procedures are also adequately covered. The time limit for the payment (depending on the basis of assessment), currency of payment, penalties for late payment and Revenue authority's enforcement procedures, and other issues comprehensively addressed.

It also discusses issues relating to the issuance and importance of Tax Clearance Certificate.

3.6 WORKED EXAMPLES

3.6.1 Questions

- (1) The powers to assess the incomes of corporate organisations to taxes are vested in the Federal Inland Revenue Service as entrenched in the Companies Income Tax Act, Cap C21, LFN 2004 (as amended).
To comply with the statutory provisions, corporate organisations are required to file tax returns within a specified period of time to the relevant tax authority.
You are required to state:
 - (a) Documents required to be forwarded to the relevant tax authority when sending the first set of returns;
 - (b) The time lag for filing the first set of returns and subsequent ones; and
 - (c) The penalty for late filing of returns at the due dates.
- (2) When does an assessment become final and conclusive?
- (3) The self-assessment system was introduced with effect from 1 January 1996, to run parallel and in conjunction with the existing

government assessment for both individual and corporate taxpayers. How does it operate and what are its benefits?

- (4) In relation to the assessment procedures in Nigerian taxation administration, write on the following:
 - (a) Types of assessments available to companies
 - (b) Time within which tax is to be paid
 - (c) Penalty for late payment of tax
 - (d) Back duty assessment

- (5) It is the habit of some taxable individuals or companies to avoid paying tax. One of the measures introduced by the government to bring taxpayers into the tax net was the introduction of Tax Clearance Certificate.

Required:

List any TEN transactions in respect of which Tax Clearance Certificate must be produced.

3.6.2 Suggested Solutions

- (1) Corporate organisations are required by law to file tax returns to the Federal Inland Revenue Service in accordance with CITA 2004. The returns must be submitted to the integrated tax office nearest to the registered address of the business.

The returns to be sent must follow some specified guidelines and procedures as follows:

- (a) Documents required to be forwarded to the relevant tax authority when sending the first set of returns are:
 - (i) Copy of the Certificate of Incorporation.
 - (ii) Certified true copy of the Memorandum and Articles of Association.
 - (iii) Certified copy of form CAC 7 (Particulars of Directors).
 - (iv) Letter of appointment of External Auditors and Tax Representatives.
 - (v) Tax computations and the computations of capital allowances for the relevant year of assessment.
 - (vi) Audited financial statements of the company.
 - (vii) Letter of acceptance by the External Auditors and Tax Representatives
 - (viii) Answers to the questionnaires which include the following information:
 - ◆ Date of commencement of operations
 - ◆ Accounting year end

- ◆ Registered address of the company
 - ◆ Business address of the company if different from the registered office; and
 - ◆ Any other relevant information
- (b) The time lag for filing the first set of returns and subsequent ones
- (i) First set of returns: within 18 months from the date of incorporation or 6 months after the end of its first accounting period, whichever is earlier.
 - (ii) Subsequent returns: within 6 months from the accounting year end of the business entity.
- (c) Penalty for late filing of returns at the due dates
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:

- (i) ₦25,000 in the first month in which it fails to file its annual returns, and
- (ii) ₦5,000 for each subsequent month in which the failure continues.

In addition, 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 ₦100,000 or imprisonment for 2 years or both.

- (2) 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 tax payer after his objection has been determined by FIRS; or
 - (c) The amount of Total profit has been determined on appeal.
- (3) Self-Assessment Scheme is a system in which a taxpayer is required to make a return of his income and the tax liability based on such income. The taxpayer is expected to forward the returns with the cheque or in such number of monthly instalments, not exceeding six to the tax authority. An application by a company to FIRS for instalmental payment of tax shall be accompanied by proof of payment of the first instalment to a designated bank.

The following are the benefits of the scheme:

- (a) There is reduction in time taken to raise assessment by the tax authority.
 - (b) The taxpayer can pay the current tax due in 6 equal instalments, if approved by the tax authority.
 - (c) It gives a measure of confidence to the taxpayer to willingly submit himself to be assessed.
 - (d) Provisional tax will not be paid.
- (4) (a) Types of assessment
- (i) Provisional tax assessment: It is an estimate of tax payable based on the tax paid by the taxpayer in the preceding year of assessment.
 - (ii) Government assessment: A company's tax liability for the year is determined by the tax authority which is then conveyed to the taxpayer through Notice of Assessment.
 - (iii) Self-assessment: Tax is assessed by the taxpayers.
- (b) Time within which tax is to be paid
- (i) 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.
 - (ii) Government assessment: This is payable within 2 months from the date on the Notice and the tax liability is after the payment of the provisional tax.
 - (iii) Self-assessment scheme: Same applies as for government assessment. Disputed assessment must be settled within one month from the date of Amended Assessment Notice.
- (c) 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:
- (i) Penalty of an amount equal to ten percent per annum of the amount of tax payable; and
 - (ii) 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.

- (d) **Back duty assessment**
Where a taxpayer or its representative has committed fraud, wilful 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, wilful default or neglect.

The additional tax referred to above can be raised by the Revenue Service at any time or as often as it may consider necessary without a time limit.

- (5) The transactions in respect of which Tax Clearance Certificate must be produced are as follows:
- (a) Application for Government loan for industry or business;
 - (b) Registration of motor vehicle;
 - (c) Application for firearms licence;
 - (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;
 - (g) Application for approval of building plans;
 - (h) Application for trade licence;
 - (i) Application for transfer of real property;
 - (j) Application for import or export licence;
 - (k) Application for agent licence;
 - (l) Application for pools or gaming licence;
 - (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 the vendor; and
 - (u) Application for plot of land.

Skills level

Taxation

CHAPTER

4

Objections and Appeal Procedures

Contents

1. Purpose
2. Objection to Tax Assessment
3. Contents of a Notice of Objection
4. Procedure for Raising Objection to Tax Assessment
5. Hearing Before the Tax Appeal Tribunal
6. Appeals Before the Federal High Court
7. Chapter Review
8. Worked Examples

4

OBJECTIONS AND APPEAL PROCEDURES

4.0 PURPOSE

After studying this chapter, readers should be able to understand:

- (a) the procedures available to a taxpayer for raising objections to tax assessments;
- (b) how to file an Appeal before the Tax Appeal Tribunal;
- (c) how the hearing of an appeal is conducted; and
- (d) the other appeal options available.

4.1 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.

4.2 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.

4.3 PROCEDURE FOR RAISING OBJECTION TO TAX ASSESSMENT

4.3.1 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.

4.3.2 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 or 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.

4.3.3 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
 - (ii) 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;
- il) 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.

4.3.4 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.

4.4 CHAPTER REVIEW

This chapter deals with the procedure for raising an objection to a tax assessment raised on a company/taxpayer (Appellant), by the Federal Inland Revenue Service (FIRS).

The options available to an aggrieved Appellant are: Appeal to the Tax Appeal Tribunal (and if no respite or relief), appeal to the Federal High Court, highlighting procedures for the hearing under both options, have been extensively covered.

Beyond the Federal High Court, an Appellant still has two appeal options left; proceed to the Court of Appeal and ultimately to the Supreme Court.

4.5 WORKED EXAMPLES

4.5.1 Questions

- (1) What are the specific particulars to be included in a Notice of Appeal against an assessment pending before the Tax Appeal Tribunal?
- (2) Explain the procedure for an appeal against the decision of Tax Appeal Tribunal.
- (3) As a Tax Consultant, the Managing director of your client brought an Assessment Notice served on the company by the Federal Inland Revenue Service complaining that the assessment was outrageous. You observed that the amount assessed was higher than on the basis of documents you submitted.

Required:

State what could be done in this circumstance.

- (4) In relation to the assessment procedures in Nigerian tax administration, write fully on objections and appeal,

4.5.2 Suggested Solutions

- (1) **Notice of Appeal shall specify the following specific particulars:**
 - (a) The official number of the assessment and the year of assessment for which it was made.
 - (b) The amount of the tax charged by such assessment.
 - (c) The amount of the Total profit upon which such tax was charged as appearing in the Notice of Assessment.
 - (d) The date upon which the appellant was served with Notice of Refusal by the FIRS to amend the assessment as desired.
 - (e) The precise grounds of appeal against the assessment, but such grounds shall be limited to the grounds stated by the appellant in its Notice of Objection.
 - (f) An address for service of any notices, receipts or other documents to be given by the Secretary to the Tax Appeal Tribunal. Provided that at any time the appellant may give notice to such Secretary and to the FIRS, by delivering the same by registered post, of a change of such address but any such notice shall not be valid until delivered or received.

(2) **Appeal against the decision of the Tax Appeal Tribunal**

The Tax Appeal Tribunal was established and provided for in Section 59(1) of the Federal Inland Revenue Service Act, 2007. The Tribunal has power to settle disputes between taxpayers and the tax authority (like FIRS). However, once the Tax Appeal Tribunal has delivered its judgement, an appeal may be lodged to the Federal High Court within 30 days of the receipt of the judgement. The appeal must be in writing and must show the grounds of law on which the decision of the Tax Appeal Tribunal is being challenged.

(3) The following actions would be taken to remedy the disputed tax assessment:

(a) The tax consultant will review the accounts and documents which were earlier sent to the tax office to determine whether there was any basis for the variation in the assessments. If there is any genuine reason for the increase in the assessment, the taxpayer will be advised not to pursue the disputed assessment, but to make payment without any further delay.

(b) However, if there is no ground or basis for the variation in the assessment, then a valid Notice of Objection will be written to the FIRS, within 30 days of the receipt of the Notice of Assessment. The Notice of Objection will contain the grounds of objection.

(c) The Tax Consultant will expect the FIRS to see reasons and amend the assessment, which if satisfactorily would be remitted. On the other hand, where the FIRS refuses to amend the assessment, a NOTICE of Refusal to Amend should be written and sent to the company (the taxpayer).

(d) Within 30 days upon the receipt of the NOTICE of Refusal to Amend from the tax authority, a notice of appeal would be filed with the Tax Appeal Tribunal.

(4) **Objection and appeal procedures**

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

In line with the provision of Section 69 of Companies Income Tax Act CAP C21 LFN 2004 (as amended), for instance, 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 (30) days of the date of service of the notice of assessment.

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

- (i) Review and revise the assessment to an amount that is mutually agreeable to the taxpayer and the tax authority. If this occurs, the tax authority will amend the assessment and serve on the taxpayer a notice of revised tax payable; or
- (ii) 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 tax authority does not see any reason to further revise the assessment, then it will issue a Notice of Refusal to Amend its assessment.

Where the issue is not satisfactorily resolved in favour of the taxpayer, the taxpayer has the right to proceed to the Tax Appeal Tribunal for the settlement of the dispute.

The Tax Appeal Tribunal will give seven (7) days notice to the appellant and tax authority of the date and place fixed for hearing of the appeal,

An appeal would 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;

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.

All appeals before the Tax Appeal Tribunal are heard in public.

Appellant may be represented by a professional adviser or may give its evidence by written notice;

Appellant leads the case, by proving that the assessment is excessive, that is, onus of proof is put on the appellant:

If the representative of the tax authority (for instance FIRS) can prove to the Tax Appeal Tribunal that:

- ◆ Appellant failed to file returns, audited accounts etc. as required by CITA; or
- ◆ The appeal is frivolous, vexatious or an abuse of appeal process; or
- ◆ 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.

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

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

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

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.

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

- ◆ Amount involved must not be less than N400;
- ◆ The appeal must be on points of law;
- ◆ 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.
- ◆ 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.

Skills level

Taxation

CHAPTER

5

Determination of Residence

Contents

1. Purpose
2. Introduction
3. Determination and Importance of Residence
4. Resolving Dispute Over Residence Rule Application
5. Chapter Review
6. Worked Examples

5

DETERMINATION OF RESIDENCE

5.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) define place of residence and principal place of residence;
- (b) discuss the significance of residence for tax purposes;
- (c) state the rules for the determination of an individual's residence with reference to his source(s) of income; and
- (d) explain how a dispute over the determination of an individual's territory of residence can be resolved.

5.1 INTRODUCTION

In taxation, residence of an individual plays an important role in the determination of the tax authority to which the individual would be liable to pay his tax. However, there is difference between the place an individual is resident and the place he is deemed resident for tax purposes.

5.2 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.

5.2.1 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) Serve as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria.

5.2.2 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.

5.2.3 Residence and Nationality

Residence should not be confused with nationality. The Nigerian tax laws attach importance to residence and not nationality. Therefore, whether you are a citizen

of Nigeria or a citizen of another country, the same standards apply to you as far as you are resident in Nigeria. The same condition will also apply to an individual who is not resident in Nigeria whether he is a Nigerian or a foreign national.

5.2.4 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.

5.2.5 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.

5.2.6 Residence of Different Categories of Individuals

Liability to income tax is often determined according to whether a person receiving income is resident in a state for a particular year of assessment.

A taxpayer is therefore liable to the tax authority of the territory in which he is deemed to be resident for a year of assessment.

The following rules guide the determination of residence.

- (a) An individual whether in employment or whose only sources of income are unearned income is deemed to be resident for a year of assessment in the territory in which he has a place available for his domestic use in Nigeria on the first day of January of the assessment year, and does not include any hotel, rest house or other place at which he is temporarily lodging.
- (b) An executor is deemed to be resident in the territory in which the deceased individual was last deemed to be resident or would have been deemed to be resident if the law had been in force prior to the death of his date.

- (c) A trustee of any trust or settlement is deemed to be resident where all the income of the settlement or trust for a year of assessment arises. Where the income arises in more than one territory or where the tax authority cannot be determined, the Federal Board of Inland Revenue is the tax authority.
- (d) Partners in partnership are deemed to be resident where the principal office or the place of the partnership is situated on the first day of that year or is first established during the year.
- (e) A village or an indigenous community is deemed to be resident in the territory in which the community is found.
- (f) An itinerant worker is deemed to be resident where he is found in a year of assessment.
- (g) An individual not being a person assessable by FBIR (S. 2, 1 (b) who holds a foreign employment on the 1st 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.
- (h) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, or who had a place or principal place on that day shall be deemed to be resident for that year in the territory in which that place or principal place or residence was situated on that day.

5.3 MEANING OF INCOME

Income chargeable to tax, is the aggregate amount, each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including:

- (a) Gain or profit from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
- (b) Any salary, wage, fee, allowance or gain or profit from employment including compensation, bonuses, premiums, benefits or other perquisites allowed, given or granted by any entity to an employee, other than those specifically stated as non-taxable.

For the purpose of Personal Income Tax and place of residence, income is classified into Earned and Unearned.

5.3.1 Earned Incomes

“Earned incomes” in relation to an individual, means income derived by him from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of a previous employment. It includes profits, salaries, wages, commission, bonuses, etc.

Place of residence:

- (a) An individual who has a source of earned income in Nigeria, for a year of assessment, other than from employment or a pension, shall be deemed to be resident for that year in the territory in which he had a place or principal place of residence on the 1st day of January in that year.
- (b) If the source of the income is first acquired by the individual during the year of assessment, and he had no place of residence on the first day of that year, he shall be deemed to be resident for that year, in the territory where he first establishes a place of residence during that year.
- (c) In any other case, the individual shall be deemed to be resident for that year, in any territory from which any part or the whole of his earned income, arising in Nigeria is derived, if the income is derived from more than one territory, in the Federal Capital Territory.

5.3.2 Unearned Incomes

These are incomes derived from sources other than employment, business or reward for services rendered. It includes investment incomes such as rental incomes, dividends, royalty, earnings from trademark, patents, etc. Others are gifts, inheritance and bequeathals.

Place of residence:

- (a) An individual who has no source of earned income in Nigeria for a year of assessment, but has one or more sources of unearned income in Nigeria for 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 the 1st day of January of that year.
- (b) If all the unearned income of the individual for that year, arises in one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year in that territory where the income arises.
- (c) If the unearned income of the individual arises for that year, in more than one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year, in the territory from which any part of the unearned income arises.

5.3.3 Corporation Sole

A Corporation Sole or body of individuals other than a family or community, shall be deemed to be resident for a year of assessment, in the territory in which its principal office in Nigeria is situated, on the 1st day of January in that year or, if it has no office in Nigeria on that day, in a territory in which any part or the whole of its income liable to tax in Nigeria, arises for that year.

5.4 RESOLVING DISPUTE OVER RESIDENCE RULE APPLICATION

- (a) Where the territory of residence of an individual for a year of assessment may be determined under more than one of the preceding circumstances, it shall be determined by the first determined circumstance applicable.
- (b) If, by reason of (a) above, a determination of residence of an individual for a year of assessment, fails to be revised by a tax authority, other than that of the territory in which the individual is finally determined to be resident for that year, it shall discharge any assessment made by it, on the income of the individual for that year.
- (c) Where a dispute arises between two or more tax authorities or between a tax authority and an individual, with respect to the residence of an individual for a year of assessment, the aggrieved party shall:
 - (i) set out all the grounds on which he relies, to refute that determination;
 - (ii) refer those grounds, together with the observations thereon by that tax authority, to the Joint Tax Board (JTB);
 - (iii) the Secretary to the JTB shall give notice of any grounds, observations or facts referred to by relevant tax authority to those parties, including the individuals who are affected or likely (in his opinion) to be affected, by a determination of residence by the relevant tax authority, and shall afford the parties a period which is not less than forty days, from the issue of the notice, in which to reply thereto;
 - (iv) the Secretary to the JTB may call for further information to be given by any party, including an individual, to an objection or dispute, within such time as may appear to him, to be reasonable;
 - (v) at the expiration of the period mentioned in (iii) or (iv) above, whichever is the latter, the JTB shall proceed to determine the territory of residence of the individual, for the relevant year of assessment;
 - (vi) written notice of a determination by the Board, shall be given by its Secretary, to the individual and to each tax authority affected thereby, and any assessment which has been made on that individual, but not in accordance with the determination of the JTB, shall be discharged.
- (d) The tax authority which has referred an objection to the JTB, shall not determine that objection, unless that objection is withdrawn by him, in writing.
- (e) A determination of the JTB, shall be binding on all tax authorities and on an Appeal Tribunal, but may be questioned by the individual in the High Court of the territory of the tax authority which has made the relevant assessment.

- (f) An appeal from a decision of a High Court, in respect of the territory of residence of an individual, shall lie with the Court of Appeal, and the Supreme Court.
- (g) Where a tax authority discovers that an individual, who has been assessed by it to tax, for a year of assessment, is deemed to be resident for that year in the territory of some other tax authority, the assessment shall be discharged and any tax already paid by the individual, in respect of that assessment shall be:
- (i) set-off against tax owing for any other year, by that individual, to the first-mentioned authority; or
 - (ii) paid to the Government of that other authority; or
 - (iii) repaid to the individual, in such proportions as the first-mentioned authority may decide.

5.5 CHAPTER REVIEW

This chapter fully addresses Residence and the importance of residence in the taxation of an individual including dispute resolution in the application of the rules of residence.

5.6 WORKED EXAMPLES

5.6.1 Questions

- (1) Mr. Alexis Sanchez was employed by Zenon Ltd as Director Commercial West and Central Africa with effect from 1 March 2011. He entered Nigeria on the date his employment became effective and remained in Nigeria till 25 August 2011. He returned to Nigeria on 15 January 2012, and remained in Nigeria till 31 July 2012.

Required:

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

- (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 visit, 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.

- (3) Explain the following terms in relation to First Schedule to the Personal Income Tax Act 2004 (as amended):

- (a) Resident Individual
 - (b) Non-resident individual;
 - (c) Residence and Nationality;
 - (d) Place of Residence; and
 - (e) Principal Place of Residence.
- (4) Explain the provisions of the tax law on dispute resolution involving the application of Residence Rule in the determination of a taxpayer's income tax obligation.

5.6.2 Suggested Solutions

- (1) The taxation of the income earned by Mr. Alexis Sanchez in Nigeria would be determined by the period of his residence. Under the Nigerian income tax laws, a person is deemed resident 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.

Based on the details provided, it can be established that in 2011, Mr. Alexis Sanchez stayed in Nigeria for 178 days (i.e. 1/3/11 – 25/8/11). Based on the rule of residence, Mr. Alexis Sanchez haven stayed for only 178 days and he is not liable to Nigerian tax in 2011.

In 2012, Mr. Alexis Sanchez stayed in Nigeria 198 days (i.e. 15/1/12 – 31/7/12). However, based on the current law, Mr. Alexis Sanchez is liable to Nigerian tax in 2012 after staying in the country for more than 183 days.

- (2) Based on the above question, it is obvious that Mr. Abass has three places of residence that are not within the same state, therefore, there would be the need to establish his principal place of residence for tax. Mr. Abass principal place of residence would be the place nearest to his place of employment which in the case is Gwagwalada, FCT, Abuja.
- 3(a) **Resident Individual:** An individual is regarded as resident in Nigeria in an assessment year if he:
- (i) Is domiciled in Nigeria;
 - (ii) Sojourns in Nigeria for a period or periods in all amounting to 183 days or more in a 12 month period; and
 - (iii) Serves as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria.

- (b) **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.
- (c) **Residence and Nationality:** Residence should not be confused with nationality. The Nigerian tax laws attach importance to residence and not nationality. Therefore, whether you are a citizen of Nigeria or a citizen of another country the same standards apply to you as far as you are resident in Nigeria. The same condition will also apply to an individual who is not resident in Nigeria whether he is a Nigerian or a foreign national.
- (d) **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.
- (e) **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:
- (i) 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;
 - (ii) 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
 - (iii) 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.
- (4) The Personal Income Tax Act Cap P8 2004 (as amended) makes the the following provisions in relation to dispute resolution involving the application of Residence Rule in the determination of the liability of a taxpayer to income tax:
- (a) Where the territory of residence of an individual for a year of assessment may be determined under more than one of the preceding circumstances, it shall be determined by the first determined circumstance applicable.
 - (b) If, by reason of (a) above, a determination of residence of an individual for a year of assessment fails to be revised by a tax authority, other than

that of the territory in which the individual is finally determined to be resident for that year, it shall discharge any assessment made by it on the income of the individual for that year.

- (c) Where a dispute arises between two or more tax authorities or between a tax authority and an individual, with respect to the residence of an individual for a year of assessment, the aggrieved party shall:
- (i) set out all the grounds on which he relies to refute that determination;
 - (ii) refer those grounds, together with the observations thereon by that tax authority, to the Joint Tax Board (JTB);
 - (iii) the Secretary to the JTB shall give notice of any grounds, observations or facts referred to by relevant tax authority to those parties, including the individuals who are affected or likely (in his opinion) to be affected, by a determination of residence by the relevant tax authority, and shall afford the parties a period which is not less than forty days, from the issue of the notice, in which to reply thereto;
 - (iv) the Secretary to the JTB may call for further information to be given by any party including an individual, to an objection or dispute, within such time as may appear to him, to be reasonable;
 - (v) at the expiration of the period mentioned in (iii) or (iv) above, whichever is the latter, the JTB shall proceed to determine the territory of residence of the individual for the relevant year of assessment;
 - (vi) written notice of a determination by the Board, shall be given by its Secretary, to the individual and to each tax authority affected thereby, and any assessment which has been made on that individual, but not in accordance with the determination of the JTB, shall be discharged.
- (d) The tax authority which has referred an objection to the JTB shall not determine that objection, unless that objection is withdrawn by him in writing.
- (e) A determination of the JTB shall be binding on all tax authorities and on an Appeal Tribunal but may be questioned by the individual in the High Court of the territory of the tax authority which has made the relevant assessment.
- (f) An appeal from a decision of a High Court in respect of the territory of residence of an individual, shall lie with the Court of Appeal.

- (g) Where a tax authority discovers that an individual, who has been assessed by it to tax, for a year of assessment, is deemed to be resident for that year in the territory of some other tax authority, the assessment shall be discharged and any tax already paid by the individual, in respect of that assessment shall be:
- (i) set-off against tax owing for any other year, by that individual, to the first-mentioned authority; or
 - (ii) paid to the Government of that other authority; or
 - (iii) repaid to the individual, in such proportions as the first-mentioned authority may decide.

Skills level

Taxation

CHAPTER

6

Reliefs and Allowances

Contents

1. Purpose
2. Introduction
3. Reliefs and Allowances
4. Tax Exempt Deductions
5. Rate of Tax and Ascertainment of Tax Liability
6. Minimum Tax; and
7. Explanatory Notes
8. Chapter Review
9. Worked Examples

6

RELIEFS AND ALLOWANCES

6.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) appreciate and identify relevant reliefs and allowances;
- (b) understand non-taxable payments and allowances;
- (c) know applicable tax rates and relevant laws;
- (d) ascertain tax liabilities; and
- (e) calculate minimum tax.

6.1 INTRODUCTION

Reliefs and allowances are meant to reduce the tax burden of the individual in recognition of his personal financial responsibilities. They are deductions allowed to individual taxpayers in a year of assessment to reduce the chargeable income of such individuals.

6.3 RELIEFS AND ALLOWANCES AND TAX EXEMPT DEDUCTIONS

Reliefs and allowances are deductions available to individual taxpayer under the Personal Income Tax Act Cap P8 LFN 2004 (as amended) to lighten his tax burden. In addition to the reliefs and allowances, Personal Income Tax (Amendment) Act, 2004 (as amended), also provides that certain deductions shall be tax exempted under the sixth schedule to the. Below are the reliefs and allowances (including tax exempt deductions) available under the law:

(a) Consolidated Relief Allowance (CRA)

CRA is granted at the higher of ₦200,000 or 1% of gross income plus 20% of gross income.

“Gross Emolument” means wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other income derived solely by reason of employment.

Note: The PIT Act Cap P8 LFN 2004 (as amended) defined gross emolument but failed to define gross income which is the supposed to be the basis for calculating Consolidated Relief Allowance (CRA) claimable by a taxpayer. However, to give effect to the intention behind the introduction and the application of gross emolument in computing CRA, we shall attempt to define to define gross income.

“Gross Income” means “all incomes from whatever source derived, unless excluded by law”. Gross income is not limited to cash received.

It includes incomes realized in any form, whether money, property, or services - **Wikipedia, the free encyclopedia.**

Going by the foregoing definition, it is obvious that gross income encompasses all income of a taxpayer, whether received in cash, in kind or in any form (excluding income specifically exempted). However, for purpose of CRA computation, Gross income shall be defined as the total income (excluding Franked investment Income (FII)) of a taxpayer i.e. Earned income plus unearned income (excluding FII).

(b) National Housing Fund Contribution

The National Housing Fund Act of 1992 provides that a Nigerian earning an income of N3,000 and above per annum in both the public and the private sectors of the economy shall contribute 2.5 per cent of his basic monthly salary to the Fund. The employer is to deduct the contribution from the contribution from the employee's monthly salary and to the Federal Mortgage Bank of Nigeria within one month of making the deduction. The Act mandates the Federal Mortgage Bank of Nigeria to collect, manage and administer the fund. Contributions made to the fund are tax deductible.

(c) National Health Insurance Scheme

The National Health Insurance Scheme (NHIS) was set up by The National Health Insurance Scheme Act, 1999 for the purpose of providing health insurance which shall entitled persons insured under the scheme and their dependants the benefits of prescribed good quality and cost effective health services as set out in the Act. 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 for the Scheme. An employer under the scheme shall cause to be deducted from an employee's wages the negotiated amount of any contributions payable by the employee. The employer's contributions and the contributions in respect of its employee are to be paid into the account of a designated health maintenance organization. Contributions to the scheme are tax deductible.

(d) 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.

Notwithstanding the foregoing mode of contribution to the scheme, an employer may agree or elect to bear the full burden of the Scheme, provided that in such a case the employer's contribution shall not be less than 15% of the monthly emoluments of the employee. The Act further provides that in addition to the rates of contribution highlighted above, employers shall maintain life insurance policy in favour of the employee for a minimum of three times the annual total emolument of the employee.

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. Gratuity is tax deductible.

6.3 RATE OF TAX AND ASCERTAINMENT OF TAX LIABILITY

Having ascertained the reliefs and allowances claimable, such are deducted from the Total income of the individual in order to arrive at the Chargeable income to which the graduated tax rates are applied in order to obtain the tax payable. The graduated rates currently applicable are as follows:

Income to be Taxed	Rate of Tax	Per Centum
For every naira of the First 300,000	7k per 1	7%
For every naira of the next 300,000	11k per 1	11%
For every naira of the next 500,000	15k per 1	15%
For every naira of the next 500,000	19k per 1	19%
For every naira of the next 1,600,000	21k per 1	21%
For every income above 3,200,000	24k per 1	24%

6.4 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:

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

6.5 EXPLANATORY NOTES ON RELIEFS AND ALLOWANCES OLD TAX FREE ALLOWANCES VERSUS CONSOLIDATED RELIEF ALLOWANCE

Previously, tax free allowances included Housing of N150,000, Transport of N20,000, Personal allowance of N5,000 plus 20% of earned income, leave allowance at 10% of basic pay, Utility of N10,000, Meal of N5,000, Entertainment of N6,000, Children allowance not exceeding N10,000, Dependant relative of N4,000. The fixed components of these allowances add up to N210,000. However under the amended PITA the old tax free allowances have been replaced with a Consolidated Relief Allowance of 20% of gross income plus higher of 1% of gross income or N200,000.

However, the relevant subsections of Section 33 on children and dependant relative allowances were not deleted. This creates the impression that the allowances will still continue to apply thereby contradicting the intention behind the granting of a Consolidated allowance. Furthermore, there was the issue of interpretation on the applicability or otherwise of the allowance in the determination of the amount of reliefs and allowances available to a taxpayer when computing income tax.

As a result of the foregoing, two schools of thought emerged:

- (a) There are those that hold the view that since the relevant subsections of Section 33 on children, dependant relative and other allowances were not deleted from the amended legislation, that the allowances are still very much available to taxpayers under the current regime.
- (b) There are also those that hold the view that the non deletion of the subsections of Section 33 on children, dependant relative and other

allowances from the amended legislation does not in anyway imply that they are still available under the current regime. For them, the inclusion of the said allowances was just a mere omission by the National Assembly and should not be construed to mean their availability. They further assert that granting those allowances would go contrary to the intention of the National assembly in granting a Consolidated allowance as well as simplifying the process of Personal income tax computation.

Due to the conflicting views occasioned by the non deletion of the subsections of Section 33 on children, dependant relative and other allowances, the Joint Tax Board (JTB) issued a guideline pending the time the law will be amended.

6.6 CHAPTER REVIEW

Under the Nigerian revenue laws, individuals are granted tax reliefs generally referred to as “reliefs and allowances”. This is designed to bring equity among taxable persons under the Pay As You Earn system. Such reliefs include: Consolidated relief allowance (CRA).

There are other deductions that are tax exempt under the sixth schedule to the Act and they include: National Housing Fund (NHF), National Health Insurance Scheme (NHIS), Pension contribution, Life assurance premium contribution and Gratuity.

Finally, tax liabilities are computed after reliefs and allowances (including tax exempt deductions) are deducted from the earned and unearned income (gross income). Taxable income is charged on the basis of established tax rates as graduated under the relevant tax laws.

6.7 WORKED EXAMPLES

6.7.1 Questions

- (1) In accordance with the Personal Income Tax Act CAP P8 LFN 2004 (as amended), write short notes on the following:
 - (a) National Housing Fund Contribution (NHF);
 - (b) National Health Insurance Scheme Contribution (NHIS);
 - (c) Life Assurance Premium;
 - (d) National Pension Scheme Contribution; and
 - (e) Gratuity.

- (2) Mr. Olasumbo Adejumo retired from the Public Sector of Lagos State Government on 31 March 2013. He subsequently secured employment with First Bank Nigeria Plc as a Marketing Manager, effective 1 July 2013.

The following information has been provided by Mr. Adejumo:

- (a) Salary - 1 January to 31 March 2013: ₦360,000 per month
- (b) New employment: ₦2,640,000 per annum.
- (c) Pension income, effectively 1 April 2013: ₦720,000 per annum.
- (d) Transport allowance – new employment: ₦80,000 per annum.
- (e) Rent allowance – new employment: ₦240,000 per annum.
- (f) Contribution to National Housing Fund and National Pension Scheme: $2\frac{1}{2}\%$ and $7\frac{1}{2}\%$ of Consolidated gross income respectively.

- (g) Rental income received (Gross)

	₦
3/3/2012	250,000
9/8/2012	380,000
20/7/2011	180,000
2/12/2011	75,000

- (h) Mr. Adejumo is married and has four children, aged between 2 and 19 years. All except one named Olawole aged 19 are still in school.
- (i) Mr. Adejumo has a life assurance policy on his life with a sum assured of ₦5,000,000 and annual premium of ₦350,000.
- (j) His aged parents live with him. They have no income of their own.

Required:

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

- (3) Mrs. Amara Onyemachi retired as a Director in the Federal Ministry of Justice on 31 December 2011. On retirement, she was paid a gratuity of ₦30,000,000.

On 1 January 2012, she was employed by Septraco Limited as the Company Secretary, on a salary of ₦60,000,000 per annum. Mrs. Amara Onyemachi is married and has five children.

The following information was also provided at the end of his first year in his new employment:

- (i) The eldest son, Onyebuchi, is gainfully employed with Golf Bank Limited.
- (ii) The company provides Mrs. Amara Onyemachi with an official car – Toyota Prado- with a market value of ₦15,000,000.
- (iii) The company pays ₦7,500,000 per annum on her official accommodation.

- (iv) Mrs. Onyemachi has a life assurance policy with Mutual Assurance Plc. The sum assured is ₦50,000,000, while premium paid is ₦6,000,000 in 2011.
- (v) She contributed ₦400,000 monthly to an approved Pension Scheme.
- (vi) She spent ₦150,000 during the year for the upkeep of his two aged parents who have no source of income.

Required:

Compute Mrs. Amara Onyemachi's monthly and annual tax liabilities for the relevant year of assessment.

- (4) In accordance with the provisions of the Personal Income Tax Act 2004 (as amended) to date, explain the the provisions of minimum tax as they apply to an individual taxpayer.

6.7.2 Suggested Solutions

1(a) National Housing Fund Contribution (NHF)

The National Housing Fund Act of 1992 provides that a Nigerian earning an income of ₦3,000 and above per annum in both the public and the private sectors of the economy shall contribute 2.5 per cent of his basic monthly salary to the Fund.

The employer is to deduct the contribution from the employee's monthly salary and remit to the Federal Mortgage Bank of Nigeria within one month of making the deduction. The Act mandates the Federal Mortgage Bank of Nigeria to collect, manage and administer the fund. Contributions made to the fund are tax deductible.

(b) National Health Insurance Scheme (NHIS)

The National Health Insurance Scheme (NHIS) was set up by The National Health Insurance Scheme Act, 1999 for the purpose of providing health insurance which shall entitle persons insured under the scheme and their dependants the benefits of prescribed good quality and cost effective health services as set out in the Act.

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 for the Scheme. An employer under the scheme shall cause to be deducted from an employee's wages the negotiated amount of any contributions payable by the employee. The employer's contributions and the contributions in respect of its employee are to be paid into the account of a designated

health maintenance organization. Contributions to the scheme are tax deductible.

(c) **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;

(d) **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.

Notwithstanding the foregoing mode of contribution to the scheme, an employer may agree or elect to bear the full burden of the Scheme, provided that in such a case the employer's contribution shall not be less than 15% of the monthly emoluments of the employee. The Act further provides that in addition to the rates of contribution highlighted above, employers shall maintain life insurance policy in favour of the employee for a minimum of three times the annual total emolument of the employee.

However, with effect from 1 July 2014 the minimum contribution into the scheme has been increased as employers are now required to contribute a minimum of 10% of their employees' monthly emolument and employees are to contribute a minimum of 8%.

(e) **Gratuities**

Gratuity is money paid to an employee who is retiring or leaving his employer after several years of service. Gratuity is tax deductible.

**(2) MR OLASUMBO ADEJUMO
COMPUTATION OF PERSONAL INCOME TAX PAYABLE IN 2013 TAX
YEAR**

	₦	₦
Earned Income:		
Employment Income:		
Income from Public Service		
1/1/12-31/3/12		
Salary – 3 x ₦360,000		1,080,000
Income from Public Limited company		
1/7/12-31/12/12		
Salary – 6/12 x ₦2,640,000	1,320,000	
Transport Allowance – 6 x ₦80,000	1,320,000	
Rent Allowance – 6 x ₦240,000	<u>120,000</u>	1,920,000
Gross Emoluments		3,000,000
Add: Unearned Income		
Rental income:		
3/3/2012	250,000	
9/8/2012	<u>380,000</u>	630,000
Gross Income		3,630,000
Less: Reliefs and Allowances:		
Consolidated Relief allowance-		
Higher of 1% x ₦3,000,000 or ₦200,000 +		
20% x ₦3,000,000	800,000	
Pension – 7.5% x ₦3,630,000	272,000	
NHF – 2.5% x ₦3,630,000	<u>90,750</u>	
		<u>(1,163,000)</u>
Taxable Income		2,467,000
Applying Tax Table of Rate		
	₦	
1st ₦300,000 @ 7%	21,000	
Next ₦300,000 @ 11%	33,000	
Next ₦500,000 @ 15%	75,000	
Next ₦500,000 @ 19%	<u>95,000</u>	
Next ₦867,000 @ 21%	<u>182,070</u>	
Tax Payable		<u>406,070</u>

**(3) MRS. AMARA ONYEMACHI
COMPUTATION OF THE MONTHLY AND ANNUAL TAX LIABILITY FOR
2012 TAX YEAR**

	₦	₦
Annual salary		60,000,000
B.I.K –		
Official car – 5% X ₦15,000,000	750,000	
Accommodation – Rent		
– 5% X 7,500,000	<u>375,000</u>	<u>1,125,000</u>
Gross Income		61,125,000

Less: Reliefs and Allowances:

Consolidated Relief Allowance –

(20% X ₦61,125,000 + Higher
of ₦200,000) or

(1% X ₦61,125,000)

12,836,250

Life Assurance Policy – Premium

6,000,000

Pension - ₦400,000 X 12

4,800,000

(23,636,250)

Taxable Income

37,488,750

₦

Applying Tax Table of Rate

1st ₦300,000 @ 7%

21,000

Next ₦300,000 @ 11%

33,000

Next ₦500,000 @ 15%

75,000

Next ₦500,000 @ 19%

95,000

Next ₦1,600,000 @ 21%

336,000

Next ₦34,288,750 @ 24% 37,488,750

8,229,300

Annual Tax Liability

8,789,300

Monthly Tax

₦732,441.67

(4) In accordance with the Personal Income Tax Act 2004 (as amended), minimum tax shall be payable where:

- (a) there is no chargeable income for an individual; or
- (b) where the tax payable on the chargeable income of that individual is less than 1 per centum of his total income; or
- (c) the individual earned income does not exceed ₦300,000.

Skills level

Taxation

CHAPTER
7

Taxation of Employment Income

Contents

1. Purpose
2. Introduction
3. Types of Employment
4. Distinction Between Employment, Vocation and Trade
5. Employment Income
6. Taxation of Income from Employment
7. Operation of Pay As You Earn (PAYE) Regulations
8. Itinerant Worker
9. Non-Resident Individuals
10. Chapter Review
11. Worked Examples

TAXATION OF EMPLOYMENT INCOME

7.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) draw a distinction between contract of employment and contract for employment;
- (b) distinguish between the two types of employment;
- (c) distinguish between employment, vocation and profession;
- (d) understand the basis for valuing benefits-In-kind received by employees;
- (e) identify when gain or profit from employment is deemed to be derived from Nigeria;
- (f) understand PAYE system of taxation;
- (g) understand responsibility of employer on PAYE; and
- (h) appreciate the employer's responsibility under the PAYE system of taxation.

7.1 INTRODUCTION

The Personal Income Tax Act CAP P8 LFN 2004 (as amended) 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.

However, 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. The following distinctions can be drawn between a contract of employment and a contract for employment:

- (a) An individual under a contract of employment earns remuneration i.e. salary, while an individual under a contract for employment earns profit.
- (b) An individual under a contract of employment is assessed to tax on actual year basis, while an individual under a contract for employment is assessed to tax on preceding year basis.
- (c) A self-employed person is required to register for Value Added Tax, while an employee is not required to do so.
- (d) An employee has the right not to be unlawfully dismissed and to receive redundancy payment and other employment rights, while a self-employed person does not have such rights.

7.2 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:

Provided that if the individual is on leave from a Nigerian employment on the first day of January in a year of assessment, he shall be deemed to be resident for that year by reference to his place or principal place of residence immediately before his leaves began.

- (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.

7.3 DISTINCTION BETWEEN EMPLOYMENT, VOCATION AND PROFESSION

The distinction between employment, vocation and profession can easily be established from the definition of employment, vocation and profession as explained below:

7.3.1 Employment

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 can be verbal, implied, or an official employment contract.

In employment, the employer determines the where, when, how, why, and what of the work that is performed by the employee. The degree of input, autonomy and self-directedness that an employee experiences on the job is a by-product of an employer's philosophy of management and employment. Employment ends at the prerogative of the employer or the employee.

7.3.2 Vocation

A vocation is a specified occupation or profession or trade to which a person is specially drawn or for which he or she is suited, trained, or qualified. Vocation can either be an activity that serves as an individual's regular source of livelihood or as an activity engaged in especially as a means of passing time.

7.3.3 Profession

A profession refers to an occupation that requires specialized education, knowledge, training and ethics. Although professionals make their living in what they do, this paid work is often more than just a job or occupation alone. Whether the occupation is law, medicine, plumbing, writing, interior design or baseball, those who are in it are expected to meet and maintain common standards.

Professions are, ideally, made up of people with high ethical standards who have special knowledge and skills. The responsibility of people in certain occupations to the public is an important distinction from those who may participate in the fields on an amateur or non-professional basis. For example, if a homeowner hires a non-licensed plumber to save money, he or she wouldn't be able to hold this person to the same standards as a licensed professional in the same industry.

Based on the above definitions, we can draw the following distinctions amongst employment, vocation and profession:

- (a) Employment is an agreement between an employer and an employee in which the employee is required to provide certain services on the job in a work place 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 includes 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 brought to an end 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.

7.4 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.

(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, dependant or guest of the employee.

(c) Valuation of Benefits-in-Kind

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

(i) 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.

Note

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.

(ii) **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 rateable value of the premises. The annual rateable value of any premises is that value as determined by the relevant tax authority for purpose of local rate.

(iii) **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.

(iv) **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).

Illustration 7.1

Format for the computation of taxpayers tax liability

	₦	₦
Gross Income/Gross Emoluments		XXX
Less Consolidated Relief Allowance (₦200,000 or 1% of gross income, whichever is higher plus 20% of gross income)		<u>XXX</u>
Net Income		XXX
Less Tax Exempt Items:		
(a) Pension Contribution	XXX	
(b) National Housing Fund (NHF)	XXX	
(c) National Health Insurance Scheme (NHIS)	XXX	
(d) Life Assurance Premium	XXX	
(e) Gratuity	<u>XXX</u>	<u>XXX</u>
Chargeable Income		<u><u>XXX</u></u>

Tax Computation

	₦
1st ₦300,000 @7%	21,000
Next ₦300,000 @11%	33,000
Next ₦500,000 @15%	75,000
Next ₦500,000 @19%	95,000
Next ₦1,600,000 @21%	336,000
Balance @24%	<u>XXX</u>
Tax Payable	XXX
Less: Withholding Tax	<u>XXX</u>
Final Tax Liability	<u><u>XXX</u></u>

7.5 TAXATION OF INCOME FROM EMPLOYMENT

While PITA 2004 (as amended) provides for the taxation of individuals in Nigeria, it makes special provisions for the taxation of those in employment. Section 10 of PITA provides that 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 annual leave or temporary period of absence) or more in any twelve months period commencing in a calendar year and ending either within that same year or the following year; and
 - (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 Country.
- (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 the gains or profits from the employment 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.; and
 - (e) Notwithstanding the above provision, the gains or profits of an individual from any employment as a seafarer, other than any such employment in the Nigerian Navy or the Nigerian Ports Plc, shall be deemed to be derived from Nigeria only during any period in which the individual is serving under articles which he had signed in Nigeria or is performing stand-by duty on board a ship preparatory to his signing articles in Nigeria.

With respect to income from an employment or pension which is derived, or deemed to be derived from Nigeria, the assessable income of an individual shall be the amount of the income of the year of assessment.

For this purpose, income from an employment shall be deemed to arise from day to day except to the extent that it is derived from any bonus, commission or allowance payable on one occasion only or at intervals exceeding one month, and to that extent, it shall be deemed to be income:

- ◆ Of the day on which it is paid; or
- ◆ If it is paid after the cessation of the employment, of the last day of the employment including any terminal leave arising therefrom.

Income tax chargeable on an employee by an assessment whether or not the assessment has been made, shall if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee.

A direction under the above paragraph shall be in writing, addressed to an employer or be published in the State Gazette, and shall specify the emolument of an employee or class of employees to which it refers and the amount or amounts of income tax to be deducted whether by reference to tax tables issued by the relevant tax authority or otherwise.

In arriving at the amount of income tax to be deducted from any payment of, or on account of the emolument to an employee, the relevant tax authority shall secure so far as possible that the aggregate amount of all the deductions made during a year of assessment shall equal the income tax chargeable on him in respect of this emolument for that year.

In determining the amount of a deduction or deductions to be made in the case of any particular employee, the relevant tax authority may take into account an assessable income of that employee for the same year arising from any other source chargeable with income tax under PITA.

Income tax recovered under the foregoing provisions by deduction from the emoluments of an employee shall be set-off for the purposes of collection against tax charged on him by an assessment, but only to the extent that the deductions have been made on account of or by reference to an income charged by the assessment.

The Minister of Finance may make regulations generally for the carrying out of the foregoing provisions relating to Pay As You Earn scheme.

An employer required to make deductions from emoluments or amounts on account of emoluments paid by him to an employee shall account to the relevant tax authority in such manner as the relevant tax authority may prescribe for the deductions so made, and 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 ten *per centum* (10%) per annum of the amount, plus interest at the prevailing monetary policy rate of the Central bank of Nigeria shall be recoverable as a debt due by the employer to the relevant tax authority.

7.6 OPERATION OF PAY-AS-YOU-EARN (PAYE) REGULATIONS

(a) Regulation of employer with tax authority

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.

(b) Deduction of tax, etc

(i) 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;

(ii) Without prejudice to the provisions of Regulation 21 of these regulations, an employer who fails or refuses to register with the relevant tax authority within the time specified in paragraph (i) of this regulation commits an offence and is liable on conviction to pay N25,000 in addition to the payment of arrears of the tax due;

(iii) Where the employee works under the supervision or management of a person who is not his employer, that person (hereinafter in these Regulations referred to as "Manager") shall furnish the particulars of the employees' emolument as may be necessary to comply with the provisions of these Regulations and the Manager shall deduct the tax due from the employees' emolument and remit same to the relevant tax authority.

(c) **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; and
- (viii) The tax, if any, deducted or repaid on making the payment.

(d) **Cumulative Net Emoluments, etc**

(i) Before payment of emolument to any employee, the employer shall ascertain the cumulative net emoluments after due deduction of an approved pension fund, the cumulative free emoluments, the cumulative taxable emoluments, and the corresponding cumulative tax.

(ii) Where the cumulative tax is less than the previous cumulative tax, the employer shall refund the difference to the employee.

(iii) Where an employee in respect of whom a tax deduction card has been issued ceases to be in employment, the employer shall send to the relevant tax authority a certificate on the prescribed form containing the following particulars:

- ◆ The name of the employee;
- ◆ Any number used to identify the employer;
- ◆ The address of the employee;

- ◆ The date on which the employment commenced;
- ◆ The date on which the employment ceased;
- ◆ The “relief from income tax”, if any, appropriate to the employee’s case;
- ◆ The cumulative emoluments at the date of leaving; and
- ◆ The corresponding cumulative tax.

(e) **Certificate of deduction of tax**

- (i) 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.
- (ii) 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; and
 - ◆ Prepare a tax deduction card in accordance with the particulars given in the copies of the certificate and record on the card the cumulative free emoluments, if any, and the corresponding cumulative tax as from the month the employee left his former employment.

(f) **Death of Employee**

- (i) 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.
- (ii) 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.

(g) **Remittance of Tax Deducted**

- (i) 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.
- (ii) The tax officer shall give the employer a receipt on the prescribed form for the total amount paid.

- (h) **Demand for Remittance of Taxes**
If after ten days of the end of any month an employer fails to remit tax to the tax officer or to any bank designated for such payments, the collector of taxes shall demand for the immediate remittance of the tax due.
- (i) **Application of the Act**
If the relevant tax authority discovers or is of the opinion at any time that an employer has not been remitting taxes, the tax authority may within the year of assessment or within six years after the expiration thereof, assess the employer and the provisions of the Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and to the tax there under.
- (j) **Returns**
- (i) Not later than thirty first day of January of each year, an employer is required to file a returns with the relevant tax authority of all emolument paid to employees in its employment in the preceeding year. The return in respect of the employees shall show the total emoluments of each employee during the year, the tax relief, if any, and the total tax deducted from the employee.
- (ii) The return specified in sub-paragraph (a) of this regulation shall be accompanied by a statement and a declaration on Form H1 or any other form approved or prescribed by the relevant tax authority.
- (iii) Any employer who contravenes the above provisions shall be liable on conviction to a penalty of N500,000 in case of a body corporate and N50,000 in case of an individual.
- (k) **Inspection of Records**
Every employer shall produce for inspection, at the employer's premises, all wages records, tax deductions cards, vouchers and other documents and records relating to payment of emolument to his employees and deduction of tax thereof.
- (l) **Duty of Successor in Title**
If any employer is unable to perform the duties under this regulation by reason of death, incapacitation, liquidation or for any other reason, his personal representative or successor shall perform such duties.
- (m) **Notice to Render Returns**
The relevant tax authority may give notice to an employer requiring him to render returns of any emolument paid to the employees before the end of that year, and any such returns shall be rendered to the relevant tax authority within the time specified in the notice.

(n) Notice of Assessment

The relevant tax authority shall serve a notice of assessment on every employee assessed every six years.

7.7 ITINERANT WORKER**(a) Definition**

“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.

(b) Imposition of tax

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.

7.8 NON-RESIDENT INDIVIDUALS**(a) Imposition of tax**

Section 2 (1) (b) (iv) of PITA 2004 (as amended) imposes tax on a person resident outside Nigeria who derives income or profit from Nigeria.

(b) Employment

Subject to the provisions of Section 10 of the PIT Act, the gain or profit from any employment, the duties of which are mainly performed outside Nigeria, shall be deemed to be derived from Nigeria to the extent that those duties are performed in Nigeria.

Notwithstanding any provision of the section, the gains or profits of an individual from any employment as a seafarer, other than any such employment in the Nigerian Navy or the Nigerian Ports Plc, shall be deemed to be derived from Nigeria only during any period in which the individual is serving under articles which he had signed in Nigeria or is performing stand-by duty on board a ship preparatory to his signing articles in Nigeria.

(c) Unearned income

Section 15 deems the territory in which dividend or interest paid by a Nigerian company arises to be Nigeria.

Where a dividend or interest is distributed or paid by a Nigerian company, the dividend or interest as the case may be, whenever necessary; for the purpose of the First Schedule to the Act, shall be deemed to be derived from the territory in which the recipient of the dividend or interest, resides or, where the recipient is not resident in Nigeria, the

person shall be deemed to be a person to whom section 2 (1) (b) (iv) applies.

Withholding tax on rent; interest and dividend is the final tax due from a non-resident recipient of the payment.

(d) **Turnover tax**

Relevant tax authority may assess and charge tax on the turnover of a business whether resident or not.

The provision of the Act regarding turnover tax is applicable to a non-resident person who:

- (i) Has a fixed base from where he carried on such business, assess and charge that person on such a fair and reasonable percentage of the turnover attributable to that fixed base;
- (ii) Operates a business through a person authorized to conclude contracts on his behalf or on behalf of some persons related to him or both of whom are controlled by some other person or operates a business through a person who regularly makes deliveries from a stock of goods, or merchandise habitually held in Nigeria on his behalf, assess and charge that person on a fair and reasonable percentage of the turnover of the business carried on through that person; and
- (iii) Operates a business in Nigeria which involves a single contract for surveys, deliveries, installation or construction, assess and charge that person on a fair and reasonable percentage of the contract.

7.9 BONUS FOR EARLY FILING OF SELF-ASSESSMENT RETURN

A person who files a return under sections 41 and 44 of the Personal Income Tax (amendment) Act 2011 within the time specified for filing of the return shall, if there is no default, in the payment arrangement, be granted a bonus of 1% of the tax payable.

In addition, the chapter treats tax provisions in respect of an itinerant worker and Non-resident individuals.

7.10 CHAPTER REVIEW

This chapter fully addresses Taxation of Income from Employment under Pay As You Earn (PAYE) scheme as well as issues relating to residence, monthly deductions of PAYE and remittances.

In addition, the chapter treats tax provisions in respect of an Itinerant Worker and Non-Resident Individuals.

7.11 WORKED EXAMPLES

7.12.1 Questions

- (1) Mallam Sule Yusuf is an employee of Temidire Limited. His salary is ₦500,000 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. Malam Sule Yusuf has a life assurance policy with Jabu Insurance Limited. The sum assured is ₦250,000 and he pays a premium of ₦2,500 per month. He also contributes ₦1,000 monthly to a pension scheme approved by the Joint Tax Board. The following information is made available:
- (a) The company pays ₦180,000 per annum on his accommodation and provides him with an official car which has a market value of ₦2,000,000.
 - (b) He spent ₦6,000 on his aged father and ₦7,000 on his aged mother. Both have no source of income due to old age.
 - (c) He was retired on 31 December 2010 and was paid a gratuity of ₦300,000.
 - (d) He was also paid a lump sum of ₦100,000 for loss of office.

Required:

Compute his tax liability for the relevant year of assessment.

- (2) Mr. Willi Willi was employed by Zenon Bank Limited as Head of banking operations, effective 1 June 2013. The details of his salary are as follows:

	₦
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. Willi Willi was provided with official car. The cost of the car is ₦7,500,000. He was also provided with a driver and a private personal assistant and was paid ₦300,000 and ₦500,000 per annum respectively.

Prior to joining Zenon Bank Ltd, Mr. Willi Willi was on annual salary of ₦32,000,000 while working with Caban Bank Plc. He resigned from the bank, effective 31 May 2013.

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 ₦2,800,000 in 2012 and ₦3,000,000 in 2013 on his life.
- (c) His employers deducted and remitted on his behalf the following mandatory deduction of ₦4,900,000 and ₦1,166,667 for NHF and pension respectively for 2013.
- (d) He paid NHIS premium of ₦350,000 in 2013 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.

- (3) Alhaji Oriowo Olanihun is married with seven children. Details about his children are as follows:
 - (a) Olumide Deji is 23 years and a Lecturer in one of the private tertiary institutions.
 - (b) His daughter, Mrs Anike Ibe, is a housewife and married to Mr Cornelius Ibe, a protocol officer, in the Ministry of Youths and Sports.
 - (c) Zeb Irekari is an undergraduate in Ladoko Akintola University of Technology and is aged 18 years.
 - (d) Dupe Oyare is a student in Nick Secondary School and her age last birthday was 13 years.
 - (e) Tolulope is in one of the elitist private schools as a student. She is 8 years old.
 - (f) Kemi is in Command Secondary School and is 16 years old.

(g) Kikelomo is three years old.

Other information are as follows:

- (i) He took out a life insurance policy for which he pays annual premium of ₦400,000.
- (ii) His employer deducted ₦2,137,500 and ₦712,500 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 ₦28,500,000 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 ₦5,000,000 and the construction cost of the guest house is ₦38,000,000. However, the relevant tax authority determine the local rate on the property to be ₦320,000.

Required:

Compute Alhaji Oriowo Olanihun's Personal income tax payable for 2012 year of assessment.

- (4) Explain the following in relation to the operation of the PAY AS YOU EARN (PAYE) scheme by a taxpayer:
 - (a) Regulation of Employer with Tax Authority;
 - (b) Deduction of Tax;
 - (c) Records of Deductions;
 - (d) Cummulative Net Emoluments; and
 - (e) Certificate of Deduction of Tax

7.11.2 Suggested Solutions

(1a) **MALLAM SULE YUSUF
COMPUTATION OF TAX LIABILITY FOR 2010 ASSESSMENT YEAR**

	₦	₦
Salary		500,000
Benefit-in-kind:		
Company accommodation	180,000	
Official Car	100,000	280,000
Gratuity		<u>300,000</u>
Gross Income		1,080,000

Less Reliefs:

(i) Consolidated Relief Allowance: ₦200,000 OR 1% of ₦1,080,000, whichever is higher + 20% of ₦1,080,000	416,000	
(ii) Gratuity	300,000	
(iii) Life Assurance Relief	30,000	
(iv) Contribution to Pension Scheme	<u>12,000</u>	<u>758,000</u>
Chargeable Income		<u>322,000</u>

Tax Payable

	₦
First ₦300,000 @ 7%	21,000
Next ₦22,000 @ 11%	<u>2,420</u>
Tax Payable	<u><u>23,420</u></u>

**2. MR. WILLI WILLI
COMPUTATION OF TAX LIABILITY FOR 2013 TAX YEAR**

	₦	₦
Income – Zenon Bank Ltd 1/6/13-31/12/13:		
Basic Salary – 7/12 x ₦48,000,000		28,000,000
Housing Allowance – 7/12 x ₦12,000,000		7,000,000
Transport Allowance – 7/12 x ₦2,000,000		1,166,667
Utility Allowance – 7/12 x ₦800,000		466,667
Meal Allowance – 7/12 x ₦500,000		291,667
Leave Allowance – 7/12 x ₦4,800,000		2,800,000
Clothin Allowance – 7/12 x ₦2,000,000		1,166,667
BIK:		
Car – 7/12 x (5% of ₦7,500,000)	328,125	
Domestic servant:		
Driver – 7/12 x ₦300,000	175,000	
Personal Assistant – 7/12 x ₦500,000	<u>291,667</u>	<u>794,792</u>
		41,686,460

Add: Income - Caban Bank Plc-1/1/13-30/5/13:		
5/12 x ₦32,000,000		<u>13,333,333</u>
Gross emoluments		<u>55,019,793</u>
Less: Allowances and Tax Exempt deductions:		
Consolidated Relief Allowance:		
1% of ₦55,019,793 or ₦200,000, whichever is higher, plus		
20% of ₦55,019,793	11,554,157	
Pension	4,900,000	
Life Insurance Premium	3,000,000	
NHF	1,166,667	
NHIS	<u>350,000</u>	<u>(20,970,824)</u>
Chargeable Income		<u>34,048,969</u>
<u>Apply Tax Table</u>		
		₦
First ₦300,000 @ 7%		21,000
Next ₦300,000 @ 11%		33,000
Next ₦500,000 @ 15%		75,000
Next ₦500,000 @ 19%		95,000
Next ₦1,600,000 @ 21%		336,000
Above ₦3,200,000 @ 24%		
(₦34,048,969 – ₦3,200,000) x 24%		<u>7,403,753</u>
Tax Liability		<u>7,963,753</u>

**3. ALHAJI ORIOWO OLANIHUN
COMPUTATION OF TAX LIABILITY FOR 2012 ASSESSMENT YEAR**

	₦	₦
Salary		28,500,000
Add: B.I.K:		
Accommodation – local rate	320,000	
Car – 5% x ₦5,000,000	<u>250,000</u>	<u>570,000</u>
		<u>29,070,000</u>
Less:		
Allowances and Tax Exempt deductions:		
Consolidated Relief Allowance:		
1% of ₦29,070,000 or ₦200,000, whichever is higher, plus		
20% of ₦29,070,000	6,104,700	
Life Insurance Premium	400,000	
Pension	2,137,500	
NHF	<u>712,500</u>	<u>9,354,700</u>
Chargeable Income		<u>19,715,300</u>

Apply Tax Table

	₦
First ₦300,000 @ 7%	21,000
Next ₦300,000 @ 11%	33,000
Next ₦500,000 @ 15%	75,000
Next ₦500,000 @ 19%	95,000
Next ₦1,600,000 @ 21%	336,000
Above ₦3,200,000 @ 24%	
(₦19,715,300 – ₦3,200,000) x 24%	<u>3,963,672</u>
Tax Liability	<u><u>4,523,672</u></u>

4(a) Regulation of Employer with Tax Authority

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.

(b) Deduction of Tax

- (i) 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;
- (ii) Without prejudice to the provisions of Regulation 21 of these regulations, an employer who fails or refuses to register with the relevant tax authority within the time specified in paragraph (i) of this regulation commits an offence and is liable on conviction to pay ₦25,000 in addition to the payment of arrears of the tax due;
- (iii) Where the employee works under the supervision or management of a person who is not his employer, that person (hereinafter in these Regulations referred to as “Manager”) shall furnish the particulars of the employees’ emolument as may be necessary to comply with the provisions of these Regulations and the Manager shall deduct the tax due from the employees’ emolument and remit same to the relevant tax authority.

(c) Records of Deductions

An employer shall record, either on the tax deduction card for 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; and
- (viii) The tax, if any, deducted or repaid on making the payment.

(d) Cumulative Net Emoluments, etc

- (i) Before payment of emolument to any employee, the employer shall ascertain the cumulative net emoluments after due deduction of an approved pensions fund, the cumulative free emoluments, the cumulative taxable emoluments, and the corresponding cumulative tax.
- (ii) Where the cumulative tax is less than the previous cumulative tax, the employer shall refund the difference to the employee.
- (iii) Where an employee in respect of whom a tax deduction card has been issued ceases to be in employment, the employer shall send to the

relevant tax authority a certificate on the prescribed form containing the following particulars:

- ◆ The name of the employee;
- ◆ Any number used to identify the employer;
- ◆ The address of the employee;
- ◆ The date on which the employment commenced;
- ◆ The date on which the employment ceased;
- ◆ The “relief from income tax”, if any, appropriate to the employee’s case;
- ◆ The cumulative emoluments at the date of leaving; and
- ◆ The corresponding cumulative tax.

(e) **Certificate of Deduction of Tax**

(i) 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.

(ii) 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 commenced, and shall send that copy to the collector of taxes for the tax deductions while the employer retains a copy; and
- ◆ Prepare a tax deduction card in accordance with the particulars given in the copies of the certificate and record on the card the cumulative free emoluments, if any, and the corresponding cumulative tax as from the month the employee left his former employment.

Skills level

Taxation

CHAPTER

8

Taxation of Sole Traders/Self Employed Individuals

Contents

1. Purpose
2. Introduction
3. What Constitutes a Business
4. What Constitutes a Trade
5. Badges of Trade
6. Sole Proprietor
7. Basis for Computing Assessable Income of a Sole Proprietor
8. Capital Allowance
9. Loss Relief
10. Chapter Review
11. Worked Examples

8

TAXATION OF SOLE TRADERS/SELF EMPLOYED INDIVIDUALS

8.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) understand what constitute a business and trade;
- (b) state the factors that should be taken into consideration when deciding whether or not an individual is engaged in a trade or business;
- (c) draw a distinction between revenue receipts and capital receipts;
- (d) state the expenses specifically disallowed by the Act in ascertaining the income or loss of an individual;
- (e) compute adjusted profit or loss of an individual from a trade, business, profession and vocation; and
- (f) compute the tax liability of an individual who derives income from trade or business.

8.1 INTRODUCTION

This chapter covers unincorporated entities, that is, sole proprietorship.

8.2 WHAT CONSTITUTES A BUSINESS?

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.

8.3 WHAT CONSTITUTES A TRADE?

The difficulty in determining what constitute a trade has led to many litigation and the huge number of tax cases that exist on the issue. The problem from the decided cases is that of finding an absolute test for identifying a trade. The conclusion has always been that there are no fixed rules but that each case must be examined on its own fact. However, Lord Atkins offered a guide in the case of **Fry v Burma Corporation Ltd.**

Case 1: Fry v Burma Corporation Ltd – Lord Atkins interpreted the word ‘trade’ to mean the various activities of commerce, these includes, the winning and using the product of the earth, or multiplying the product of the earth and selling them; the purchase and sale of commodity or the offering of services for reward.

From the judicial decision, it is obvious that there could be no infallible test to determine what constitute a trade.

Case 2: Glasgow Heritable Trust Ltd v I.R.Comrs – The decision of the presiding Judge is that the fact that a former owner of a business was carrying on a trade was not a conclusive evidence of trade,

Case 3: Building and Civil Engineering Holidays Scheme Management Ltd v Clark. The decision here is that the fact that an activity generates a surplus does not necessary turn the activity into trading. Rather, it will appear that the court will favour an examination of the fact and circumstances of every transaction to find out if the transaction said to have given rise to a taxable profit bears any of the badges of trade.

8.4 BADGES OF TRADE

The Royal Commission on the taxation of profit and income gave a summary of considerations that influenced the identification of the badges of trade and they include:

- (a) The subject matter of the realization;
- (b) The length of period of ownership;
- (c) The frequency or number of similar transactions;
- (d) Supplementary work on or in connection with the property realized;
- (e) The circumstances that were responsible for the realization; and
- (f) The motive.

Case 4: Trustees of Methodist Church Mission v FBIR – An assessment was raised on the income from Wesley House, a property developed by the trustees and leased out to tenants. Objection to the assessment was based on the status of the owners (Methodist Church) which enjoys exemption under the Act as being engaged in ecclesiastical activities.

The Federal Revenue court held that the company is doing precisely what it was formed to do, namely, carrying on the business of a company dealing in real estate. Therefore, it cannot claim to be exempted from the incidence of taxation because it is established that the relevant income is derived from a trade or business.

8.5 SOLE PROPRIETOR

The profit of an enterprise, being an unincorporated entity, is taxable in the hands of the owner.

8.5.1 Basis for computing assessable income

- (a) The income of any individual for each year of assessment from each source of his income (hereinafter referred to as “assessable income”), shall be the amount of the income of the year, immediately preceding the year of assessment, from each such source, notwithstanding that he may have ceased to possess that source or that the source may have ceased to produce income.

- (b) Where the relevant tax authority is satisfied that an individual makes, or intends to make up the accounts of a trade, business, profession or vocation carried on by him, to some day other than the thirty-first day of December, it shall direct that the assessable income from that source, be computed on the amount of the gains or profits of the year, ending on that day in the year preceding the year of assessment.

8.5.2 Change of Accounting Date

If an individual in respect of his income from a trade, business, profession or vocation changes his accounting date, his assessable profits for the year of assessment in which the change occurs and those of the two years subsequent to that year, shall be computed on such basis as the relevant tax authority, may, in its discretion, thinks fit.

The relevant Tax Authority usually bases its assessment on the three years of assessment, on the basis of the old and the new accounting year, and compares the result achieved under both bases, and assesses the company based on the total assessment that gives the higher profit chargeable, of the two computations.

8.5.3 New Trades

The assessable income of an individual from a trade, business, profession or vocation carried on by him in Nigeria, for the year of assessment in which he commenced trade, business, profession or vocation in Nigeria and for the two following years of assessment (which years are, in this subsection, respectively referred to as, “the first year”, “the second year” and “the third year”) shall be ascertained in accordance with the following provisions:

- (a) For the first year, the assessable income shall be the amount of the income of that year;
- (b) For the second year, the assessable income shall, unless such notice as hereinafter mentioned is given, be the amount of the income of one year from the date of the commencement in Nigeria of the trade, business, profession or vocation;
- (c) For the third year, the assessable income shall, unless such notice to exercise the right of election is given, be computed on a preceding year basis;
- (d) The individual carrying on a trade, business, profession or vocation shall be entitled, on giving notice in writing to the relevant tax authority within two years after the end of the second year, to require that the assessable income for both the second and the third years (but not for one or the other), shall be the income of the respective years of assessment:

Provided that he may, by notice in writing, given to the relevant tax authority, within twelve months after the end of the third year, revoke the notice, and in such case, the assessable income for both the second

and the third years, shall be computed as if the first notice had never been given;

- (e) Where such a notice as stated above, has been given or revoked, such additional assessment, or, on a claim being made for the purpose in writing, such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to paragraph (d) of this subsection.

8.5.4 Cessation of Trade

Where an individual permanently ceases to carry on a trade, business, profession or vocation, in Nigeria, his assessable income therefrom shall be:

- (a) As regards the year of assessment in which the cessation occurs, the amount of the income of that year; and
- (b) As regards the year of assessment preceding that in which the cessation occurs, the amount of the income on preceding year basis, or the amount of the income of such year, whichever is the greater, and he shall not be deemed to derive assessable income from such trade, business, profession or vocation for the year of assessment following that in which the cessation occurs.

8.5.5 Receipts and Payments after Cessation of Business or Trade

Where after the date on which an individual has ceased to carry on a trade, business, profession or vocation in Nigeria, he or, after his death, his personal representative receives or pay any sum which could have been included in or deducted from his gain or profit of that trade, business, profession or vocation if it had been received or paid prior to that date, that sum shall be deemed for all purposes of this Act to have been received or paid by him, as the case may be, on the last day on which he carried on that trade, business profession or vocation.

8.5.6 Deductions Allowed

For the purpose of ascertaining the income or loss of an individual for any period from any source chargeable to tax, there shall be deducted all outgoings and expenses, or any part thereof wholly, exclusively, necessarily and reasonably incurred, during that period and ultimately borne by that individual in the production of the income. An expense will be allowable, if it is:

- Wholly - The entire amount in question must be borne for the purpose of earning the income;
- Exclusively - The expenses incurred must be exclusive for the generation of the income;
- Necessarily - The income cannot be derived without incurring that expenses; and

Reasonably - The expenses should be comparative with the prior year expenses and with the income generated, industry standard, regulatory approval etc. incurred during that period for the purpose of earning and ultimately borne by that individual in the production of that income.

8.5.7 Deductions allowed will include:

- (a) A sum payable by way of interest on money borrowed and employed as capital in acquiring the income.
- (b) Interest on Loan for developing an owner occupier residential house.
- (c) Rents payable in respect of land and buildings occupied for the purpose of acquiring the income.
- (d) Expenses for repairs of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair, or alteration of any implement, utensil or article so employed:
Provided that, if the premises, plant, machinery, fixtures, implement, utensils or articles are used in part for domestic or private purposes, so much of the expenses as relates to such use shall not be so deducted;
- (e) Bad debts incurred in any trade, business, profession or vocation, proved to have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they have become bad during the said period and notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of such period:

Provided that:

- All sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purpose of this Act be deemed to be income of the trade, business, profession or vocation of that period;
- (f) A contributory Pension or an abatement deducted from the salary or pension of a public officer under the Pension Act or any approved scheme within the meaning of the Act, and any contribution, other than penalty, made under the provisions of any Act establishing a National Provident Fund or other retirement benefit schemes for employees throughout Nigeria;
- (g) Contributions to approved pension, provident or other retirement benefits, funds under the Pension Reform Act 2004. (now Pension Reform Act 2014)
- (h) In the case of income from trade, business, profession or vocation, any expenses or part thereon, incurred for that period wholly and exclusively for the purpose of trade, business, profession or vocation.
- (i) Any expense which is proved to the satisfaction of the relevant tax authority, to have been incurred by the individual on research, for the period, including the amount of levy paid by him to the National Science and Technology Fund; and

- (j) Where the income is chargeable, only by reason of it being brought into or received in Nigeria, nothing in this section shall confer a right to any deduction from the amount of that income so brought into or received in Nigeria.

8.5.8 Deductions Not Allowed

Subject to the express provisions of the Act, no deduction shall be allowed for the purpose of ascertaining the income of an individual in respect of:

- (a) Domestic or private expenses;
- (b) Capital withdrawn from a trade, business, profession or vocation and any expenditure of a Capital nature;
- (c) Any loss or expenses recoverable under an insurance or contract of indemnity;
- (d) Rent or cost of repairs to any premises or part of premises, not incurred for the purpose of producing the income;
- (e) Taxes on income or profits levied in Nigeria or elsewhere, except as provided in the Act;
- (f) Pension contribution not approved under the Pension Reform Act.
- (g) Depreciation of Fixed Assets;
- (h) Any sum reserved out of profits, except for provision for bad and doubtful debts incurred by the business;
- (i) Any expenses of any description incurred within or outside Nigeria, for the purpose of earning management fees, unless prior approval of the arrangement has been obtained from the Minister; and
- (j) Management fees on an arrangement entered into after the commencement of this paragraph, except to the extent as the Minister may allow.

8.5.9 Capital Allowances

(a) What is Capital Allowance?

Capital allowance can be defined as a relief claimable by a taxpayer who incurs qualifying capital expenditure (QCE) during a basis period in respect of assets in use for the purpose of trade or business at the end of the basis period. Capital allowance can also be defined as allowance granted a taxpayer in lieu of depreciation charged which is treated as non allowable expenses for tax purposes.

(b) Conditions for Granting Capital Allowance

Capital allowance is claimable only on the following conditions:

- (i) Capital expenditure must have been incurred in the basis period;
- (ii) The qualifying capital expenditure must have been put into use for the purpose of trade or business by the taxpayer.
- (iii) Ownership over the assets must not be in dispute.
- (iv) Assets must be in use as at the end of the basis period

- (v) Application for Acceptance Certificate must be made with the Federal Ministry of Industry where total value of additions to fixed assets exceed ₦500,000; in any given year.

(c) **Types of Capital Allowances**

- (i) **Initial allowance:** This is a relief that is granted to a business that has incurred a qualifying capital expenditure in the basis period of the year of in the year the qualifying expenditure was incurred. Initial allowance is granted to give an immediate relief from the huge expenditure incurred by the business. Initial allowance has the following attributes:

- ◆ It is claimable only once throughout the useful life of the asset.
- ◆ It is determined by applying initial allowance rate on asset's cost.
- ◆ Initial allowance is never prorated on account of the basis period being less than twelve months. However, if the relevant tax authority established that the asset has been put to private use, the amount of initial allowance that will be allowed as a deduction from profit shall be restricted to the proportion attributable to the business use of the assets.

- (ii) **Annual allowance:** This relief is granted annually on the residue of qualifying capital expenditure incurred on fixed asset after deducting initial allowance. Annual allowance has the following attributes:

- ◆ It is granted annually over the useful life of the asset.
- ◆ It is determined by dividing the cost of the assets less initial allowance over the assets useful life.
- ◆ Annual allowance shall be prorated where the basis period of a year of assessment is less than twelve months.
- ◆ Annual allowance is calculated on a straight line basis.
- ◆ A book value of ₦10 shall be deducted from annual allowance claimable in the last year of the assets life and retained until the asset is disposed off.

- (iii) **Investment allowance:** This is an incentive granted to a business that incurred qualifying capital expenditure on plant and machinery. Investment allowance has the following features:

- ◆ It is granted only once in the life of the asset;
- ◆ It is granted only on plant and machinery;
- ◆ It is granted at the rate of 10%;

- ◆ Initial allowance is never prorated on account of the basis period being less than twelve months. However, if the relevant tax authority established that the asset has been put to private use, the amount of initial allowance that will be allowed as a deduction from profit shall be restricted to the proportion attributable to the business use of the assets.
- ◆ It is never used in determining the tax written down value of the asset. In other word, investment allowance does not impact the tax written down value of the asset. However, it should be added to other capital allowances i.e. I.A and A.A, and deducted from assessable profit.

(iv) **Rural investment allowance:** With effect from 1992, any company that incurs capital expenditure for the provision of electricity, water, tarred road and telephone for the purpose of its trade or business located in a rural area and at least 20 kilometers away from such facilities which were provided by government can claim rural investment allowance on such capital expenditure as follows:

No electricity, water and tarred road	95%.
No electricity	50%
No water	30%
No tarred road	15%

Note: Prior to 2011, rural investment allowance in respect of telephone was part of rural investment allowance.

- (d) **Balancing adjustment:** These shall arise upon the disposal of a qualifying capital expenditure in a year of assessment. The disposal may result in either:
- (i) **Balancing allowance:** This is arrived at when the tax written down value of the qualifying capital expenditure is greater than the sales proceed at the time of disposal. Balancing allowance shall be added to other capital allowances i.e. I.A and A.A, and deducted from assessable profit.
 - (ii) **Balancing charge:** This is arrived at when the tax written down value of a qualifying capital expenditure is less than the sales proceed at the time of disposal. Balancing charge being a gain shall be added to assessable profit. However, since balancing charge is a claw back of capital allowances previously enjoyed on the disposed asset, the amount to be added back to profit shall not exceed the relief previously enjoyed. Consequently, the excess

of balancing charge being capital gains shall be assessed under the Capital Gains Tax Act.

(e) Capital Allowance Rates

With effect from 1996 the following rates shall be applied for the computation of capital allowance:

Qualifying Expenditure in respect	Rate Per Centum	
	Initial	Annual
Qualifying Building Expenditure	15	10
Qualifying Industrial Building Expenditure	15	10
Qualifying Mining Expenditure	95	Nil
Qualifying Plant Expenditure (excluding Furniture and Fittings)	50	25
Qualifying Plant Expenditure (Manufacturing, Construction and Agricultural Production)	95	Nil
Qualifying Furniture and Fittings Expenditure	25	20
Qualifying Motor Vehicle Expenditure	50	25
Qualifying Motor Vehicle (Public Transportation Expenditure with at least 3 buses)	95	Nil
Qualifying Plantation Equipment Expenditure	95	Nil
Qualifying Housing Estate Expenditure	95	Nil
Qualifying Ranching and Plantation Expenditure	30	50
Qualifying Research and Development Expenditure	95	Nil

8.6 Loss Relief

Loss relief procedure, for an individual is similar to that under the incorporated companies except for current year loss. With effect from 2007, losses can be carried forward indefinitely except for a company engaged in insurance business.

8.6.1 Current Year Loss Relief (Section 36(2) (a))

- (a) The trade loss can be set off from the current year's gains or profits from other sources of income.
- (b) Such losses can also be set-off from the preceding year's gains or profits, provided that it is claimed in writing within twelve months after the end of the year of assessment as illustrated below. See 8.7.1
- (c) Such relief covers only trade losses and does not cover those incurred in connection with any other sources of income.

8.6.2 Carry forward Loss Relief (Section 36(2)(b))

The procedures for granting carry forward loss relief are as follows:

- (a) The relief is in respect of the loss, brought forward from the preceding year of assessment.

- (b) This relief is automatically granted hence, no need for claiming it in writing as is the case under current year's loss relief.
- (c) The relief is available only against the gains or profit of the same trade as the source, from where the loss was incurred.
- (d) The aggregate deduction from assessable income in respect of any loss must not exceed the amount of such loss.
- (e) The amount to be relieved must not have been relieved under the current year's relief provision.
- (f) Losses incurred in property letting can be relieved under the carry forward loss relief provision (and not under the current year's loss relief).
- (g) Carry forward loss relief is available for relief for a maximum period of four years, after which such loss lapses. This limitation does not however, extend to losses incurred in agricultural trade or business.

In the long run, it does make a significant difference whether or not the current year loss relief is claimed. However, the following factors may influence the tax payer's decision:

- (i) Possible change in tax rate: Where there is possible increase in future tax rate, the tax payer may choose not to claim the current year's loss relief and vice versa;
- (ii) Cash flow: When there is liquidity problem, it is advisable to claim the current year's loss relief; or simply to enjoy cash flow benefit (time value of money)
- (iii) Inflation rate: Where there is continuous increase in inflation rate, it may be wise to claim the current year's relief.

It should be noted that PITA does not provide for terminal loss relief.

8.6.3 Treatment of Losses under Commencement and Cessation of Business

On commencement or cessation of business, it would be observed that due to the application of the commencement provision in the determination of a company's basis period and assessable profits, the use of a basis period several times is inevitable and as such profits or losses could have been used several times resulting into an increase in the actual loss given (i.e. loss given in a question).

The following rules should be applied under the above scenarios:

- (a) In any year where profits and losses have been aggregated, the loss shall be deemed to have relieved to the extent of the profit used on aggregation.

- (b) Where on aggregating, a loss appeared several times resulting in its being more than the original loss (actual loss in question); the loss to be carried forward shall be restricted to the actual loss sustained as provided in the question. However, if actual loss has been relieved on aggregation (say in the 1st and 2nd year), the actual loss to be carried forward shall be adjusted for aggregation reliefs.

8.7 CHAPTER REVIEW

This chapter fully explains the constituents of a business and trade and addresses the taxation of income from Business, Profession and Vocation.

8.8 WORKED EXAMPLES

8.8.1 Questions

- (1) Dominion Enterprises commenced business on 1 July 2004. The following are the results submitted to Revenue:

	Profit/(Loss) N	Capital Allowances N
Period ended 31 Dec. 2004	(180,000)	30,000
Year ended 31 Dec. 2005	(120,000)	40,000
Year ended 31 Dec. 2006	140,000	40,000
Year ended 31 Dec. 2007	260,000	45,000
Year ended 31 Dec. 2008	400,000	50,000

Required:

Compute the Total income/(loss) of the business that is assessable for all the relevant years of assessment.

- 2.(a) (i) Define qualifying capital expenditure.
 (ii) State the conditions for the granting of capital allowances.
 (iii) Discuss the special provisions regarding assets purchased under hire purchase agreements or leases.
- (b) Differentiate between Balancing Allowances and Balancing Charges.
- (3) Dr. Eniola Ajayi, who resides in Lagos, has been trading for several years. The Detailed Profit or Loss Account of her business for the year ended 31 December 2013, is as shown below:

	N	N
Gross Profit		50,000,000
Profit on sale of vehicle		1,200,000
		<u>51,200,000</u>

	N	N
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>
Net Profit		<u><u>16,200,000</u></u>

You are provided with the following additional information:

- (i) Legal expenses of ~~N~~360,000 formed part of staff salary instead of capital items.
- (ii) Donations were to a local charity. None of her employees benefitted from it.
- (iii) She agreed with the inspector of Taxes that one third of vehicle repairs and maintenance related to private use.
- (iv) Further examination of accounts revealed that salary of ~~N~~800,000 was paid to an unknown person.
- (v) The Chief Accountant perpetrated 75% of the defalcation.
- (vi) Allowable expenses of ~~N~~230,000 have been omitted from the accounts
- (vii) Repairs and renewals comprised of:

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

- (viii) Agreed capital allowance on qualifying capital expenditure was ~~N~~7,500,000.
- (ix) Dr. Eniola paid mortgage interest of ~~N~~3,455,750 in 2012 on his private residence located in Lagos.

Required:

- (a) Compute the taxable income of Dr. Eniola for the relevant tax year.
- (b) State any **THREE** conditions that must be met before donations can be allowed as an expense.
- (4) Dr. Zuba Zuniga has been the Sole proprietor of his business for several years. His detailed Statement of Profit or Loss Account for the year ended 31 December 2012, is as follows:

	₦	₦
Revenue:		
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>
		<u>34,500,000</u>
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>	<u>(15,800,000)</u>
Net Profit		<u><u>18,700,000</u></u>

Additional information:

- (i) Salaries and wages include:
- | | ₦ |
|--|------------------|
| Salary paid to Mrs Zuniga who is a full time employee of the company | 350,000 |
| Wages to to the 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 for 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 Gen 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 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; and
- (b) Compute the tax liability and tax payable by Mr. Zuniga for the relevant tax year.
- (c) WHT rate on Dividend and rent is 10%

8.8.2 Suggested Solutions

(1) DOMINION ENTERPRISES

COMPUTATION OF TOTAL INCOME

ASSESSMENT YEARS - 2004-2009

Assessable Income Computation

2004 Based on 1/7/04 - 31/12/04 (Actual)

	₦	₦
Loss for the period		(180,000)
Less: Capital Allowance - for the year		<u>(30,000)</u>
Unrelieved Loss and Capital Allowance c/f		<u>(210,000)</u>

2005 Based on 1/7/04 - 30/6/05 (first 12 months)

Loss - 1/7/04 - 31/12/04		(180,000)
- 1/1/05 - 30/6/05 - $\frac{6}{12} \times (\text{₦}120,000)$		<u>(60,000)</u>
		<u>(240,000)</u>

Less:

Capital Allowance -for the year ($\frac{6}{12} \times \text{₦}40,000$)	(20,000)	
- unrelieved B/f	<u>(30,000)</u>	<u>(50,000)</u>
Unrelieved losses & Capital Allowances c/f		<u>(290,000)</u>

2006 Based on 1/1/05 - 31/12/05 (PYB)

Loss for the year		(120,000)
Add:		
Unrelieved Losses - B/f		<u>(240,000)</u>
		<u>(360,000)</u>

However, Unrelieved Losses carried forward is restricted to actual losses incurred, namely:

- Loss for the period 1/7/04 - 31/12/04		(180,000)
- Loss for the year 1/1/05 - 31/12/05		<u>(120,000)</u>
Unrelieved losses - c/f		<u>(300,000)</u>

Less:

Capital Allowance -For the year ($\frac{6}{12} \times \text{₦}40,000$)	(20,000)	
- Unrelieved b/f	<u>(50,000)</u>	<u>(70,000)</u>
Unrelieved Losses and Capital Allowances		<u>(370,000)</u>

	N	N
2007 Based on 1/1/06 - 31/12/06 (PYB)		
Assessable income		140,000
Deduct:		
Unrelieved Loss - b/f	(300,000)	
Relieved	<u>(140,000)</u>	<u>(140,000)</u>
Unrelieved Losses - c/f	(160,000)	
- Less: Capital allowances - For the year	(40,000)	
- Unrelieved	<u>(70,000)</u>	
	<u>(110,000)</u>	<u>(110,000)</u>
Unrelieved Losses & Capital Allowances c/f	<u>(270,000)</u>	
2008 Based on 1/1/07-31/12/07 (PYB)		
Assessable income		260,000
Deduct: Unrelieved Losses - B/F	(160,000)	
Relieved	<u>160,000</u>	<u>(160,000)</u>
		100,000
Less: Capital Allowance - for the year	(45,000)	
- Unrelieved b/f	<u>(110,000)</u>	
	(155,000)	
Relieved restricted to 66 ² / ₃ % of	<u>66,667</u>	(66,667)
Unrelieved Capital Allowances c/f	<u>(88,333)</u>	
Total Income		<u><u>33,334</u></u>
2009 Based on 1/1/08 - 31/12/08 (PYB)		
Assessable Income		400,000
Deduct:		
Capital Allowances - for the year	(50,000)	
- unrelieved b/f	<u>(88,333)</u>	
	(138,333)	
Relieved	<u>138,333</u>	<u>(138,333)</u>
Total Income		<u><u>261,667</u></u>

Workings

Determination of Basis Period (BP) for the relevant years:

YOA	BP for Assessment	BP for Capital Allowances
2004	1/7/04 - 31/12/04	1/7/04 - 31/12/04
2005	1/7/04 - 30/06/05	1/1/05 - 30/06/05
2006	1/1/05 - 31/12/05	1/7/05 - 31/12/05
2007	1/1/06 - 31/12/06	1/7/06 - 31/12/06

Note:

Loss relieved in total cannot exceed the actual total loss incurred. Consequently, losses for overlapping or coinciding periods are eliminated.

- 2 (a) (i) Qualifying capital expenditure means the expenditure incurred during the basis period of a company in the acquisition of a particular item of non-current assets, for example, plant and machinery, buildings, motor vehicles, furniture and fittings, and all incidental expenses incurred in bringing the asset into a usable position. Examples of such incidental expenses are legal, delivery and other professional fees.
- (ii) Conditions for granting capital allowances:
- ◆ The assets must be in use at the end of the basis period.
 - ◆ The asset must have been used for the development and enhancement of the trade or business of the company.
 - ◆ The company must be the bonafide owner of the asset.
- (iii) Special provisions for assets purchased under hire purchase agreements or leases:

Hire Purchase

When there is an absolute term for the ultimate acquisition of the asset, the hirer is deemed to be owner of such asset for the purpose of capital allowances, subject to the following conditions:

the qualifying capital expenditure shall be restricted to the total amount of installments paid during the basis period.

the installment shall exclude the hire purchase interest paid under the agreement.

Leases

Where a person owning an asset has incurred capital expenditure in respect thereof; or

Leases that asset to any person under an operating lease contract, for use wholly, exclusively, necessarily and reasonably for the purpose of a trade, or business carried on by the lessee.

Then the lessor or owner of the asset will claim capital allowance.

Where, however, an asset is acquired by any hirer or lessee under a finance lease contract, the terms of which provide for the transfer of ownership, risks and rewards to the hirer or lessee, the provision of the Schedule should apply in the same way as it applies to an asset acquired by any owner, or lessor of an asset for the purpose of his trade or business. In other words, the hirer or lessee claims the relevant capital allowances.

Where in its basis period for a year of assessment, a company owning an asset has incurred in respect thereof qualifying expenditure, wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, disposes of that asset, a balancing allowance will be given to the owner of

the asset, where the disposal value is less than the residue (tax written down value), of the asset at the date of disposal. The asset must be in use prior to disposal for the purpose of granting such allowance.

Where an asset is disposed of, by the owner and the disposal value is higher than the residual value of the asset, at the time of sale, the owner will be charged a “balancing charge” which should not be higher than the amount of allowances granted to the owner before the disposal of the asset.

Note

In order to simplify the calculation of a balancing charge, sale proceeds should be restricted to the cost of the asset. The intention of the law is not to give allowance in excess of the cost of the asset or penalize the owner by way of a balancing charge for more than the allowance earlier granted

3.(a)

**DR. ENIOLA AJAYI
COMPUTATION OF TAXABLE INCOME FOR 2013 TAX YEARS**

	N	N
Earned Income:		
Income from Trade (see working)		24,822,167
Less: Reliefs and allowances; Consolidated Relief Allowance		
Higher of 1% x N24,822,167 or N200,000 whichever is higher, +		
20% x 24,822,167	5,212,655	
Mortgage interest	<u>3,455,750</u>	<u>(8,668,405)</u>
Taxable income		<u><u>16,153,762</u></u>

WORKING

Determination Of Adjusted Profit And Income From Trade

	N	N
Net Profit as per accounts		16,200,000
Add back: Disallowable expenses:		
Staff Salary – Capital Item	360,000	
Vehicles repairs and maintenance- private use		
$\frac{1}{3}$ x N455,000	151,667	
Salary – paid to unknown person	800,000	
Defalcation – 75% x N1,200,000	900,000	
Repairs and Renewal – Partitioning cost	30,500	
Depreciation	5,010,000	
VAT on equipment	<u>2,800,000</u>	<u>10,052,167</u>
		26,252,167

	N	N
Less: Non-taxable income		
Profit on sale of vehicle	(1,200,000)	
Less: Allowable expenses omitted	<u>(230,000)</u>	<u>(1,430,000)</u>
Adjusted Profit		<u>24,822,167</u>

- (b) The conditions for a donation to be allowed as an expense are as follows:
- (i) It must be made to a body or institution approved under the fifth schedule of Companies Income Tax Act CAP C21 LFN 2004 (as amended).
 - (ii) It must not be of capital in nature.
 - (iii) It must be made out of profit.
 - (iv) It must not exceed 10% of the chargeable profit.
 - (v) It must not be for a valuable consideration.

**4.(a) MR. ZUNIGA
COMPUTATION OF ADJUSTED PROFIT FOR 2013 TAX YEAR**

	N	N
Net profit		18,700,000
Add: Disallowable Expenses:		
Salaries and wages:		
Wages paid to Mrs. Zuniga's maid	50,000	
General expenses:		
Fines paid for traffic offence committed by Mrs. Zuniga	100,000	
Hire of Gen set for Mr. Zuniga's private residence	300,000	
Finance cost:		
Interest in respect of Mr. Zuniga's private loan	200,000	
Depreciation	<u>4,800,000</u>	5,450,000
Less: Non taxable income:		
Dividend (gross)	2,500,000	
Rental income (Gross)	800,000	
Profit on sale of Fixed assets	<u>1,200,000</u>	<u>(4,500,000)</u>
Adjusted Profit		<u>19,650,000</u>

**(b) MR. ZUNIGA
COMPUTATION OF ADJUSTED PROFIT FOR 2013 TAX YEAR**

	N	N
Trade income	19,650,000	
Less: Capital Allowance	<u>(5,500,000)</u>	14,150,000
Add: Rental income (Gross)		<u>800,000</u>
Gross income		14,950,000

	N	N
Add: Dividend (Gross)		<u>2,500,000</u>
Total income		<u>17,450,000</u>
Less: Reliefs and tax deductible expenses:		
Consolidated Relief Allowance: Higher of:		
1% of N14,950,000 or N200,000,		
whichever is higher, plus		
20% of N14,950,000	3,139,500	
Life insurance premium	350,000	
NHIS contribution	<u>150,000</u>	<u>(3,639,500)</u>
Chargeable income		13,810,500
Less: Franked Investment Income:		
Dividend (Gross)		<u>(2,500,000)</u>
Net Chargeable income		<u>11,310,500</u>
<u>Apply Tax Table</u>		
		N
First N300,000 @ 7%		21,000
Next N300,000 @ 11%		33,000
Next N500,000 @ 15%		75,000
Next N500,000 @ 19%		95,000
Next N1,600,000 @ 21%		336,000
Next N8,110,500 @ 24%		<u>1,946,520</u>
Tax liability		2,506,520
Less: WHT earlier deducted from Rent		
(10% x N800,000)		<u>(80,000)</u>
Tax payable		<u><u>2,426,520</u></u>

Skills level

Taxation

CHAPTER

9

Taxation of Partnership Income

Contents

1. Purpose
2. Introduction
3. Partnership Agreement
4. Registration of Partnership Agreement With the Relevant Tax Authority
5. Relevant Tax Authority
6. Taxable Income of Partners
7. Allowable and Non-allowable Expenses
8. Assessable Income of Partners
9. Partnership Loss
10. Change in Partnership
11. Chapter Review
12. Worked Examples

9

TAXATION OF PARTNERSHIP INCOME

9.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) understand the meaning of a partnership and the content of a partnership agreement;
- (b) determine a partnership's residence and the relevant tax authority in relation to a partnership for a year of assessment;
- (c) ascertain the income of a partnership and each partner's assessable income from partnership;
- (d) ascertain the loss relief available to a partner when a partnership incurs a loss;
- (e) understand the allowable and non-allowable expenses of a partnership business;
- (f) understand when to apply commencement and cessation provisions when computing the assessable income of a partnership; and
- (g) understand how to compute the tax liability of individual partners in the partnership.

9.1 INTRODUCTION

The Partnership Act, 1890 defines a "partnership as a relationship that exists or subsists between or among persons carrying on business in common with a view of profit". Partnership is an association of two or more persons who come together with a view of making profit. A partnership has a minimum of two and a maximum of 20 members. However, section 19 (2) (b) of the Companies and Allied Matters Act (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, by persons each of whom is a legal practitioner, or as accountants by persons each of whom is entitled by legal practise as a chartered accountant.

9.2 PARTNERSHIP AGREEMENT

The conduct of a partnership business will usually be in accordance with certain terms and conditions as agreed to by all the partners. A partnership agreement or deed would spell out the rights, duties and interest of the partners in the business.

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.

9.3 REGISTRATION OF PARTNERSHIP AGREEMENT WITH THE RELEVANT TAX AUTHORITY

The Personal Income Tax Act CAP P8 LFN 2004 (as amended) requires the partnership, employee or agent in charge of the principal office or place of business of a partnership in Nigeria shall without notice or demand thereof register or cause to be registered with the relevant tax authority, a certified copy of the partnership deed or, where no written deed is in existence, particulars of any written or oral agreement under which the partnership is currently established and where any such particulars have been so registered, notice of any subsequent change therein agreed between the partners shall be similarly registered with that tax authority within thirty days of the agreement.

Where the particulars of any partnership have been registered under the provisions of the section 8 sub-section (8) of the Act, the computation of the gains or profits of a partner therein may be made by the relevant tax authority on the basis of those particulars as they apply at any relevant time and in the event of failure by a partnership to comply with any demand made under the foregoing subsection, notwithstanding the provisions of subsection (3) of section 8, tax may be assessed and charged by the relevant tax authority as though the whole gains or profits of such partnership accrued to any individual partner therein or were divisible between any partner therein as may appear just and reasonable to the tax authority.

9.4 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.

9.5 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:

- (a) Salary to a partner;
- (b) Leave passage;
- (c) Interest on capital; and
- (d) Share of profit or loss.

9.6 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.

9.7 ASSESSABLE INCOME OF PARTNERS

The gains or profits from a partnership of a partner therein shall be the sum of:

- (a) Any remuneration, interest on capital, or the cost of passages to or from Nigeria wholly or mainly undertaken or the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner, and
- (b) His share in the income of the partnership, computed in accordance with the provisions of this Act after the deduction of charges to which paragraph (a) above applies in respect of all the partners but before the deduction of any other expenses of the partnership referable to a partner which would have been private or domestic expenditure disallowed by the Act if incurred directly by that partner.

9.8 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).

9.9 CHANGE IN PARTNERSHIP

A change in the composition of a partnership business shall include the following:

9.9.1 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.

9.9.2 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.

9.9.3 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.

9.9.4 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 are 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.

Illustration 6.1

Segun and Sanni have been in partnership (Sesa & Co) for many years. The principal office of Sesa & Co is at Abeokuta in Ogun State of Nigeria. Segun normally resides in Lagos whereas Sanni resides in Abeokuta. Accounts are made up to 31 August every year.

Required:

Determine the relevant tax authority in relation to the partnership stating the duties of the relevant tax authority in accordance with the relevant Nigerian tax law.

SOLUTION TO ILLUSTRATION 6.1

The relevant tax authority in relation to the partnership is the Ogun State Board of Internal Revenue since the principal place of the partnership business is at Abeokuta in Ogun State. It is the duty of the Ogun State Board of Internal Revenue to request for a certified copy of the partnership deed or agreement. It

is also the duty of the Board to determine the partnership income or loss and its apportionment between the partners in any year of assessment. The Board, having determined the partnership income or loss, supplies the other tax authority, the Lagos State Board of Internal Revenue with the information regarding the income of the partner who is resident in Lagos State.

9.10 CHAPTER REVIEW

This chapter addresses taxation of income from Partnership including the importance of a partnership agreement and the provisions requiring the registration of the agreement with the relevant tax authority.

9.11 WORKED EXAMPLES

9.11.1 Questions

- (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	<u>360,000</u>	<u>900,000</u>	<u>(30,775,000)</u>
Net Profit for the year			<u>9,425,000</u>

Other relevant information are 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.

- (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:

	₦
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	₦360,000
Akanbi	₦240,000
David	₦180,000

- (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.

- (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:

	₦	₦
Legal Fees		33,000,000
Fees for Secretarial services	9,500,000	
Sundry incomes	4,500,000	
Interest on fixed deposit	<u>2,800,000</u>	<u>16,800,000</u>
		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	<u>700,000</u>	<u>(13,200,000)</u>
Net Profit		<u><u>36,600,000</u></u>

Additional information:

- (i) Salary include salaries paid to the partners:
- | | |
|--------------------|----------|
| Professor Wachukwu | ₦550,000 |
| Dr. Orlando | ₦400,000 |
- (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 | <u>200,000</u> |
| | <u>900,000</u> |
- (iv) Repairs and maintenance is made up of:
- | | |
|------------------------------------|----------------|
| Maintenance of partners residence: | |
| Professor Wachukwu | 200,000 |
| Dr. Orlando | 200,000 |
| Office repairs | <u>300,000</u> |
| | <u>700,000</u> |

- (v) Both partners are married with 3 children all of school going age. Professor Wachukwu maintain his aged parent and incurred ₦30,000 annual on his parents.
- (vi) Dr. Orlando paid life insurance premium of ₦2,800,000 annually on his life and that of his spouse.
- (vii) Sundry income includes profit on sale of non-current assets amounting to ₦980,000.
- (viii) Capital allowance agreed with the relevant tax authority amounted to ₦6,400,00.
- (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.

- (4) Amanda and Lilly commenced a partnership business on 1 October 2010. The account of the business for the first 12 months ended 30 September 2011, showed a loss of ₦25,000,000, after charging the following expenses:

	₦	₦
Salaries paid to partners:		
Amanda		3,500,000
Lilly		2,500,000
Interest on capital:		
Amanda		2,200,000
Lilly		1,800,000
Cost of passage:		
Amanda		800,000
Interest on loan – Lilly		680,000

Additional information:

Amanda and Lilly agreed to a profit and loss sharing ratio of 3:2.

Required:

- (a) Compute the each partner’s income/loss for the relevant years of assessment; and
- (b) Compute the individual partner’s assessment for the relevant years of assessment.

9.11.2 Suggested Solutions

1(a) EREWA, SOLA AND WOLE
COMPUTATION OF ADJUSTED INCOME OF THE
PARTNERSHIP FOR 2008 YEAR OF ASSESSMENT

	₦	₦
Net Profit for the year		9,425,000
Add Disallowable Expenses:		
Bad debts Provision	650,000	
Office Expenses (Donation)	800,000	
Depreciation	7,800,000	
Staff Loans Written Off	<u>270,000</u>	<u>9,520,000</u>
Adjusted/Assessable Income		<u><u>18,945,000</u></u>

(b) COMPUTATION OF PARTNERS' CHARGEABLE INCOME

	EREWA ₦	SOLA ₦	WOLE ₦
EARNED INCOME			
Interest on Capital	225,000	315,000	360,000
Share of Profit [5:7:8]	<u>4,736,250</u>	<u>6,630,750</u>	<u>7,578,000</u>
	4,961,250	6,945,750	7,938,000
UNEARNED INCOME			
Interest on Loan	<u>455,000</u>	-	-
	5,416,250	6,945,750	7,938,000
Deduct:			
Capital Allowance[5:7:8]	<u>(2,375,000)</u>	<u>(3,325,000)</u>	<u>(3,800,000)</u>
TOTAL INCOME	3,041,250	3,620,750	4,138,000
Deduct: Reliefs			
Consolidated Relief Allowance	<u>808,250</u>	<u>924,150</u>	<u>1,027,600</u>
Chargeable Income	<u><u>2,233,000</u></u>	<u><u>2,696,600</u></u>	<u><u>3,110,400</u></u>

(c) COMPUTATION OF TAX PAYABLE BY PARTNERS

	EREWA ₦	SOLA ₦	WOLE ₦
Chargeable Income	2,233,000	2,696,600	3,110,400
Tax Liability			
First ₦300,000 @ 7%	21,000	21,000	21,000
Next ₦300,000 @ 11%	33,000	33,000	33,000
Next ₦500,000 @ 15%	75,000	75,000	75,000

Next ₦ 500,000 @ 19%	95,000	95,000	95,000
Next ₦ 1,600,000 @ 21%			
Erewa:			
(₦ 2,233,000 - ₦ 1,600,000)@21%	132,930		
Sola:			
(₦ 2,696,600 - ₦ 1,600,000)@21%		230,286	
Wole:			
(₦ 3,110,400 - ₦ 1,600,000)@21%			317,184
	<u>356,930</u>	<u>454,286</u>	<u>541,184</u>

WORKINGS

Consolidated Relief Allowance

Erewa: ~~₦~~200,000 + 20% of ~~₦~~3,041,250 = ~~₦~~808,250

Sola: ~~₦~~200,000 + 20% of ~~₦~~3,620,750 = ~~₦~~924,150

Wole: ~~₦~~200,000 + 20% of ~~₦~~4,138,000 = ~~₦~~1,027,600

**(2) (a) DEJO, AKANNI & DAVID IN PARTNERSHIP
COMPUTATION OF PARTNERSHIP INCOME**

2011 is the year of cessation; Basis period is 1/1/11 – 31/5/11

Income Assessable:

	Dejo ₦	Akanni ₦	David ₦	Dandy ₦
Salary (5 months)	150,000			
Salary (7 months)	105,000			
Salary (12 months)	240,000	180,000		
Interest	3,750	18,000	12,600	7,350
Share of Profit	<u>250,000</u>	<u>825,000</u>	<u>41,250</u>	<u>350,000</u>
	<u>403,750</u>	<u>1,083,000</u>	<u>605,100</u>	<u>462,350</u>

Basis period is 1/1/11 – 31/5/11 1/1/10-31/12/10 1/1/10-31/12/10 1/6/11–31/12/11

	(Actual)	(PYB)	(PYB)	(Actual)
Notes Ref.	1	3	3	2

Notes:

(i) Dejo is deemed to have ceased business on 31/5/11, having retired on same date. Accordingly, applying the cessation provisions, he is assessed in 2011 tax year on his income from the partnership for the period 1/1/11 - 31/5/11, namely:

	₦
- Salary (5/12 x 360,000)	150,000
- Interest on capital 150,000 at 6% x 5/12	3,750
Share of profit -	2,400,000
(Profit -Y/E 31/12/11 x 5/12 x 1/4 (profit share)	<u>250,000</u>

The Internal Revenue Service may revise Dejo's assessment for 2010 tax year to actual, if this will produce a higher assessable income than PYB on which he would hitherto have been assessed.

- (ii) Dandy will be deemed to have commenced business on 1 June 2011, being the date of his admission into partnership. Consequently, the commencement provisions will apply to the determination of his income for 2011 assessment year, and will, therefore, be assessed on actual basis, that is, actual income of the period 1/6/11 - 31/12/11, namely:

	N
- Salary 7/12 x N180,000	105,000
- Interest on capital - N210,000 at 6% x 7/12	7,350
- Share of profit N240,000 (profit)	
Y/E 31/12/11 x 7/12 x 1/4 (profit share)	<u>350,000</u>

- (iii) Both Akanni and David, the continuing partners, will continue to be assessed on preceding year basis.

Consequently, for 2011 assessment year, their Assessable income is the share of each of them from the partnership income for the year ended 31 December 2010, namely:

	N	N
- Adjusted profit - Y/E 31/12/10		<u>1,650,000</u>
shared as follows:-		
- Dejo - (1/4 x N1,650,000)	412,500	
- Akanni - 1/2 x N1,650,000	825,000	
- David - 1/4 x N1,650,000	<u>412,500</u>	
		<u>1,650,000</u>

As stated in note 1 above, Dejo's share of N412,500 may be assessed on him in 2010 assessment year if it is higher than his assessment on preceding year basis PYB.

- (b) It is true that partnership income is subject to the commencement rules. The commencement rules provisions are as follows:
- (i) The assessable income of the year of commencement shall be the profit from the date of commencement to the end of the year of assessment.
- (ii) The assessable income for the second year of assessment, that is, the year succeeding the year of commencement shall be the profit from the day of commencement to a period of 12 months thereafter, that is, the profit of the first twelve months from commencement.

- (iii) The assessable income for the third year of assessment after commencement shall be profit of the business for the year ended in the preceding year of assessment.
- (iv) A retiring partner's income will be determined by preference to cessation rules while a new partner joining the partnership will have his case determined by reference to commencement rules. Continuing partners will be assessed on preceding year basis.

(3) **WORLAND & ASSOCIATE**

COMPUTATION OF ASSESSABLE INCOME AND TAX LIABILITY OF PARTNERS FOR 2014 TAX YEAR

	Professor Wachukwu ₦	Dr. Orlando ₦
Share of profit	17,485,000	17,485,000
Add:		
Partners salary	<u>550,000</u>	<u>400,000</u>
Income from partnership	18,035,000	17,885,000
Add: Interest on partner's loan	<u>200,000</u>	<u>0</u>
Assessable income/Gross income	18,235,000	17,885,000
Less: Reliefs and tax deductible expenses:		
Consolidated Relief allowance: Higher of 1% of gross income or ₦200,000 plus 20% of gross income	(3,847,000)	(3,777,000)
Life insurance premium	<u>0</u>	<u>(2,800,000)</u>
Chargeable income	<u>14,388,000</u>	<u>11,308,000</u>
Apply Tax Table	₦	₦
First ₦300,000 @ 7%	21,000	21,000
Next ₦300,000 @ 11%	33,000	33,000
Next ₦500,000 @ 15%	75,000	75,000
Next ₦500,000 @ 19%	95,000	95,000
Next ₦1,600,000 @ 21%	336,000	336,000
Above ₦3,200,000 @ 24%		
Professor Wachukwu		
(₦14,388,000 - ₦3,200,000) x 24%	2,685,120	0
Dr. Orlando		
(₦11,308,000 - ₦3,200,000) x 24%	<u>0</u>	<u>1,945,920</u>
Tax liability	<u>3,244,120</u>	<u>2,505,920</u>

WORKINGS

(i) Computation of Adjusted Profit and Partner's Share of Profit

	Total	Professor Wachukwu	Dr. Orlando
	₦	₦	₦
Net profit	36,600,000		
Add: Disallowed expenses:			
Sundry expenses – salary paid to Dr. Orlando's personal driver	300,000		
Depreciation	4,800,000		
Interest on Partners loan:			
Professor Wachukwu	150,000		
Dr. Orlando	100,000		
Repairs and maintenance:			
Professor Wachukwu	200,000		
Dr. Orlando	200,000		
	<u>42,350,000</u>		
Less: Non taxable income			
Sundry income:			
Profit on sale of non-current assets	<u>(980,000)</u>		
Adjusted profit	41,370,000		
Less: Capital Allowance	<u>(6,400,000)</u>		
Divisible profit	<u>34,970,000</u>		
Share of divisible profit:			
Professor Wachukwu			
50% x ₦34,970,000	(17,485,000)	17,485,000	
Dr. Orlando			
50% x ₦34,970,000	<u>(17,485,000)</u>		<u>17,485,000</u>
	<u>0</u>	<u>17,485,000</u>	<u>17,485,000</u>

(4) (a) AMANDA AND LILLY

COMPUTATION OF PARTNER'S INCOME AND LOSS FOR THE RELEVANT TAX YEARS

	Total	Amanda	Lilly
	₦	₦	₦
Divisible loss	(25,000,000)		
Share of divisible loss in agreed PSR (3:2)	25,000,000	(15,000,000)	(10,000,000)
Add:			
Partners salary		3,500,000	2,500,000
Interest on capital		2,200,000	1,800,000

Cost of passage	<u>800,000</u>	<u>0</u>
	(8,500,000)	(5,700,000)
Add:		
Interest on loan	<u>0</u>	<u>680,000</u>
Assessable income/loss	<u>(8,500,000)</u>	<u>(5,020,000)</u>

(b) **AMANDA AND LILLY**

COMPUTATION OF PARTNER'S ASSESSMENT FOR THE RELEVANT TAX YEARS

AMANDA

YOA	BASIS PERIOD	N	ASSESSMENT N
2010	1/10/2010-31/12/2010 3/12 x (N8,500,000)		<u>(2,125,000)</u>
2011	1/10/2010-30/9/2011 Loss B/F Total loss	(8,500,000) <u>(2,125,000)</u> <u>(10,625,000)</u>	
	Loss C/F restricted to: Actual loss		<u>(8,500,000)</u>
2012	1/10/2010-30/9/2012 Loss B/F Total loss	(8,500,000) <u>(8,500,000)</u> <u>(17,000,000)</u>	
	Loss C/F restricted to: Actual loss		<u>(8,500,000)</u>

LILLY

YOA	BASIS PERIOD	N	ASSESSMENT N
2010	1/10/2010-31/12/2010 3/12 x (5,020,000)		<u>(1,255,000)</u>
2011	1/10/2010-30/9/2011 Loss B/F Total loss	(5,020,000) <u>(1,255,000)</u> <u>(6,275,000)</u>	
	Loss C/F restricted to: Actual loss		<u>(5,020,000)</u>
2012	1/10/2010-30/9/2012 Loss B/F Total loss	(5,020,000) <u>(5,020,000)</u> <u>(10,040,000)</u>	
	Loss C/F restricted to: Actual loss		<u>(5,020,000)</u>

Skills level

Taxation

CHAPTER
10

Settlements, Trusts and Estates

Contents

1. Purpose
2. Introduction
3. Definitions
4. Persons Chargeable
5. Basis Period
6. Relevant Tax Authority
7. Computed Income
8. Capital Allowances – Deceased Individuals
9. Losses
10. Discretionary Payment
11. Infants' Income Under a Settlement
12. Special Provisions as to Settlement on Unmarried Children
13. Accounts of The Estate
14. Assessable Income and Tax
15. Payment of Tax
16. Chapter Review
17. Worked Examples

10

SETTLEMENTS, TRUSTS AND ESTATES

10.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) understand the meaning and nature of Settlements, Trust and Estates;
- (b) appreciate the relevant tax laws guiding Settlement, Trust and Estates; and
- (c) understand the modus operandi for computing tax liabilities relating to Settlement, Trust and Estates.

10.1 INTRODUCTION

10.1.1 Settlement

A Settlement 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.

10.1.2 Trust

The term 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.

10.1.3 Estate

Estate is the aggregate of the properties possessed by a person, including his/her goods, money etc. or other types of property.

10.2 DEFINITIONS

- (a) **“Child”** includes a stepchild, an adopted child and an illegitimate child;
- (b) **“Settlor”** in relation to a settlement, includes a person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing) includes a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.
- (c) **“Will”** is a document made by a person as to how his assets should be distributed at his death. The person mentioned in the Will to administer

the Estate, that is, see to the carrying out of the will of “the deceased” is called the “executor”. Where the deceased appointed no executor, the Court on application will appoint an “administrator” of the estate.

- (d) **“Annuitant”** is a person receiving an annuity i.e. an annual payment from an estate.
- (e) **“Beneficiary”** is a person who receives income from a settlement, trust or estate.
- (f) **“Legatee”** is a person who receives a gift of personal property by will. Legatee can be either:
 - (g) A **Specific Legatee** is named in a will to receive a particular thing (e.g. black horse); and
 - (h) 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.
- (i) **“Devisee”** is a person who receives real property under a Will.
- (j) **“Personal Representative”** is the person, whether executor or administrator, who is charged with the administration of the estate of a deceased person, and in whom the estate is vested for the purpose of distribution.
- (k) **“Life Tenant”** is the person(s) who has a right to the income or property held in trust for life.
- (l) **“The Remainder Man”** is the person(s), who has the right to the capital of the settlement when the life interest terminates.
- (m) **“Administration Period”** 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.

10.3 PERSONS CHARGEABLE

The persons liable to pay the tax due from Settlements, Trusts and Estate include:

- (a) The Beneficiary including any annuitant
On their proportion of the share of income from the settlement or estate.
- (b) The Trustee or Executor
On the remainder, if any, after deducting all amounts apportioned to beneficiaries.
- (c) The Settlor or the person who created the trust in circumstances where he can direct the disposition of the income or the right thereto.

10.4 BASIS PERIOD

The basis period for assessing the income of any trustee, executor, beneficiary or annuitant for any year of assessment is the income of the preceding year. A trustee of a Settlement or Trust in Nigeria, and the executor of an Estate in Nigeria, shall prepare accounts of the income from all sources of the Settlement, Trust or Estate for successive periods to the thirty-first day of December in each year, and to the date on which the assets of the Settlement, Trust or Estate are finally distributed.

Note that the commencement and cessation provisions do not apply under a Settlement, Trust and Estate arrangement.

10.5 RELEVANT TAX AUTHORITY

The relevant tax authority in relation to a Trust or Settlement shall be:

- (a) Where all the income of the Trust or Settlement for the year of assessment arises in one territory, the tax authority of the State.
- (b) Where the income of the Trust or Settlement arises in more than one territory, or in any other case, the Federal Inland Revenue Service.

10.6 COMPUTED INCOME

The Computed income of a Settlement, Trust or Estate is simply the difference between the Total income and allowable expenses. The allowable expenses peculiar to an Estate include:

- (a) Expenses of the trustee or executor (or administrator) connected with the Settlement, Trust or Estate which are authorized by the Trust deed or Will.
- (b) Any fixed annuity paid out of income under the deed or Will.

Where the income of the Trust or Settlement include any gain or profit from a trade, business, profession or vocation or a rent or premium, such additions and expenses thereon shall ordinarily be taken into account in arriving at the computed income.

10.7 CAPITAL ALLOWANCE - DECEASED INDIVIDUALS

Where an asset of a trade or business, profession or vocation form part of the Estate of a deceased individual, being asset in respect of which an annual allowance may be claimed in arriving at the Total income of that individual for the year of assessment in which he died, capital allowance shall be computed as follows:

- (a) No balancing allowance or charge shall be given or made to that individual in respect of the asset for that year;
- (b) The Estate shall be deemed to have incurred qualifying expenditure on the acquisition of the asset equal in amount to the residue of the expenditure on the day following the death of the individual; and

- (c) In the event of the disposal of the asset on or after that day, an addition to be made by way of a balancing charge in computing the income of the Estate shall be made by reference to the sum of all allowances or deductions made in respect of the asset to the individual and to the Estate.

10.8 LOSSES

Losses are relieved in the normal way by deducting from the Computed income. Where the loss was transferred to the Estate or Trust, it is not an allowable relief and so should be added back. The normal restrictions also apply.

Note that such losses may arise when the Trust, Settlement, or Estate engages in a trade, business or vocation.

10.9 DISCRETIONARY PAYMENTS

These are fixed amounts payable to direct beneficiary or beneficiaries as authorized by the Trust deed. A trustee or executor has no power to make discretionary payments to the beneficiaries unless authorized by the instrument appointing him. Where the instrument authorizes the making of discretionary payments, it would generally provide for the apportionment of the net income after such payments. That is, the Adjusted income would be apportioned after deducting such discretionary payments. It is important to note that discretionary payments are not expenses but appropriations of the income of the estate. They are, therefore, not to be deducted in computing the Computed income.

10.10 INFANTS' INCOME UNDER A SETTLEMENT

Income from any Settlement or Trust paid to an infant (who is unmarried) child of the Settlor during the life time of the settlor is treated as the income of the settlor for that year and not the income of the child. Where for any year of assessment the aggregate amounts paid to a child of the settlor does not exceed ₦500, it shall not be treated as the income of the Settlor. If the Settlor is not resident in Nigeria or is resident but has been absent from Nigeria for more than 183 days (6 months) or more in any year of assessment then the income paid to the child of the Settlor shall not be treated as the income of the Settlor.

10.11 SPECIAL PROVISIONS AS TO SETTLEMENT ON UNMARRIED CHILDREN

Where, by virtue or in consequence of a Settlement and during the life of the settlor, an income is paid to or for the benefit of a child of the settlor in a year of assessment, the income shall, if at the time of payment the child was an infant and unmarried, be treated for the purposes of this Act as the income of the settlor for that year and not as the income of any other person.

Income paid to or for the benefit of a child of a settlor shall not be treated as provided above for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which but for this provision,

would be so treated by virtue of the above provision, does not exceed five hundred naira (₦500).

The above shall not apply in relation to an income arising under a settlement in a year preceding a year of assessment if the settlor is not in Nigeria at any time during that year of assessment, or is not in Nigeria for a period or periods amounting to one hundred and eighty-three days or more in any twelve months period commencing in the calendar year and ending either in the same year or the following year.

For these purposes:

- (a) Income which, by virtue or in consequence of a settlement may become payable or applicable to or for the benefit of a child of the settlor in the future (where on the fulfillment of a condition or on the happening of a contingency, or as a result of the exercise of power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and
- (b) An income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing the income will or may become payable or applicable.

Where any income tax becomes chargeable on and is paid by the settlor, he shall be entitled:

- (i) To recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid, and
- (ii) For that purpose to require the relevant tax authority to furnish to the settlor a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

Where the settlor obtains from a trustee or any other person a payment in excess of the amount he is entitled to recover, then, an amount equal to the excess shall be paid by him to the trustee or other person to whom the income is payable by virtue, or in consequence of the settlement, or where there are two or more such persons, the amount shall be apportioned among those persons as the case may require.

If a question arises as to the amount of any payment or as to any apportionment to be made, that question shall be decided by the relevant tax authority and its decision thereon shall be final and not subject to an appeal or any review whatsoever by any court of law.

In the case of any settlement where there are more than one settlor (paragraph 4 of this Schedule) shall, subject to the provisions of this paragraph, have effect in relation to each settlor as if he were the only settlor.

In the case of a settlement as aforesaid, income originating from that settlor or person may, for the purposes of paragraph 4 of this Schedule, be taken into account, in relation to any settlor, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settlor.

10.12 ACCOUNTS OF THE ESTATE

The accounts of the Estate are to be prepared to the 31 December each year and to date of final distribution of the Estate. Responsibility for the preparation of the accounts rests with the trustee or executor.

10.13 ASSESSABLE INCOME AND TAX

The income of an individual or of a trustee or executor from a settlement, trust or estate of deceased person, made, created or administered in Nigeria, or in the case of a settlement or trust made, created or administered in Nigeria, is ascertained in accordance with the provisions of the Second Schedule to PITA 2004 (as amended).

The Assessable income of a trustee or of an executor of the Estate of a deceased individual, or of a beneficiary of a Trust or Estate for any year of assessment shall be the income of that person as determined under the following paragraphs and on preceding year basis.

The income of a Settlement or Trust shall be deemed to be the income of the settlor or person creating the trust, as the case may be, if:

- (a) That settlor or person retains or acquires an immediately exercisable general power of appointment over the capital assets of the settlement or trust or over the income derived therefrom; or
- (b) That settlor or person makes use, directly or indirectly, by borrowing or otherwise, of any part of the income arising under the settlement or trust, or

- (c) The Settlement or Trust is revocable in circumstances whereby that settlor or person, or the spouse thereof, resumes control over any part of the income or assets comprised therein.

Provided that:

A settlement or trust shall not be regarded as revocable, solely by reason of the fact that an income or asset comprised therein may revert to that settlor, or person, or the spouse thereof, in the event of a beneficiary pre-deceasing that settlor or person, or of the happening of an uncertain event upon which the settlement or trust is limited.

The income of a Settlement or Trust, other than a settlement or trust or of the estate of a deceased individual shall be so much of that income as is derived from a source in Nigeria and any of the income brought into or received in Nigeria.

The amount of the income (otherwise known as the “computed income”) of each period of twelve months ending on the thirty-first day of December in each year shall be ascertained as though the provisions of Parts 1 and 11 of PITA 2004 (as amended) applied thereto and:

- (a) There shall be deducted:
- (i) Any expenses of the trustee or executor relative to the settlement, trust or estate which is authorised by the terms of the deed of settlement or trust or of the will as the case may be;
 - (ii) Any annuity of fixed annual amount paid out of the income of the settlement, trust or estate in accordance with the provisions of the deed or will; and
- (b) If the income includes any gain or profit from a trade, business, profession or vocation, or a rent or premium, there shall be added or deducted, as the case may require, any sum which would have been added or deducted for the next following year of assessment, if the income from those sources had been the assessable income of an individual for that year of assessment.

The computed income of a year of a settlement, trust or estate shall be apportioned for the assessment in the following manner:

Where:

- (i) the terms of the deed of settlement or trust or of a will provide that the whole income of the settlement, trust or estate after deduction of any authorised expense or annuity of fixed amount is to be divided in specific proportions among the beneficiaries entitled thereto, from time to time; or

- (ii) by operation of law, on an intestacy, the income of an individual is to be divided in the manner referred to in the above paragraph, the income of each beneficiary of any year from the settlement, trust or estate shall be his similarly apportioned share of the computed income.
- (c) Where a trustee or executor has discretion to make any payment (other than a payment on account) to a beneficiary out of the income of a settlement, trust or estate in such amount as he sees fit, from time to time, then:
 - (i) The amount of the payment to a beneficiary made in the cause of a year shall be treated as income of that year which is assessable to tax in the hand of that beneficiary; and
 - (ii) Out of the remainder of the computed income after deducting the aggregate amount of all the payments during any year, there shall be apportioned to each beneficiary who has any specified proportional interest in the income of the settlement, trust or estate, so much thereof as is obtained by applying the proportion to that remainder.

Provided that if the aggregate amount exceeds the Computed income, the amount of each payment to be treated as income in the hand of a beneficiary shall be reduced proportionally so that the aggregate of the amount reduced does not exceed the computed income.

- (d) Any remainder of the Computed income of a Settlement, Trust or Estate of any year after deducting all amount apportioned to beneficiaries, or treated as income in the hands of beneficiaries shall be apportioned to the trustee or executor for assessment in his name as trustee of the settlement or trust or as executor of the estate.

10.14 PAYMENT OF TAX

The income arising from a Settlement, Trust or Estate is assessable in the hands of the individual beneficiary. The relevant tax authority is the tax authority of the state where the beneficiary is resident on 1st of January of that year. Note that where the instrument does not provide for apportionment of net income or there is a balance of adjusted income not apportioned, such income is taxable in the hands of the trustee or executor as agent of the estate. The trustee therefore pays tax out of the funds of the Estate.

10.15 CHAPTER REVIEW

This chapter defines Settlement, Trust, Estate and related income, including Annuities payable to beneficiaries. It explains the distinction between Income taxable in the hands of the beneficiaries and that of the trustees.

10.16 WORKED EXAMPLES

10.16.1 Questions

- (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:

	₦
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 include:

- (i) Dafur is to get a Fixed Annuity of ₦35,000 per annum.
- (ii) The remuneration of the Trustee is fixed at ₦20,000 per annum, plus 2.5 per cent of Computed income.
- (iii) The allowable expenses of the Trustee amounted to ₦25,000.
- (iv) The Trustee made the following discretionary payments:
Ade - ₦40,000, Baruwa - ₦30,000, Chidi - ₦20,000 and Dafur - ₦15,000
- (v) Capital Allowance agreed for the business of the Trustee was ₦22,000.
- (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.
- (2) 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	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	-
- Other expenses	4,400,000

The Trust provides discretionary payments to the children towards their maintenance and education as follows: Zainab ₦2,400,000, Abass ₦2,300,000, Halima ₦2,500,000. Capital allowance was agreed at ₦2,400,000. It is stipulated in the Trust that the beneficiaries are to share half of the distributable income equally.

₦3,000,000 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.
- (3) In relation to provisions of the Second schedule to PITA 2004 as amended, explain the following terms:
- (a) Settlement;
 - (b) Trust;
 - (c) Estate;
 - (d) Settlor/Settler; and
 - (e) Will;
- (4) Baba Ali Musa is the Trustee of a Settlement made by late Mallam Junaid Dikko in favour of his four children, grand children 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.

	₦
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:

	₦
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 - ₦4,200,000.

Required:

- (a) Compute the Net income assessable in the hand of the trustee.
- (b) Assessable income in the hand of the each beneficiary.

10.16.4 Suggested Solutions

(1)(a) Settlement

This is an agreement made in writing in which money is made available to another person for his/her use without any interference whatsoever.

A settlement includes any disposition, trust, covenant, agreement, arrangement or transfer of assets.

Trust

A Trust is created when an estate or property is held by a person (Trustee) for the benefit of named person called beneficiaries. The Trustee administers the Trust.

Estate

An Estate is the total of the properties of a person and is commonly used in executorships. It also means the property of a deceased person.

**(b) ADE, BARUWA, CHIDI AND DAFUR
COMPUTATION OF INCOME CHARGEABLE TO TAX IN THE HANDS
OF EACH OF THE BENEFICIARIES**

	Ade N	Baruwa N	Chidi N	Dafur N	Total N
Share of distributable income	222,363	222,363	222,363	222,363	889,451
Add:					
Fixed Annuity	-	-	-	35,000	35,000
Discretionary payments	<u>40,000</u>	<u>30,000</u>	<u>20,000</u>	<u>15,000</u>	<u>105,000</u>
	<u><u>262,363</u></u>	<u><u>252,363</u></u>	<u><u>242,363</u></u>	<u><u>272,362</u></u>	<u><u>1,029,451</u></u>

(c) ADE, BARUWA, CHIDI AND DAFUR

**ASSESSABLE TO COMPUTATION OF UNDISTRIBUTABLE INCOME
ASSESSABLE TO TAX IN THE HANDS OF THE TRUSTEE**

	₦	₦
Profit from trading activities	980,000	
Deduct: Capital Allowances agreed	<u>22,000</u>	958,000
Interest received on Fixed Deposits		270,000
Rent from property (gross)		620,000
Other income		<u>163,000</u>
		2,011,000
Deduct: Allowable expenses:		
Dafur's fixed annuity	35,000	
Trustees' fixed remuneration	20,000	
Trustees' remuneration based on computed income $25/102.5\%$ of (₦2,011,000 - ₦35,000 - ₦20,000 - ₦25,000)	47,098	
Allowance expenses of the Trustee	<u>25,000</u>	<u>(127,098)</u>
Computed Income		1,883,902
Less: Discretionary Payment		<u>105,000</u>
Distributable income		1,778,902
Deduct: $1/2$ of income distributable among the beneficiaries		<u>889,451</u>
Net distributable income assessable to tax in the hands of the Trustee		<u><u>889,451</u></u>

2(a).

**ALHAJI ISTIAQ AHMAD TRUST
DETERMINATION OF NET COMPUTED INCOME OF
BENEFICIARIES FOR 2013 TAX YEAR**

	N	N	N
Income:			
Adjusted trading profit		24,000,000	
Less: Capital Allowance		<u>(2,400,000)</u>	21,600,000
Add:			
Rental income		11,000,000	
Profit on sale of assets		4,500,000	
Other miscellaneous income	10,000,000		
Less: Other expenses (N4,500,000-N3,000,000)	<u>(1,500,000)</u>	<u>8,500,000</u>	<u>24,000,000</u>
Gross Income			45,600,000
Less: Allowable expenses:			
Trustee's remuneration:			
- Fixed		800,000	
- Variable- 2% of Gross Income 2% X N45,600,000		912,000	
Fixed Annuity – Zainab		<u>1,200,000</u>	<u>(2,912,000)</u>
Computed income			42,688,000
Less: Discretionary payment:			
Zainab		2,400,000	
Abass		2,300,000	
Halima		<u>2,500,000</u>	<u>(7,200,000)</u>
Computed Income			35,488,000
Less: Distribution:			
Zainab - $\frac{N35,488,000}{2} = N17,744,000 / 3$		5,914,666.67	
Abass - $\frac{N35,488,000}{2} = N17,744,000 / 3$		5,914,666.67	
Halima - $\frac{N35,488,000}{2} = N17,744,000 / 3$		<u>5,914,666.67</u>	<u>(17,744,000)</u>
Undistributed income assessable in the hand of the trustee			<u><u>17,744,000</u></u>

(b) DETERMINATION OF EARNED INCOME OF EACH BENEFICIARY

	ZAINAB N	ABASS N	HALIMA N
Distributed income	5,914,667	5,914,667	5,914,667
Fixed annuity	1,200,000	-	-
Discretionary payment	<u>2,400,000</u>	<u>2,300,000</u>	<u>2,500,000</u>
Earned income	<u><u>2,990,392</u></u>	<u><u>2,910,392</u></u>	<u><u>2,710,392</u></u>

3. (a) **Settlement:** A Settlement 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.

- (b) **Trust:** The term 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.
- (c) **Estate:** Estate is the aggregate of the properties possessed by a person, including his/her goods, money etc. or other types of property.
- (d) **Settlor:** in relation to a settlement, includes a person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing) includes a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.
- (e) **Will:** is a document made by a person as to how his assets should be distributed at his death. The person mentioned in the Will to administer the Estate, that is, see to the carrying out of the will of “the deceased” is called the “executor”. Where the deceased appointed no executor, the Court on application will appoint an “administrator” of the estate.

4 (a) **MALLAM JUNAID DIKKO SETTLEMENT
COMPUTATION OF ASSESSABLE INCOME IN THE HAND OF THE
TRUSTEE FOR 2014 TAX YEAR**

	₦	₦
Income:		
Interest received	2,000,000	
Dividend (Gross)	8,000,000	
Rental Income	6,000,000	
Business profit	18,000,000	
Less; Capital allowance	<u>(4,200,000)</u>	13,800,000
Miscellaneous income		<u>3,200,000</u>
Gross Income		33,000,000
Less: Allowable expenses:		
Trustee’s remuneration:		
Fixed	450,000	
Variable– 2% of Gross Income 2% x ₦33,000,000	660,000	

Fixed annuity to grandchildren:			
Aminat		50,000	
Danladi		30,000	
Admin expenses		<u>2,600,000</u>	<u>(3,790,000)</u>
Computed income			29,210,000
Less: discretionary payments:			
Wakilu		150,000	
Aishat		200,000	
Illyasu		250,000	
Badamasi		<u>180,000</u>	<u>(780,000)</u>
Amount available for distribution			28,430,000
Less: Distribution:			
Wakilu ($\text{N}28,430,000 \times \frac{1}{6}$)		3,158,888	
Aishat ($\text{N}28,430,000 \times \frac{1}{6}$)		3,158,889	
Illyasu ($\text{N}28,430,000 \times \frac{1}{6}$)		3,158,889	
Badamasi ($\text{N}28,430,000 \times \frac{1}{6}$)		3,158,889	
Aminat ($\text{N}28,430,000 \times \frac{1}{6}$)		3,158,889	
Danladi ($\text{N}28,430,000 \times \frac{1}{6}$)		<u>3,158,889</u>	<u>(18,953,333)</u>
Net Distributed Income			9,476,667
Less: Franked Investment Income:			
Dividend (Gross)			<u>(8,000,000)</u>
Balance assessable in the hand of Trustee			<u>1,476,667</u>

(b) **MALLAM JUNAID DIKKO SETTLEMENT
COMPUTATION OF ASSESSABLE INCOME IN THE HAND OF EACH
BENEFICIARY**

	Wakil	Aisha	Illyasu	Badamasi	Aminat	Danladi
	N	N	N	N	N	N
Fixed annuity	0	0	0	0	50,000	30,000
Discretionary payment	150,000	200,000	250,000	180,000	0	0
Distributed income	<u>3,158,889</u>	<u>3,158,889</u>	<u>3,158,889</u>	<u>3,158,889</u>	<u>3,158,889</u>	<u>3,158,889</u>
Beneficiary's Assessable Income	<u>3,308,889</u>	<u>3,358,889</u>	<u>3,408,889</u>	<u>3,338,889</u>	<u>3,208,889</u>	<u>3,188,889</u>

Skills level

Taxation

CHAPTER
11

Taxation of Investment Income

Contents

1. Purpose
2. Introduction
3. Basis of Assessment
4. Dividend Income
5. Interest Income
6. Rental Income
7. Royalty Income
8. Chapter Review
9. Worked Examples

11

TAXATION OF INVESTMENT INCOME

11.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) discuss the basis of assessment of investment income; and
- (b) compute the tax liability of an individual earning investment income.

11.1 INTRODUCTION

Investment incomes are incomes received primarily from investment decisions. Investment decisions include decisions such as purchase of shares, purchase of property for letting purpose, 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, rent, royalty, etc.

11.2 BASIS OF ASSESSMENT

The basis of assessment of dividend, interest, rent and royalty is the preceding year basis. The assessable income from each year of assessment is the income of the year immediately preceding the year of assessment.

11.3 DIVIDEND INCOME

Dividend is the profits distributed by a company to its shareholders in proportion of their respective shareholdings. However, the Personal Income Tax Act CAP C21 LFN 2004 (as amended) defines dividend as:

- (a) In relation to company not being in the process of being wound up or liquidated, any profits distributed whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus share, debentures or securities awarded to the shareholders; and
- (b) In relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

11.3.1 Nigerian Dividend

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 on payment thereof under the provisions of any law in force in Nigeria at the relevant time imposing taxation on the profits of companies.

11.3.2 Undistributed Profit of a Nigerian Company Deemed to be Dividend

Any amount of undistributed profit of a Nigerian company which is treated as distributed under the provisions of any law in force in Nigeria imposing tax on the profits of companies shall be deemed to be income from a dividend accruing to any person who is a shareholder in the company in proportion to his share in the ordinary capital thereof at the relevant time, and the income for the dividend be taken for assessment in his hands shall be his due proportion thereof increased by such amount as may be specified by the relevant tax authority in respect of tax deemed to be deducted at source.

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.

11.3.3 Territory in which Dividend Paid by a Nigerian Company Arises

Where a dividend is distributed or paid by a Nigerian company, the dividend, whenever necessary, shall be deemed to be derived from the territory in which the recipient of the dividend resides or, where the recipient is not resident in Nigeria, the person shall be deemed to be a person resident outside Nigeria and who derives income or profit in Nigeria. Dividend derived by a non resident person shall be deemed derived from the Federal Capital Territory.

11.3.4 Dividend Exempted from Tax

The following dividend incomes are exempted from tax:

- (a) 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;
- (b) 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. The dividend tax free period is 5 years if the company paying the dividend is engaged in agricultural production within Nigeria or processing of Nigeria agricultural products produced within Nigeria or production of petrochemicals or liquefied natural gas, and in any other case, the tax free period is 3 years. The tax free period commences from the year of assessment following the year in which the new capital is brought into Nigeria for the real purpose of the trade or business in Nigeria of the company paying the dividend.

11.4 INTEREST INCOME

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:

- (a) There is a liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made;
- (b) The interest accrues in Nigeria to foreign company or person regardless of what form the payment takes and wherever the payment is made.

11.4.1 Interest from a Source outside Nigeria

Where an individual is resident in Nigeria, the interest accruing to him from a source outside Nigeria is liable to tax in Nigeria if such amount of interest is brought into or received in Nigeria subject to double taxation provisions, if applicable.

11.4.2 Territory in Which Interest Paid by a Nigerian Company Arises

Where interest is paid by a Nigerian company, the interest, whenever necessary, shall be deemed to be derived from the territory in which the recipient of the interest resides or, where the recipient is not resident in Nigeria, the person shall be deemed to be a person resident outside Nigeria and who derives income or profit in Nigeria. Interest derived by a non resident person shall be deemed derived from the Federal Capital Territory.

11.4.3 Interest Exempted from Tax

The following interest incomes are exempted from tax:

- (a) Interest accruing to a person on foreign currency domiciliary account;
- (b) With effect from 1 January 1996, 100% of certain foreign incomes are exempted from tax provided that such incomes are repatriated into Nigeria in convertible currency and paid into a domiciliary account in a bank approved by government. Income falling into this category include interest earned from abroad and brought into Nigeria by a Nigeria resident;
- (c) Interest accruing to a person who is not resident in Nigeria as specified below:
 - (i) the interest on a loan charged on the public revenue of the Federation and raised in the United Kingdom;
 - (ii) the interest on a bond issued by the Government of the Federation to secure repayment of loan raised from the International Bank for Reconstruction and Development under the authority of the Railway Loan (International Bank) Act;
 - (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;

- (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; and
 - (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.
- (d) Interest on any loan granted by a bank on or after 1st Jan. 1997 to a person engaged in:
- (i) agricultural trade or business;
 - (ii) the fabrication of any local plant and machinery; and
 - (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 18 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted

11.5 RENTAL INCOME

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.

11.5.1 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 covering a period that is more than 5 years, it will be spread for 5 years. Thus for tax purposes, the gains or profit arising from rent of a property is ascertained by deducting only those expenses that were directly incurred for the purpose of earning the income.

11.5.2 Allowable Rental Expenses

In computing the gain or profit from rental income for tax purposes, the following expenses are allowable deductions:

- (a) Tenement rates or land use charge;
- (b) Cost of collecting rent e.g. fees paid to a caretaker, estate agent, legal representative, etc.;
- (c) Cost of advertising for tenants;

- (d) Any expenses incurred for repairs and maintenance of the building;
- (e) Bad debt incurred;
- (f) Interest on money borrowed and employed in acquiring or renovating the property;
- (g) Commission paid to agent or caretaker;
- (h) Insurance premium paid on the property; and
- (i) Water rate.

11.5.3 Disallowable Expenses

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

11.6 ROYALTY INCOME

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.

Royalties are often expressed as a percentage of the revenues obtained using the owner's property, but can be negotiated to meet the specific needs of an arrangement. The use of royalties is common in situations where an inventor or original owner chooses to sell their product to a third party in exchange for royalties from the future revenues it may generate.

11.6.1 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 Government.

11.7 CHAPTER REVIEW

This chapter provides a detailed explanation of the various investment incomes including, dividend, interest, rent and royalty. It also highlights investment incomes that are tax exempt.

11.8 WORKED EXAMPLES

1.8.1 Questions

- (1) Mr. Chukwuemeka Okoye completed the construction of his building, a two wing duplex located in Gwagwalada, Abuja, on 31 December 2011. He rented out both flats with effect from 1 January 2012, through an estate agent and received rent for two years. He made available the following details of his income and expenses for the period of the rental:

	2012	2013
	₦	₦
Rent received (Gross)	3,500,000	3,500,000
Expenses:		
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:

- (i) Capital allowances agreed with the relevant tax authority for 2012 and 2013 were ₦480,000 and ₦120,000.
- (ii) Repairs and maintenance comprised:
- | | | |
|--|----------|----------|
| Depreciation | ₦100,000 | ₦85,000 |
| Repairs of tenant's bathroom | 0 | ₦180,000 |
| Repairs of Mr. Chukwuemeka's residence | ₦120,000 | ₦185,000 |
- (iii) Tenement rate includes tenement rate of ₦5,000 and ₦12,000 paid on the private residence of Mr. Chukwuemeka for 2011 and 2012.

Required:

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

- (2) Nelson and Sons Limited is a company owned by the members of Nelson family. Its Issued share capital of 20,000,000 ordinary shares of ₦1 each are held by:
- | | |
|-----------------|------------------|
| Williams Nelson | 8,000,000 shares |
| Samuel Nelson | 4,000,000 shares |
| Tamara Nelson | 2,000,000 shares |
| Malia Nelson | 6,000,000 shares |

For the year ended 31 December 2012, the company made a net profit before tax of ₦53,000,000. The company has not paid dividend since it was established 8 years ago.

The Federal Inland Revenue Service is of the opinion that the non-payment of dividend by the company was with a view to reducing the

tax payable by its shareholders. In exercise of the powers conferred on it by the Companies Income Tax Act, the FIRS has directed that N15,900,000 of the profit be treated as having been distributed as dividend.

Required:

Compute the amount deemed to be income in the hands of the company's shareholders.

- (3) Briefly explain the following:
- (a) Dividend income;
 - (b) Interest income;
 - (c) Rental income;
 - (d) Royalty income; and
 - (e) Nigerian Dividend.
- (4a) Explain briefly the provisions of the tax law in respect of rental income received in advance.
- (b) In computing the gains or profit from rental income, certain expenses are allowed as deductible.

Required:

Give any FIVE examples of expenses that can be deducted when computing rental income.

11.9.2 Suggested Solutions

- (1) **Mr. Chukwuemeka**
Computation of Rental Income Assessable to Tax in 2012 and 2013 Tax Years

	2012		2013	
	N	N	N	N
Rent received		3,500,000		3,500,000
Less: Allowable Expenses:				
Repairs and maintenance –				
Repairs of tenant's bathroom	-		180,000	
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	<u>20,000</u>	<u>(622,000)</u>	<u>12,000</u>	<u>(871,000)</u>
Assessable rent		2,878,000		2,629,000
Less: Capital allowances		<u>(480,000)</u>		<u>(120,000)</u>
Chargeable rent		<u><u>2,398,000</u></u>		<u><u>2,509,000</u></u>

**(2) NELSON AND SONS LTD
COMPUTATION OF AMOUNT DEEMED AS INCOME IN THE HAND OF
SHAREHOLDERS**

		Deemed Dividend ₦
Williams Nelson	<u>8,000,000</u> 20,000,000 X ₦15,900,000	6,360,000
Samuel Nelson	<u>4,000,000</u> 20,000,000 X ₦15,900,000	3,180,000
Tamara Nelson	<u>2,000,000</u> 20,000,000 X ₦15,900,000	1,590,000
Malia Nelson	<u>6,000,000</u> 20,000,000 X ₦15,900,000	4,770,000

(3)(a) Dividend Income: Dividend is the profits distributed by a company to its shareholders in proportion of their respective shareholdings. However, the Personal Income Tax Act CAP P8 LFN 2004, defines dividend as:

- (i) In relation to a company not being in the process of being wound up or liquidated, any profits distributed whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus share, debentures or securities awarded to the shareholders; and
- (ii) In relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

(b) Interest Income: 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:

- (i) There is a liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made;
- (ii) The interest accrues in Nigeria to foreign company or person regardless of what form the payment takes and wherever the payment is made.

- (c) **Rental Income:** 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.
- (d) **Royalty Income:** 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.
- (e) **Nigeria Dividend:** The income from a dividend distributed by a Nigeria 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 on payment thereof under the provisions of any law in force in Nigerian at the relevant time imposing taxation on the profits of companies.
- 4(a) **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 covering a period, that is more than 5 years, it will be spread for 5 years. Thus for tax purposes the gains or profit arising from rent of a property is ascertained by deducting only those expenses that were directly incurred for the purpose of earning the income.
- (b) **Allowable Rental Expenses**
In computing the gain or profit from rental income for tax purposes, the following expenses are allowable deductions:
- (i) Tenement rates or land use charge;
 - (ii) Cost of collecting rent e.g. fees paid to a caretaker, estate agent, legal representative, etc.;
 - (iii) Cost of advertising for tenants;
 - (iv) Any expenses incurred for repairs and maintenance of the building;
 - (v) Bad debt incurred;
 - (vi) Interest on money borrowed and employed in acquiring or renovating the property;
 - (vii) Commission paid to agent or caretaker;
 - (viii) Insurance premium paid on the property; and
 - (ix) Water rate.

Skills level

Taxation

CHAPTER
12

Ascertainment of Companies Profits/ Losses

Contents

1. Purpose
2. Introduction
3. Persons Chargeable to Companies Income Tax
4. Allowable and Non-allowable Expenses
5. Taxable and Non-taxable Income
6. Chapter Review
7. Worked Examples

12

ASCERTAINMENT OF COMPANIES PROFITS/ LOSSES

12.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) identify the types of companies and chargeable profits;
- (b) identify persons liable;
- (c) compute assessable profit;
- (d) identify taxable and non-taxable income; and
- (e) explain allowable and non- allowable expenses.

12.1 INTRODUCTION

In a trade or business, the profit or loss of the company is the difference between the income and expenses incurred in generating the income. This can be illustrated using the following proforma:

XYZ LTD	
STATEMENT OF COMPREHENSIVE INCOME	
FOR THE YEAR ENDED 31 DECEMBER 2012	
	'000
Revenue	xxx
Cost of Sales	(xx)
Gross Profit	<u>xxx</u>
Deduct:	
Overhead expenses	(xx)
Net Profit/Loss	<u><u>xx</u></u>

The Net profit as ascertained above is an accounting profit, having been arrived at after taking into consideration, all known principles of accounting, as well as the company's accounting policies.

However, the accounting profit/loss arrived at above, cannot be used for the purpose of computing the tax payable by a company.

The accounting profit has to be converted to tax profit usually referred to as Adjusted Profit/Loss before it is used for the determination of Total Profit / Loss and, consequently, the computation of tax payable.

The process of converting the accounting profit to arrive at the tax profit or adjusted profit involves the application of the provisions of tax laws that allow for the exclusion from tax of some income/profit, that is, exempted income/profit and allowability/disallowability of some expenses. Simply put, the conversion is achieved using a pro-forma computation for the purpose of illustration as follows:

**XYZ LIMITED
COMPUTATION OF ADJUSTED PROFIT
FOR THE YEAR ENDED 31 DECEMBER 2012**

	'000
Net Profit per accounts	XXX
Deduct:	
Non-taxable incomes	(xx)
	<u>XXX</u>
Add:	
Disallowable expenses	xx
Adjusted Profit/(Loss)	<u><u>XXX</u></u>

12.2 PERSONS CHARGEABLE TO COMPANIES INCOME TAX

The applicable law governing the taxation of companies (other than companies engaged in petroleum operations) is The Companies Income Tax Act (CITA) CAP. C21 LFN 2004 (as amended).

Companies Income tax refers to **tax payable on the profits of a company** accruing in, derived from, brought into or received in Nigeria (Section 9 CITA).

Persons Chargeable to Companies Income Tax – Section 47 CITA

A company shall be chargeable to companies income tax: -

- (a) In its own name; or
- (b) In the name of a principal officer, attorney, factor, agent or representative in Nigeria; or
- (c) In the name of a receiver or a liquidator, that is, where the company is in receivership or liquidation or its attorney, agent or representative in Nigeria.

For the purpose of companies income tax, a “company” is defined in Section 105 CITA as:

“Any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere”.

The implication of this is that income tax is payable not only on the **worldwide income of a Nigerian company**, that is, a company incorporated in Nigeria, but also on **the profits of a foreign company**, that is, company incorporated

under any law in force, in any territory or country outside Nigeria to the extent that such profit, is derived or deemed to be derived, from Nigeria (Section 13 CITA).

12.3 ALLOWABLE AND DISALLOWABLE DEDUCTIONS

12.3.1 Allowable Expenses

Unless otherwise provided, for the purposes of ascertaining the chargeable profit or loss of any company from any source, only expenses incurred **wholly, exclusively, necessarily and reasonably** in the production of the profits shall be allowable as deductions for tax purposes.

Examples of allowable expenses provided for in CITA are:

- (a) Interest on money borrowed or employed as capital in generating the profits of the company;
- (b) Rent and premium paid by the company for the period of assessment in respect of land or building, occupied and used for the purpose of generating the profits:

Where a building is occupied by the company's employees as residential accommodation, the rent or premium paid by the company which is chargeable or allowable in company's account for income tax purposes, is restricted to 100% of the basic salary of such employees.

- (c) Salaries, wages, or other remuneration as well as any benefits-in-kind or allowance granted by the company to senior staff and executives within the limits prescribed by collective agreement entered into between the company and its employees and as approved by Federal Ministry of Labour, Employment and Productivity.
- (d) Repairs and renewal in respect of premises, plant, machinery or fixtures, implements, utensils or articles employed in acquiring the profit,
- (e) Bad debts incurred in the course of trade or business proved to have become bad, during the period and specific provision for doubtful debts.
- (f) Research and development expenses incurred by the company for the period including levy payable to National Science and Technology Fund.
- (g) **Allowable Donations (Section 25, CITA)**
In ascertaining the profits or losses of a company chargeable to tax for any period, there shall be deducted, donations made during that period by the company.

The conditions for allowing such donations are as follows:

- (i) Donations must be made to any of the funds, bodies, institutions in Nigeria contained in the Fifth schedule to CITA;
- (ii) Donations must be made out of profit , that is, donations shall not be allowed in circumstances where it will increase the loss of a company or convert its profit into a loss;
- (iii) Donations must not be of a capital nature except donation to a university or other tertiary or research institutions; and
- (iv) Donations must not exceed 10% of the company's Total profits for an assessment year before any deduction for donation. In the case of donation to tertiary or research institution, up to 15% of Total profit or 25% of tax payable in the year whichever is higher.

Allowable Deductions - Research and Development Expenditure

In ascertaining the profit or loss of any company for any period from any source chargeable to tax, there shall be deducted the amount of reserve (provision) made out of the profits of that period for Research and Development.

Such provision shall not exceed ten percent (10%) of Total profits of the company for that year before deducting the reserve/provision.

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.

12.3.2 Disallowable Expenses Section 27 CITA 2004)

In the ascertainment of the profit or loss of a company for a period, certain expenses are not allowed.

Examples of such expenses are:

- (a) Capital repaid or withdrawn and any expenditure of a capital nature;
- (b) Sums recoverable under an insurance or contract of indemnity;
- (c) Taxes on income or profits, except tax levied outside Nigeria on profits, which are also chargeable to tax in Nigeria and in respect of which double tax relief is not available;
- (d) Depreciation – In place of depreciation charged in the accounts, and disallowed, capital allowances on qualifying capital expenditure are granted;
- (e) Expenses incurred in earning management fees unless prior approval of an agreement giving rise to the management fee has been obtained from the Minister of Finance; and
- (f) Any expense of any description incurred as management fee unless under an agreement for which prior approval of the Minister of Finance has been obtained.

12.3.3 Waivers or Refunds of liability or expenses

In ascertaining the profits or losses of a company for any period chargeable to tax, there shall be included:

- (a) Any income waived, released or refunded in respect of any liability or expense previously allowed in computing the chargeable profit of a company; and
- (b) All sums recovered during a period in respect of bad debts previously written off, or specific provision for doubtful debts previously allowed in computing the chargeable profit of a company in a previous period.

12.4 NON-TAXABLE AND TAXABLE INCOME

12.4.1 Non-Taxable Income

The following incomes or profits are exempt from liability to companies income tax:

- (a) Interest on a foreign loan granted on or after 1 April 1978, is exempted from tax within the limits prescribed in the Third Schedule to CITA 2004 (as amended).

THIRD SCHEDULE

TABLE OF TAX EXEMPTION ON INTEREST ON FOREIGN LOANS

Repayment Period	Grace Period Allowed (including moratorium)	Tax Exemption %
(i) Above 7 years	Not less than 2 years	100
(ii) 5 – 7 years	Not less than 18 months	70
(iii) 2 – 4 years	Not less than 12 months	40
(iv) Below 2 years	Nil	Nil

ILLUSTRATION 12.1

Loan interest payable in respect of a foreign loan granted to a Nigerian company in 1990 amounted to ₦1,000,000.

The breakdown of the loan interest payable based on the terms contained in the loan agreement is as follows:

Repayment Period	Grace Period	Loan Interest ₦
6 years	2 years	600,000
3 years	18 months	400,000
		<u>1,000,000</u>

Required:

Compute the loan interest exempted from tax.

SUGGESTED SOLUTION 12.1

The loan interest exempted from tax based on the application of the Third schedule to CITA is computed as follows:

Repayment Period (including moratorium)	Grace Period	Loan Interest Payable ₦	Percentage Interest Exempted %	Exempt Loan Interest ₦
Above 7 years	2 years	-	100	
-				
5 – 7 years	18months	600,000	70	420,000
2 – 4 years	12months	400,000	40	160,000
Below	2 years	Nil	-	Nil
		<u>1,000,000</u>		<u>580,000</u>

- (b) Interest on any loan granted by a bank on or after 1 January 1997 to a company:
- (i) Engaged in
 - ♦ agricultural trade or business; or
 - ♦ local fabrication of any plant and machinery; or
 - (ii) As working capital for any cottage industry established by the company under the Family Economic Advancement Programme (FEAP) provided moratorium is not less than eighteen (18) months and interest is not more than base lending rate at the time the loan was granted.
- (c) Interest on a loan granted by a bank on or after 1 April 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.

- (d) **Profits/Income Exempted from Tax**
Examples are as follows:
- (i) Dividend distributed by a Unit trust;
 - (ii) Dividends derived by a company from another company incorporated in Nigeria provided the recipient of the dividend:
 - ♦ is the beneficial owner of not less than ten percent of the equity capital of the company paying the dividend; and

- ◆ wholly paid for its equity participation in the company paying the dividend, in foreign currency or by asset brought into or imported into Nigeria, between 1 January 1987 and 31 December 1992;
- (iii) Profits of a company engaged in petroleum operations, within the meaning of Section 2 of the Petroleum Profits Tax Act CAP P13 LFN 2004, to the extent that such profits are subject to tax under that Act;

Profits of a company engaged in petroleum marketing are liable to companies income tax as their business does not fall within the definition of petroleum operations as contained in Section 2, PPTA;

- (iv) Dividend, interest, rent, royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels;

Government approved channel means Central Bank of Nigeria (CBN) or any bank or other body corporate appointed by the Minister as authorised dealer under the Second-Tier Foreign Exchange Market Act;

- (v) Interests on deposit account of a foreign non-resident company provided the deposits are in respect of foreign currencies transferred into the account on or after 1 January 1990 through government approved channels;
- (vi) Dividend received from small companies engaged in manufacturing during the first five (5) years of their operations;
- (vii) Dividend received from investments in wholly export oriented business;
- (viii) Dividend of a Nigerian company in respect of goods exported from Nigeria provided, that proceeds from such export are repatriated to Nigeria and used exclusively for the purchase of raw materials, plant, equipment and spare parts; and
- (ix) Dividend received by a Nigerian company from another Nigerian company after deduction of withholding tax shall be regarded as Franked Investment Income in the hands of the recipient company and shall not be subject to further companies income tax as part of the profits of the recipient company. The concept of franked investment income is that the dividend has been paid out of a profit that has been subjected to corporate tax.

The implication of this is that the Franked Investment Income (FII) is excluded in computing the adjusted profit of the recipient company, since such income is excluded from taxable profit, it is not necessary to gross

up the dividend received. It is just appropriate to exclude whatever has earlier been credited, which invariably will be the net dividend received for tax purpose. It should be noted that where the recipient company includes in its own accounts the franked investment income, and re-distributes same as dividend to its own shareholders, and withholding tax is to be accounted for on the gross amount of the dividend, the company may set-off the withholding tax which it has itself suffered on the same income.

- (x) Interest earned on bonds issued by the Federal, State or Local Government and their agencies with effect from 14 June 2011.
- (xi) Interest earned on Bond issued by corporate and supra-nationals.
- (xii) Interest earned by holders of bonds and short term securities listed in (ix) and (x) above.

12.4.2 TAXABLE INCOME

Tax is imposed on the profits of any company accruing in, derived from, brought into or received in Nigeria. The taxable profits into or received in Nigeria. The taxable profits are those in respect of the following:

- (a) Any trade or business for whatever period of time such trade or business may have been carried on
- (b) Rent or any premium arising from a right granted to any other persons for the use or occupation of any property
- (c) Dividends, interest, discounts, royalties, charges or annuities.
- (d) 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.
- (e) Fees, dues and allowances (wherever paid) for services.

12.5 CHAPTER REVIEW

This chapter distinguishes between Accounting Profits / Losses and Taxable Profits, including workings/adjustments required to arrive at Taxable Profits, from Accounting Profits. Clear examples of allowable/non-allowable expenses are provided as well as some classes of profits/incomes, that are exempt in the computation of Companies income tax.

12.6 WORKED EXAMPLES

12.6.1 Questions

- (1) Olori-ebi Ltd is a Nigerian company engaged in the manufacture of textile materials. For the year ended 31 December 2013, the company's accounts disclosed a net profit of ₦5million after charging the following:

	₦'000
Staff salaries	1,000
Rent paid on MD's residential accommodation	1,500
Depreciation	500
Penalties and Fines	100

You are informed that the annual basic salary of the company's Managing Director is ₦750,000 while other allowances totalled ₦2 million.

Required:

Compute the Adjusted profit of the company for the year ended 31 December 2009.

- (2) The interest on agricultural loan included in the income of ABC Bank Limited for the year ended 31 December 2008, 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	12 " "	20	800,000
2 years	18 " "	14	700,000
5 years	18 " "	35	1,000,000
			5,000,000

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

Required:

Compute the loan interest exempted from tax.

- (3) Sandgrouse Limited, a Nigerian company declared a dividend of 1.50 per share on its 50million ordinary shares of 50k each, amounting to ₦75million.

Included in the dividend declared is a franked investment income amounting to ₦50million which it received from XYZ Limited, another Nigerian company, after the latter has deducted withholding tax of 10%.

Required:

Advise Sandgrouse Limited of the relief available to it in accounting for the withholding tax payable on the N75million dividend declared by the company.

- (4) For an expenditure to be allowed for tax purposes, it should be expenditure incurred wholly, exclusively, necessarily and reasonably in earning the income required.

Required:

Briefly explain what the underlined words mean.

12.7.2 Suggested Solutions

**(1) OLORI – EBI LIMITED
COMPUTATION OF ADJUSTED PROFIT
FOR THE YEAR ENDED 31 DECEMBER 2013 (ASSESSMENT YEAR
2014)**

	N '000	N'000
Net Profit per accounts		5,000
Add:		
Disallowed expenses:		
- Depreciation		500
- Penalties and fines		100
- Excess rent on M.D's residential accommodation:		
Rent paid by company	1,500	
Less:		
M.D's. basic salary	<u>(750)</u>	
Excess rent disallowed		<u>750</u>
Adjusted Profit		<u><u>6,350</u></u>

(2) Loan Interest exempted from tax

Moratorium Period	Interest Rates	Agric Loan Interest	Exempt Interest Income
	%	N	N
(i) 24 months	15	2,500,000	2,500,000
(ii) 12 months	20	800,000	-
(iii) 18 months	14	700,000	700,000
(iv) 18 months	35	<u>1,000,000</u>	-
		<u><u>5,000,000</u></u>	<u><u>3,200,000</u></u>

Note:

(ii) & (iv) are not tax exempt as they fail to meet the two conditions as to moratorium period and base lending rate, concurrently.

(3) Sandgrouse Limited

The relief available to Sandgrouse Limited in accounting for the withholding tax payable on the ₦75million dividend declared by it, is to offset against the withholding tax due, the withholding tax deducted from its franked investment income of ₦50million.

The net withholding tax payable by Sandgrouse Limited on its distribution of ₦75million is computed thus:

	₦'000
Dividend (Gross) Distributed by Sandgrouse Ltd	<u>75,000</u>
Withholding tax at 10% on ₦75million	7,500
<i>Less:</i>	
Withholding tax on receipt of FII of ₦50million from XYZ Ltd - 50m at 10%	<u>(5,000)</u>
Net withholding tax to be accounted for by Sandgrouse Ltd	<u>2,500</u>

Note: In practice, the Federal Inland Revenue Service would allow the set-off to the extent that the withholding tax deducted from the Franked Investment Income has been accounted for or paid over to the tax authority. Furthermore, a set-off would be feasible only where the beneficiary of the withholding tax on the dividend declared by the two companies is one and the same tax authority, that is, the Federal Inland Revenue Service.

- (4)**
- (a) “Wholly” refers to quantum of the amount expended which means the total amount should be for business purposes.
 - (b) “Exclusively”: means the expenditure should be for the business purposes only. Where expenditure is incurred for a dual purpose - a business purpose and the other a private purpose – the private element of the expenditure is not deductible.
 - (c) “Necessarily” means expenditure should be incurred as of necessity for the production of the income.
 - (d) “Reasonably” means expenditure incurred should be comparative with prior year expenses and with the income generated industry standard, regulatory approval, etc., incurred during the period for the purpose of earning and ultimately borne by the individual in the production of the income.

Skills level

Taxation

CHAPTER
13

Ascertainment of Assessable/ Total Profits

Contents

1. Purpose
2. Introduction
3. Basis of Assessment
4. Chapter Review
5. Worked Examples

13

ASCERTAINMENT OF ASSESSABLE / TOTAL PROFITS

13.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) define and compute Assessable Profits;
- (b) understand the basis of assessment for a subsisting business, a new business, on a change of accounting date, a business winding-up (going into cessation); and
- (c) understand the ascertainment of Total profit.

13.1 INTRODUCTION

The Assessable Profit of a company is its adjusted profits or part thereof that is assessed to Companies income tax, in an assessment year.

While Adjusted profit is computed based on the accounts of a company for whatever period covered by such accounts (normally twelve months), Assessable profit is determined and assessed to tax for an Assessment year.

An Assessment year, which incidentally, is the same as the government fiscal year, is a calendar year running from 1 January of a year to 31 December, of the same year.

Conversely, a company's accounting year, is the period for which it prepares its annual accounts. It is usually a twelve (12) months period, which may begin and end in the same year (for example, 1 January – 31 December) or commence in a year and end the following year (for example, 1 July – 30 June).

13.2 BASIS OF ASSESSMENT

Since Adjusted profit is computed based on a company's accounting year, and the Assessable profit is determined and assessed to tax, for an assessment year, the question that arises is "how do we determine the assessment year when the profit of an accounting year is assessable to tax?"

This question forms the kernel of the concept of "Basis of Assessment".

13.2.1 Subsisting Business

The basic principle underlying the concept of "Basis of Assessment" is that the Assessable profit for a year of assessment, shall be the company's profits, that is, its Adjusted profit for its accounting year ended in the preceding year of assessment.

Succinctly put, it means the profit assessable in a tax year is the company's profit, that is, adjusted profit for its twelve (12) months accounting period ended in the preceding tax year. This is what is popularly referred to as the "Preceding Year Basis" (PYB) of assessment.

It should be noted that the above basic principles will only apply when a company has been in business for some years and there is no change of accounting date.

It cannot be strictly applied where a company has just commenced business, or there is a cessation of business, or a change of accounting date.

In these circumstances, the company may not have (12) months accounting period ended in the previous tax year and therefore, will be unable to strictly apply the PYB of assessment. Special rules are provided under CITA to take care of each of the peculiar situations stated above.

13.2.2 Basis of Assessment on Commencement of Business

The rules for ascertaining the Assessable profits of a company from a new trade or business under the Companies Income Tax Act, can be summarised as follows:

Assessment year Basis period for assessment

- (a) 1st year
Assessable Profit is the **actual profit**, from date of commencement of business to December 31 of the same year, (that is, to the end of the first year of assessment).
- (b) 2nd year
Assessable Profit, is **profit of the first twelve (12) months** from the date of commencement of business.
- (c) 3rd year
Assessable Profit, is the **profit of a twelve months (normal) accounting period ended in the preceding year of assessment**. However, where the accounting period ended in the preceding tax year, is less than 12 months, the FIRS practice is to require the basis of assessment in the 3rd year to be the same as in the 2nd year of assessment.

The above rules can be illustrated using the following example:

ILLUSTRATION 13-1

Mabel Ltd commenced business on 1 October 2011, and prepared the first set of accounts to 30 June 2012. Thereafter, accounts are prepared to June 30 of each year.

The company's adjusted profits are as follows:

- 9 months period to 30 June 2012 – N3million
- Year ended 30 June 2013 – N3.5million

Required:

Determine the basis period as well as the Assessable profit for the first 4 years of assessment.

SUGGESTED SOLUTION 13-1

MABEL LIMITED

Determination of the basis period and Assessable Profits for the relevant years of assessment.

Assessment Year	Basis Period	Workings Assessable	N'000	Profits N'000
2011	1/10/01-31/12/01	3/9 x N5m		1,667
2012	1/10/01-30/9/02	1/10/01-30/6/02 1/7/02-30/9/02	5,000	
		3/12 x N3.5m	<u>875</u>	5,875
2013	1/10/01-30/9/02			5,875
2014	1/7/02-30/6/03			<u>3,500</u>
		Total Assessable Profits		<u><u>16,917</u></u>

Note:

In the application of the above rules, some of the profits assessable on the company, may suffer tax more than once.

For instance, in the above illustration, the actual profits of the company for a period of twenty-one (21) months, was assessed to tax over four assessment years, due to overlap in basis period of assessment, as demonstrated below:

	N'000	N'000
Total assessable profits for assessment years 2011-2014 (see above)		16,917
Less:		
- Actual profits of 21 months, namely:		
- 9 months to 30/9/12	5,000	
- 12 months to ended 30/9/13	<u>3,500</u>	<u>8,500</u>
Profits assessed more than once due to overlapping basis period		<u>8,417</u>

In order to reduce the effect of overlapping basis period, on the taxpayer, there is a provision which confers a right of election on the taxpayer, to have the

assessable profits for the second and third assessment years revised to actual basis.

The conditions to be satisfied to be able to exercise this right of election, are as follows:

- (a) Notice of intention to exercise the right must be given in writing to the FIRS;
- (b) The notice must be given within two years after the end of the second year of assessment;
- (c) The election to be assessed on actual basis must be for the second and third years together and not for one or the other; and
- (d) Notice to revoke the right of election must be given in writing within twelve months after the end of the third year of assessment, if the taxpayer so decides.

The application of the provision in respect of the exercise of the right of election by a taxpayer, is better illustrated as follows:

ILLUSTRATION 13-2

Appex Limited commenced business on 1 June 2008 and profits are as follows:

	₦
Seven months ended 31 December 2008	7,000
Year ended 31 December 2009	24,000
Year ended 31 December 2010	18,000
Year ended 31 December 2011	9,600

Required:

Compute the Assessable profits for all relevant years, assuming the company takes advantage of any option open to it to minimise its tax liability.

SUGGESTED SOLUTION 13.2

**APEX LIMITED
COMPUTATION OF ASSESSABLE PROFITS
ON COMMENCEMENT OF BUSINESS**

Without Taxpayer's Election			With Taxpayer's Election		
Tax Year	Basis Period	Assessable Profit ₦	Basis Period	Assessable Profit ₦	
2008	1/6/08-31/12/08	<u>7,000</u>	1/6/08-31/12/08	<u>7,000</u>	
2009	1/6/08-31/5/09	17,000	1/1/09-31/12/09	24,000	
2010	1/1/09-31/12/09	<u>24,000</u>	1/1/10-31/12/10	<u>18,000</u>	
		<u>41,000</u>		<u>42,000</u>	
2011	1/1/10-31/12/10	18,000	1/1/10-31/12/10	18,000	
2012	1/1/11-31/12/11	9,600	1/1/11-31/12/11	9,600	

Comments and Recommendation

The taxpayer is better-off not exercising his right of election to be assessed on actual basis for the second and third years of assessment. Tax will be saved on assessable profits of ₦1,000 by not exercising the option.

Working:

Without taxpayer's election

2009 Tax Year

Basis Period	Assessable Profit ₦
- 1/6/08-31/12/08	7,000
- 1/1/09-31/5/09- 5/12 x 24, 000	<u>10,000</u>
	<u><u>17,000</u></u>

It will be worth the while for a taxpayer to elect to be assessed on actual basis for the second and third years of assessment, when profit is declining after commencement of business.

This is because the profits that will be assessed to tax more than once during the opening years will be the higher profit of earlier years.

ILLUSTRATION 13.3

Yanriyan Ltd, commenced business on 1 July 2008, and the adjusted profits are as follows:

	Adjusted Scenario I N	Profits Scenario II N
6 months ended 31 December 2008	1,050,000	5,000,000
Year ended 31 December 2009	2,040,000	3,200,000
Year ended 31 December 2010	3,000,500	2,650,000

Required:

Compute the Assessable profits for the first four years of commencement of business under each scenario, taking into consideration the tax payer’s right of election on commencement of business.

SUGGESTED SOLUTION 13,3

SCENARIO I

YANRIYAN LIMITED

COMPUTATION OF ASSESSABLE PROFITS

Assessment Year	Without Election		With Election	
	Basis Period	Assessable Profits N	Basis Period	Assessable Profits N
2008	1/7/08 - 31/12/08	<u>1,050,000</u>	1/7/08 - 31/12/08	<u>1,050,000</u>
2009	1/7/08 - 30/6/09(w)	2,070,000	1/1/09 - 31/12/09	2,040,000
2010	1/1/09 - 31/12/09	<u>2,040,000</u>	1/1/10 - 31/12/10	<u>3,000,500</u>
		<u>4,110,000</u>		<u>5,040,500</u>
2011	1/1/10 - 31/12/10	<u>3,000,500</u>	1/1/10 - 31/12/10	<u>3,000,500</u>

Working:

2009 Assessment Year

Assessable Profit:	N
- 1/7/08 - 31/12/08	1,050,000
- 1/1/09 - 30/6/09	
- 6/12 x N2,040,000	<u>1,020,000</u>
	<u>2,070,000</u>

**SCENARIO II
YANRIYAN LIMITED
COMPUTATION OF ASSESSABLE PROFITS**

Without Election			With Election	
Tax Year	Basis Period	Assessable Profits N	Basis Period	Assessable Profits N
2008	1/7/08-31/12/08	<u>5,000,000</u>	1/7/08-31/12/08	<u>5,000,000</u>
2009	1/7/08-30/6/09(W)	6,600,000	1/1/09-31/12/09	3,200,000
2010	1/1/09-31/12/09	<u>3,200,000</u>	1/1/10-31/12/10	<u>2,650,000</u>
		<u>9,800,000</u>		<u>5,850,000</u>
2011	1/1/10-31/12/10	<u>2,650,000</u>	1/1/10-31/12/10	2,650,000

Working:

2009 Assessment Year

Assessable Profit:

-	1/7/08-31/12/08	N	5,000,000
-	1/1/09-30/6/09- 6/12	x N3,200,000	<u>1,600,000</u>
			<u>6,600,000</u>

Comments

A comparison of the two scenarios above, shows that, it pays the taxpayer better to exercise his right of election when the company's profits is declining, after commencement of business.

In scenario I, additional profit of N930,500 (N5,040,500 – N4,110,000) will be assessed to tax, if the right of election for second and third years of assessment is exercised, while profit of N3,950,000 (N9,800,000 – N5,850,000), will be saved in scenario II, if right of election for second and third assessment years are exercised.

13.2.3 Basis of Assessment on a Change of Accounting Date

For an old established business, the basis of Assessment of profit is preceding year basis. However, the preceding year basis of assessment cannot be rigidly applied whenever there is a change of accounting date. A normal accounting period may not have ended in the preceding year because whenever there is a change of accounting date, it is either that accounts are prepared for a period of more than twelve (12) months to the new accounting date or alternatively, two sets of accounts are prepared to end in the same tax year. One, for twelve months to the old accounting year end, the other, for less than twelve months to the new accounting year end, and in either situation, special rules apply in determining the basis period for the relevant years of assessment.

Rules on a Change of Accounting Date

Whenever a company fails to make up its accounts to its normal year-end, for the year of Assessment in which that failure occurs as well as the following two years, the assessable profits of the company are computed on such basis as the Board in its discretion may decide.

The manner in which the FIRS exercises its discretion, in practice, is as follows:

- (a) Determine the year of assessment in which the company failed to make up accounts to its normal year-end;
- (b) Identify the two (2) years of assessment next following (a) above;
- (c) Compute the assessable profits for the three (3) years of assessment in (a) and (b) above on the old basis, that is, assuming the company has not changed its accounting date;
- (d) Compute the assessable profits for the three (3) years of assessment in (a) and (b) above on the new basis, that is, assuming the company has always prepared accounts to its new year-end;
- (e) Obtain the sum of the Assessable profits for the three (3) years for each of the computations in (c) and (d) above; and
- (f) The practice of the FIRS is to choose the higher of the Assessable profits for the 3 years in (e) above.

Note:

The provision in Section 29(2) CITA confers on FIRS the discretion to determine the basis of assessment on a change of accounting date. In exercising this discretion, the FIRS may assess the year of change and the two following assessment years on actual basis instead of preceding year basis. This, it will do if using the basis, produces a higher Assessable profits for those three (3) years put together.

ILLUSTRATION 13-4

Olowo-Lekomo Limited for many years prepared accounts to 31 December, but in 2009 decided to prepare a sixteen-month accounts to 30 April. The adjusted profits are as follows:

	N
12 months to 31 December 2006	180,000
12 months to 31 December 2007	240,000
16 months to 30 April 2009	336,000
12 months to 30 April 2010	144,000

Required:

Compute the Assessable profits for the relevant years of assessment.

SUGGESTED SOLUTION 13-4

**OLOWO-LEKOMO LIMITED
COMPUTATION OF ASSESSABLE PROFITS**

Tax Year	OLD BASIS	Assessable Profits N	NEW BASIS	Assessable Profits N
	Basis Period		Basis Period	
2008	1/1/07 - 31/12/07	240,000	1/5/06-30/4/07(w.iii)	200,000
2009	1/1/08 - 31/12/08(w.i)	252,000	1/5/07-30/4/08(w.iv)	244,000
2010	1/1/09 - 31/12/09(w.ii)	180,000	1/5/08-30/4/09(w.v)	252,000
		<u>672,000</u>		<u>696,000</u>

Based on the foregoing, the Revenue would assess on the new basis, since this would produce higher Assessable profits for 2008 – 2010 Assessment years. Consequently, final assessable profits will be as follows:

Assessment Year	Assessable Profits N
2008	200,000
2009	244,000
2010	252,000
	<u>696,000</u>

Workings:

(a) Old basis

	Assessable Profits N
(i) 2009 Assessment Year	
- 1/1/08 – 31/12/08 = 12/16 x N336,000	= <u>252,000</u>
2010 Assessment Year	
- 1/1/09 – 30/4/09 = 4/16 x N336,000	= 84,000
- 1/5/09 – 31/12/09 = 8/12 x N144,000	= <u>96,000</u>
	<u>180,000</u>

(b) New basis

	Assessable Profits N
(i) 2008 – Assessment year	
- 1/5/06 – 31/12/06 = (8/12 x N180,000) =	120,000
- 1/1/07 – 30/4/07 = (4/12 x N240,000)	= <u>80,000</u>
	<u>200,000</u>

(ii) 2009 – Assessment year	Assessable Profits
	N
- 1/5/07 – 31/12/07 = (8/12 x N240,000)	= 160,000
- 1/1/08 – 30/4/08 = (4/16 x N336,000)	= <u>84,000</u>
	<u>244,000</u>
 (iii) 2010 – Assessment Year	Assessable Profit
1/5/08 – 30 /4/09 = (12/16 x N336,000) =	<u>N252,000</u>

13.2.4 Basis of Assessment on Cessation of Business

On cessation of trade or business by a company, the bases of assessment of profits for the year of cessation (ultimate year) and the immediately preceding year of assessment (penultimate year), are as follows:

Year of Assessment	Basis of Assessment
Ultimate year (year of cessation)	Actual profit for the year of cessation (1 January – date of cessation)
Penultimate year	Higher of the Assessable profits based on: (a) Actual basis and (b) Preceding year basis

ILLUSTRATION 13-5

Ozumba Limited ceased business on 31 October 2009. Its Adjusted profits/(loss) for tax purposes are as follows:

	N
Year ended 30 September 2006	6,000
Year ended 30 September 2007	(9,000)
Year ended 30 September 2008	24,000
Period 1 October 2008 to 31 October 2009	19,500

Required:

Compute the Assessable profit/(loss) for the year of cessation as well as the penultimate year.

**OZUMBA LIMITED
COMPUTATION OF ASSESSABLE PROFITS/(LOSS)
ON CESSATION OF BUSINESS**

Tax Year	Basis Period	Assessable Profits
		₦
2008 (Penultimate year)		
Higher of (a) 1/10/06-30/9/07(PYB)		<u>(9,000)</u>
and (b) 1/1/08 – 31/12/08 (Actual)		
1/1/08 – 30/9/08 - (9/12 x ₦24,000)	18,000	
- 1/10/08 – 31/12/08 - (3/13 x ₦19,500)	<u>4,500</u>	22,500
2009 (Ultimate year)	1/1/09 – 31/10/09	
	- (10/13 x ₦19,500)	15,000

Notes:

- (a) The FIRS would revise the assessment for the penultimate year, that is, A.Y 2008 on actual as this will result in higher tax payable by the tax payer.
- (b) The following points should be noted on cessation of trade:
- (i) The effect of a sudden change in the basis of assessment from preceding year basis to actual basis is that part of the company's profits will escape tax. The best the tax authority can do is to minimise the amount of profit escaping tax;
 - (ii) The magnitude of profit that will escape tax on cessation will depend on the trend of profit, that is, whether it is increasing or decreasing, towards cessation as well as the date cessation occurs;
 - (iii) Where profit is decreasing towards cessation of trade, the likelihood is that the tax authority will not revise the assessment for the penultimate year, to actual basis. Otherwise, higher profits of earlier years will escape tax. The converse is true, where profit is increasing towards cessation of trade; and
 - (iv) Where profits are falling towards cessation period, it is better to cease trading earlier, for the taxpayer to minimise the profits chargeable to tax.

ILLUSTRATION 13-6

Geez Viewcards Limited has been in business for so many years and is engaged in the importation and distribution of greeting cards and souvenirs.

Due to declining profits, the company decided to cease trading. However, the Chairman of the company could not make up his mind whether to cease trading on 31 December 2012 or 31 January 2013.

Recent accounts adjusted for tax purposes, revealed the following profit figures:

		PROFITS
		N
Year ended 30 September	2008	55,000
Year ended 30 September	2009	46,000
Year ended 30 September	2010	38,000
Year ended 30 September	2011	28,600
Year ended 30 September	2010	22,200
3 months ended 31 December	2012	5,000

Required:

Determine Assessable profits from 2009 Assessment year up to cessation and indicate what difference it would make, if business ceases on 31 January 2013, assuming profit of N8,000 for 4 months to 31 January 2013.

SUGGESTED SOLUTION 13.6

**(a) GEEZ VIEWCARDS LIMITED
COMPUTATION OF FINAL ASSESSMENTS
ASSUMING BUSINESS CEASES ON 31/12/2012**

Tax Year	Basis Period	Assessable N	Profits N
2009	1/10/07 – 30/9/08		<u>55,000</u>
2010	1/10/08 – 30/9/09		<u>46,000</u>
2011 Higher of:			
(i)	1/10/09 – 30/9/10 (PYB)	<u>38,000</u>	
and			<u>38,000</u>
(ii)	1/1/11 - 31/12/11 (Actual)		
	1/1/11 - 30/9/11		
	- 9/12 x N28,600	21,450	
	1/10/11/ - - N 31/12/11		
	- 3/12 x 22,200	<u>5,550</u>	
		<u>27,000</u>	
2012	- 1/1/12 – 31/12/12		
	1/1/12 – 30/9/12		
	(9/12 x N22,200)	16,650	
	1/10/12 – 31/12/12	<u>5,000</u>	
			<u>21,650</u>

Assessable Profits (2009 – 2012 Assessment years)	160,650
Adjusted Profits (per 2003 – 2007 accounts)	<u>194,800</u>
Profits escaping charge to tax	<u>34,150</u>

(b) **ASSUMING BUSINESS CEASES ON 31/1/2013**

Tax Year Basis Period		Assessable Profits	
		₦	₦
2009	1/10/07 – 30/9/08		<u>55,000</u>
2010	1/10/08 – 30/9/09		<u>46,000</u>
2011	1/10/09 – 30/9/10		<u>38,000</u>
2012 Higher of:			
(a)	1/10/10 – 30/9/11 (PYB)	<u>28,600</u>	<u>28,600</u>
and (b)	1/1/12 – 31/12/012 (Actual)		
	- 1/1/12 – 30/9/12		
	- $\frac{9}{12} \times \text{₦}22,200$	16,650	
	(1/10/12 – 31/12/12)		
	- $\frac{3}{4} \times \text{₦}8,000$	<u>6,000</u>	
		<u>22,650</u>	
2013	1/1/13 – 31/1/13		
	- $\frac{1}{4} \times \text{₦}8,000$		<u>2,000</u>
Assessable Profits (2008 – 2013 Assessment years)		169,600	
Adjusted Profits (per 2003 – 2008 accounts)		<u>197,800</u>	
Profits escaping charge to tax		<u>28,200</u>	

A comparison between the two dates of cessation reveals the following:

Date of Cessation

	31/01/13	31/12/12
	₦	₦
2011	38,000	38,000
2012	28,600	21,650
2013	<u>2,000</u>	-
	<u>68,600</u>	<u>59,650</u>

It is better to lease trading on December 31, 2007 because trading till January 31, 2008 will increase the total tax liability by ₦8,950.

ILLUSTRATION 13.7

Assume the same facts as in illustration 13.6 except that adjusted profits are as follows:

	₦
Year ended 30/9/08	22,200
Year ended 30/9/09	28,600
Year ended 30/9/10	38,000
Year ended 30/9/11	46,000
Year ended 30/9/12	55,000
3 months ended 31/12/12	18,000
4 months to 31/1/13	20,000

SUGGESTED SOLUTION 13.7

**(a) GEEZ VIEWCARDS LIMITED
COMPUTATION OF FINAL ASSESSMENTS
ASSUMING BUSINESS CEASED 31/12/2012**

Tax Year	Basis Period	Assessable Profits	
		₦	₦
2009	1/10/07 – 30/9/08		22,200
2010	1/10/08 – 30/9/09		28,600
2011 Higher of:			
(i)	1/10/09 – 30/9/10 (PYB)	<u>38,000</u>	
	- 1/1/11/ -30/9/11		
	(9/12 x ₦46,000)	34,500	
	- 1/10/11/ - 31/12/11		
	(3/12 x ₦55,000)	<u>13,750</u>	
		<u>48,250</u>	<u>48,250</u>
2012	- 1/1/12 – 31/12/12		
	- 1/1/12 – 30/9/12		
	- 9/12 x ₦55,000	41,250	
	- 1/10/12 – 31/12/12	<u>18,000</u>	
		<u>59,250</u>	
Assessable profits (2009 – 2012 Assessment years)			158,300
Adjusted profits (per 2008 – 2012 accounts)			<u>207,800</u>
Untaxed profits			<u><u>49,500</u></u>

**(b) GEEZ VIEWCARDS LIMITED
ASSUMING BUSINESS CEASES 31/1/2013**

Tax Year	Basis Period	Assessable Profits	
		₦	₦
2009	1/10/07 – 30/9/08		22,200
2010	1/10/08 – 30/9/09		28,600
2011	1/10/09 – 30/9/10	38,000	
2012 Higher of:			
(i)	1/10/10 – 30/9/11 (PYB)	<u>46,000</u>	
(ii)	1/1/12 – 30/9/12		
	9/12 x ₦ 5,000 =	41,250	
	1/10/12 – 31/12/12	<u>18,000</u>	
		<u>59,250</u>	<u>59,250</u>
2013	1/1/12 – 31/12/13 (1/4 x ₦ 20,000)		<u>5,000</u>
Assessable Profits (2009 – 2012 Assessment years)			153,050
Adjusted Profits (per 2008 – 2013 accounts)			<u>209,800</u>
Untaxed Profits			<u><u>56,750</u></u>

Comparison between the two dates of cessation under decreasing and increasing profits:

Date of cessation	Increasing Profit		Decreasing Profit	
	31/12/12	31/1/13	31/12/12	31/1/13
	₦	₦	₦	₦
Assessable profits	158,300	153,050	160,050	169,600
Adjusted profit	<u>209,800</u>	<u>209,800</u>	<u>194,800</u>	<u>197,800</u>
Profits escaping tax	<u><u>49,500</u></u>	<u><u>56,750</u></u>	<u><u>34,150</u></u>	<u><u>28,200</u></u>

Note:

The above analysis shows that it is better to cease trading on 31/1/13, where profit is increasing towards cessation or on 31/12/12, where profit is decreasing.

13.2.5 Ascertainment of Total Profits

Total Profits as provided for in Section 31 (1) CITA, is the amount of a company's "total assessable profits from all sources for that year", plus balancing charge, less deductions for:

- (a) Any loss incurred in any preceding assessment year; and
- (b) Capital allowances in respect of qualifying capital expenditure incurred by the company.

The above can be explained in simple terms, using a proforma layout as follows:

**ABC LIMITED
PROFORMA COMPUTATION OF TOTAL PROFITS
AND TAX LIABILITIES
ASSESSMENT YEAR 2013**

Assessable Profit	₦	₦
		XX
Add:		
Balancing Charge		<u>XX</u>
		XX
Deduct:		
Unrelieved Loss		<u>(X)</u>
Capital allowances:		<u>XX</u>
- For the year	X	
- Brought forward	X	
- Investment allowance	<u>X</u>	<u>(XX)</u>
Total Profit		<u><u>XX</u></u>

The Total profit of a company is the amount of its profits for an assessment year that is chargeable to income tax.

13.3 CHAPTER REVIEW

This chapter highlights the differences between Accounting profit/loss and taxable profits.

This chapter explains the concepts of bases of assessment as relate to the rights of a company on commencement of business and that of the Revenue on cessation and change of accounting date.

This chapter closes with ascertainment of Total profit.

13.4 WORKED EXAMPLES

13.4.1 Questions

- (1) Pako Limited is a company which commenced business on 1 January 2010. Its Profit and Loss Account for the year ended 31 December 2012 showed a profit of ₦2million.

After applying the rules for deductible expenses and taxable income, the company had an Adjusted profit of ₦3million, for the year ended 31 December 2012.

The company's Adjusted profits for the two previous years, are as follows:

	₦
Year ended 31 December 2010	1.5million
Year ended 31 December 2011	2.2million

Required:

Determine the basis of assessment and Assessable profits for all relevant years of assessment.

- (2) Mr. Tom Bull was advised by his accountant to incorporate a limited liability company in order to obtain financial assistance from his bankers. Based on the foregoing, Tom Bull Nigeria Limited was incorporated on 31 December 2007.

The company which was into importation of cement posted profits for so many years. Due to a change in government policy, the importation of cement was banned on 1 January 2013. The company could not cope with the new policy, hence it ceased trading on 30 November 2013.

The Adjusted profits of Tom Bull Nigeria Limited since incorporation have been given as follows:

	₦
Year ended 31 December 2008	50,000
Year ended 31 December 2009	65,000
Year ended 31 December 2010	82,500
Year ended 31 December 2011	125,000
Year ended 31 December 2012	180,000
Year ended 31 December 2013	35,000

Required:

Compute the Adjusted profits of Tom Bull Nigeria Limited for 2012 and 2013 Assessment Years, taking into consideration the options available to the relevant tax authority.

- (3) Pius Ojo Limited changed its accounting date from 30 June to 31 December. The following information is made available.

	₦
12 months to 30/6/2007	160,000
12 months to 30/6/2008	192,000
18 months to 31/12/2009	120,000
12 months to 31/12/2010	288,000
12 months to 31/12/2011	320,000

Required:

Compute the Assessable profits for the relevant assessment years.

- (4) Omobitan Limited commenced business on 1 October 2008 making up accounts to 30 June of every year. The following results were extracted from his books:

	₦
Period to 30 June 2009	84,000
Year to 30 June 2010	90,000
Year to 30 June 2011	200,000
Year to 30 June 2012	400,000

Capital expenditure were incurred as follows:

Date of purchase	Item	Cost
		₦
January 2008	Lorry	150,000
August 2008	Plant	80,000
May 2009	Building	240,000
September 2009	Motor Vehicle	200,000
June 2010	Furniture	35,000
December 2010	Equipment	65,000

You are required to compute:

- (a) The normal assessments
- (b) The revised assessments based on tax payer's election
- (c) The relevant years in which the capital expenditure incurred will be treated for the purpose of capital allowances.

13.4.2 Suggested Solutions

- (1) On preceding year basis, the Assessable profits for all relevant years will be as follows:

Assessment Year	Basis Period	Assessable Profits
		₦
2010	1/1/10 - 31/12/10	1.5million
2011	1/1/10 - 31/12/10	1.5million
2012	1/1/11-31/12/11	2.2million
2013	1/1/12-31/12/12	3.0million

- (2) **TOM BULL NIGERIA LIMITED**
COMPUTATION OF ADJUSTED PROFITS
FOR 2012 AND 2013 ASSESSMENT YEARS.

Original Assessments		₦
A.Y. 2012	- On preceding year basis	125,000
A.Y 2013	- On preceding year basis	180,000

On cessation, the Adjusted profits will be reviewed as follows:

		₦
A.Y 2012	-On Actual basis (1/1/12 31/12/12)	180,000
A.Y 2013	-On Actual basis (1/1/13 30/11/13)	35,000

Since the Adjusted profit for A.Y 2012 on actual basis is greater than that on preceding year basis, the Revenue will amend the 2012 assessment to actual profit earned during that year.

The final assessment will be	₦
A.Y 2012 on actual basis	180,000
A.Y 2013 on actual basis	35,000

**(3) PIUS OJO LIMITED
COMPUTATION OF ASSESSABLE PROFITS
FOR 2009, 2010 AND 2011 ASSESSMENT YEARS**

OLD ACCOUNTING DATE		
Year of Assessment	Basis Period	Amount ₦
2009	1/7/07 - 30/6/08	192,000
2010	1/7/08 - 30/6/09	
	$\frac{12}{18} \times \text{or } \text{₦}120,000)$	80,000
2011	1/7/09 - 30/6/10	
	$(\frac{6}{18} \times \text{₦}120,000) + (\frac{6}{12} \times \text{₦}288,000)$	
	= ₦40,000 + ₦144,000	184,000

NEW ACCOUNTING DATE		
Year of Assessment	Basis Period	Amount ₦
2009	1/1/08 - 31/12/08	
	$6/12 \times \text{₦}192,000 + (\frac{6}{18} \times \text{₦}120,000)$	136,000
	$(\text{₦}96,000 + \text{₦}40,000)$	
2010	1/1/09 - 31/12/09	
	$\frac{12}{18} \times \text{₦}120,000$	80,000
2011	1/1/10 - 31/12/10	288,000

Mr. Pius Ojo's business did not make its accounts to 30 June 2009, hence 2009 is the year of change and the next two assessment years are 2010 and 2011.

The tax authority would assess the tax payer for 2009 – 2011 assessment years using the higher Assessable profits obtained by comparing the old with the new bases.

Year of Assessment	Assessable Profit Old Basis ₦	Assessable Profit New Basis ₦
2009	192,000	136,000
2010	80,000	80,000
2011	<u>184,000</u>	<u>288,000</u>
	<u>456,000</u>	<u>504,000</u>

NB: The Tax Authority would assess the Assessment years 2009-2011, using the new accounting to date because it gives a higher assessable profit of ₦504,000.

(4) (a) OMOBITAN LIMITED

TAX ASSESSMENTS BASED ON NORMAL BASIS

Year of Assessment	Basis Period	Amount ₦
2008	1/10/08-31/12/08 (3/9 X ₦84,000)	<u>28,000</u>
2009	1/10/08-30/9/09 (₦ 84,000 + 3/12 x ₦ 90,000)	106,500
2010	1/10/08-30/9/09 (same as 2009)	<u>106,500</u>
		<u>213,000</u>
2011	1/7/09-30/6/10	90,000
2012	1/7/10-30/6/11	200,000

(b) TAX ASSESSMENTS BASED ON TAX PAYER'S ELECTION

Year of Assessment	Basis Period	Amount ₦
2008	1/10/08-31/12/08 (3/9 X ₦ 84,000)	<u>28,000</u>
2009	1/1/09-31/12/09 (6/9 X ₦84,000 + 6/12 x ₦ 90,000)	101,000
2010	1/1/10-31/12/10 (⁶ / ₁₂ X ₦90,000 + ⁶ / ₁₂ X ₦200,000)	<u>145,000</u>
		<u>246,000</u>
2011	1/7/09-30/6/10	90,000
2012	1/7/10-30/6/11	200,000

The tax payer will opt to be assessed on normal basis because the total assessments for second and third years of ₦213,000 is lower than that of the taxpayer's election of ₦246,000.

(c) PLACEMENT OF CAPITAL EXPENDITURE IN THE RELEVANT YEARS

Year of Assessment	Basis Period	Amount ₦
2008	1/10/08-31/12/08 -Lorry	150,000
	-Plant	80,000
2009	1/1/09-30/9/09 -Building	240,000
	-Motor Vehicle	200,000
2010	-NIL	NIL
2011	1/10/09-30/6/10 -Furniture	35,000
2012	1/7/10-30/6/11 -Equipment	65,000

Note: The taxpayer will opt to be assessed on normal basis, hence the assets are placed on the basis of normal assessment.

Skills level

Taxation

CHAPTER
14

Capital Allowances

Contents

1. Purpose
2. Definition and Types of Capital Allowances
3. Definition and Types of Capital Expenditure
4. Conditions for Granting Capital Allowances
5. Capital Allowances Rates and Restrictions
6. Computation of Balancing Adjustments on Assets Disposed of
7. Basis Periods
8. Chapter Review
9. Worked Examples

14

CAPITAL ALLOWANCES

14.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) appreciate the meaning of Capital Allowances;
- (b) understand the categories of Qualifying Capital Expenditure;
- (c) ascertain conditions for Granting Capital Allowances;
- (d) establish Basis Period for Capital Allowances; and
- (e) understand various restrictions on Capital Allowances Claims.

14.1 DEFINITION AND TYPES OF CAPITAL ALLOWANCES

Capital allowances are a form of relief granted to any company which incurred qualifying capital expenditure during a basis period in respect of fixed assets in use, at the end of the basis period, for the purpose of a trade or business.

Capital allowances are granted in place of depreciation which is usually disallowed for income tax purposes. Capital allowances include initial allowance, annual allowance, balancing allowance/(charge) and investment allowance.

(a) **Initial Allowance**

This is a relief that is granted in the year of assessment in the basis period of which a qualifying capital expenditure was incurred. In effect, it is an allowance that is granted once in the life of any asset for as long as it is beneficial, owned and used by the same owner.

(b) **Annual Allowance**

This is granted every year, on the residue of qualifying capital expenditure, incurred on fixed assets, after deducting the initial allowance. Annual allowance is computed on a straight line basis.

(c) **Balancing Allowance/Charge**

This is the difference between the tax written down value and sale proceeds on the disposal of an asset. Proceeds can also be in the form of insurance claim. Where the tax written down value exceeds the sale proceeds, the difference is a balancing allowance.

Where it is the other way round, the difference is a balancing charge. The latter is a claw back of capital allowances previously enjoyed by the company and should not exceed the reliefs actually given.

(d) Investment Allowance

This is an incentive granted where a company has incurred expenditure on plant and equipment (Section 32 (1)) CITA or on plant and machinery (Second Schedule (Para 18 (3)) CITA. The investment allowance is granted at the rate of 10% of qualifying expenditure and such allowance shall not be taken into account in ascertaining the tax written down value of qualifying expenditure.

(e) Rural Investment Allowance

This is an allowance given in addition to an initial allowance to a company which incurs capital expenditure or the provision of facilities such as electricity, water or tarred road for the purpose of a trade or business which is located at least 20 kilometers away from such facilities provided by the government.

The rate of the rural investment allowance shall be as follows:

(i)	No facilities at all	-	100%
(ii)	No electricity	-	50%
(iii)	No water	-	30%
(iv)	No tarred road	-	15%

The rural investment allowance shall be made against the projects of the year in which the said facility falls and the allowance or any balance shall not be available for carry forward to any subsequent year.

14.2 DEFINITION AND TYPES OF QUALIFYING CAPITAL EXPENDITURE

Qualified capital expenditure means expenditure incurred on assets used for a trade or business, which qualifies for capital allowances in a basis period. Categories of capital expenditure that qualify for the grant of capital allowances are as follows:

- (a) Qualifying Building expenditure - that is, expenditure on buildings, structures or work of a permanent nature.
- (b) Qualifying industrial building expenditure, that is, expenditure on buildings or structure in regular use, such as a mill factory, mechanical workshops, dock, port and wharf.
- (c) Qualifying mining expenditure (expenditure on working a mine, oil well, etc.).
- (d) Qualifying plant expenditure - that is, expenditure incurred on plant, machinery and fixtures.
- (e) Qualifying plantation expenditure (expenditure incurred on clearing of land for planting, etc).
- (f) Qualifying research and development expenditure, that is, expenditure incurred on equipment, facilities, patent and licences, etc.
- (g) Qualifying agricultural expenditure (expenditure incurred on plant in use for agricultural trade or business).
- (h) Qualifying public transportation, new mass transit coach expenditure.

14.3 CONDITIONS FOR GRANTING CAPITAL ALLOWANCES

Capital allowances are granted if the following conditions are satisfied:

- (a) Company must have incurred qualifying capital expenditure,
- (b) The claimant must remain the beneficial owner of the asset at the end of the basis period of the company,
- (c) The asset must be in use wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by the company at the end of its basis period.

Note

A period of temporary disuse is ignored for this purpose, provided that the asset is brought into use before disposal.

14.4 CAPITAL ALLOWANCE RATES AND RESTRICTIONS UNDER CITA

Qualifying Expenditure in respect of:	%	
	Initial	Annual
Building Expenditure	15	10
Industrial Building Expenditure	15	10
Manufacturing Industrial Plant Expenditure	50	25
Mining Expenditure	95	NIL
Plant Expenditure (excluding Furniture and Fittings)	50	25
Construction Plant Expenditure (excluding Furniture and Fittings)	50	25
Furniture and Fittings Expenditure	25	20
Motor Vehicle Expenditure	50	25
Public Transportation Motor Vehicle	95	NIL
Plantation Equipment Expenditure	95	NIL
Agricultural Plant Expenditure	95	NIL
Housing Estate Expenditure	50	25
Ranching and Plantation Expenditure	30	50
Research and Development Expenditure	95	NIL

Capital allowances to be deducted from assessable profits of companies in any year are restricted to $66\frac{2}{3}\%$ of such assessable profits, except for companies engaged in agro-allied industry and manufacturing.

Capital allowances are also restricted when:

- (a) There is a private use, restrict amount granted to official use; and
- (b) The basis period is less than 12 months, restrict amount calculated to the number of months in the basis period.

14.5 BASIS PERIOD FOR CAPITAL ALLOWANCES

14.5.1 Basic Principles

The basis period for capital allowances is the same as that for the assessment of the profits of a company. This means that capital allowances are given in an assessment year in respect of assets acquired or qualifying expenditure incurred in the preceding year of assessment.

ILLUSTRATION 14-1

A company that normally makes up its accounts to June 30 each year acquired assets as follows:

Date	Assets Purchased	Cost
31/12/01	Building	₦5million
15/5/02	Jeep motor vehicle	₦3million
30/7/02	Machinery	₦2million
13/3/04	Furniture	₦1.5million

Required:

Determine the basis period and compute the capital allowances for all the relevant assessment years.

SUGGESTED SOLUTION 14.1

(i) DETERMINATION OF BASIS PERIOD

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2003	1/7/01 – 30/6/02	1/7/01 – 30/6/02
2004	1/7/02 – 30/6/03	1/7/02 – 30/6/03
2005	1/7/03 – 30/6/04	1/7/03 – 30/6/04

(ii) **COMPUTATION OF CAPITAL ALLOWANCES**

	Building	Motor Vehicle	Mach-inery	Furni-ture	Total Allowances
Initial allowance (%)	15	50	50	25	
Annual allowance (%)	<u>10</u>	<u>25</u>	<u>25</u>	<u>20</u>	
	(‘000)	(‘000)	(‘000)	(‘000)	(‘000)
	₦	₦	₦	₦	₦
Assessment Year-2003					
31/12/01-Building	5,000				
15/5/02-Jeep		3,000			
Allowances					
Initial allowance	(750)	(1,500)			2,250
Annual allowance (w.1)	<u>(425)</u>	<u>(375)</u>			<u>800</u>
Written Down value-C/F	3,825	1,125			<u><u>3,050</u></u>
Assessment Year-2004					
30/7/02 – Machinery			2,000		
Initial allowance	-	-	(1000)		1,000
Annual allowance	<u>(425)</u>	<u>(375)</u>	<u>(250)</u>		<u>1,050</u>
Written Down value-c/f	3,400	750	750		<u><u>2,050</u></u>
Assessment Year-2005					
13/3/04 – Furniture				1,500	
Initial allowance	-	-	-	(375)	375
Annual allowance	<u>(425)</u>	<u>(375)</u>	<u>(250)</u>	<u>(225)</u>	<u>1,275</u>
W.D.V. c/f	2,975	375	500	500	<u><u>1,650</u></u>

Workings

(a) Annual allowance

$$= \frac{₦5,000 - 750}{10 \text{ years}} \quad \frac{₦3000 - ₦1500}{4 \text{ years}} \quad \frac{₦2,000 - ₦1000}{4 \text{ years}} \quad \frac{₦1,500 - ₦375}{5 \text{ years}}$$

$$= \quad 425 \quad 375 \quad 250 \quad 225$$

(b) Investment allowance

$$₦2,000,000 \text{ at } 10\% = ₦200,000$$

The preceding year basis of assessment is applicable only in a situation where a normal (12-months) accounting period ended in the preceding year of assessment.

However, this is usually not the case on commencement, cessation of business or change of accounting date. The problems normally associated with the determination of basis period in these situations are two, namely:

- (i) Overlapping basis period, and
- (ii) Gap between basis periods.

14.5.2 Overlapping Basis Period

Overlapping basis period occurs when a basis period is common to more than one year of assessment.

ILLUSTRATION 14.2

Bukky White Limited is a company engaged in the entertainment business. It commenced business on 1 September 2005 and made up accounts as follows:

- ◆ 9 months ended 30 June 2006
- ◆ Year ended 30 June 2007

Required:

Determine the basis period of assessment for each of the first four years of assessment of the company.

SUGGESTED SOLUTION 14.2

DETERMINATION OF BASIS PERIOD FOR ASSESSMENT

Assessment Year	Basis Period of Assessment	Overlapping Period
2005	1/9/05–31/12/05(Actual)	-
2006	1/9/05–31/8/06(1st12 months)	1/9/05 - 31/12/05
2007	1/9/05–31/8/06(1st 12 months)	1/9/05 - 31/8/06
2008	1/7/06–30/6/07(PYB)	1/7/06 - 31/8/06

Since basis period for capital allowance derives from that for assessment of profit, the question that arises is: When will the initial allowance be given in respect of assets purchased during the overlapping basis period?

Suppose, the company purchased a motor vehicle on 15th December, 2001, in which of the assessment years, will the initial allowance be given since the period 1/9/01 – 31/12/01 is common to three (3) years of assessment.

Rule: when there is Overlapping Basis Period

When there is an overlapping basis period between two years of assessment, the period common to both is deemed to form part of the earlier year of assessment, for the purpose of determining the assessment year to which the initial allowances is allocated.

ILLUSTRATION 14-3

Applying the rule on overlapping basis period to Bukky White Limited, the basis period for assessment and for capital allowances are as follows:

SUGGESTED SOLUTION 14-3

DETERMINATION OF BASIS PERIOD FOR ASSESSMENT YEARS AND CAPITAL ALLOWANCES

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2001	1/9/01–31/12/01	1/9/01–31/12/01
2002	1/9/01 – 31/8/02	1/1/02 – 31/8/02
2003	1/9/01 – 31/8/02	-
2004	1/7/02 – 30/6/03	1/9/02 – 30/6/03

ILLUSTRATION 14-4

James Nigeria Limited commenced business as a textile manufacturing company on 1 June 2001, even though it was incorporated on 15 March 2001. Its accounts for the first few years of its operations showed the following adjusted profits:

	₦'000
Ten (10) months period ended 31 March 2002	7,500
Year ended 31 March 2003	12,000
Year ended 31 March 2004	18,000

The company incurred the following qualifying capital expenditure:

	₦'000
25 March 2001 – Factory Building	3,500
18 May 2001 – Machinery	2,800
15 October 2001 – Furniture	750
28 February 2002 – Delivery van	500
20 May 2002 – Motor car	1,200
21 January 2003 – Office Equipment	600

Required:

- (a) Determine the basis period for assessment and for capital allowances for the first five (5) assessment years;
- (b) Compute the Capital allowances due for five (5) years of assessment in respect of the qualifying capital expenditure incurred by the company; and
- (c) Compute the company's tax liabilities for the first five (5) years of assessment.

SUGGESTED SOLUTION 14-4**JAMES NIGERIA LIMITED****(a) DETERMINATION OF BASIS PERIOD FOR THE ASSESSMENT YEARS AND CAPITAL ALLOWANCES**

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2001	1/6/01 - 31/12/01	1/6/01 - 31/12/01
2002	1/6/01 - 31/5/02	1/1/02 - 31/5/02
2003	1/6/01 - 31/5/02	-
2004	1/4/02 - 31/3/03	1/6/02 - 31/3/03
2005	1/4/03 - 31/3/04	1/4/03 - 31/3/04

Note: Basis periods for 2nd and 3rd years overlap, therefore basis period for Capital Allowances will be same for 2nd Assessment Year so no Capital Allowances since already claimed in 2nd year.

(b) COMPUTATION OF CAPITAL ALLOWANCES

	BUILDING	P&M	F&F	MV	EQUIP	Total Allowances
	%	%	%	%	%	
Rate-initial Allowance	15	50	25	50	50	
Annual Allowance	10	25	20	25	25	
	N'000	N'000	N'000	N'000	N'000	N'000
Assessment Year 2001						
25/3/01-Factory Building	3,500					
18/5/01 – Machinery		2,800				
15/10/01 – Furniture			750			
Allowances:						
Initial allowance	(525)	(1,400)	(188)			2,113
Annual allowance (w.1)	(174)	(204)	(66)			444
Written Down Value c/f	2,801	1,196	496			2,557
Assessment Year-2002						
Additions						
- 28/2/02-Delivery van				500		
- 20/5/02 – Motor car				1,200		
	2,801	1,196	496	1,700		
Allowances:						
Initial allowance	-	-	-	(850)		850
Annual allowance (w.2)	(297)	(350)	(112)	(212)		971
W.D.V. c/f	2,504	846	384	638		1,821
Assessment Year 2003						
Annual allowance	(297)	(350)	(112)	(212)	-	971
W.D.V. c/f	2,207	496	272	426	-	971

Assessment Year 2004

Addition						
-12/1/03-Office Equipment					600	
Allowances:						
Initial allowance	-	-	-	-	(300)	300
Annual allowance	(297)	(350)	(112)	(212)	(75)	1,046
W.D.V.c/f	<u>1,910</u>	<u>146</u>	<u>160</u>	<u>214</u>	<u>225</u>	<u>1,346</u>

Assessment Year 2005

Annual allowance	(297)	(136)	(112)	(204)	(75)	824
W.D.V.c/f	<u>1,613</u>	<u>10</u>	<u>48</u>	<u>10</u>	<u>150</u>	<u>824</u>

Workings

- (i) **Annual allowance – 2001 Assessment Year**
(7 months' basis period)

$$= \text{N}297 \times \frac{7}{12} \quad \text{N}350 \times \frac{7}{12} \quad \text{N}112 \times \frac{7}{12} \quad - \quad -$$

$$= \text{N}174 \quad \text{N}204 \quad \text{N}66 \quad - \quad -$$

- (ii) **Annual allowance: 2002 – 2005 Assessment Years**

$\frac{3,500 - 525}{10 \text{ years}}$	$\frac{2,800 - 1,400}{4 \text{ years}}$	$\frac{750 - 188}{5 \text{ years}}$	$\frac{1,700 - 850}{4 \text{ years}}$	$\frac{600 - 300}{4 \text{ years}}$
= N297	N350	N112	N212	N75

- (iii) **Investment**

Allowance at 10% = - N280 - - N60

Note

Qualifying capital expenditure incurred before date of commencement of business is deemed to have been incurred on the first day of commencing business. Consequently, factory building and machinery purchased on 25/3/01 and 18/5/01 respectively, that is, before commencement date are deemed to have been incurred on 1/6/01, that is, date of commencement of business.

Keys

IB	=	Industrial Building
P&M	=	Plant and Machinery
F&F	=	Furniture and Fittings
MV	=	Motor Vehicles
Equip	=	Equipment

(c) COMPUTATION OF COMPANY'S TAX LIABILITIES

Assessment Year 2001 (Based on 1/6/01 – 31/12/01) Assessable Profit:

	N	N
-7/10 x N7,500,000		5,250,000
Deduct:		
Capital allowances (see (ii) above)	(2,557,000)	
Investment allowance (w.3)	<u>(280,000)</u>	<u>2,837,000</u>
Total Profit		<u><u>2,413,000</u></u>

Income tax payable (N2,413,000) at 30% = N723,900

Education tax payable (N5,250,000) at 2% = N105,000

Assessment Year 2002 (Based on 1/6/01 – 31/5/02)

Assessable Profit:

- 1/6/01 – 31/3/02	7,500,000	
- 1/4/02 – 31/5/02 – 2/12 x N12,000,000	<u>2,000,000</u>	9,500,000
Deduct:		
Capital allowance (see (b))		<u>(1,821,000)</u>
Total Profit		<u><u>7,679,000</u></u>

Income tax payable (N7,679,000) at 30% = N2,303,700

Education tax payable (N9,500,000) at 2% = N190,000

Assessment Year 2003 (Based on 1/6/01 – 31/5/02)

	N
Assessable Profit:	9,500,000
Deduct:	
Capital allowance (see (b))	<u>(971,000)</u>
Total Profit	<u><u>8,529,000</u></u>

Income tax payable (N8,529,000) at 30%= N2,558,700

Tertiary Education tax payable (N9,500,000) at 2%= N190,000

Assessment Year 2004 (Based on 1/4/02 – 31/3/03)

	N
Assessable Profit:	12,000,000
Deduct:	
Capital allowance (see (b))	(1,346,000)
Investment allowance	<u>60,000)</u>
Total Profit	<u><u>10,594,000</u></u>

Income tax payable (N10,594,000) at 30%= N3,178,200

Tertiary Education tax payable (N12,000,000) at 2% =N240,000

Assessment Year 2005 (Based on 1/4/03 – 31/3/04)

	N
Assessable Profit:	18,000,000
Deduct:	
Capital allowance (see (b))	<u>(824,000)</u>
Total Profit	<u><u>17,176,000</u></u>
Income tax payable (N17,176,000) at 30%=	N5,152,800
Tertiary Education tax payable (N18,000,000) at 2%=	N360,000

14.5.3 Basis Period when there is a gap

This occurs when there is a gap between the basis periods of two assessment years. This type of situation usually arises when there is a change of accounting date or on cessation of business.

ILLUSTRATION 14-5

Chopping Stick (Nigeria) Limited is engaged in catering business. Its recent accounts showed the following adjusted profits.

	N
Year ended 30/9/01	280,000
Year ended 30/9/02	360,000
Fifteen (15) months to 31/12/03	525,000
Year ended 31/12/04	728,000

You are required to:

- (a) Compute the company's Assessable profit for the relevant assessment years.
- (b) State the final basis of assessment and capital allowances after determining the final assessable profit for 2002 – 2005 assessment years.

SUGGESTED SOLUTION 14-5
(a) CHOPPING STICK (NIGERIA) LIMITED
COMPUTATION OF ASSESSABLE PROFITS
BASED ON A CHANGE OF ACCOUNTING DATE

Asses sment Year	OLD BASIS PERIOD		NEW BASIS PERIOD	
	Basis Period	Assessable Profit ₦	Basis Period	Assessable Profit ₦
2003	1/10/01-30/9/02	<u>360,000</u>	-1/1/02 -30/9/02 (9/12 x ₦360,000) = -1/10/02-31/12/02	270,000
			(3/15 x N 525,000) =	<u>105,000</u>
				<u>375,000</u>
2004	1/10/02 –30/9/03 12/15 x ₦525,000=	<u>420,000</u>	1/1/03 –31/12/03 (12/15 x ₦525,000)=	<u>420,000</u>
2005	1/10/03-30/9/04		1/10/03-31/12/03	
			1/1/04-31/12/04	<u>728,000</u>
	(3/15 x ₦525,000) =	105,000		
	-1/1/04 - 30/9/04 (9/12 x ₦728,000) =	<u>546,000</u>		
		<u>651,000</u>		
		<u><u>1,431,000</u></u>		<u><u>1,523,000</u></u>

The practice of the Revenue on a change of accounting date is to assess the profits of the year of change and the two following years of assessment on the basis of the new year end if this will produce higher assessable profits, than on the basis of old year end.

Therefore, the assessable profits for the Assessment Years 2003 –2005 will be based on the new year-end, as this produced higher assessable profits of ₦1,523,000 compared with ₦1,431,000 based on the old year end.

Consequently, the basis period for the assessment of the profits for the years 2002 – 2005 are as follows:

Assessment Year	Basis Period for Assessment	Assessable Profits N
2002	1/10/00 – 30/9/01	280,000
2003	1/1/02 – 31/12/02	375,000
2004	1/1/03 – 31/12/03	420,000
2005	1/1/04 – 31/12/04	728,000

A cursory look at the basis period of Assessment reveals a gap between the basis period for 2002 and 2003 assessment years. The gap is the period between 1/10/01 and 31/12/01.

Since basis period for capital allowances is derived from the basis period for assessment, the question arises as to which assessment year will take the benefit of initial allowance in respect of qualifying capital expenditure incurred during the gap period. Alternatively, the issue is, in which of the years 2002 and 2003 will initial allowance be granted in respect of capital expenditure incurred in the period 1/10/01 – 31/12/01, that is, gap period?

(b) Rule: when there is a gap in between basis periods

When there is a gap or an interval between the basis period for two assessment years, for the purpose of capital allowances, the gap is deemed to form part of the basis period for the latter assessment year, except, where the latter year is a year of cessation, in which case, it forms part of the basis period for the earlier (penultimate) year of assessment.

Applying this rule to the above illustration, the basis period for assessment and capital allowances are as follows:

Assessment Year	Basis period for Assessment	Basis Period for Capital Allowance
2002	1/10/00 – 30/9/01	1/10/00 – 30/9/01
2003	1/1/02 – 31/12/02	1/10/01 – 31/12/02
2004	1/1/03 – 31/12/03	1/1/03 – 31/12/03
2005	1/1/04 – 31/12/04	1/1/04 – 31/12/04

ILLUSTRATION 14-6

Mohammed Liman Nigeria Limited is a company engaged in the manufacture of plastic products. Due to the company's dwindling fortune, the company's Board of Directors decided to cease business on 31 March 2004.

The Assessable Profits of the company for the relevant years are as follows:

	N
Year ended 30 June 2001	2,500,000
Year ended 30 June 2002	1,600,000

Year ended 30 June 2003	800,000
9 months ended 31 March 2004	400,000

The company acquired the following fixed assets in recent times:

	N
15/12/00 – Land	850,000
30/07/01 – Foundation for factory building	700,000
18/08/03 – Factory construction	1,200,000
16/12/03 – Motor Vehicles (Fairly used – 2)	800,000

Tax written down value brought forward in respect of plant and machinery for 2002 Assessment year was N720,000. The plant and machinery was installed and commissioned on 4 April 1999.

On cessation of business, the fixed assets were disposed of as follows:

(a) Plant and Machinery	-	N585,000
(b) Factory Building	-	N2,250,000
(c) Factory Land	-	N1,500,000
(d) Motor Vehicles	-	N200,000

Required:

- (a) Determine the company's Assessable profits for the last three (3) years of assessment, taking into account the right of the Federal Inland Revenue Service on cessation.
- (b) Determine the basis period for capital allowances.
- (c) Compute the capital allowances for the last three years of assessment.
- (d) Compute the company's tax liabilities for the last three years of assessment.

SUGGESTED SOLUTION 14-6

**(a) MOHAMMED LIMAN NIGERIA LIMITED
DETERMINATION OF ASSESSABLE PROFITS**

Assessment Year	Basis Period	N	Assessable Profit N
2002	1/7/00-30/6/01		<u>2,500,000</u>
2003 (Penultimate year)			
Higher of: (a)	1/7/01-30/6/02 (PYB)	1,600,000	<u>1,600,000</u>
and (b)	1/1/03-31/12/03(actual)		
	-1/1/03-30/6/03		
	6/12 x N 800,000	= 400,000	
	1/7/03-31/12/03		
	6/9 x N 400,000 =		<u>266,667</u>
			<u><u>666,667</u></u>
2004 (Ultimate year)	1/1/04-31/3/04		
	(3/9 x N 400,000)		<u><u>133,333</u></u>

(b) DETERMINATION OF BASIS PERIOD FOR CAPITAL ALLOWANCES

Assessment Year	Basis Period for Assessment	Basis Period for Year Capital Allowances
2002	1/7/00 – 30/6/01	1/7/00 – 30/06/01
2003	1/7/01 – 30/6/02	1/7/01 – 31/12/03
2004	1/1/04 – 31/3/04	1/1/04 – 31/03/04

(c) COMPUTATION OF CAPITAL ALLOWANCES

	Factory	Plant & Building	Motor Machinery	Total Vehicles
Allowances	%	%	%	
Initial allowance	15	50	50	
Annual allowance	10	25	25	
	N	N	N	N
<u>Assessment Year-2002</u>				
Brought forward		720,000		
Annual allowance		<u>(360,000)</u>		<u>360,000</u>
W.D.V. c/f			360,000	
<u>Assessment Year-2003</u>				
30/7/01 -Factory Building	700,000			
18/8/03 – “ “	1,200,000			
6/12/03– Motor Vehicles				800,000
	<u>1,900,000</u>		<u>360,000</u>	<u>800,000</u>

Initial allowance	(285,000)	-	(400,000)	685,000
Annual allowance (w1)	<u>(161,500)</u>	<u>(359,990)</u>	<u>(100,000)</u>	<u>621,490</u>
W.D.V. c/f	1,453,500	10	300,000	1,306,490

Assessment Year – 2004

Sale proceeds	(1,900,000)	(585,000)	(200,000)
Balancing(charge)/ Allowance (w.2)	(446,500)	(584,990)	100,000

$$(i) \text{ Annual allow.} = \frac{1,900,000 - 285,000}{10 \text{ years}} \quad \frac{720,000}{4-2 \text{ years}} \quad \frac{800,000 - 400,000}{4 \text{ years}}$$

$$= \text{₦}161,500 \quad \text{₦}360,000 \quad \text{₦}100,000$$

$$(ii) \text{ Actual balancing charge (2004)} = \text{₦}2,250,000 - \text{₦}1,453,500$$

$$\text{re-Factory Building} = \text{₦}796,500$$

However, balancing charge is restricted to actual capital allowances granted. This is calculated as the difference between cost of acquisition and tax written down value at disposal, that is,

$$= \text{₦}1,900,000 - \text{₦}1,453,000$$

$$= \text{₦}446,500$$

Note:

Capital allowance is not given in respect of capital expenditure incurred on land.

(d) COMPUTATION OF TAX LIABILITIES

	₦	₦
<u>Assessment Year 2002</u>		
Assessable Profits (see (a) above)		2,500,000
Less:		
Capital allowances (see (c) above)		<u>360,000</u>
Total Profit		<u><u>2,140,000</u></u>
Income tax payable (₦2,140,000) at 30%=		₦642,000
Education tax payable (₦2,500,000) at 2%=		₦50,000
<u>Assessment Year 2003</u>		
Assessable Profits (see (a))		1,600,000
Deduct:		
Capital allowances (see (c))	1,306,490	
Restricted to 66 2/3 % of ₦1,600,000	<u>(1,066,667)</u>	(1,066,667)
Unrelieved C.As carried forward	<u>239,823</u>	-
Total Profit		<u><u>533,333</u></u>

Income tax payable (N533,333) at 30%	=	N160,000
Tertiary Education tax payable (N1,600,000) at 2%	=	N32,000
Assessment Year 2004		
Assessable Profit (see (a))		133,333
Add:		
Balancing charge – Factory Building	446,500	
– Plant & Machinery	<u>584,990</u>	<u>1,031,490</u>
		<u>1,164,823</u>
Deduct:		
Unrelieved Capital allowances –b/f	239,823	
Balancing allowance – Motor vehicles	<u>100,000</u>	<u>339,823</u>
Total Profit		<u>825,000</u>
Income tax payable (N825,000) at 30%=		N247,500
Tertiary Education tax payable (N133,333) at 2%=		N2,667

14.5.4 Carry-Back of Capital Allowances on Cessation of Business

On cessation of trade or business, unabsorbed capital allowances arising in the assessment year in which trade or business permanently ceases, may be carried back for relief against, the remainder of profits of the five years of assessment preceding the final year of trading or business.

The relief should first be claimed against the remainder of profits of the penultimate year, and thereafter, the pre-penultimate year and so on.

The remainder of profits is determined, using a proforma as follows:

PROFORMA COMPUTATION DETERMINATION OF REMAINDER OF PROFIT

	N	N
Assessable profit		xxx
Add:		
Balancing charge		<u>x</u>
		xxx
Deduct:		
Unrelieved Loss - b/f	(xx)	
Relieved losses	<u>xx</u>	<u>(xx)</u>
		(xx)
Deduct:		
Capital allowances		<u>(x)</u>
Total Profits (Remainder of profit)		<u><u>x</u></u>

The total profits are the remainder of profits available for carry-back of capital allowances. Thus, unabsorbed capital allowances are relieved from the remainder of profits for the five years of assessment before the year of cessation. Technically, the tax implication of the carry-back of capital allowances, is that, the tax previously paid is refundable to the company by the Federal Inland Revenue Service but this rarely happens in practice.

ILLUSTRATION 14-7

Energy Resources Limited is a company engaged in the incorporation and sale of new electric cookers. The company ceased business on 31 July 2008 due to stiff competition from importers of fairly used cookers.

The recent results of the company revealed the following:

Year Ended September 30	Assessable Profits
	₦
2000	1,800,000
2001	2,300,000
2002	3,500,000
2003	1,500,000
2004	1,700,000
2005	1,200,000
2006	950,000
2007	780,000
10 months ended 31 July 2008	250,000

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

Assessment Year	Capital Allowances
	₦
2001	1,950,000
2002	920,000
2003	1,350,000
2004	870,000
2005	850,000
2006	730,000
2007	950,000

Balancing allowance after disposal of all company's fixed assets on cessation of business amounted to ₦2,350,000.

Required:

Compute the company's income tax liabilities for 2001 to 2008 Assessment years, giving all reliefs as much as possible.

SUGGESTED SOLUTION 14.7

ENERGY RESOURCES LIMITED COMPUTATION OF INCOME TAX LIABILITIES

Assessment Year 2001 (Based on 1/10/99-30/9/00)

	N	N
Assessable Profit		1,800,000
Deduct:		
Capital allowances	1,950,000	
Restricted to $66\frac{2}{3}\%$ of N1,800,000	<u>(1,200,000)</u>	<u>1,200,000</u>
Unrelieved capital allowance c/f	750,000	
Total Profit		<u>600,000</u>
Income tax payable (N600,000) at 30%		N180,000
Tertiary Education tax payable (N1,800,000) at 2%		N36,000

Assessment Year 2002 (Based on 1/10/00-30/9/01)

Assessable Profit		2,300,000
Deduct:		
Capital allowances – for the year	920,000	
– Unrelieved b/f	750,000	
	1,670,000	
Restricted to N2,300,000 at $66\frac{2}{3}\%$	<u>(1,533,333)</u>	1,533,333
Unrelieved capital allowances – c/f	<u>136,667</u>	
Total Profit		<u>766,667</u>
Income tax payable (N766,667) at 30%		N230,000
Tertiary Education tax payable (N2,300,000 x 2%)		N46,000

Assessment Year 2003 (Based on 1/10/01-30/9/02)

Assessable Profit		3,500,000
Deduct:		
Capital allowances – for the year	1,350,000	
– Unrelieved b/f	<u>136,667</u>	<u>1,486,667</u>
Total Profit		<u>2,013,333</u>
Income tax payable (N2,013,333) at 30%		N604,000
Tertiary Education tax payable (N3,500,000) x 2%		N70,000

Assessment Year 2004 (Based on 1/10/02 – 30/9/03)

Assessable Profit	1,500,000
Deduct:	
Capital allowances	<u>870,000</u>
Total Profit	<u><u>630,000</u></u>

Income tax payable (N630,000) at 30%	N189,000
Tertiary Education tax payable (N1,500,000) x 2%	N30,000

Assessment Year 2005 (Based on 1/10/03 – 30/9/04)

Assessable Profit	1,700,000
Deduct:	
Capital allowances	<u>(850,000)</u>
Total Profit	<u><u>850,000</u></u>

Income tax payable (N850,000) at 30%	N255,000
Tertiary Education tax payable (N1,700,000) x 2%	N34,000

Assessment Year 2006 (Based on 1/10/04-30/9/05)

Assessable Profit	1,200,000
Deduct:	
Capital allowances	<u>730,000</u>
Total Profit	<u><u>470,000</u></u>

Income tax payable (N470,000) at 30%	N141,000
Tertiary Education tax payable (N1,200,000 x 2%)	N24,000

Assessment Year 2007 (penultimate year)

Assessable Profit:

Higher of:

(a) 1/10/05 – 30/9/06 950,000

(b) 1/1/07 – 31/12/07

- 1/1/07 – 30/9/07 – $\frac{9}{12}$ x (N780,000) 585,000- 1/10/07 – 31/12/07 – $\frac{3}{10}$ x (N250,000) 75,000660,000**Deduct:**

Capital allowances 950,000

Restricted to (N950,000) x $66\frac{2}{3}\%$ (633,333) (633,333)Unrelieved capital allowances c/f 316,667Total Profit 316,667

Income tax payable (N316,667) at 30% N95,000

	N	N
Education tax payable (N950,000) x 2%		<u>19,000</u>
Assessment Year – 2008 (Based on 1/1/08-31/7/08)		
Assessable Profits – 7/10 x 250,000		175,000
Deduct:		
Capital allowances – Balancing allowance	2,350,000	
– Unrelieved b/f	<u>316,667</u>	
	2,666,667	
Relieved in the year	<u>(175,000)</u>	<u>(175,000)</u>
Unrelieved:	<u>2,491,667</u>	<u>-</u>
- carried back against the remainder of profits as follows: 2007 A/Y		
	(316,667)	
2006 A/Y	(470,000)	
2005 A/Y	(850,000)	
2004 A/Y	(630,000)	
2003 A/Y	(225,000)	
	<u>2,491,667</u>	
Tax refundable by FIRS based on the foregoing:		
Assessment year – 2003 - N225,000 at 30%	N67,500	
– 2004 - N630,000 at 30%	N189,000	
– 2005 - N850,000 at 30%	N255,000	
– 2006 - N470,000 at 30%	N141,000	
– 2007 - N316,667 at 30%	N95,000	
Total	<u>N2,491,667</u>	<u>N747,500</u>

Tertiary Education Tax (N175,000 x 2%) N3,500

Note

- (i) Any part of the capital allowances, which remained unrelieved after carrying back against the remainder of profits for 2003, will be deemed lost. The period of carry back is limited to five (5) years before the year of cessation starting from the penultimate year, that is, year preceding that of cessation.

14.6 COMPUTATION OF BALANCING ADJUSTMENTS ON DISPOSAL OF QUALIFYING CAPITAL EXPENDITURE

14.6.1 Balancing Charge

Balancing charge is one of the components of balancing adjustment, which is obtained when an asset is disposed of. It occurs where the sales proceeds exceed the tax written down value at the time of disposal.

Balancing charge is regarded as an additional taxable value. However, the maximum amount payable should not exceed the total capital allowance claimable on the asset before the disposal of the capital expenditure.

14.6.2 Balancing Allowance

This occurs where the sales proceeds on disposal of qualifying expenditure is less than the tax written down value of the asset. This can be regarded as an additional annual allowance as it reduces tax liability.

A balancing allowance can only be made if immediately prior to the disposal of the asset, it was in use by the owner of the trade or business for the purposes of which qualifying expenditure was incurred.

14.7 CHAPTER REVIEW

This chapter addresses the incidence of Capital Allowances - what they represent and the categories of Assets that could be classified as Qualifying Capital Expenditure. It also discusses the conditions for granting Capital Allowances. In addition, it explains how basis period is determined when there is an overlapping basis period and when a gap exists between basis periods.

14.8 WORKED EXAMPLES

14.8.1 Questions

- (1) Abdulahi commenced business in May 2009 and bought a motor vehicle at a cost of ₦2,000,000. Assuming the initial allowance rate is 25% and annual allowance is 20%,

Required:

Compute the capital allowance claimable up to 2011 Assessment year.

- (2) Given that an asset of written down value of ₦975,000 is sold for ₦1,200,000,

Required:

Compute the balancing charge.

- (3) Chukwu Ltd commenced business on 1 May 2009 and chose 31 July every year as its accounting year end. You are provided with the following information on the qualifying capital expenditure.

Qualifying Capital Expenditure	Date of Acquisition
Buildings	20 April 2009
Plant and Machinery	28 September 2009
Motor Vehicle	17 March 2010
Furniture and Fittings	29 June 2010

Required:

Determine the basis period for capital allowance of cash qualifying capital expenditure.

- (4) Ali Ltd. which had financial statements made up to 31 May every year, ceased business on 30 July 2010. A motor vehicle was acquired on 19 December 2004.

Required:

Determine the tax year when initial allowance will be claimed

14.8.2 Suggested Solutions

- (1) **ABDULAH**

COMPUTATION OF CAPITAL ALLOWANCES UP TO 2011 TAX YEAR

A.Y. 2009	₦
Cost (₦2,000,000)	
Initial Allowance (25%)	500,000
Annual Allowance (20%)	200,000
$\frac{\text{₦2,000,000} - \text{₦500,000} \times 8}{5 \quad 12}$	700,000
A.Y. 2010	
Annual Allowance (12 months) =	300,000
$\frac{12 \times \text{₦200,000}}{8}$	
A.Y. 2011	
Annual Allowance (12 months)	300,000
Total	<u>1,300,000</u>

	₦
(2) Tax written down value	975,000
Sales proceeds	1,200,000
Balancing Charge	225,000

**(3) CHUKWU LIMITED
DETERMINATION OF THE BASIS PERIOD FOR CAPITAL ALLOWANCES**

Assessment Year	Basis period For Assessable Profit	Basis period For Capital Allowances	Qualifying Capital Expenditure
2009	1/5/2009-31/12/2009	1/5/2009/31/12/2009	Building, Plant and Machinery
2010	1/5/2009-31/12/2009	1/1/2010-30/4/2010	Motor Vehicles
2011	1/8/2009-31/7/2009	1/5/2010-31/7/2010	Furniture and Fittings

When an asset is acquired before the date of commencement of business, such as asset is deemed to have been acquired on the first day of the new business, hence the building acquired on 20/4/2009 is deemed to have been acquired on 1/5/2009.

(4) Ali Limited

Tax years	Basis period For Assessable Profit	Basis period For Capital Allowance	Qualifying Capital Expenditure
2009	1/6/2007-31/5/2008	1/6/2007- 31/12/2009	Motor Vehicles
2010	1/1/2010-30/7/2010	1/1/2010-30/7/2010	

Skills level

Taxation

CHAPTER
15

Loss Relief

Contents

1. Purpose
2. Introduction
3. Types of Loss Reliefs
4. Rules on Loss Relief
5. Treatment of Losses Under Commencement and Cessation of Business
6. Chapter Review
7. Worked Examples

15

LOSS RELIEF

15.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) understand what constitutes loss relief;
- (b) identify the basis for granting loss relief; and
- (c) know the rules guiding claims for loss relief.

15.1 INTRODUCTION

A company makes a loss from its trade or business, when its allowable operating expenses, exceed its total income or earnings.

A company that makes a loss from its trade or business is entitled to relieve such loss by carrying it forward for set-off against the assessable profits of subsequent assessment years commencing from the year following that in which the loss occurs.

Prior to May 2007, losses could only be carried forward for four assessment years commencing from the year following that in which the loss occurs, except for a company engaged in agro-allied trade or business. However, with effect from May 2007, the restriction has been removed for all companies, except insurance companies.

15.2 TYPES OF LOSS RELIEFS

15.2.1 Current Year Loss Relief

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. For example, loss from any source of income can be relieved against income from any other source. In order to enjoy this relief, a written claim must be made with twelve 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.

15.2.2 Carry Forward Loss Relief

This relief is available only against profit from the same source of income where the loss originally occurred. It does not require approval before the relief can be granted. The relief also applies to both individuals and corporate bodies.

15.3 RULES ON LOSS RELIEF

The following points are to be noted in the application of the rules on loss relief for companies:

- (a) Trading loss to be deducted from assessable profits of an assessment year, shall not exceed the actual loss incurred by the company in the previous assessment year;
- (b) Losses are not aggregated with assessable profits in the computation of a company's total profits, in strict compliance with the provision of Section 31 (1) CITA. Consequently, a trading loss from one of the company's sources of profits cannot be set-off against profits from another source; A loss incurred from a particular line of business can only be relieved in future years from assessable profits derived from the same source or line of business;
- (c) When losses incurred in two different assessment years are being carried forward against future profits, the first loss incurred will be relieved in priority to the subsequent loss, subject to the four (4) – year loss relief period for insurance companies; and
- (d) When trade ceases, any terminal loss resulting therefrom which could not be relieved in the year of cessation due to insufficiency or non-availability of profit, is deemed lost.

There is no provision under the Nigerian tax system for carry-back of terminal loss.

ILLUSTRATION 15.1

AK 47 Nigeria Limited has been sustaining losses for many years but made a good recovery in 2007. The adjusted result of the company for the following years are as follows:

		N
Year ended Dec 31 2002	Loss	350,000
Year ended Dec 31 2003	Loss	250,000
Year ended Dec 31 2004	Loss	457,000
Year ended Dec 31 2005	Loss	75,000
Year ended Dec 31 2006	Profit	79,000
Year ended Dec 31 2007	Profit	450,000

Capital allowances for the periods are as follows:

Assessment Year	N
2003	25,000
2004	37,500
2005	32,000
2006	45,000

Required:

Compute the company's tax liabilities for 2003 – 2006 Assessment Years

SUGGESTED SOLUTION 15.1

**AK 47 NIGERIA LIMITED
COMPUTATION OF COMPANY'S TAX LIABILITIES
FOR ASSESSMENT YEARS 2003 – 2006**

	N	N
Assessment Year 2003		
(Based on 1/1/02-31/12/02)		
Loss for the year		(350,000)
Add:		
Capital allowances for the year		<u>(25,000)</u>
Unrelieved loss and capital allowance c/f		<u>(375,000)</u>
Assessment Year 2004		
(Based on 1/1/03 - 31/12/03)		
Loss for the year		(250,000)
Add:		
Unrelieved Loss b/f		<u>(350,000)</u>
		<u>(600,000)</u>
Capital allowances - for the year	37,500	
- b/f	<u>25,000</u>	<u>(62,500)</u>
Unrelieved loss and capital allowances c/f		<u>(662,500)</u>
Assessment Year 2005		
(Based on 1/1/04-31/12/04)		
Loss for the year		(457,000)
Add:		
Unrelieved Losses b/f		<u>(600,000)</u>
		<u>(1,057,000)</u>
Capital allowances – For the year	32,000	
– b/f	<u>62,500</u>	<u>(94,500)</u>
Unrelieved loss and capital allowances c/f		<u>(1,151,500)</u>
Assessment Year 2006		
(Based on 1/1/05-31/12/05)		
Loss for the year		(75,000)
Add:		
Unrelieved losses b/f		<u>(1,057,000)</u>
		<u>(1,132,000)</u>
Capital allowances – For the year	45,000	
– b/f	<u>94,500</u>	<u>(139,500)</u>
Unrelieved Losses & capital allowances c/f		<u>(1,271,500)</u>

15.4 CHAPTER REVIEW

The chapter defines what constitutes a Loss for a company in trade or business, and goes on to provide guidelines regarding Loss Relief rules, by clearly explaining how the Loss Relief rules are applied, using detailed worked examples.

15.5 WORKED EXAMPLES

15.5.1 Questions

- (1) Explain the following:
 - (a) Current Year Loss Relief
 - (b) Carry Forward Loss Relief

- (2) Johnson Enterprises commenced business on 1 September 2009 and the profit and loss as adjusted for tax purposes are as follows:

Year ended 31 August 2010	₦240,000 Loss
Year ended 31 August 2011	₦400,000 Profit
Year ended 31 August 2012	₦320,000 Profit

Required:

Compute the amount of loss that can be relieved assuming that Johnson Enterprises does not exercise its right of election

- (3) What are the rules governing the claim for loss relief?
- (4) What are the major advantages of loss relief to a taxpayer?

15.5.2 Suggested Solutions

1(a) Current Year Loss Relief

This method of relieving losses applies only to individuals. Any loss incurred from a particular source of income can be relieved against other sources. In other words, loss from any source of income can be relieved against income from other sources.

It is important that any claim on this must be made in writing twelve months after the end of the year assessment in which the loss arises. The current year loss relief is applicable to a loss incurred only in the first year.

(b) Carry Forward Loss Relief

This relief is available only against profits from the same source of income where the loss originally occurred. Carry Forward Loss Relief does not require approval before the relief is granted. It applies to both individuals and corporate bodies.

(2) **Johnson Enterprises**
Computation of Total Loss Relieved for the Relevant Assessment Years

	N	N
A.Y 2009		
Adjusted Loss		80,000
Loss relieved		-
Unrelieved Loss c/f		<u>80,000</u>
A.Y 2010		
Adjusted Loss	240,000	
Unrelieved Loss b/f	<u>80,000</u>	
	320,000	
Restricted to actual loss of	<u>240,000</u>	240,000
A.Y 2011		
Adjusted Loss	240,000	
Unrelieved Loss b/f	<u>240,000</u>	
	480,000	
Restricted to actual loss of	<u>240,000</u>	240,000
A.Y 2012		
Adjusted Profit		400,00
Unrelieved Loss b/f from A.Y. 2011		<u>(240,000)</u>
Assessable Profit		<u><u>160,000</u></u>
A.Y 2013		
Adjusted Profit		320,000
Loss relieved		-
Assessable Profit		<u><u>320,000</u></u>

The loss relieved amounted to N240,000, that is, the actual loss incurred.

(3) **The rules governing loss relief are as follows:**

- (a) In no circumstance shall the amount to be relieved exceed the loss of amount of total.
- (b) Where a person has incurred more than one loss, losses shall be deducted in the order in which they were incurred.
- (c) Losses are to be deducted from the sources from which they were incurred. That is to say a loss from one line of business, for example mining, cannot be set off against income from another line of business, say farming. Mining losses are set off against mining income only, and farming losses are set off against farming income only.
- (d) Claiming relief for losses takes precedence over claim for capital allowances.
- (e) Losses can be carried forward indefinitely save losses of insurance companies.

- (4) The major advantage of a loss relief to a taxpayer is the consequential reduction in the amount of assessable profit of a year or future years. This has major impact on the total tax payable with a corresponding cash flow advantage for a taxpayer.

Skills level

Taxation

CHAPTER
16

Computation of Companies Income Tax

Contents

1. Purpose
2. Normal Basis for Computing Companies Income Tax Payable
3. Other Bases of Computing Companies Income Tax Payable
4. Chapter Review
5. Worked Examples

16

COMPUTATION OF COMPANIES INCOME TAX

16.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) identify basis of computing Companies income tax;
- (b) know other bases of computing Companies income tax; and
- (c) compute Companies income tax.

16.1 NORMAL BASIS FOR COMPUTING COMPANIES INCOME TAX PAYABLE

CITA provides that Companies income tax shall be levied and payable for each year of assessment at the rate of thirty kobo for every Naira in respect of a company's Total Profit.

This means that income tax payable is charged at the rate of 30% of a company's Total Profit for an assessment year.

To assist readers, the format of the computation of Companies income tax payable is stated below:

COMPANIES INCOME TAX ASCERTAINMENT OF TOTAL PROFIT (SECTION 27)

	N	N
Profit as per Accounts		XXX
Add Back: All disallowed items, for example:		
Depreciation	XX	
Capital expenses on shares	XX	
Rent disallowed	XX	
Donations	XX	
General provision for bad debts	XX	
Diminution in value of invest.	<u>XX</u>	<u>XXX</u>
		XXX
Less:		
Profit on sales of fixed assets	XX	
Profit on export sales	XX	
Non-taxable incomes		
(Interest on Agric or Export loans)	<u>XX</u>	<u>XXX</u>
Assessable Profit (AP)		<u>XXX</u>
(Education Tax: 2% of AP)		XXX

Add: Balancing charge (Schedule 2)		XXX
Less: Loss Relief (Sec. 27)	(XXX)	XXX
Less: Investment Allowance (Sec. 28)		<u>XXX</u>
		XXX
Less: Capital Allowance (Schedule 2)		
Initial	XX	
Annual	XX	
Balancing Allowance (Sch. 2)	XX	
Restricted to 66 2/3% of Ass. Profit	(XX)	(XX)
Capital Allowance c/f	<u>XX</u>	
Total Profit		<u>XXX</u>
Companies income tax payable (30% of Total Profit)		XXXX
Tertiary Education tax payable (2% of Assessable Profit)		<u>XXXX</u>
		<u>XXXX</u>

16.2 OTHER BASES OF COMPUTING COMPANIES INCOME TAX PAYABLE

Apart from the above, other bases of determining the income tax payable by a company are as follows:

- (a) Minimum tax basis - Section 33 CITA
- (b) Turnover basis - Section 30 CITA
- (c) Dividend basis - Section 19 CITA

16.2.1 Minimum Tax Basis - Section 33 CITA

Minimum tax is levied and payable by a company for any year of assessment where:

- (a) In ascertainment of Total assessable profits from all sources, a loss occurs; or
- (b) Tax on Total profits is less than the minimum tax as determined below:
 - (i) Where turnover is ₦500,000 or below, minimum tax payable shall be the highest of:
 - ◆ 0.5% of Gross profits;
 - ◆ 0.5% of Net assets;
 - ◆ 0.25% of Paid-up capital; or
 - ◆ 0.25% of Turnover for the year.
 - (ii) Where turnover is above ₦500,000, minimum tax payable shall be the sum of:
 - ◆ Highest factor in (i) above; plus
 - ◆ 0.125% of turnover in excess of ₦500,000

However, minimum tax is not applicable to a company where:

- ◆ it is carrying on agricultural trade or business;
- ◆ at least 25% of its equity is imported; and
- ◆ the company has not been in operations for more than four years (i.e. for the first 4 calendar years of its commencement of business).

ILLUSTRATION 16.1

Internet Services Limited is a company engaged in the marketing and sale of computer hardware.

Its results for the year ended 30 June 2003, revealed the following:

Statement of Profit or Loss

	₦ '000
Revenue	<u>23,000</u>
Gross Profit	7,820
Deduct:	
Overhead expenses	<u>4,950</u>
Net profit	<u>2,870</u>

(a) **Notes:**

The overhead expenses include:

- (i) Depreciation - ₦500,000
- (ii) Share Issue expenses - ₦250,000
- (iii) Non-current assets costing below ₦25,000

(b) Revenue was overstated by ₦650,000

(c) Statement of Financial Position as at 30 June 2013 (extract)

	₦ '000
Non-current assets	16,500
Current Assets	<u>108,000</u>
Total assets	<u>124,500</u>

Financed by:

Share capital	78,700
Reserves	<u>27,000</u>
Total equity	105,700
Current liabilities	<u>18,800</u>
Total equity and liabilities	<u>124,500</u>

Notes:

Capital allowances for the year including

capital expenses written off	₦2,200,000
Unrelieved losses brought forward	₦350,000

Required:

Compute the Company's income tax payable for 2014 Assessment year.

SUGGESTED SOLUTION 16.1
INTERNET SERVICES LIMITED
COMPUTATIONS OF INCOME TAX LIABILITY
FOR THE YEAR ENDED 30 JUNE 2013 (ASSESSMENT YEAR 2014)

	N'000	N'000
Net Profit per accounts		2,870
Add:		
Depreciation	500	
Share issue expenses	250	
Capital expenditure written off	<u>25</u>	<u>275</u>
Deduct:		3,645
Overstatement of turnover		<u>(650)</u>
Adjusted Profit		2,995
Deduct:		
Unrelieved loss brought forward		<u>(350)</u>
		2,645
Capital allowances - For the year	2,200	
Restricted to 66 ² / ₃ % of N2,995,000	<u>(1,997)</u>	<u>(1,997)</u>
Unrelieved capital allowances c/f	<u>203</u>	
Assessable Profit		<u>648</u>
Income Tax Payable:		
Higher of (a) N648,000 at 30%		N194,400
and (b) Minimum Tax (see comp.below)		<u>N552,563</u>
Income tax payable		<u><u>552,563</u></u>

COMPUTATION OF MINIMUM TAX PAYABLE

	N	N
(a) 0.5% of Gross profit (N7,170,000)		35,850
(b) 0.5% of Net assets (N105,050,000)		<u>525,250</u>
(c) 0.25% of paid-up capital (N78,700,000)		<u>196,750</u>
(d) 0.25% of N500,000	<u>1,250</u>	
0.125% of N21,850,000	27,312	
(N22,350,000 - N500,000)		
Plus		
The Highest of (a) - (c)	<u>525,250</u>	<u><u>552,563</u></u>

The Minimum Tax liability if N552,563

Workings

(a) Computation of Gross Profit		
Gross Profit per accounts (N124,500 less N18,860)		N 7,820,000

Less:	
Overstatement of turnover	<u>650,000</u>
	<u>7,170,000</u>
(b) Re-Statement of Net Assets	
Net assets per accounts	105,700,000
Less:	
Overstatement of reserves	<u>650,000</u>
Adjusted Net assets	<u><u>105,050,000</u></u>
(c) Re-Statement of Turnover	N
Turnover per accounts	23,000,000
Less:	
Overstatement	<u>650,000</u>
	<u><u>22,350,000</u></u>

16.2.2 Turnover Basis – Section 30 CITA

The Federal Inland Revenue Service is given the discretionary power, by virtue of the provision of Section 30 CITA, to assess and charge a company to tax on a fair and reasonable percentage of the 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 turnover, is deemed to be its Assessable profit for the assessment year concerned.

Illustration 16.2

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 2014.

	N '000
Revenue	<u>100,000</u>
Assessable profit	5,850
Balancing charge	<u>500</u>
Less:	6,350
Unrelieved loss brought forward	<u>1,200</u>
	5,150
Capital allowance	<u>(2,500)</u>
Total Profit	<u>2,650</u>
Companies income tax payable	
N2,650,000 at 30%	<u><u>N795,000</u></u>

An extract from the company's financial statements revealed the following additional information:

	₦'000
Gross Profit	<u>9,780</u>
Net Assets	<u>48,500</u>
Share Capital	<u>30,000</u>
Shareholders' Funds	<u>48,500</u>

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 2014 Assessment Year.

Suggested Solution 16.2

**OJOKORO (NIGERIA) LIMITED
COMPUTATION OF COMPANIES INCOME TAX LIABILITY
ASSESSMENT YEAR 2014**

	₦'000
Revised Assessable Profit i.e (105m (100m+ 5m) x 25%)	26,250
Add:	
Balancing Charge	<u>500</u>
	26,750
Deduct:	
Unrelieved Losses brought forward	<u>(1,200)</u>
	25,550
Capital allowances	<u>(2,500)</u>
Total Profit	<u>23,050</u>
Companies income tax payable	
Higher of (a) ₦23,050,000 at 30%	₦6,915,000
and (b) Minimum tax (see below)	₦373,125

COMPUTATION OF MINIMUM TAX PAYABLE

Highest of:

	₦	₦
(i) 0.5% of ₦14,780,000 (₦9.78m + ₦5m)	73,900	
(ii) 0.5% of ₦48,500,000	242,50	242,500
(iii) 0.25% of ₦30,000,000	75,000	
(iv) 0.25% of ₦500,000	1,250	
Add: 0.125% of ₦104,500,000		<u>130,62</u>
[₦105,000,000 - ₦500,000]		<u><u>373,125</u></u>

16.2.3 Dividend basis – Section 19 CITA

Where a dividend is paid out of profit on which no tax is payable due to:

- (a) No assessable profits; or
- (b) Assessable profits being less than the dividend paid or proposed, the company paying the dividend shall be charged to income tax at the rate of 30% on the dividend paid/proposed as if it were its Total profit for the Assessment year to which the accounts from which the dividend was declared relate.

Assume that during the year ended 31 December, 2012 ABC Limited paid a dividend of ₦35 million while its Total profit for 2013 Assessment year (based on the accounts to 31 December 2012) was ₦20 million.

Invoking the provision of Section 19 CITA, the Federal Inland Revenue Service would revise the company's tax liability for 2013 Assessment year by substituting ₦35m for the company's Total profit of ₦20 million.

The implication is that the company pays more tax as the amount due would be revised from ₦6m (₦20m at 30%) to ₦10.5m (₦35m at 30%).

Illustration 16.3

Okija (Nigeria) Limited engages in the marketing and sale of spare parts. Its financial statements for the year ended 30 September 2013 revealed the following:

Profit and Loss Account

	₦ '000
Revenue	500,000
Cost of sales	<u>212,000</u>
Gross Profit	288,000
Administrative and other expenses	<u>(163,000)</u>
Operating profit	125,000
Interest expenses	<u>(10,000)</u>
Profit for the year	115,000
Income tax expense	<u>(46,000)</u>

Profit for the year	69,000
Dividend paid	<u>(60,000)</u>
Retained Profit	<u>9,000</u>

Notes:

(a) Operating profit is after charging:	
Depreciation	5,000
Loan interest	2,500
Loss on sale of fixed assets	500
(b) Taxation Account	
	₦ '000
Income tax at 30% on Assessable profit	12,050
Prior year under provision for tax	25,000
Tertiary Education tax at 2% of assessable profit	2,410
Provision for deferred tax	6,540
Per Profit and Loss Account	46,000
(c) Additional information revealed:	
Capital allowance for the year	₦85m
Unrelieved losses brought forward	₦2m

Required:

Compute the Company's income tax payable for 2014 Assessment year.

Suggested Solution 16.3

**OKIJA (NIGERIA) LIMITED
COMPUTATION OF INCOME TAX LIABILITY
2014 ASSESSMENT YEAR**

	₦'000	₦'000
Profit for the year		115,000
Add:		
Depreciation	5,000	
Loss on sale of fixed assets	<u>500</u>	<u>5,500</u>
Adjusted/Assessable profit		120,500
Deduct:		
Unrelieved losses brought forward		<u>(2,000)</u>
		118,500
Capital allowances for the year	85,000	
Restricted to $66\frac{2}{3}\%$ x (₦120,500,000)	<u>(80,333)</u>	(80,333)
Unrelieved capital allowances c/f	<u>4,667</u>	
Total Profit		<u>38,167</u>

However, since Total profit of ₦38,167,000 is less than dividend ₦60,000,000 paid, the latter will be substituted for the former. Therefore, Companies income tax payable is ₦60,000,000 at 30% = ₦18,000,000.

16.3 CHAPTER REVIEW

This chapter addresses the issue of applicable tax rates and the bases for computing Companies income tax under the Companies Income Tax Act Cap C21 LFN 2004 (as amended).

Apart from the normal rate of 30%, the conditions for using other bases such as, Minimum tax, Turnover, and Dividend basis and conditions relating thereto, are also fully covered.

16.4 WORKED EXAMPLES

16.4.1 Questions

- (1) Empire Nigeria Limited is owned by Nigerians and has been in business since year 2003. The results of the company as at 31 December 2008 are as follows:

	₦	₦
ASSETS EMPLOYED		
Non-Current Assets		180,000,000
Current Assets	550,000,000	
Less: Current Liabilities	<u>360,000,000</u>	
Net Current Assets		<u>190,000,000</u>
Net Assets		<u><u>370,000,000</u></u>
FINANCED BY:		
Share Capital		140,000,000
Statutory Reserves		60,000,000
General Reserves		100,000,000
Long Term Loans		<u>70,000,000</u>
		<u><u>370,000,000</u></u>

You are provided with the following additional information:

- (i) The turnover of the company during the year ended 31 December 2008 was ₦240,000,000.
- (ii) Gross Profit was ₦35,000,000.
- (iii) Assessable Profit was ₦2,100,000.
- (iv) Unrelieved capital allowances brought forward from 2007 year of assessment was ₦600,000.
- (v) Capital allowances for 2008 year of assessment amounted to ₦950,000.

You are required to:

- (a) Compute the company's minimum tax liability for 2009 year of assessment.

- (b) Compute the company's income tax liability for 2009 year of assessment. Note: Ignore restriction on capital allowance that can be relieved.
- (c) Differentiate between Direct and Indirect Taxes. Give THREE examples of each.

(2) **BOLING NIGERIA LIMITED**

The Managing Director of Boling Nigeria Limited attended a workshop during which he came across the following tax matters under the Companies Income Tax Act CAP C21 LFN 2004:

- ◆ Payment of dividend by a Nigerian company;
- ◆ Treatment of losses in the ascertainment of Total Profits, and
- ◆ Incentives, with particular reference to Research and Development

On his return to the office, he requested the Finance Director to explain these matters to him. The Finance Director rather than explain, presented the Managing Director with two tables as shown below:

Table I

Information already agreed with the Federal Inland Revenue Service with respect to the 2012 Assessment year

	N 000
Assessable Profit	26,000
Loss b/f	9,000
Balancing Charge	4,500
Capital Allowances	4,200

Table II Year	<u>Total Profit</u> N 000	Tax N 000	<u>Capital Reserves</u> N 000	Dividend Paid N 000
2009	10,000	3,000	-	5,000
2010	-	-	-	5,000
2011	3,000	900	4,000	5,000

Not satisfied, the Managing Director called a Tax Consultant, whom he met at the workshop, to explain the three items. The Tax Consultant then asked the Managing Director to send the two tables presented to him by the Finance Director.

As the Tax Consultant, you are required to:

- (a) Explain the provisions of the Companies Income Tax Act CAP C21 LFN 2004 dealing with the three areas of interest identified by the Managing Director.
- (b) Using the information contained in Table I, determine the Tax Payable by the company in 2012 Assessment Year.
- (c) Based on the Dividend paid in the Assessment Years 2009 to 2011 in Table II, determine the adequacy of the taxes for all the years.

(3) CONVERSION OF ABIA, BIODUN, CLEMENT & CO TO ABC CONSULTANTS LIMITED

Abia, Biodun and Clement based in Makurdi in Benue State, have run the firm Abia, Biodun, Clement and Company as builders for several years. The Partnership Agreement provided for the following:

(i) Salaries paid to Partners:

	N
Abia	120,000
Biodun	240,000
Clement	480,000

(ii) Profit sharing ratio:

Abia	$\frac{1}{5}$
Biodun	$\frac{3}{10}$
Clement	$\frac{1}{2}$

In January 2010, there was a decision to review the Partnership Agreement. Messrs Abia, Biodun and Clement have been unable to find worthy successors to take over as Partners. Rather than review the Partnership Agreement, they agreed to convert the Partnership into a Limited Liability Company. In view of this, a firm of Chartered Accountants was contacted to incorporate the name ABC Consultants Limited.

The Authorised share capital of the proposed Company was agreed at N10,000,000, made up of 10,000,000 ordinary shares of N1.00 each. The details of the Shareholding structure was agreed as follows:

Abia	20%
Biodun	30%
Clement	50%

The Certificate of Incorporation was approved by the Registrar-General of the Corporate Affairs Commission, Abuja on 1 August 2010. The Certificate of Incorporation was dated 10 August 2010. The Company commenced business on 1 October 2010.

The cost of incorporation include:

	N
Payment for Stamp Duty	80,000
Professional fee for incorporation	50,000
Corporate Affairs Commission registration fees	100,000
Additional costs of incorporation	40,000
	<u>270,000</u>

The financial results for the year ended 31 December 2010 are as follows:

	N	N	N
Income			4,000,000
Less :			
Cost of incorporation		270,000	
Transport and travelling		135,000	
Medical		120,000	
Hotel and accommodation		125,000	
Audit and accountancy		110,000	
Postages and telephone		150,000	
Salaries:			
Abia	120,000		
Biodun	240,000		
Clement	<u>480,000</u>	<u>840,000</u>	<u>1,750,000</u>
Net Profit			<u><u>2,250,000</u></u>

Assume: Fees and expenses were earned/incurred evenly throughout the year.
You are required to write a report to Messrs Abia, Biodun & Clement, highlighting:

- (a) Any ONE tax implication of the decision to convert to a Limited Liability company, limiting yourself to the facts/details provided in the Case Study.
 - (b) Your comment on the breakdown of the cost of incorporation of N270,000 and the tax implication of EACH item.
- (4) Compass Holding Company (CHC) is essentially a Holding entity that was only engaged in the Treasury and Finance operations of its four Subsidiaries in Lagos State of Nigeria.

The following are extracts from its books of accounts in respect of the year ended 31 December 2011:

	N'000
Net Profit per accounts	107,000
Depreciation	18,500
Balancing charge	5,200
Donations	12,500
Capital Allowances (unrestricted)	22,300
Diminution in value of Investments	25,000
Profit on Export Sales	5,200
Loss Relief	15,200
Bad debt provision	32,000

Additional notes:

- (i) Income from sale of assets included in the Holding Company's results for the year amounted to N60million.

- (ii) Dividend income (Net of Withholding Tax) from subsidiaries included in the Holding Company's account amounted to N105million.
- (iii) Dividend proposed to shareholders of Compass Holding Company for the year was N165million.

As the Tax Consultant to the Board of CHC, you are required to advise on the following:

- (a) The tax implications of the dividend proposed by the Board.
- (b) The tax liability of the company for the relevant assessment year.

16.4.2 Suggested Solutions

Empire Nigeria Ltd.

1. (a) Computation of Minimum Tax Liability

2009 Assessment Year	N	N
(a) (i) 0.5% of Gross Profit i.e .5% of N35,000,000	175,000	
(ii) 0.5% of Net Assets i.e .5% of N300,000,000	1,500,000	1,500,000
(iii) 0.25% of Paid up capital i.e 25% of N140,000,000	<u>350,000</u>	
(b) 0.25% of Turnover i.e N500,000	<u>1,250</u>	
0.125% of N240,000,000 – N500,000		<u>299,375</u>
		<u><u>1,799,375</u></u>

Note:

The highest above is N1,500,000, which will be added to the figure using turnover.

(b) Computation of Company's Income Tax Liability 2009 Assessment Year

	N	N
Assessable Profit		2,100,000
<u>Deduct</u>		
Unrelieved capital allowances b/fd	600,000	
Current year capital allowance	<u>950,000</u>	<u>(1,550,000)</u>
Total Profit		<u>550,000</u>
Tax on N550,000 at 30%		165,000
Education Tax (2% of N2,100,000)		<u>42,000</u>
Total Tax Liability		<u><u>207,000</u></u>

(c) Direct Tax

This form of tax is assessable profit directly on the tax payer who is required to pay tax on his property, income or. They are paid mainly on income, capital and property.

Indirect Taxes.

These taxes 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 prices of the commodities.

Direct Taxes

Personal Income Tax
 Capital Gains Tax
 Petroleum Profit Tax
 Companies Income Tax
 Education Tax
 Withholding Tax

Indirect Taxes

Value Added Tax
 Sales Tax
 Customs Excise Duties
 Goods and Services Tax
 Customs Import
 Duties Stamp Duties.

(2) (a) **XYZ & CO. CHARTERED ACCOUNTANTS**

May 18, 2013
The Managing Director
Boling Nigeria Limited
Airport Road
Ikeja
Lagos.

Dear Sir,

RE: TAX MATTERS

Further to our discussions at the last workshop, please find below our explanations on the three areas of interest as identified.

(i) **PAYMENT OF DIVIDEND BY A NIGERIAN COMPANY** Section 19 of CITA stipulates that:

Where a dividend is paid out of profits on which no tax is payable due to: Total profit which is less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company, by a Nigerian company, the company paying the dividend shall be charged to tax at the existing rate of 30%, as if the dividend is the Total Profit of the company for the year of assessment to which the accounts relates out of which the dividend is declared.

This means that dividends paid out of exempted profits from pioneer company, capital or reserves will be treated as business profits. This is an anti-avoidance provision which seeks to exclude dividends from a pioneer company, and Revaluation Reserves, and other Reserves as Franked Investment Income.

(ii) **TREATMENT OF LOSSES IN THE ASCERTAINMENT OF TOTAL PROFITS**

In ascertaining the Total Profits of any company, losses are deductible from the Total Assessable Profits from all sources. The conditions to be met for losses to be so deductible as contained in Section 31 of CITA CAP C21 LFN 2004 are:

- ◆ the Board must be satisfied that the loss has been incurred by the company in any trade or business during any preceding year of assessment.
- ◆ the aggregate deduction from the assessable profits or income must not exceed the amount of the loss.

- ◆ the loss can be carried forward and deducted from the same trade or business without restriction on period.
- ◆ the loss sustained by a Non-resident Company that indigenizes its Nigerian operations shall be deemed to be a loss of the re-constituted company in its trade or business during the year of assessment in which it commenced business, and it shall be deducted from the profits of subsequent assessment year(s).

(iii) **TAX INCENTIVES WITH PARTICULAR REFERENCE TO RESEARCH AND DEVELOPMENT:**

Section 26 (1), (2) and (3) stipulate that:

- ◆ In ascertaining the profits or loss of any company, from any source, chargeable to tax, there shall be deducted, the amount of reserve made out of the profits of that period.
- ◆ The deduction is 10% of Total Profits of the company for that year, before any deduction is made.
- ◆ Where the company or organisation is engaged in Research and Development for commercial purpose, the incentive is 20% Investment Tax Credit of the qualifying expenditure.

(b) **TAX PAYABLE IN 2012 ASSESSMENT YEAR**

	₦ 000
Assessable profit	26,000
Add: Balancing charge	4,500
	<u>30,500</u>
Loss Relief	<u>(9,000)</u>
	21,500
Capital Allowance	<u>(4,200)</u>
Total Profit	<u>17,300</u>
Income tax payable @ 30%	5,190
Education tax 2% of ₦26,000,000	<u>520</u>
Total liability	<u>5,710</u>

2009 - Since the dividend payable is less than the Total Profit, the dividend will only suffer withholding tax in the hands of the recipients.

2010 - There was no Total Profit hence no tax payable. However, dividend paid will be taken as business profits, and so will be regarded as Total Profit and taxed at 30%, resulting in the tax payable of ₦1,500,000 payable.

2011 - There was Total Profit of ₦3,000,000 and a Tax of ₦9,000,000. Since the Total Profit is less than the dividend paid, the dividend of ₦5,000,000 will be treated as Total Profit and will be taxed at 30%, which is ₦1,500,000.

This means that additional tax of N600,000 will be paid.

(c) Summary of taxes payable.

Year of Assessment	Total Profit N 000	Dividend N 000	Tax paid N 000	Tax on Dividend N 000	Tax under payment N 000
2009	10,000	5,000	3,000	1,500	NIL
2010	-	5,000	-	1,500	1,500
2011	3,000	5,000	900	1,500	600
Total					<u><u>2,100</u></u>

We hope the above satisfies your enquiry. Please feel free to revert to us if you require any further clarification.

Yours faithfully,

XYZ & Co.
Chartered Accountants

QUESTION 3

The Directors,
ABC Consultants Limited

Dear Sirs,

CONVERSION OF ABIA, BIODUN, CLEMENT & (PARTNERSHIP) TO ABC CONSULTANTS LIMITED

We write in response to your recent decision to convert your partnership business into a Limited liability Company.

Please find below our submissions:-

(a) TAX IMPLICATIONS OF CONVERSION

- (i) The Partnership ceases on 30 September 2010 and so all Partnership income shall be based on Personal Income Tax.
- (ii) Commencement rules will apply from 1 October 2010 when ABC Consultants Limited commences operation.
- (iii) The incorporation expenses shall be applicable only to ABC Consultants Limited though not an allowable expense for tax purposes.
- (iv) ABC Consultants Limited will be required to register with the Federal Inland Revenue Service for VAT and CIT etc.
- (v) ABC Consultants Limited in accepting the incorporation expense, shall deduct and remit with-holding tax from the Professional fees at the rate of 10% if the beneficiary is a company and 5% if the recipient is an individual partnership or incorporated entity.

(b) TAX IMPLICATIONS OF COST OF INCORPORATION

- (i) The total cost of ₦270,000 though paid during the Partnership period, shall be considered as Pre-operational expenses of ABC Consultants Limited.
- (ii) The pre-operational expenses when added back, will increase taxable Income, thereby increasing Tax payable by ABC Consulting Limited.
- (iii) ₦270,000, charged into ABC Consultants Limited is not an allowable expense for tax purposes even if spread over a number of years.

Yours faithfully,

ABC Consultants Limited

QUESTION 4

(a) The Chairman,
Board of Directors,
Compass Holding Company,
10, Compass Lane,
Lagos.

Date:.....

Dear Sir,

TAX IMPLICATIONS OF PROPOSED THE DIVIDEND

We acknowledge the receipt of your letter reference CHC/Z1811V/08/2012, in respect of the above subject.

We have gone through the content of your letter, and our comments are as follows:

- (i) On the tax implications of the dividend proposed, there is a provision in the Companies Income Tax Act (CITA) section 19, which stipulates in respect of a Nigerian Company that:

Where a 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 the Dividend which is paid, whether or not the recipient of the Dividend is a Nigerian Company;

The company paying the dividend shall be charged to tax at the rate prescribed in sub-section (1) of section 40 of the Act (i.e 30%) as if the dividend is the total profit, of the company for the year of assessment to which the accounts relate, out of which the dividend is declared.

- (ii) Based on the above provision, it is evident that the dividend proposed (N165,000,000) is more than the total profit (NIL). It would appear that what is being proposed is the dividend income of N105,000,000 and the income from sale of assets of N60,000,000.
- (iii) However, there is a provision of the Act (CITA) section 80(3) which stipulates that dividend income from subsidiaries of a Holding company (net of Withholding Tax), is regarded as Franked Investment Income and therefore regarded as Final Tax.
- (iv) Based on point noted above, the dividend income (N105,000,000) is not to be taxed.

- (v) The balance of N60,000,000 representing the proceeds from sale of assets is already included in the Income of the Holding Company and at the time of redistribution of the dividends to Compass Holding shareholders, the dividends would not be subjected to further tax.
- (vi) Compass Holding Company therefore is expected to gross-up the dividends from its subsidiaries and offset the Withholding Tax suffered at source against the Withholding Tax deductible on distribution to the shareholders.

In our opinion, the only tax payable is the Tertiary Education Tax of N496,000. Should you require further clarification on any of the issues highlighted above, please do not hesitate to contact us.

We use this opportunity to thank you for your patronage.

Yours faithfully,

XYX & CO.
Tax Consultants

(b) COMPASS HOLDING COMPANY (CHC)		
COMPUTATION OF TAX LIABILITY FOR 2012 TAX YEAR		
	N 000	N 000
Net Profit per Accounts		107,000
Add Back:		
Depreciation	18,500	
Donations	12,500	
Diminution in investment	25,000	
Bad debt provision	<u>32,000</u>	<u>88,000</u>
		195,000
Less:		
Profit on Export sales	5,200	
Income from sales of Assets	60,000	
Dividend treated as franked investment Income	<u>105,000</u>	<u>170,200</u>
Assessable Profit		24,800
Add: Balancing charge		<u>5,200</u>
		30,000
Less: Loss Relief		<u>15,200</u>
		14,800
Less: Capital allowance	<u>22,300</u>	
Limited to $\frac{2}{3}$ of N24,800	<u>14,800</u>	<u>14,800</u>
Absorbed c/f	<u>7,500</u>	
Total Profit		<u>NIL</u>
Tax payable (Please see comment a(i) above)		<u>NIL</u>
Education Tax Payable		<u>496,000</u>

Skills level

Taxation

CHAPTER

17

Accounting for Taxes

Contents

1. Purpose
2. Nature of Tax Account
3. Postings Into the Tax Account
4. Disclosure of Taxes in the Financial Statements
5. Presentation of Tax Account in the Financial Statements
6. Chapter Review
7. Worked Examples

17

ACCOUNTING FOR TAXES

17.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) appreciate the nature of accounting for taxes;
- (b) understand accounting entries with respect to tax;
- (c) know the disclosure requirements; and
- (d) know how to present tax account in financial statements.

17.1 NATURE OF TAX ACCOUNT

The tax accounts of a company are used to record movements in the company's tax transactions for each year. For clarity, a separate account is maintained for deferred tax.

A typical tax account of a company contains the following:

- | | | |
|---|--------------------|------|
| (a) Unpaid taxes at the beginning of the year | - Opening balance | - CR |
| (b) Provision for Companies income tax | - Current year | - CR |
| (c) Provision for Tertiary Education tax | - Current year | - CR |
| (d) Prior year under provision for tax | - Previous year(s) | - CR |
| (e) Prior year over provision for tax | - Previous year | - DR |
| (f) Provision for deferred tax on timing differences | - Current year | - CR |
| (g) Payments during the year | | - DR |
| (h) Withholding tax credit notes set-off | | - DR |
| (i) Unpaid/Recoverable taxes at the end of the year - closing balance c/f | | |

17.2 POSTINGS INTO THE TAX ACCOUNT

Entries into the tax account, are posted by raising the following journals.

(a) **Income tax provision account:**

Profit and loss account	DR
Tax Account	CR

Being provision for income tax for the year based on the Total profit at 30%.

(b) **Education tax provision account**

Profit and loss account	DR
Tax account	CR

Being provision for Tertiary Education tax at 2% of Assessable profit

- (c) **Under/(Over) provision for tax**
 Profit and loss account DR/CR
 Tax account CR/DR
 Being prior year under or (over) provision for year 20x1 Income tax.
- (d) **Tax account** DR
 Bank CR
 Being payment on account of outstanding Income tax and Education tax liabilities for year 20x1.
- (e) **Income tax account** DR
 To Withholding tax account (Debtor) CR
 Being set-off of withholding tax suffered at source against Income tax liabilities for the year.
- (f) **Provision for Deferred tax on timing differences**
 Profit and loss account DR
 Deferred tax account CR
 Being provision charged for deferred tax on timing differences.

17.3 DISCLOSURE OF TAXES IN THE FINANCIAL STATEMENTS

Companies are required to disclose the components of tax expenses, tax assets and liabilities be disclosed in the financial statements. Such disclosures are usually made in the financial statement by way of notes.

17.4 PRESENTATION OF TAX ACCOUNT IN THE FINANCIAL STATEMENTS

The note on taxation is usually presented in the financial statements in a vertical form, as follows:

	N'000
Income tax on Profit before tax	x
Tertiary Education tax at 2% of Assessable profit	x
Prior year's under provision for income tax	x
Deferred tax charge	<u>x</u>
Per Profit and Loss account	xx
Outstanding at the beginning of the year	x
Adjustment for deferred tax charge	(x)
Payments during the year	<u>(x)</u>
Per Statement of Financial Position	<u><u>xx</u></u>

17.5 CHAPTER REVIEW

This chapter covers sequence of accounting entries required and necessary to record the tax transactions of a company. It provides the disclosure requirements with regards to components of tax expenses to be detailed in Notes to the financial statements.

17.6 WORKED EXAMPLES

17.6.1 Questions

Isiaka Jimoh Limited is a company engaged in the manufacture of Imirat Oil. Its accounts for the year ended 30 September 2002, revealed the following results:

	N'000
Net Profit for the year	<u>300,000</u>
after charging:	
Depreciation of fixed assets	22,500
Loss on sale of fixed assets	500
Penalty and fine	200
Loan interest	8,500
Salaries and wages	30,000
and crediting:	
Franked Investment Income	20,000
Interest on foreign deposit a/c repatriated	5,600

Additional Information:

- (a) The company has unrelieved losses of **₦15million**
- (b) Capital allowance claim amounted to **₦55million**
- (c) The tax written down value of fixed assets as at 30 September 2002, after the above capital allowances have been taken into account was **₦620million** while the net book value on the same date was **₦550million**. The opening tax written down values and net book values were **₦665m** and **₦630m** respectively.
- (d) Unpaid tax at the beginning of the year was **₦52m** while payment in the year was **₦60m**.
- (e) Assume a deferred tax charge of **₦9m** for the year and a depreciation rate of 5% per annum on fixed assets.
- (f) The company revalued its fixed assets during the year ended 30 September 1997. The revaluation surplus arising from the revaluation which amounted to **₦100m** was reflected in the company's financial statements for that year.

Given the information above, you are **required** to provide answers to the following questions:

- (i) Compute the company's tax liabilities for the relevant year of assessment.
- (ii) Compute the Deferred tax payable
- (iii) Show movements in the relevant tax accounts
- (iv) Define Deferred tax

17.6.2 Suggested Solutions

(1) **ISIKA JIMOH LIMITED**
COMPUTATION OF TAX LIABILITIES
ASSESSMENT YEAR 2003

	N'000	N'000
Net Profit per accounts		300,000
Add:		
Depreciation		22,500
Loss on sale of fixed assets		500
Penalties and fines		<u>200</u>
		323,200
Deduct:		
Franked Investment	20,000	
Repatriated interest	<u>5,600</u>	<u>(25,600)</u>
Adjusted/Assessable Profit		297,600
Deduct:		
Unrelieved losses brought forward		(15,000)
		<u>282,600</u>
Capital allowances		<u>(55,000)</u>
Total Profit		<u>227,600</u>
Tax Payable		
(a) Income tax payable – (N227,600) at 30%		N68,280
(b) Tertiary Education tax payable – (N297,600) at 2%		5,952

(2) **COMPUTATION OF DEFERRED TAX****ASSESSMENT YEAR 2003**

	2003			2002		
	N'000	N'000	N'000	N'000	N'000	N'000
Tax written down value			620			665
Less:						
Net book values		550			630	
Deduct:						
Revaluation surplus	100			100		
Less:						
Depreciation 2003						
N100m at 5% p.a. x 6 years	<u>(30)</u>	<u>(70)</u>	<u>(480)</u>			
Depreciation 2002						
N100m at 5% p.a. x 5 years				<u>(25)</u>	<u>(75)</u>	<u>(555)</u>
Timing difference			<u>140</u>			<u>110</u>
Deferred tax provision thereon at 30%			<u>42</u>			<u>33</u>

(3) **Notes to the Accounts**

Taxation	₦'000
Income tax based on profit for the year	68,280
Education tax based on 2% of Assessable profits	5,952
Deferred tax charge	9,000
Per Statement of Profit or Loss	<u>83,232</u>
Unpaid taxes at the beginning of the year	52,000
Adjustment for deferred tax provision	(9,000)
Payments in the year	(60,000)
Per Statement of Financial Position	<u>66,232</u>

- (4) Deferred Taxation which is provided for by the liability method represents taxation at the current rate of companies income tax and the difference between the Net book value of the assets qualifying for capital allowances and their corresponding tax written down values.

Differed tax liability should be recognized for all taxable temporary difference and charged to the income statement. A deferred tax asset should be recognized to the extent that is probable that taxable profit will be available in the future against which to recover tax or reduce liability.

Skills level

Taxation

CHAPTER

18

Tertiary Education Tax

Contents

1. Purpose
2. Objectives
3. Basis of Computation
4. Assessment and Collection
5. Management and Administration of Tertiary Education Trust Fund
6. Composition and Functions of the Board of Trustees
7. Allocation and Distribution of the Tax
8. Offences and Penalties
9. Chapter Review
10. Worked Examples

TERTIARY EDUCATION TAX

18.0 PURPOSE

At the end of this chapter, readers should be able to:

- (a) identify the objectives of Tertiary Education Trust Fund (Establishment) Act 2011;
- (b) understand the procedures for assessment and collection of Tertiary Education Tax;
- (c) calculate offences and penalties in respect of Tertiary Education Tax; and
- (d) understand how Tertiary Education Trust Fund is being managed.

18.1 OBJECTIVES

Education tax was introduced into the Nigerian tax system through the Education Tax Act, 1993 (ETA 1993) which metamorphosed into Education Tax Act CAP E4 LFN 2004 but is now repealed by the Tertiary Education Fund (Establishment etc) Act, 2011 to address the funding crisis in the education sector. The Act aims at involving the private sector, being a beneficiary of the products of education to partake in its funding through contribution to the Tertiary Education Trust Fund (TET Fund). This has, however, generated a lot of criticism in view of the presence of many taxes in the country which cumulatively erode the profits of companies, hence the general perception of education Tax as a disincentive to foreign investment.

The Fund will be specifically used for the provision or maintenance of the following:

- (a) Essential physical infrastructure for teaching and learning;
- (b) Instructional material and equipment;
- (c) Research and publication;
- (d) Academic staff training and development; and
- (e) 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.

18.2 BASIS OF COMPUTATION

The rate of Tertiary Education tax is 2 percent of the Assessable profit of a company registered in Nigeria. Note that Assessable profit is Adjusted profit or part thereof that is assessed to Companies income tax in an assessment year.

The Tertiary Education tax imposed is due and payable within 60 days after the Federal Inland Revenue Service has served notice of the assessment on a company.

18.3 ASSESSMENT AND COLLECTION

The Federal Inland Revenue Service assesses and collects from each company, tertiary education tax imposed for companies' income tax or petroleum profits tax for an accounting period of the company.

The Act provides as follows:

- (a) when assessing a company, for companies income tax or petroleum profits tax for an accounting period of the company, the FIRS shall also proceed to assess the company for the education tax due;
- (a) the provision of the Act relating to the collection of companies income tax or petroleum profits tax shall subject to this Act, apply to the education tax due under the Act.

The Federal Inland Revenue Service shall pay the tertiary education tax collected into the TET Fund and shall when doing so, submit to the TET Fund, in such form as the Board of Trustees of the TET Fund shall approve, a return showing:

- (i) the name of the company making the payment;
- (ii) the amount collected;
- (iii) the assessable profit of the company for the accounting period; and
- (iv) such other information as may be required by the TET Fund for the proper administration of the education tax.

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:

- ◆ the cost of administration and management of the fund.
- ◆ the maintenance of any property acquired by or vested in the Fund and generally to pay for services rendered to the fund;
- ◆ for project monitoring
- ◆ to meet all the needs of the fund necessary for the due administration and implementation of the purpose of this Act.

18.4 MANAGEMENT AND ADMINISTRATION OF THE TET FUND

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 in the country.

18.5 COMPOSITION AND FUNCTIONS OF THE BOARD OF TRUSTEES

18.5.1 Composition

The Board of Trustees shall consist of:

- (a) a Chairman;
- (b) six persons, each representing a geo-political zone in the country;
- (c) a representative of the Federal Ministry of Education who shall not be below the rank of a Director;
- (d) a representative of the Federal Ministry of Finance who shall not be below the rank of a Director;
- (e) a representative from the Universities;
- (f) a representative from the Polytechnics;
- (g) a representative from the Colleges of Education; and
- (h) the Executive Secretary of TET Fund who shall be the Secretary to the Board of Trustees.

This brings the total number of members of Board of the Trustees to thirteen persons.

The membership of the Board of Trustees shall reflect the six-geopolitical zones of the Federation and members shall be persons of considerable experience from both the public and private sectors and appointed by the President on the recommendation of the Education Minister to represent the business, financial and education sectors.

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.

The Board shall meet for the conduct of its ordinary meetings four times in a calendar year. Notwithstanding, the Board may meet to conduct such other business as exigency demands.

18.5.2 Functions

The following are the functions of the Board of Trustees:

- (a) Monitor and ensure collection of tertiary education tax by the FIRS and ensure transfer to the Fund;
- (b) Manage and disburse the fund;
- (c) Liaise with the appropriate Ministries or Bodies responsible for collection or safekeeping of the tax;
- (d) Receive requests and approve admissible projects after due consideration;
- (e) Ensure disbursement of funds to various public tertiary educational institutions in Nigeria;
- (f) Monitor and evaluate execution of the projects;

- (g) Invest funds in appropriate and safe securities;
- (h) Update the Federal Government on its activities and progress through annual and audited reports;
- (i) Review progress and suggest improvements;
- (j) Make and issue guidelines from time to time to all beneficiaries on disbursements from the Fund and the use of monies received into the Fund and;
- (k) Regulate the administration, application and disbursement of monies from the Fund; and
- (l) Do such other things as are necessary or incidental to the objects of the TET Fund under the Act or as may be assigned by the Federal Government of Nigeria.

Illustration

The Assessable profit of Adobe Limited for Assessment Year 2011 was ₦65 million. You are required to compute the Tertiary Education tax due.

Solution

The Tertiary Education Tax is 2% of ₦65 million, that is, ₦1,300,000.

18.6 ALLOCATION OF DISTRIBUTION OF THE TAX

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:

(a)	Universities	-	50%
(b)	Polytechnics	-	25%
(c)	Colleges of Education	-	25%

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.

The Minister for Education shall, on the recommendation of the Board of Trustees and subject to approval by the President, make guidelines for the disbursement of funds under this Act, as follows:

- (a) Funding of all public tertiary educational institutions;
- (b) Equality among the six geo-political zones of the Federation in the case of special intervention; and
- (c) Equality among the States of the Federation in the case of regular intervention.

18.7 OFFENCES AND PENALTIES

If Tertiary Education tax is not paid within 60 days, the Federal Inland Revenue Service will serve, on the company, a demand note for the unpaid tax a sum which is equal to 5 per cent of the tax. In addition to such penalty, the tax payable shall carry interest at bank lending rate from the date when the tax becomes payable until it is paid.

If the tax and penalty are not paid within a further period of two months of the demand, the company is guilty of an offence. The FIRS shall with the approval of the Board of Trustees of TET Fund remit in whole or in part a sum added to the unpaid tax.

Notice that other officers of such company are severally guilty of that offence of default and liable to be prosecuted against and punished for the offence in like manners as if they themselves committed the offence, unless they prove that the act or omission constituting the offence took place without his knowledge, consent or connivance.

The person guilty of the offence shall, on conviction, be liable:

- (a) for the first offence, to a fine of up to ₦1,000,000 or imprisonment for a term of six months; and
- (b) For a second and subsequent offence, to a fine of up to ₦2,000,000 or imprisonment for a term of twelve months, or both such fine and imprisonment.

18.8 CHAPTER REVIEW

This chapter examines the background to the introduction of Tertiary Education Tax, its objectives and the method of computing the tax. It also confirms that a Tertiary Education Tax Fund has been put in place, into which the tax collected/ due is paid.

Mention is also made of the management of the Fund and the uses to which the tax so collected is put. Petroleum companies engaged in petroleum operations are also subject to Tertiary Education tax calculated on their Assessable profits but the tax is deductible in arriving at chargeable profits.

There is no doubt that every segment of the educational institutions has benefited in one way or the other from TET Fund, though some areas must have benefited more than the others. The extent to which education tax has been able to solve the problem of funding in the education sector is a matter of opinion.

18.9 WORKED EXAMPLES

18.9.1 Questions

- (1) Explain briefly the administration of Tertiary Education Tax in Nigeria.
- (2) Enumerate any **TWO** offences and penalties stipulated by the Tertiary Education Trust Fund (Establishment etc) Act, 2011 for non-compliance.
- (3) XYZ Limited has been in business for 4 years. An extract from the company's financial records for the year ended 31 December 2013, is as follows:

	₦
Capital Allowances for the year	2,400,000
Total Profit	800,000
Depreciation	960,000
Sales	110,000,000

Required:

Compute the Tertiary Education tax for the relevant assessment year

- (4) James Limited commenced business in 2009. You are provided with the following information for the year ended at 31 December 2012:

	₦
Net profit per accounts	1,407,600
Depreciation	100,200
Provision for bad debts	250,000
Donations to ABC political party	420,000

Required:

Compute the Tertiary Education tax for the relevant assessment year.

18.9.2 Suggested Solutions

- (1) **Administration of Tertiary Education Tax**
The Tertiary Education Trust Fund (Establishment etc) Act, 2011, stipulates that the tertiary education tax at a rate of 2 per cent shall be charged on the assessable profit of any company registered in Nigeria. The Federal Inland Revenue Service Board is to be responsible for the assessment and collection of this tax. The payment of tax is due within 60 days of the service of notice. The Board shall pay tax collected to the Tertiary Education Trust

Fund set up with relevant details to the Board of Trustees to the Fund.

(2) **Offences and Penalties**

- (a) Failure to pay within 60 days of the service of notice attracts 5 percent of the sum assessed.
- (b) Failure to pay the tax and penalty as stated in (i) 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.

(3) **XYZ Limited**

**Computation of Tertiary Education Tax
For year ended 31 December 2013 (Assessment Year 2014)**

	₦
Total profit	800,000
Add: Capital allowances	<u>2,400,000</u>
Assessable profit	<u>3,200,000</u>

Tertiary education tax is 2% of Assessable profit (₦3,200,000) = ₦64,000

(4) **James Limited**

**Computation of Tertiary Education Tax
For the year ended 31 December 2012 (Assessment Year 2013)**

	₦
Net profit per accounts	1,407,600
Add:	
Depreciation	100,200
Provision for bad debts	250,000
Donations to ABC political party	<u>420,000</u>
Assessable profit	<u>2,177,800</u>

Tertiary education tax is 2% of Assessable profit (₦2,177,800.00) is ₦43,556.

Skills level

Taxation

CHAPTER

19

Taxation of Specialised Companies

Contents

1. Purpose
2. Tax Provisions for Real Estate, Agriculture etc
3. Tax Provisions and Tax Computation on Transport and Telecommunication Business
4. Taxation of Insurance Companies and Unit Trust Schemes
5. Basis of Turnover Tax
6. Small Company Relief
7. Taxation of Enterprises in free Trade Zones
8. Provisions of the Nigeria Information Technology Development Agency Act (NITDA) 2007
9. Chapter Review
10. Worked Examples

19

TAXATION OF SPECIALISED COMPANIES

19.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) understand the peculiar tax laws relating to specialized businesses; and
- (b) compute the taxes payable including minimum tax.

19.1. TAX PROVISIONS FOR REAL ESTATE, AGRICULTURE ETC

19.1.1 Real Estate

Most people erroneously believe that there are no real property or real estate taxes in Nigeria.

The taxes that are applicable to real property transactions in Nigeria are as follows:

- (a) **Companies Income Tax and Personal Income Tax**
Any income or profit earned by a taxable person in respect of a property transaction is liable to the payment of tax.

For companies, the corporate tax rate is 30% of the Total Profit whilst for individuals, registered business enterprises or partnerships, there is a graduated tax rate from 7% to 24% of income depending on the income of the individual

- (b) **Withholding Tax**
The payer of any income is expected to withhold 10% and 5% where the recipients are companies and individuals respectively. The amount so deducted by the payer should be remitted to the relevant tax authority within the period specified by law.

It should be noted that the tax payer is entitled to deduct this advance tax so withheld to reduce the final tax liability provided a Withholding tax Credit Note or certificate is obtained. In case of dividends, withholding tax deducted is regarded as final tax in the hands of the recipients.

- (c) **Tertiary Education Tax**
Like any other taxable person, companies which are into real estate are expected to pay tertiary education tax in addition to

Companies income tax, the tertiary education tax is 2% of the Assessable Profit of the company.

- (d) **Value Added Tax**
Any company involved in real estate transactions are required to register for VAT within six months of commencement of business with the relevant tax authority.

All goods and services utilized in the real estate industry are to be invoiced and 5% of the value of the goods and services representing the Value added tax should be remitted to the relevant tax authority.

- (e) **Personal Income Tax**
The Personal income tax comes into play when you sell a property or when you receive rent from rental properties you own. These are earnings based on which you are expected to pay taxes.

In Lagos State, the percentage is dependent of the level of income of the tax payer and it starts from 5% all the way to a flat rate of 20%, for those who earn as much as 1 million naira per month.

- (f) **Land Use Charge**
The Land use charge is like a ground rent paid annually by property owners in Lagos, Nigeria. This tax is more or less like a tenement rate paid to the government for granting the request to lease the land (government owns all land by law).

- (g) **Stamp Duties**
All written documents relating to any property or interest in property which are transferred or leased to any person must be stamped. Stamp duties are paid at the rate of 75 kobo for every ₦200 of the consideration of certain real estate transactions like mortgages while for conveyances or the transfer or sale of real property is 75k for every ₦50.

19.1.2 Agriculture

Agricultural trade or business is defined in the Act, as any trade or business connected with; the establishment or management of plantations for the production of rubber, oil palm, coffee, tea and similar crops; the cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, benised, vegetables, pineapples, bananas and plantains, animal husbandry, that is to say, poultry, piggery, cattle rearing, fish farming, and deep sea fish trawling

The gain or profit from any land used for agriculture purposes or for livestock shall unless the relevant tax authority is satisfied to the contrary, be deemed to be gain or profit which should be realized by the tax payer, if the land were dealt with, as the case may be, in the manner and up to average standard of cultivation, use or practice, relating to the use of the land, or the dealing with livestock prevailing in the neighbourhood.

This is an area where average standard of cultivation plays an important role in case the business result is below expectation.

19.2 TAXATION OF FOREIGN AIR AND SEA TRANSPORT COMPANIES

19.2.1 Foreign Air and Sea Transport

The taxation of the profits of specialised businesses are covered by the provisions of Sections 14 – 17, CITA.

The specialised businesses covered by these provisions are:

- (a) Foreign companies engaged in Air and sea transport business - Section 14, CITA;
- (b) Foreign companies engaged in Cable undertakings – Section 15, CITA;
- (c) Foreign companies engaged in Insurance business (life and non-life) - Section 16, CITA;
- (d) Nigerian Companies engaged in Insurance business (life and non-life) - Section 16, CITA; and
- (e) Companies engaged in Authorised Unit Trust Schemes - Section 17, CITA.

Foreign companies engaged in air or sea transport businesses are assessable to tax in Nigeria, in respect of their income, derived from the loading of passengers, mails, livestock or goods into an aircraft or a ship in Nigeria.

Exempted are incomes in respect of passengers, mails, livestock or goods:

- (a) Loaded on routes outside Nigeria, but terminating in Nigeria; and
- (b) In transit in Nigeria, that is, brought to Nigeria for transshipment or connecting flight.

Computation and Assessment of Profit Liabile to Tax

The determination of profit or loss derived by a foreign company in respect of loading of passengers, mails, livestock or goods into an aircraft or a ship in Nigeria is done in either of the following methods:

Method 1 – Adjusted Profit/Depreciation Ratio Basis

This method is used where the Federal Inland Revenue Service is satisfied that the tax authority of the foreign company’s country of origin:

- (a) computes and assesses a company which operates ship or aircraft on a basis not materially different from that prescribed by CITA, and
- (b) certifies as being applicable to a company in the air or sea transport business,

(i)
$$\text{Adjusted Profit Ratio (\%)} = \frac{\text{Profit or Loss before depreciation}}{\text{Worldwide Income}} \times 100\%$$

(ii)
$$\text{Depreciation Ratio (\%)} = \frac{\text{Depreciation Allowance}}{\text{Worldwide Income}} \times 100\%$$

In order to determine the Assessable profit, capital allowances and consequently the Total profits chargeable to tax in Nigeria, the Federal Inland Revenue Service applies the above ratios against the income derived by the foreign company from the loading of passengers, mails, livestock and goods into an aircraft or a ship in Nigeria.

The above can be explained by way of a pro-forma thus:

Assessable Profit = Income receivable in Nigeria x Profit Ratio (%)	xxx
Less:	
Capital allowance = Income Receivable in Nigeria	
x Depreciation Ratio (%)	x
Total Profit	<u>xx</u>
Income tax payable xx at 30 %	<u>x</u>

(c) **Minimum Tax**

This should not be less than 2% of the full sums receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in Nigeria.

ILLUSTRATION 19.1

The profit and loss account of a foreign Airline, Ethiopian Airways Limited, for year ended 31 March 2003, is as follows:

	N	N
Income from passengers freight into Nigeria	300,000	
Income from goods loaded into aircraft in Nigeria	220,000	
Income from passengers loaded and flown out of Nigeria	180,000	
Income from goods loaded into aircraft on other routes	<u>500,000</u>	1,200,000

	₦	₦
Less: Salaries and other expenses	800,000	
Depreciation	120,000	
Other disallowable expenses	<u>40,000</u>	<u>960,000</u>
Net Profit for the year		<u><u>240,000</u></u>

You are given the following additional information:

- (i) The Federal Inland Revenue Service is satisfied that the tax authority in Ethiopia computes and assesses tax on similar basis with Nigeria and has received certification of the appropriate ratios.
- (ii) The tax authority has agreed that depreciation charged in the accounts can be granted in lieu of capital allowances.
- (iii) Salaries and other expenses include:
 - ◆ Deposit for a new V.C 10 aircraft ₦80,000
 - ◆ Payment of ₦24,000 to Nigeria Airport Authority for the use of the V.I.P. lounge at the new Murtala Mohammed Airport by the Airline's first class passengers.
 - ◆ Payment of ₦12,000 as rent for accommodation used as transit flat by the airline's crew.

Required: Compute the

- (a) Total profit for Nigerian tax purposes, and
- (b) Income tax payable by the Airline for Assessment Year 2004.

SUGGESTED SOLUTION 19.1

- (a) **ETHIOPIAN AIRWAYS LIMITED**
COMPUTATION OF TOTAL PROFIT FOR NIGERIAN TAX PURPOSES
ASSESSMENT YEAR 2004

	₦
Assessable Profit - ₦ 400,000 x 40% (w2)	160,000
Deduct:	
Capital Allowances - ₦ 400,000 x 10% (w3)	<u>(40,000)</u>
Total Profit liable to tax in Nigeria	<u><u>120,000</u></u>

- (b) **COMPUTATION OF INCOME TAX PAYABLE FOR 2004 ASSESSMENT YEAR**

Total profit (₦ 120,000 at 30%) = ₦36,000

Workings:

- (i) **Computation Of Adjusted Profit**
Year Ended 31 March 2003

	₦
Net Profit per accounts	240,000
Add:	
Depreciation	120,000
Other disallowable expenses	40,000
Deposit for V.C.10 Aircraft-capital	<u>80,000</u>
Adjusted Profit	<u><u>480,000</u></u>

(ii) Computation of Adjusted Profit Ratio

$$\frac{\text{Adjusted Profit}}{\text{Worldwide Income}} \times 100\% = \frac{\text{N } 480,000}{\text{N } 1,200,000} \times 100 = \underline{\underline{40\%}}$$

(iii) Computation of Depreciation Allowance Ratio

$$\frac{\text{Depreciation Allowance}}{\text{Worldwide Income}} \times 100\% = \frac{\text{N } 120,000}{\text{N } 1,200,000} \times 100 = \underline{\underline{10\%}}$$

Method 2

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.

Put in a proforma, the Assessable profits of a foreign company in respect of income derived from Nigeria is as shown below:

	N
Income receivable in Nigeria	<u>XXX</u>
Assessable Profits:	
Income receivable in Nigeria x fair % (as determined by FIRS)	<u>XX</u>

Other Points to Note

- (a) Where Method 2 above is used, the foreign company shall be entitled to require that its assessment be revised and re-computed on the basis of method 1.
- (b) This request 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
- (c) Certificate to the satisfaction of the Revenue.
- (d) 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 receiveable 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.

19.2.2 TAXATION OF FOREIGN COMPANY ENGAGED IN CABLE UNDERTAKINGS (TELECOMMUNICATION)

Where a foreign company is engaged in the business of transmission of messages by cable or any other form of wireless apparatus, it is assessable to tax in the same way as a foreign company engaged in air or sea transport business.

Its profits which are deemed to be derived from Nigeria are from the transmission of messages through its network in Nigeria to places outside the country (Nigeria). Such cable messages originating from Nigeria are deemed equivalent to the shipping or loading of passengers, mails, livestock or goods in Nigeria.

Apart from the above, all the other provisions relating to the taxation of companies engaged in air or sea transport companies apply exactly in the same way as to companies engaged in cable undertakings.

ILLUSTRATION 19.2

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

Its worldwide management accounts for the year ended 30 September 2002, revealed the following:

	N'000	N '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>	450,000
Less:		
Salaries and wages	180,000	
Depreciation	90,000	
Overhead expenses	85,000	
Purchase of equipment	<u>39,000</u>	<u>394,000</u>
Net Profit		<u><u>56,000</u></u>

Notes:

- (a) 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;
- (b) Canadian tax authority has certified the Adjusted profit and Depreciation allowance ratios.
- (c) Included in overhead expenses are disallowable items totalling ₦23million.

Required:

- (a) Compute the company's Adjusted profit;
- (b) Determine the Adjusted profit ratio and Depreciation ratio; and
- (c) Compute the Total profits and Income tax payable in Nigeria.

SUGGESTED SOLUTION 19.2

(a) **ULTIMATE LIMITED**

COMPUTATION OF ADJUSTED PROFIT

	N'000	N'000
Net Profit per accounts		56,000
Add:		
Depreciation	90,000	
Purchase of Equipment Capital	39,000	
Other disallowable expenses	<u>23,000</u>	<u>152,000</u>
Adjusted Profit		<u>208,000</u>

(b) **COMPUTATION OF ADJUSTED PROFIT AND DEPRECIATION RATIOS**

(i) Computation of Adjusted Profit Ratio:

$$\frac{\text{N}208,000}{\text{N}450,000} \times 100\% = 46.22\%$$

(ii) Computation of Depreciation Ratio:

$$\frac{\text{N}90,000}{\text{N}450,000} \times 100\% = 20\%$$

(c) **COMPUTATION OF INCOME TAX PAYABLE IN NIGERIA**

	N '000
Assessable Profit (N100m x 46.22%)	46,220
Deduct:	
Capital Allowances (N100m x 20%)	<u>20,000</u>
Total Profit	<u>26,220</u>
Income Tax payable	
N26,220,000 at 30%	<u>7,866</u>

19.3 TAXATION OF INSURANCE COMPANIES

19.3.1 Introduction

The taxation of insurance business is covered by Sec 14 of CITA 2007. The section deals with both Nigerian and Non-Nigerian insurance businesses. It further distinguishes between Life assurance business and Non-life insurance business.

For tax purposes, the main difference between the taxation of Life assurance business and Non-life business is that for Life assurance business, the premium received from the assured does not form part of income for tax purposes since the assured will definitely be paid or indemnified either at his death or the attainment of a specified age under endowment policy. Since the premium is not taken as income, claims paid is also not allowable as a deduction for life assurance business, the reverse is applicable for Non-life insurance business.

With effect from 1995, where a company engages in composite insurance business, that is, a company carrying on both Life and Non-life insurance business, the income from each source would be taxed separately. This means that where a loss is incurred from life business, it cannot be relieved against income from non-life.

Like any other company, dividend received by insurance companies is treated as Franked investment income and they are exempted from tax.

The investment income does not include premium received from the assured. It is made up of dividend (to be exempted), interest, annuities, commission received, rent as well as surplus arising from actuarial revaluation of the reserve for the unexpired risk account or life fund account transfer to the profit and loss account for distribution.

19.3.2 DETERMINATION OF ASSESSABLE PROFIT AND TAX LIABILITY

(a) LIFE BUSINESS

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

	N	N	N
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		X	
10% of Net Profit	<u>X</u>	X	

iii. Other allowable Management expenses	<u>X</u>	<u>(X)</u>
Assessable profit		XX
Less Capital Allowance		<u>(X)</u>
Total profit		<u><u>X</u></u>
Tax payable shall be the higher of:		

Tax paid as per Total Profit Computed; and
Tax paid on 20% of Gross income

Note:

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

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

	N	N
Investment Income (see working1)		X
Less Agency commission in Nigeria	X	
Allowable expenses in Nigeria	X	
Fair proportion of Head Office expenses	<u>X</u>	<u>(X)</u>
Assessable Profit		<u><u>X</u></u>

Working

Investment Income:

$$\frac{\text{Premium Receivable Nigeria} \times \text{Global Investment Income}}{\text{Global Premium of the company} \quad 1}$$

(b) **NON-LIFE INSURANCE BUSINESS**

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

	N	N	N
Gross Premium			XX
Less premium to Reinsurance			<u>(X)</u>
Net Premium			XX
Add: Interest income		X	
Other Income		<u>X</u>	<u>XX</u>
Gross Income			XX
Less Provision for unexpired risk c/f Restricted to 45% of total premium -for general		X	

	N	N	N
25% of total premium – for cargo marine		<u>(x)</u>	<u>(x)</u> XX
Less Allowable Expenses:			
Claims	x		
Less Claims from reinsurance	<u>(x)</u>	x	
Commission		x	
Other allowable Management Expenses		<u>x</u>	
		XX	
Restricted to 25% of total premium		<u>(x)</u>	<u>(x)</u>
Assessable profit			XX
Less Capital Allowance			<u>(x)</u>
Total profit			<u>XX</u>

Tax payable shall be the higher of
Tax paid as per Total Profit Computed or
Tax paid on 15% of Gross income

(b) NON-NIGERIAN COMPANY

Where a non-Nigerian company is 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 and 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 to such loss can be carried forward or maximum of 4 years.

(c) REINSURANCE BUSINESS

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

	N	N	N
Gross Premium			XX
Less premium to Reinsurance			<u>(x)</u>
Net Premium			XX
Add: Interest income		x	
Other Income		<u>x</u>	<u>XX</u>
Gross Income			XX
Less Provision for unexpired risk c/f		x	
Restricted to 45% of total premium -for general			
25% of total premium –for cargo marine		<u>(x)</u>	<u>(x)</u>
			XX
Less Allowable Expenses:			
Claims	x		
Less Claims from reinsurance	<u>(x)</u>	x	
Commission		x	
Other allowable Management Expenses		<u>x</u>	
		XX	
Restricted to 25% of total premium		<u>(x)</u>	<u>(x)</u>
Less Transfer to General Reserve			
i. General Reserve < Minimum Authorised Capital			
50% of Gross profit		x	
or			
ii. General Reserve ≥ Minimum Authorised Capital			
25% of Gross Profit		<u>x</u>	<u>(x)</u>
Assessable profit			<u>XX</u>
Less Capital Allowance			<u>(x)</u>
Total profit			<u><u>XX</u></u>

Tax payable shall be the higher of
 Tax paid as per Total Profit Computed
 Tax paid on 15% of Gross income

19.3.3 ADDITIONAL INFORMATION TO BE FILED BY INSURANCE BUSINESS

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.

19.4 TAXATION OF AUTHORISED UNIT TRUST SCHEMES

19.4.1 Introduction

A Unit trust scheme is an arrangement whereby facilities are provided for the participation of the public as beneficiaries, under a Trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.

19.4.2 Taxation of Unit Trust Income

Ordinarily, trust income is assessable on the beneficiaries of a trust after deducting trust expenses and any fixed annuities as may be provided for by the trust deed or on the trustee(s) in his/their names as trustee(s) where there is any part of the trust income not apportioned to the beneficiaries (PITA Second Schedule).

However, Section 17 CITA makes special provisions for the taxation of the profit of an "Authorised Unit Trust Scheme".

The Assessable profit of the Scheme is determined in accordance with the provision of Section 17 (2) CITA as follows:

	₦
Investment Income, that is, from Unit Trust Investments	xxx
Less:	
Management expenses (inclusive of manager's remuneration)	(xx)
Assessable Profit	<u><u>xx</u></u>

19.5 TURNOVER TAX

The Federal Inland Revenue Service is given the discretionary power, by virtue of the provision of Section 3A CITA, to assess and charge a company to tax on a fair and reasonable percentage of the 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;

- (a) No Assessable profits; or
- (b) Assessable profits which in the opinion of the IFRS, are less than might be expected to arise from that trade or business; or
- (c) 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 Federal Inland Revenue Service, is deemed to be its Assessable profit for the assessment year concerned.

19.6 SMALL COMPANY RELIEF

This applies to a company with a turnover of ₦1,000,000 or less per annum. The applicable rate of tax is 20% of the Total Profit as against 30% for a normal business. It is instructive to note that the small business tax is applicable for the first five assessment years of the business.

This relief does not apply to a company set up to acquire part or whole of an existing business.

The lower rate will be applicable to companies engaged in the business of either manufacturing, agriculture, mining of solid minerals or wholly export trade.

19.7 TAXATION OF ENTERPRISES IN FREE TRADE ZONES

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 from 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 or the undertaking;
- (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.

It should be noted, however, that only the tax written down value of the assets shall be carried forward at the end of the tax holidays.

This is a tax incentive to encourage the manufacturing of exported 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.

An Export Processing Zone Allowance is granted a company which has incurred an 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 but the company will not be entitled to an investment allowance.

19.8 PROVISIONS OF THE NIGERIAN INFORMATION TECHNOLOGY DEVELOPMENT AGENCY ACT (NITDA) 2007

The information technology tax is payable at an applicable rate of 1% of profit before tax by specified companies with a turnover of ₦100 million and above.

These specified companies include:

- (a) Cyber companies and internet providers;
- (b) GSM service providers and all telecommunication companies;
- (c) Pension managers and pension related companies;
- (d) Banks and other financial institutions; and
- (e) Insurance companies

This tax is assessed by the Federal Inland Revenue Service and it is payable within 60 days of service of a notice of assessment. The penalty for non-compliance attracts 2% of tax payable.

The tax when paid, is tax deductible for Companies income tax purposes.

19.9 CHAPTER REVIEW

This chapter deals comprehensively with the computation of tax for a selected number of specialised companies - such as those engaged in Air and Sea Transport, cable (communications) undertakings, Life and Non-life Insurance Companies, Property Companies and Authorised Unit Trust outfits. In order to assist readers, worked examples are provided to clearly illustrate the differences inherent in the computation of tax liability for each of the specialised businesses.

19.10 WORKED EXAMPLES

19.11.1 Questions

- (1) Zenith Insurance Co. Plc is a company engaged in both Life and other insurance business. The draft IFRS account of the company for the year ended 31 December 2012 disclosed the following information:

**(a) STATEMENT OF COMPREHENSIVE INCOME FOR YEAR ENDED
31 DECEMBER 2012**

	Life Business	Non-Life Business	Reinsurance Business	Total
	N'000	N'000	N'000	N'000
Gross Premium written	<u>22,000</u>	<u>100,000</u>	<u>58,000</u>	<u>180,000</u>
Gross Premium income	22,000	100,000	58,000	180,000
Re-insurance Premium	<u>0</u>	<u>(58,000)</u>	<u>0</u>	<u>(58,000)</u>
Net Premium Income	22,000	42,000	58,000	122,000
Fees and Commission income	<u>2,500</u>	<u>6,300</u>	<u>4,200</u>	<u>13,000</u>
Net Underwriting Income	24,500	48,300	62,200	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	<u>700</u>	<u>(2,300)</u>	<u>0</u>	<u>(1,600)</u>
Net claims expenses	(5,800)	(11,300)	(21,000)	(38,100)
Underwriting expenses:				
Acquisition expenses	(300)	(1,400)	(990)	(2,690)
Maintenance expenses	<u>(1,550)</u>	<u>(4,330)</u>	<u>(1,800)</u>	<u>(7,680)</u>
Total underwriting expenses	(1,850)	(5,730)	(2,790)	(10,370)
Underwriting Profit/(Loss)	<u>16,850</u>	<u>31,270</u>	<u>38,410</u>	<u>86,530</u>
Investment income	5,800	12,600	13,700	32,100
Other operating income	<u>1,800</u>	<u>3,800</u>	<u>2,400</u>	<u>8,000</u>
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	<u>220</u>	<u>680</u>	<u>340</u>	<u>1,240</u>
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	<u>(880)</u>	<u>(1,100)</u>	<u>(1,420)</u>	<u>(3,400)</u>
Total expenses	(4,780)	(19,100)	(10,920)	(35,800)
Result of operating activities	19,440	27,920	42,850	89,210
Interest expense	<u>(3,600)</u>	<u>(7,500)</u>	<u>(4,800)</u>	<u>(15,900)</u>
Profit or (Loss) before Taxation	<u>15,840</u>	<u>20,420</u>	<u>38,050</u>	<u>73,310</u>

(b) STATEMENT OF FINANCIAL POSITION FOR YEAR ENDED 31 DECEMBER 2012

	Life Business	Non-Life Business	Reinsurance Business	Total
	₦	₦	₦	₦
Assets				
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	300,000	500,000	400,000	1,200,000
Total Assets	<u>4,051,400</u>	<u>8,585,000</u>	<u>6,390,750</u>	<u>19,027,150</u>
Liabilities				
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	520	680	550	1,750
Total Liabilities	<u>2,112,320</u>	<u>3,480,680</u>	<u>2,556,680</u>	<u>11,149,680</u>
Equity				
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>
Total Liabilities and Reserves				<u>19,027,150</u>

Additional Information:

- (i) The company distributed ₦3,500,000 surplus arising from actuarial revaluation of Life fund.
- (ii) Administrative expenses include depreciation:
- | Life Business | Non-Life Business | Reinsurance Business |
|---------------|-------------------|----------------------|
| ₦'000 | ₦'000 | ₦'000 |
| 960 | 1,200 | 1,050 |
- (iii) Gross 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 31 December 2012 was ₦1,297,570.

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

Life Business Business	Non-Life Business	Reinsurance
N'000	N'000	N'000
250	800	650

(vi) Investment income include:

	Life Business	Non-Life Business	Reinsurance Business
	N'000	N'000	N'000
Dividend (Gross)	1,200	3,000	5,500
Interest on fixed deposit	3,300	7,600	6,900
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 include:

	Life Business	Non-Life Business	Reinsurance Business
	N'000	N'000	N'000
Balance B/F	900	3,000	1,220
Balance C/F	1,300	5,2803	1,520

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

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

Required:

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

(2) Habib Limited is a foreign company involved in air transport business. Its aircrafts are used for cargo and passenger flights between Nigeria and Spain.

The audited financial statements for year ended 31 December 2010 revealed the following:

	N	N
Income for passengers flown Madrid to Nigeria		4,425,600
Income for passengers flown Nigeria to Madrid		3,397,250
Income from cargo loaded into aircraft other routes		2,260,000
Income from cargo freight from Nigeria to Madrid		<u>3,375,000</u>
		13,457,850

	N	N
Deduct: Operating expenses:		
Depreciation	460,000	
Staff salaries	725,000	
Use of airport facilities	87,000	
Accommodation for airtime crew	28,500	
Hotel bills for passengers	120,000	
General provisions	<u>35,000</u>	<u>(1,455,500)</u>
Operating profits		<u><u>12,002,350</u></u>

In addition to the above, capital allowances were agreed with the relevant tax authority as 175% of depreciation.

Required:

Compute the income tax liability for Assessment Year 2011.

(Ignore minimum tax computation)

- (3) **DANDAUDU LIMITED** is an agricultural company which commenced business on 1 July 2001. It is engaged in plantations, cattle ranching and poultry business and prepares its financial statements to 30 June of every year. Its recent financial statements showed the following results:

	Year ended 30 June		
	2002	2003	2004
	N	N	N
Sales:			
Plantation Crops	-	-	12,000
Cattle ranching proceeds	<u>95,000</u>	<u>319,000</u>	<u>318,000</u>
Total Sales	<u>95,000</u>	<u>319,000</u>	<u>330,000</u>
Expenses:			
Preliminary expenses	25,000	25,000	25,000
Purchase: Cockrels	14,000	2,000	-
Poultry feeds	85,500	67,450	75,810
Wages and salaries	50,000	65,500	67,500
Depreciation:			
- Plant and Machinery	15,000	15,750	15,750
- Office furniture and Fittings	14,230	15,140	15,140
Drugs and Medicines for Animals	13,250	14,100	14,500
Interest on bank loan	-	17,100	18,000
General expenses	41,500	41,720	51,500
Increase in Closing Stocks: (animals and crops for resale)	-	(4,200)	(5,100)
Net Profit/(Loss)	<u>(163,480)</u>	<u>59,440</u>	<u>51,900</u>
	<u><u>95,000</u></u>	<u><u>319,000</u></u>	<u><u>330,000</u></u>

Other additional information

Preliminary expenses amounted to ₦200,000, and it is to be written off in equal annual amounts over a period of eight (8) years, commencing from the year ended 30 June 2002.

Break down of the preliminary expenses is as follows:

	₦
(i) Stamp duties and registration expenses	15,000
(ii) Cost of initial clearing and cultivation of land for Plantation	35,000
(iii) Cost of nursery plants purchased from Ministry of Agriculture	65,000
(iv) Another nursery plants purchased from an Institute of Agriculture	45,720
(v) Cost of labour and technical expertise on the first planting operation on plantations	28,030
(vi) Gratifications to local chiefs and heads of families, so as to attract labourers to the farm	<u>11,250</u>
	<u>200,000</u>

The following details were extracted from the company's Fixed Assets Register:

Assets:	Cost ₦	Date of Purchase
Motor Vehicles	30,500	July 2001
Agric Tractor	27,000	June 2003
Equipment used in spraying plantations	60,000	January 2003
Office Furniture	45,000	August 2001
Building (Administrative Block)	71,000	December 2003

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.

- (4) Abiola Bashir ACA Unit Trust Scheme is authorised by the Investment and Securities Commission to deal in the business of a Unit trust scheme. Its financial statements for the year ended, 30 September 2002 show the following:

	₦'000	₦ '000
Investment income:		
Dividends (Gross)		120,000
Bank deposit interest (Gross)		115,000
Rental income (Gross)		<u>255,000</u>
		<u>490,000</u>

	₦	₦
Deduct:		
Staff salaries and wages	5,000	
Managers' remuneration (20% of gross income)	98,000	
Other expenses	33,000	
Depreciation	<u>18,000</u>	<u>(154,000)</u>
Net Profit		<u><u>336,000</u></u>

Notes:

- (i) Both dividend and rental income have been subjected to deduction of withholding tax at 10%.
- (ii) Other expenses include an amount of ₦550,000, being loss on disposal of fixed assets.

Required:

Compute the Assessable profit for the relevant year of assessment.

19.11.2 Suggested Solutions

**1. ZENITH INSURANCE CO. PLC
COMPUTATION OF TAX LIABILITY FOR 2013 TAX YEAR**

(a) LIFE BUSINESS:

	₦'000	₦'000	₦'000
Investment income:			
Interest on fixed deposit	3,300		
Debenture interest	<u>1,300</u>		4,600
Other Income:			
Fees and Commission income			2,500
Other operating income			1,800
Actuarial Revaluation Surplus distributed			<u>3,500</u>
Gross Income			<u>12,400</u>
Deduct:			
i. General Reserves	2,600		
Add Life Fund A/c	<u>1,100</u>		
	3,700		
Less Net liabilities on policies	<u>(1,298)</u>	2,402	
ii. Special Reserve			
The higher of:			
1 % of Gross premium - 22,000 x 1%	220		
10% of Net Profit – 15,840 x 10%	<u>1,584</u>	1,584	

	N'000	N'000	N'000
iii. Other allowable Management expenses:			
Administrative expenses – (3,900 – 960)	2,940		
Interest expense	3,600		
Other operating expenses	<u>880</u>	<u>7,420</u>	<u>(11,406)</u>
Assessable profit			994
Less Capital Allowance			<u>(250)</u>
Total profit			<u>744</u>
Tax payable shall be the higher of:			
Tax @ 30% on Total profit computed	<u>223.1</u>		
Tax paid on 20% of Gross income N12,400 x 20%	<u>2,480</u>		
∴ Tax payable	<u>2,480</u>		

(b) NON LIFE BUSINESS:

	N'000	N'000	N'000
Gross Premium		100,000	
Less premium to Reinsurance		<u>(58,000)</u>	
Net Premium			42,000
Add: Interest income:			
Fees and Commission income		7,600	
Other operating income		2,000	
Other Income		<u>3,800</u>	<u>13,400</u>
Gross Income			55,400
Less Provision for unexpired risk c/f Restricted to 45% of total premium -for general N100,000 x 45%	5,280		
∴ Provision for unexpired risk c/f	45,000		<u>(5,280)</u>
			50,120
Less Allowable Expenses:			
Administrative expenses – (N18,000 – N1,200)	16,800		
Other operating expenses	<u>1,100</u>	17,900	
Claims expenses	24,000		
Re-insurance claims	<u>(15,000)</u>	9,000	
Interest expense		<u>7,500</u>	
		34,400	
Restricted to 25% of total premium N100,000 x 25%		<u>(25,000)</u>	<u>(25,000)</u>
Assessable profit			25,120
Less Capital Allowance			<u>(800)</u>
Total profit			<u>24,320</u>

	N'000	N'000	N'000
Tax payable shall be the higher of:			
Tax paid as per Total Profit Computed N24,320 x 30%		<u>7,296</u>	
Tax paid on 15% of Gross income N55,400 x 15%		<u>8,310</u>	
∴ Tax payable			<u><u>8,310</u></u>

(c) REINSURANCE BUSINESS:

	N'000	N'000	N'000
Gross Premium		58,000	
Less premium to Reinsurance		<u>(0)</u>	
Net Premium			58,000
Add: Interest income			
Interest on fixed deposit		6,900	
Debenture interest		1,300	
Other operating income		<u>2,400</u>	
Gross Income			<u><u>68,600</u></u>
Less Provision for unexpired risk c/f		1,520	
Restricted to 45% of total premium for general N58,000 x 45%		26,100	
∴ Provision for unexpired risk c/f			<u>(1,520)</u>
			67,080
Less Allowable Expenses:			
Administrative expenses—(N9,500—N1,050)	8,450		
Other operating expenses	<u>1,420</u>	9,870	
Claims expenses	21,000		
Re-insurance claims	<u>(0)</u>	21,000	
Interest expense		<u>4,800</u>	
		35,670	
Restricted to 25% of total premium N58,000 x 25%		14,500	(14,500)
Less Transfer to General Reserve			
i. General Reserve < Minimum Authorised Capital 50% of Gross profit			
or			
ii. General Reserve ≥ Minimum Authorised Capital 25% of Gross Profit N38,410 x 25%			<u>(9,602.5)</u>

	N'000
Assessable profit	42,977.5
Less Capital Allowance	<u>(650)</u>
Total profit	<u>42,327.5</u>

Tax payable shall be the higher of	
Tax paid as per Total Profit Computed	
N42,327.5 x 30%	12,698.3
Tax paid on 15% of Gross income	
N68,600 x 15%	<u>10,290</u>
∴ Tax payable	<u>12,698.3</u>

(d) **ZENITH INSURANCE CO. PLC**
SUMMARY OF TAX LIABILITY FOR 2013 TAX YEAR

	Life Business	Non-Life Business	Reinsurance Business	Total
	N'000	N'000	N'000	N'000
Tax payable	2,480	8,310	12,698.3	23,488.3
Education Tax	<u>19.872</u>	<u>502.4</u>	<u>859.55</u>	<u>1,381.822</u>
Total Tax Payable	<u>2,499.872</u>	<u>8,812.4</u>	<u>13,557.85</u>	<u>24,870.122</u>

(2) **HABIB LIMITED**
INCOME TAX COMPUTATION FOR 2011 ASSESSMENT YEAR

	N	N	N
Income from passengers' freight from Nigeria to Madrid			3,397,250
Income from cargo freight from Nigeria to Madrid			<u>3,375,000</u>
			6,772,250
Allowable deductions:			
Staff salaries	725,000		
Use of airport facilities	87,000		
Accommodation for airline crew	28,500		
Hotel bills for passengers	<u>120,000</u>		
	960,500		
Proportion applicable to operations in Nigeria			
= $\frac{960,500}{13,457,850} \times 6,772,250 =$		483,342	
Depreciation allowance as agreed		805,000	(1,288,342)
Total Profit			<u>5,483,908</u>
Companies income tax payable at (30% of N5,483,908)			<u>1,645,172</u>

**(3) DANDAUDU LIMITED
COMPUTATION OF TAX LIABILITIES**

	N	N
Assessment Year – 2001 (Based on 1/7/01-31/12/01)		
Loss for the period (w iii)		(54,625)
Add:		
Capital allowances (w iv)		<u>(114,312)</u>
Unrelieved loss and capital allowances c/f		<u>(168,937)</u>
Assessment Year – 2002 (Based on 1/7/01-30/6/02)		
Loss for the period (w iii)		(109,250)
Add:		
Unrelieved loss b/f		<u>(54,625)</u>
		<u>(163,875)</u>
Add:		
Capital allowances-for the year (w iv)	71,374	
-brought forward	<u>114,312</u>	<u>(185,686)</u>
Unrelieved loss and capital allowances c/f		<u>349,561</u>
Assessment Year-2003 (Based on 1/7/01-30/6/02)		
Loss for the period		(109,250)
Add:		
Unrelieved loss b/f		<u>(163,875)</u>
		<u>273,125</u>
However, unrelieved losses carried forward are restricted to: actual loss incurred		(109,250)
Add:		
Capital allowances – for the year (w. iv)	40,959	
- brought forward		
	<u>185,686</u>	<u>(226,645)</u>
Unrelieved loss and capital allowances c/f		<u>335,895</u>
Assessment Year 2004 (Based on 1/7/02-30/6/03)		
Assessable Profit (w. iii)		115,330
Deduct:		
Unrelieved loss b/f	(109,250)	
Relieved in the year	<u>109,250</u>	<u>(109,250)</u>
	-	6,080

	N	N
Deduct:		
Capital allowances - for the year (w iv)	101,912	
- brought forward	<u>226,645</u>	<u>(328,557)</u>
Unrelieved capital allowances c/f		<u>(322,477)</u>
Assessment Year 2005		
(Based on 1/7/03-30/6/04)		
Assessment Profit (w iii)		107,790
Deduct:		
Capital allowances - for the year (w iv)	28,698	
- brought forward	<u>328,557</u>	<u>357,255</u>
Unrelieved capital allowances c/f (Note (e))		<u>(249,465)</u>

Workings:

(i) **COMPUTATION OF ADJUSTED PROFITS/(LOSS)**

YEAR ENDED JUNE 30,

	2002	2003	2004
	N	N	N
Net profit/(loss) per accounts	(163,480)	59,440	51,900
Add:			
Disallowable expenses			
- preliminary expenses	25,000	25,000	25,000
- Depreciation:			
Plant and Machinery	15,000	15,750	15,750
Office furniture and fittings	<u>14,230</u>	<u>15,140</u>	<u>15,140</u>
Adjusted Profit/(Loss)	<u>(109,250)</u>	<u>115,330</u>	<u>107,790</u>

(ii) **DETERMINATION OF BASIS PERIOD**

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2001	1/7/01 - 31/12/01	1/7/01 – 31/12/01
2002	1/7/01 – 30/6/02	1/1/02 – 30/6/02
2003	1/7/01 – 30/6/02	-
2004	1/7/02 – 30/6/03	1/7/02 – 30/6/03
2005	1/7/03 – 30/6/04	1/7/03 – 30/6/04

(iii) COMPUTATION OF ASSESSABLE PROFIT/(LOSS)

Assessment Year	Basis Period for Assessment	Workings	Assessable Profit/(Loss) ₦
2001	1/7/01 – 31/12/01	(₦109,250) X $\frac{6}{12}$	<u>(54,625)</u>
2002	1/7/01 – 30/6/02		(109,250)
2003	1/7/01 – 30/6/02		<u>(109,250)</u>
			<u>(218,500)</u>
2004	1/7/02 – 30/6/03		<u>115,330</u>
2005	1/7/03 – 30/6/04		<u>107,790</u>

(iv) COMPUTATION OF CAPITAL ALLOWANCES

	Building Vehicle	Motor Expenditure	Plantation	Plantation Equipment	Office Furniture	Total Allowance
Rate-Initial (%)	15	50	30	95	25	
-Annual (%)	10	25	50	-	20	
	₦	₦	₦	₦	₦	₦
Assessment Year 2001						
Acquisitions						
- July 2001						
- Motor Vehicles		30,500				
- July 2001						
- Plantation			173,750			
August 2001						
- Office Furniture	-			0	45,000	
	<u>0</u>	<u>30,500</u>	<u>173,750</u>	<u>0</u>	<u>45,000</u>	
Allowances						
Initial allowance		(15,250)	(52,125)		(11,250)	78,625
Annual allowance (6 months)	<u>0</u>	<u>(1,906)</u>	<u>(30,406)</u>	<u>—</u>	<u>(3,375)</u>	<u>35,687</u>
Written down value c/f	0	3,344	91,219	0	30,375	<u>114,312</u>
Assessment Year 2002						
Annual allowance	<u>0</u>	<u>(3,812)</u>	<u>(60,812)</u>	<u>0</u>	<u>(6,750)</u>	<u>71,374</u>
Written down value c/f	0	9,532	30,407	0	23,625	
Assessment Year 2003						
Annual allowance	<u>0</u>	<u>(3,812)</u>	<u>(30,397)</u>	<u>0</u>	<u>(6,750)</u>	<u>40,959</u>
Written down value c/f	0	5,720	10	0	16,875	

	₦	₦	₦	₦	₦	₦
Assessment Year 2004						
Additions						
- Jan 2003– Spraying, Eq'	0	0	0	60,000	0	0
- June 2003 – Agric Trac'	<u>0</u>	<u>0</u>	<u>0</u>	<u>27,000</u>	<u>0</u>	<u>0</u>
	0	5,720	10	87,000	0	0
Allowances						
Investment allowance -	0	0	0	0	0	8,700
Initial allowance	0	0	0	(82,650)	0	82,650
Annual allowance	<u>0</u>	<u>(3,812)</u>	<u>0</u>	<u>0</u>	<u>6,750</u>	<u>10,562</u>
Written down value– c/f	0	1,908	10	4,350	10,125	<u><u>101,912</u></u>
Assessment Year–2005						
Addition						
- Dec 2003 – Building	<u>71,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	0
	71,000	1,908	10	4,350	10,125	
Allowances						
Initial allowance	(10,650)	0	0	0	0	10,650
Annual allowance	<u>(6,035)</u>	<u>(1,898)</u>	<u>0</u>	<u>0</u>	<u>(10,115)</u>	<u>18,048</u>
Written Down Value c/f	<u>54,315</u>	<u>10</u>	<u>10</u>	<u>4,350</u>	<u>10</u>	<u><u>28,698</u></u>

(v) COMPUTATION OF ANNUAL ALLOWANCE

	Building	Motor Vehicles	Plantation Expenditure	Plantation Equipment	Office Furniture	Allowance
	₦	₦	₦	₦	₦	₦
Cost of acquisition	71,000	30,500	173,750	87,000	45,000	0
Deduct: Initial allowance	<u>(10,650)</u>	<u>(15,250)</u>	<u>(52,125)</u>	<u>(82,250)</u>	<u>(11,250)</u>	<u>0</u>
	60,350	15,250	121,625	4,750	33,750	0
Asset life	10 years	4 years	2 years	1 year	5 years	
Annual allowance	<u>60,350</u>	<u>15,250</u>	<u>121,625</u>	<u>0</u>	<u>33,750</u>	
	10 yrs	4 yrs	2 yrs		5 yrs	
	<u>6,035</u>	<u>3,812</u>	<u>60,812</u>		<u>6,750</u>	
Annual allowance – 2001						
Pro-rated for 6 months basis		$3,812 \times \frac{6}{12}$	$60,812 \times \frac{6}{12}$	$1,750 \times \frac{6}{12}$		
		=1,906	30,406	3,575		

Notes:

- (a) Certain expenses included in preliminary expenses have been capitalised as qualifying plantation expenditure in accordance with the provision of Para 1 (1) of schedule 2 to CITA.

The capitalised costs consist of:

	N
(i) Cost of initial clearing and cultivation	35,000
(ii) Cost of nursery plants (N65,000+N45,720) for first planting	110,720
(iii) Cost of labour and technical expertise on first planting	<u>28,030</u>
	<u><u>173,750</u></u>

- (b) Stamp duties and registration expenses have been disallowed, as they are incurred in bringing the company into existence and not for the purpose of producing the profits assessable to tax.
- (c) Gratifications to local chiefs and heads of families, have been disallowed because the expenditure was not incurred wholly and exclusively, for the purpose of producing the company's profit or loss.

**(4) ABIOLA BASHIR ACA UNIT TRUST SCHEME
COMPUTATION OF ASSESSABLE PROFITS
ASSESSMENT YEAR 2003**

	N '000
Net Profit per accounts	336,000
Add:	
Depreciation	18,000
Loss on disposal of fixed assets	<u>550</u>
	354,550
Deduct:	
Franked Investment Income	<u>120,000</u>
Assessable Profit	<u><u>234,550</u></u>

Other Points to Note

- (a) Withholding tax deducted from any income (other than Franked Investment Income) is set-off against any tax assessable on the Unit Trust Scheme for any year of assessment.
- (b) Dividend received after deduction of tax is regarded as Franked investment income and not subject to any further tax in the hand of the recipient.

Skills level

Taxation

CHAPTER

20

Withholding Tax

Contents

1. Purpose
2. Nature of Withholding Tax
3. Withholding Tax Enabling Laws
4. Rates, Tax Remittances and Tax Authority
5. Withholding Tax Rate and Double Taxation Relief
6. Operation of the Withholding Tax System
7. Currency of Deduction
8. Payment Schedule
9. Withholding Tax Credit Notes
10. Payment Certificate and Treasury Receipt
11. Refunds and Set-offs
12. Dual Role of Ministries, Parastatals and other Agencies of Government
13. Rights and obligations of taxpayers
14. Advantages and Disadvantages of Withholding tax
15. Chapter Review
16. Worked Examples

WITHHOLDING TAX

20.0 PURPOSE

After studying this chapter, readers should be able to understand the:

- (a) enabling laws, nature of Withholding tax, tax rates, tax remittances and tax authorities;
- (b) withholding tax rate and Double Taxation Relief
- (c) operation of Withholding tax system, Currency of deduction; and
- (d) machinery for Set-off of Withholding tax.

20.1 NATURE OF WITHHOLDING TAX

Withholding tax is a tax deducted at source from payments made to a taxable person for the supply of goods and services.

It is not another form of tax, but simply an advance payment of tax, as the withholding tax deducted at source is off-settable against any subsequent tax liability that may be due in respect of other income.

In certain cases, the withholding tax deducted at source is the final tax in the hands of the recipients.

Peculiarities of Withholding Tax

- (a) A taxpayer has no option as to whether to pay it or not as the person making the payment is statutorily required to deduct. Failure to deduct attracts sanctions;
- (b) It is an advance payment of income tax and can therefore be utilized as tax credit against income tax liability of the year to which the income relates; and
- (c) It represents the final tax in certain cases.

20.2 WITHHOLDING TAX ENABLING LAWS

The authority for the deduction of withholding tax at source is contained in Sections 69, 70, 72 and 73 of the Personal Income Tax Act in respect of individuals and Sections 78, 79, 80 and 81 of CITA Cap. C21 LFN 2004, in respect of companies.

The tax provisions referred to above, deals with deductions from rent, interest, royalties, dividends, directors' fees (PITA only) and other payments. It is under these Sections that the application of the general provisions contained in Section

73 PITA and Section 81 of CITA widens the scope of withholding tax deductions to include building contracts, contracts of supply, consultancy and professional services, which are not specifically, mentioned in the tax Acts.

20.3 RATES, TAX REMITTANCES AND TAX AUTHORITIES

Taxes are to be withheld from payments due to corporate bodies and individuals at the rates listed in the table below and remitted to the relevant tax authorities within 30 days from the date the amount was deducted, or from the time the duty to deduct arose, whichever is earlier.

20.3.1 Table of Withholding Tax Rates

Nature of Transactions or payments	Companies	Individuals
	1 %	2 %
Royalties	10	10
Rents	10	10
Dividends	10	10
Interests	10	10
Commission	10	5
Consultancy fees	10	5
Technical fees	10	5
Management fees	10	5
Directors' fees	N/A	5
Building Construction	5	5
Contract Supplies	5	5

20.3.2 Penalty for late remittance and non-deduction of Withholding Tax from payments

Section 82 of CITA 2004 (as amended) specifies that where any person who being obliged to deduct any tax under section 78 (deduction of tax from interest, etc), 79 (deduction of tax on rent), 80 (deduction of tax from dividend) or 81 (deduction of tax at source) of this Act fails to deduct or having deducted fails to pay to the Board within 21 days from the date the amount was deducted or the time the duty to deduct arose, shall be guilty of an offence and shall be liable to a penalty of 10% per annum of the tax withheld or not remitted, as the case may be.

Similarly, failure to deduct or having deducted, fail to remit to the Revenue, Withholding tax withheld from payments due to individuals, is an offence punishable on conviction with a fine of N5,000, in addition to the tax deductible or deducted, but not remitted, plus interest at the prevailing commercial rate

Notes

- (a) Withholding tax deductions from payments due to companies in column 1 above, are payable to the Federal Inland Revenue Service;
- (b) Withholding tax deductions from payments due to individuals under column 2 above, are payable to the State Internal Revenue Service, where the recipient is resident;
- (c) The Withholding tax deductions in column 2 above, are payable to the Federal Inland Revenue Service, where the payments are due to 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; and
- (d) Withholding taxes on dividend, interest, rent and royalties when suffered by non-residents represent final tax. Also, with effect from January 1996, withholding tax on interest and dividend is final tax for individuals.

20.4 WITHHOLDING TAX RATE AND DOUBLE TAXATION RELIEF

The principle behind double taxation relief is to avoid being taxed more than once. Where there is a double taxation treaty between Nigeria and any other country, the resident of such a country, in receipt of income in Nigeria, will be entitled to double taxation relief at the rates contained in the double taxation treaty. The withholding tax rate is reduced to 7.5% for dividend, interest, and royalty for recipients of a country which has double tax treaty with Nigeria.

Nigeria has double taxation treaty with the following countries:

- (a) Canada;
- (b) Czech Republic;
- (c) France;
- (d) Netherlands;
- (e) Pakistan;
- (f) Romania;
- (g) Slovakia;
- (h) United Kingdom;
- (i) South Africa
- (j) Philippines; and
- (k) Belgium.

20.5 OPERATION OF THE WITHHOLDING TAX SYSTEM

When any of the payments listed in the table above is being made by the payer who is an agent of the relevant tax authorities, for the collection and remittance of withholding tax at the appropriate rate, the tax must be correctly deducted from the payment and the net paid to the supplier. Except for dividends which can only be paid by a body corporate, the payer has been defined as a company (corporate or unincorporated), Government Ministries and departments, parastatals, statutory bodies, institutions and other

established organisations approved for the operation of Pay-As-You-Earn system, notwithstanding that the payer is in itself not liable to pay tax. For example, an Embassy which is in itself not liable to pay tax, has an obligation to withhold tax when it makes a payment in respect of any of the items listed. The total amount withheld monthly, is to be remitted to the relevant tax authority through a cheque or bank draft, made payable to the relevant tax authority. In the case of withholding tax payable to Federal Inland Revenue Service, the cheques are to be drawn in favour of “FGN-FIRS-WHT Account”.

20.6 CURRENCY OF DEDUCTION

The currency in which tax is to be deducted and paid over to the relevant tax authorities is the currency of transaction. Where the transaction is in foreign currency, the tax is to be withheld in the foreign currency and paid to the relevant tax authority, through the Central Bank of Nigeria (CBN). The CBN would then effect the necessary conversion, using the ruling rate of exchange and then credit the appropriate government account with the sum.

20.7 PAYMENT SCHEDULE

Each Withholding tax cheque, being paid to the Revenue must be accompanied with a payment schedule, which is a list of those who suffered the deductions that make up the cheque. The payment schedule must contain the following particulars:

- (a) Name of the taxpayers who suffered the deductions;
- (b) Their addresses;
- (c) The nature of their activities/services and period covered;
- (d) Their tax file numbers [now Tax Identification Number (TIN)];
- (e) The total amount payable;
- (f) The rate of tax applied;
- (g) The amount of tax withheld;
- (h) The balance paid to the taxpayer;
- (i) The tax contract for which returns were being made;
- (j) The date of payment; and
- (k) The cheque number and date.

20.8 WITHHOLDING TAX CREDIT NOTES

When payment is made to the bank or the Withholding Tax Section of the Revenue in respect of withholding tax deducted at source, the Federal Inland Revenue Service will issue credit notes, in favour of the taxpayers whose names are contained in the withholding tax schedule. The credit notes are to be forwarded by the collection agents to the taxpayers who suffered the deductions, to enable them claim tax credits against their tax liabilities for the relevant assessment year(s).

- (a) It is important to emphasise that the presentation of a letter from the collection agent, showing that a taxpayer has suffered deductions, is not enough for the FIRS to grant withholding tax credit;

- (b) Similarly, government treasury receipts issued by other government departments, showing that they have deducted tax from a tax payer, is not enough to grant tax credit since only the FIRS can collect tax for the Federal Government and will therefore issue credit notes for only the taxes that have been paid into its coffers; and
- (c) Each State Government is expected to design forms that will enable credit to be granted to those from whose incomes, tax has been withheld.

20.9 PAYMENT CERTIFICATE AND TREASURY RECEIPT

A payment certificate is issued in favour of the tax agents, when payments are made to the tax office, in respect of withholding taxes they deducted at source. This certificate is the only documentary evidence that the tax agent would have, pending the issuance of the Inland Revenue Withholding Tax Receipt, which would be issued, only after, the cheque paid by the agent has been cleared in the bank.

20.10 REFUNDS AND SET-OFFS

Where it is proved that the person who suffered a withholding tax deduction is not liable to income tax for the year or that the tax withheld is in excess of the tax assessed, the Board has obligation to grant a refund of the over-payment. However, this is currently not the case.

Section 63 (7) of CITA 2004 provides that any excess withholding tax, shall be refunded by the FIRS within 90 days of the application, if duly filed with the option to set-off against future taxes.

20.11 DUAL ROLE OF MINISTRIES, PARASTATALS AND OTHER AGENCIES OF GOVERNMENT

The various Ministries and agencies of Government play a dual role since January 1995 in the tax collection procedure, namely:

- (a) Act as agent in the deduction of withholding tax from contract sums payable to their contractors; and
- (b) Act as agent in the collection of VAT on payments made to contractors.
 - (i) The distinction between deduction of withholding tax from contract sums and collection of VAT from contractors when they are paid is very important. Incidentally, the rate for withholding tax deduction and VAT on contracts is 5%. So, on each contract, two cheques of equal amounts are to be prepared; one for tax withheld and the other for VAT collected. The withholding tax is paid to the relevant tax authority depending on whether the taxpayer is a corporate body or an individual. The VAT, on the other hand, can only be paid to the Federal Inland Revenue Service under the Nigerian Tax Laws.

20.12 RIGHTS AND OBLIGATIONS OF TAXPAYERS

The recipient of a payment that has suffered tax by deduction at source is entitled to demand from the payer, evidence that the payer has not only deducted the tax, but has also accounted for the tax to the relevant tax authority. The evidence should be the original receipt issued by the relevant tax authority; otherwise, he is unlikely to be given credit for the tax already paid against his total tax liability for a given year of assessment.

In completing his annual tax return, the recipient is obliged to disclose his income from all sources and claim the tax reliefs that are due to him.

Even where an income is tax exempt, he is obliged to disclose or declare the income and claim the exemption. Failure to declare a source of income, even though the income may be exempt from tax, borders on tax evasion which is a punishable offence.

20.13 ADVANTAGES AND DISADVANTAGES OF WITHHOLDING TAX

20.13.1 Advantages

The advantages are but not limited to:

- (a) Source of government revenue;
- (b) It helps in expanding the tax net by roping in persons who were previously unknown to the tax authorities;
- (c) It helps in determining a person's turnover and thus ascertaining the correct income for tax purposes;
- (d) It makes tax payment less cumbersome to the taxpayer who may not have to bother himself going to the tax office to pay his tax;
- (e) It reduces incidence of tax evasion;
- (f) It involves little or no cost of collection as it is self accounting in nature; and
- (g) It saves time for the Revenue Officers to attend to other duties.

20.13.2 Disadvantages

The disadvantages include:

- (a) A high rate of Withholding tax is likely to affect the operational performance of most businesses;
- (b) The application of Withholding tax affects the cash flow of most businesses as they receive amounts less than what they have estimated or budgeted for per the invoices they have issued;

- (c) It is likely to discourage hard work by Revenue Officers since it is self accounting in nature.

20.14 CHAPTER REVIEW

In this chapter, explanations have been given on the nature, and peculiarities of withholding tax, along with the enabling laws. A profile of the transactions/payments attracting Withholding tax, and the rates applicable to each of them, vis-a-vis the category of taxpayers (Corporate entities or Individuals), suffering the tax was provided.

Details of the relevant tax authorities for purposes of collection, the nature of offences/penalties with regards to the tax and the incidence of Double Taxation Relief have been clearly addressed.

The operation of the Tax, highlighting the scenario where transactions are in foreign currency, contents of the payment schedule, issuance of Withholding Tax Credit notes and Payment certificate/Treasury receipts including the need for refunds and set-offs where necessary, have been fully covered. Finally, the dual role of Ministries, parastatals and other agencies of Governments, as well as the rights and obligations of the taxpayers, have been fully discussed.

20.15 WORKED EXAMPLES

20.15.1 Questions

- (1)(a) Briefly highlight the main features of Withholding tax.
 - (b) State the relevant tax authorities in relation to Withholding tax in Nigeria
 - (c) Enumerate the contents of a Payment schedule for the remittance of Withholding tax.
- (2) Aseye Insurance Plc engaged the services of Desu Consulting Limited for corporate structure and strategic management in line with the on-going recapitalisation exercise within the insurance industry in Nigeria. The fee for the assignment is N65 million.

As the leading company in the new mega insurance company, Aseye Insurance paid the agreed fee on the 30 June 2013, upon which no Withholding tax was deducted.

What is the tax implication of this action?

- (3) Distinguish between Value added tax and Withholding tax.
- (4) Adebola Nigeria Limited has been trading for many years. The Company make up its accounts to 31 December annually.

The extracts from its statement of Comprehensive income for the years ended 31 December 2012 and 2013 (as adjusted for tax purposes) are as follows:

Year ended 31 December

	2013 (₦)	2012 (₦)
Trading profit	14,000,000	10,000,000
Bank interest received gross	2,400,000	1,600,000
Debenture interest received (gross)	800,000	800,000
Dividend received from Adesemowo Ltd. (Net)	720,000	720,000
Dividend paid to shareholders (gross)	6,000,000	4,000,000

Required:

- (a) Compute the Company's tax liabilities for the relevant years of assessment. Ignore capital allowances.
- (b) Determine the net withholding tax payable or receivable by Adebola Nigeria Limited, arising from dividends paid and received by it.

20.15.2 Suggested Solutions

1(a) Main features of Withholding tax include:

- (i) Payment of Withholding tax is statutory on a person making the payment;
- (ii) Withholding tax credit cannot be used to off-set tax liabilities of prior or future years except the year in which the income relates;
- (iii) It is an advance payment of income tax which are utilized as tax credit against income tax liability of the year to which the income relates;
- (iv) Withholding tax represents the final tax on Franked Investment Income, in the hands of the recipients.

(b) The relevant tax authorities in relation to Withholding tax in Nigeria are:

- (i) Federal Inland Revenue Service for corporate bodies;
- (ii) State Internal Revenue Service for individuals; and
- (iii) Federal Inland Revenue Service for residents of the Federal Capital Territory, Abuja, members of the Nigerian Armed Forces and Police and officers of Nigerian Foreign Service.

(c) Contents of the Payment schedule for the payment of Withholding tax must include:

- (i) Name of the taxpayers who suffered the deductions;
 - (ii) Their addresses;
 - (iii) The nature of their activities/services and period covered;
 - (iv) Their tax file numbers [now Tax Identification Number (TIN)];
 - (v) The total amount payable;
 - (vi) The rate of tax applied;
 - (vii) The amount of tax withheld;
 - (viii) The balance paid to the taxpayer;
 - (ix) The tax contract for which returns were being made;
 - (x) The date of payment; and
 - (xi) The cheque number and date.
- (2) The tax implications to Aseye Insurance Plc for failure to deduct according to Section 82 CITA 2004 (as amended) is:
 “liable to a penalty of 10% of the tax not withheld or not remitted, in addition to payment of the tax itself.”

Specifically, this is equal to:

- (i) Payment of the penalty = 10% of the tax (₦6.5m) = ₦650,000
- (ii) Payment of the tax, that is, 10% of ₦65million, which is ₦6.5 million

- (3) The major differences between VAT and WHT are as shown in the table below:

<u>Value Added Tax</u>	<u>Withholding Tax</u>
(a) An indirect tax	A direct tax
(b) Imposed on goods and services	Imposed on incomes at source
(c) Imposed at 5%	Rate applicable is dependent on type of transaction
(d) Backed by VAT Act 2004	Backed by certain Sections of CITA 2004 and PIT (Amendment) Act 2011
(e) Is governed only by Federal Inland Revenue Service	Is governed by State Internal Revenue Service and Federal Inland Revenue Service
(f) VAT is shared by the 3 tiers of government	Withholding tax is not shared by the 3 tiers of government

(4) (a) Adebola Nigeria Limited

Computation of Income Tax liability for the relevant Tax years

	2014 (₦)	2013 (₦)
Trading profit (adjusted)	14,000,000	10,000,000
Bank interest received (gross)	2,400,000	1,600,000
Debenture interest received (gross)	<u>800,000</u>	<u>800,000</u>
Total Profit/Assessable profit	<u>17,200,000</u>	<u>12,400,000</u>
Company income tax @ 30% of Total profit	<u>5,160,000</u>	<u>3,720,000</u>
Tertiary Education Tax @ 2% of assessable	<u>344,000</u>	<u>248,000</u>

(b) Computation of Net amount of Withholding Tax for A. Y. 2013

	₦
Gross dividend received ($720,000 \times \frac{100}{90}$)	<u>800,000</u>
Withholding tax of 10% thereon	80,000
Withholding tax on dividend paid (10% of ₦4,000,000)	<u>400,000</u>
Net Withholding tax payable by the Company	<u>320,000</u>

Computation of Net amount of Withholding Tax for A. Y. 2014

	₦
Gross dividend received ($720,000 \times \frac{100}{90}$)	<u>800,000</u>
Withholding tax of 10% thereon	80,000
Withholding tax on dividend paid (10% of ₦6,000,000)	<u>600,000</u>
Net withholding tax payable by the Company	<u>520,000</u>

Skills level

Taxation

CHAPTER

21

Value Added Tax

Contents

1. Purpose
2. Introduction
3. Administration of VAT
4. Exempt Items
5. Zero-rate Goods and Services
6. Imported Goods
7. Types of VAT
8. Registration for VAT
9. Preparation of VAT Accounts
10. Returns, Remittances, Recovery and Refund of Tax
11. VAT Technical Committee
12. VAT Tribunal
13. Offences and Penalties
14. VAT Enforcement and Practice
15. Benefits and Demerits of VAT
16. Definitions of Concepts
17. Chapter Review
18. Worked Examples

21

VALUE ADDED TAX

21.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) understand the regulatory framework of VAT in Nigeria;
- (b) appreciate the structure of the VAT model in Nigeria; and
- (c) compute VAT payable and prepare VAT account.

21.1 INTRODUCTION

Value Added Tax (VAT) is an indirect tax on goods and services. It is a consumption tax. VAT was introduced into the Nigerian tax system through Act (the Decree) No. 102 of 1993, with effective date of 1 January 1994. The Act repealed the Sales Tax Act, 1986. VAT is now being administered by the Value Added Tax Act, Cap. V1, LFN 2004. It was last amended in 2007. The rate of tax is 5% on the value of all taxable goods and services. VAT is charged and payable on the supply of all goods and services, other than the exempt items listed in the First Schedule to the Act.

The three basic characteristics of VAT are:

- (a) It is a consumption tax;
- (b) It is a multi-stage tax; and
- (c) The incidence of VAT is on the final consumers.

The VAT collected by FIRS is shared as follows:

- (a) 15 per cent to the Federal Government;
- (b) 50 per cent to the State Governments and the Federal Capital territory, Abuja; and
- (c) 35 per cent to the Local Governments.

21.2 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.

21.3 EXEMPT ITEMS

21.3.1 Goods Exempt

- (a) All medical and pharmaceutical products;
- (b) Basic foods items;

- (c) Books and educational materials;
- (d) Baby products;
- (e) 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
- (e) Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations;
- (f) Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes; and
- (g) All exports.
- (h) Fertilizers locally produced, agricultural and veterinary medicine

21.3.2 Services Exempt

- (a) Medical services;
- (b) Services rendered by Micro-Finance Banks and Mortgage institutions;
- (c) Plays and performances conducted by educational institutions as part of learning; and
- (d) All exported services.

21.4 ZERO-RATE GOODS 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%.

- (a) Non oil exports.
- (b) Goods and services purchased by diplomats.
- (c) 'Humanitarian donor funded project includes project undertaken by Non-Government Organizations, Religions and Social Clubs or Societies recognized by law whose activity is not for profit and in the public interest.

21.5 REVERSE VAT

Governments levy taxes like VAT which can be a primary source of revenue for government activities. Most taxpayers pass the cost of VAT on to the consumer by adding the tax to the cost of the merchandise on a tax-included-basis, you will need to calculate sales tax in reverse. Merchants that handle product returns without a point-of-sale systems also use this calculation to recover taxes already paid in the form of tax deduction.

This can also apply to Pay-As-You-Earn (PAYE) where tax refunds are made when allowances and tax exempt items are granted to taxpayers.

21.6 BASIC TAX POINT

The basic tax point is a point where tax becomes payable. In most cases, the basic tax point for a supply of goods occurs on their removal. This normally means the supplier or collection by the buyer.

The basic tax point for a supply of services is when the services are performed.

21.7 ACTUAL TAX POINT

The basic tax point arises when the goods are delivered or services rendered. An actual tax point can be created either before or after the basic tax point.

An earlier tax point arises if the supplier issues a VAT invoice or receive a payment in advance of the basic tax point.

A later tax point arises if the supplier issues a VAT invoice or receive payment after the basic tax point.

21.8 IMPORTED GOODS

The value of imported taxable goods is deemed to be:

- (a) The price of the goods so imported plus;
- (b) All taxes, duties and other charges levied either outside or by reason of importation into Nigeria plus; and
- (c) All costs by way of commission, parking, transport and insurance up to the port or place of importation.

21.9 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.

21.10 REGISTRATION FOR VAT

21.10.1 Taxable Person

A taxable person shall within 6 months of the commencement of this Act or within 6 months of the commencement of business, whichever is earlier, register with the Board for the purpose of the tax.

21.10.2 Government Ministries, etc, as agents of the Board

Every Government Ministry, statutory body and other agency of Government shall register as agents of the Board 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 Board as a condition for obtaining a contract.

21.10.3 Non-resident companies

The Act specifies that a non-resident company that carries on business in Nigeria shall register for the tax with the Board, 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.

21.11 PREPARATION OF VAT ACCOUNTS

Nigerian VAT is calculated essentially through a system known as the credit system. With this system, all VAT on inputs is deducted from VAT outputs. The difference is the net VAT payable to the Board.

Thus, VAT on sales and services are credited to VAT account, whilst VAT on purchases is debited to this account.

The resultant credit balance is payable to the local VAT office, while a debit balance is expected to be refunded by the tax office, after satisfying itself on the correctness of the amount.

A VAT account is illustrated thus:

VAT ACCOUNT

	Dr.		Cr.
	₦		₦
Input VAT	20,000	Output VAT	180,000
Credit	<u>160,000</u>		
	<u>180,000</u>		<u>180,000</u>

The amount payable to the Board is ₦160,000.

It should be noted that the major difference between an exempt item and zero-rate item boils down to the treatment of input VAT. Whereas it is not refundable for exempt goods or services, it is however refundable on all the zero-rate items.

21.12 RETURNS, REMITTANCES, RECOVERY AND REFUND OF TAX

A taxable person shall pay to the supplier, the tax on taxable goods and services purchased by or supplied to him. The tax so paid by a taxable person is known as Input tax.

A taxable person shall, on supplying taxable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the tax on those goods or services at the above-mentioned rate. The tax so collected by a taxable person shall be known as an output tax.

A taxable person shall render to the Board, 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 Board 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 to be allowed as a 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 Comprehensive Income; and
- (b) On any capital item and asset, which is to be capitalised 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.

21.13 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 the FIRS;
- (b) Advise the FIRS, on its duties in administering the tax; and
- (c) Attend to such other matters as the FIRS may from time to time refer to it.

21.14 VAT TRIBUNAL

- (a) The Minister shall establish, by notice in the Federal Gazette, Zonal Value Added Tax (VAT) Tribunals, spread geographically throughout the country;
- (b) Each of the Zonal VAT Tribunals shall, consist of not more than eight persons, none of whom shall be a serving public officer and one of whom shall be designated as Chairman by the Minister;
- (c) The Chairman of each of the Zonal VAT Tribunals:
 - (i) Shall be a legal practitioner, of not more than 15 years, post call experience; and
 - (ii) Shall preside over the proceedings of the Tribunal.
- (d) Members of each of the Zonal VAT Tribunals:
 - (i) Shall be appointed by notice in the Federal Gazette by the Minister from among persons appearing to him to have wide and adequate practical experience, professional knowledge, skills and integrity in the profession of law, accountancy or taxation in Nigeria as well as, persons that have shown capacity in the management of

- trade/business and retired senior public servants in tax administration;
- (ii) Shall hold office for a period of three years from the date of appointment and may resign at any time, by a notice in writing, addressed to the Minister;
 - (iii) Shall cease to be a member, upon the Minister determining that his office be vacated, upon notice of such determination.
- (e) Where the Minister is satisfied that a member:
- (i) Has been absent for two consecutive meetings without the written permission of the Chairman of the Board; or
 - (ii) Is incapacitated by illness; or
 - (iii) Has failed to make any declaration and give notice of his direct or indirect financial interest in a case, when any appeal by such case is pending before the Tribunal; or
 - (iv) Has been convicted of any felony, or of any offence, under any enactment imposing tax on income or profit.
- The Minister shall make a determination that his office as a member, is vacant.
- (f) Where for some reason there is insufficient number of members to hear an appeal the Minister may make an ad-hoc appointment in writing for the purpose of hearing such appeal;
- (g) The Minister shall designate a serving public officer to be Secretary to a Zonal VAT Tribunal and the official address of the Secretary shall be published in the Federal Gazette;
- (h) The members of the VAT Tribunal shall remain in office until new ones are sworn in;
- (i) Any taxable person who, being a person aggrieved by an assessment or demand notice made upon him, may appeal against the assessment and notice to the Zonal VAT Tribunal, where the taxable person is resident, giving notice in writing, through the Secretary to the Zonal VAT Tribunal, within fifteen days after the date of service upon such taxable person, of the assessment or demand notices and the appeal shall be heard by the Tribunal;
- (j) The Service, if aggrieved by the non-compliance of a taxable person to any provision of this Act, may appeal to the Zonal Tribunal where the taxable person is resident, giving notice in writing through the Secretary to the Zonal VAT Tribunal;

- (k) Where a notice of appeal is not given within the period specified, the assessment or demand notices shall become final and conclusive and the Service may recover tax, interest and penalty which remain unpaid from any taxable person, through the proceedings at the Zonal Tribunal.
- (l) A judgement of the Zonal VAT Tribunal shall be enforced as if it were a judgement of the Federal High Court.
- (m) Notice of appeal against an assessment, shall contain:
- (i) The name and address of the taxable person;
 - (ii) The total amount of goods and services chargeable to tax, in respect of each month;
 - (iii) An input tax;
 - (iv) Net amount of tax payable;
 - (v) The copy of assessment notice:
 - ◆ The precise grounds of appeal against the assessment; and
 - ◆ An address for service of any notice, process or other documents to be given to the appellant and the Secretary to the Zonal Tribunal.
- (n) The Revenue or a taxable person, may, discontinue an appeal at any time before the hearing of the appeal, by giving notice in writing, through the Secretary to the Zonal Tribunal;
- (o) The Zonal Tribunal shall meet, as often as may be necessary, to hear appeal in any town and place in which the office of the Tribunal is situated;
- (p) At least five members may hear and determine an appeal;
- (q) The Secretary to the Zonal Tribunal shall give seven days notice to the parties to an appeal, of the date and place fixed for the hearing of the appeal;
- (r) All notice and documents, other than the decisions of the Tribunal may be signed under the hand of the Secretary. All appeals before the Tribunal shall be held in camera. Every taxable person, so appealing, shall be entitled to be represented at the hearing of the appeal, by a legal practitioner, a qualified chartered accountant, or tax consultant;
- (s) The onus of proving the basis of grievance against an assessment or non-compliance with the provisions of the law shall be on the appellant;

- (t) The Zonal Tribunal may, upon hearing the appeal, confirm, reduce, increase or amend the assessment or make such orders thereon as it deems fit;
- (u) The Minister may make rules regulating the practice and procedure of the VAT Tribunal and until such rules are made, the practice and procedure of the Federal High Court, shall apply with any such modifications as circumstances may require;
- (v) Any case on VAT issues which the VAT Tribunal has jurisdiction and pending before the Federal High Court, before the setting up of VAT Tribunal, shall be continued and completed by the Federal High Court;
- (w) After the decision of the VAT Tribunal, notice of tax payable or determined by the Tribunal, shall be served by the FIRS to the company and notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the VAT Tribunal, within one month of the notification of the tax payable to the company;
- (x) Any party aggrieved by the decision of the VAT Tribunal, may appeal to the Court of Appeal against the decision of the Tribunal on a point of law, after giving notice in writing to the Secretary to the Tribunal within 30 days after the decision of the Tribunal. The appellant shall set out the grounds of his appeal.
The Secretary of the Tribunal on receipt of the notice of appeal to the court of appeal, shall compile the record of proceedings and judgement before the VAT Tribunal and forward same to the Chief Registrar of the Court of Appeal, together with all exhibits tendered at the hearing, before the VAT Tribunal, within 30 days, after the decision to appeal was made; and
- (y) The President of the Court of Appeal may make rules for hearing appeals on VAT appeals. However, pending such rules, the rules of the Court of Appeal shall apply.
Note: Section 59 of the Federal Inland Revenue (Establishment) Act of 2007, provides for the establishment of Tax Appeal Tribunal, with jurisdiction covering various taxes including Value Added Tax.

Miscellaneous

An authorised officer, may at any time without warrant, enter any premises upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether the VAT Act is being complied with (whether on the part of the occupier of the premises or any other person) and on entry, he may carry out such inspections and make such requirements as may be specified by the FIRS. He may also take with him such persons as he considers necessary, for carrying out his functions under the VAT Act.

Appointment of an Agent

The FIRS may, by notice in writing, appoint any person to be the agent of any manufacturer or importer and the person so appointed, shall be the agent of the manufacturer or importer. Such agent may be required to pay any tax, which is or may become payable by the manufacturer or importer from any money which may be held by him for, or become due by him, to the manufacturer or importer, as the case may be, and in default of such payment, the tax shall be recoverable from him. The FIRS may require a person to give information as to any money, fund or other assets, which may be held by him for, or of any money due from him to a manufacturer or an importer.

21.15 OFFENCES AND PENALTIES

(a) **Furnishing of false documents, etc.**

A person who:

- (i) Produces, furnishes, sends or makes use of a document, which is false in any material particular, or
- (ii) In furnishing an information to the FIRS, makes a statement which is false in any material particular, is guilty of an offence and liable on conviction, to a fine of twice the amount under-declared.

(b) **Evasion of tax**

A person who:

- (i) Participates in, or
- (ii) Takes steps with a view to making the evasion of the tax by him or any other person possible, is guilty of an offence, and liable on conviction, to a fine of ₦30,000 or twice the amount of the tax evaded, whichever is greater, or to imprisonment for a term not exceeding three years.

(iii) **Failure to make attribution**

A person, required to make an attribution, who:

- ◆ Fails to do so, or
- ◆ Having done so, fails to notify the Revenue is liable to pay a penalty of ₦5,000.

(iv) **Failure to notify change of address**

A person, who fails to notify the FIRS of any change of address, within one month of such change, is liable to pay a penalty of ₦5,000.

(v) **Failure to issue tax invoice**

A person who fails to issue 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.

(f) **Resisting, etc., an authorised officer**

A person who:

- (i) Resists, hinders or obstructs or attempts to resist or hinder an authorised officer acting under the VAT Act; or
- (ii) Fails to comply fully with any requirement made under the VAT Act; or
- (iii) Makes any statement in response to a requirement made under the VAT Act, which is false or incomplete; and
- (iv) Procures or attempts to procure by any means, any other person to act as aforesaid, is guilty of an offence and liable on conviction, to a fine of ₦10,000 or imprisonment for a term of 6 months or both such fine and imprisonment.

(g) **Issuing of tax invoice by an unauthorised person**

A person who, other than:

- (i) A person registered under the VAT Act; or
- (ii) A person authorised to do so under the VAT Act, issues an invoice, purporting same to be attributable to tax, is guilty of an offence and is liable on conviction to a fine of ₦10,000 or imprisonment for a term of 6 months.

(h) **Failure to register**

A taxable person who fails to register for VAT, is guilty of an offence and liable on conviction to a fine of ₦5,000 and if after one month the person is not registered, the premises where the business is carried on, shall be liable to be sealed up.

(i) **Failure to keep proper records and accounts**

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 penalty of ₦2,000 for every month in which the failure continues.

(j) **Failure to collect tax**

A taxable person who fails to collect VAT, is liable to pay as penalty 150 per cent of the amount not collected, plus 5 per cent interest above the Central Bank of Nigeria Rediscount Rate.

(k) **Failure to submit returns**

A taxable person, who fails to submit returns to the FIRS, is liable to a fine of ₦5,000 for every month in which the failure continues.

- (l) **Aiding and abetting commission of offence, etc.**
An officer of the FIRS or any other person, who aids and abets the commission of any of the offences under the VAT Act, is guilty of an offence and is liable on conviction to a fine of ₦50,000 or to imprisonment for a term of five years.
- (m) Where a person's conduct during any specified period has involved the commission or omission by him, of any one or more of the foregoing offences, then whether or not the particulars of the offences are known, he shall be guilty of an offence and liable to pay a fine of ₦10,000 or if greater, four times the amount of any tax that was, or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.
- (n) **Offence by body corporate**
Where an offence under the VAT Act is committed by a body corporate or firm or other association of individuals:
- (i) Every director, manager, secretary or other similar officer of the body corporate; or
 - (ii) Every partner or officer of the firm; or
 - (iii) Every person concerned in the management of the affairs of the association; or
 - (iv) Every person who was purporting to act in any capacity as aforesaid, is severally guilty of that offence and liable to be proceeded against and punished for the offence, in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence, took place without his knowledge, consent or connivance.
- (o) Where a taxable person fails to render returns or renders incomplete or inaccurate returns, the FIRS shall assess, to the best of its judgement, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person.
- (p) (i) If a taxable person or his agent does not remit the tax, on/ before the 30th day of the month following that, in which the purchase or supply was made, a sum equal to five per centum per annum, (plus interest at a commercial rate) of the amount of tax remittable, shall be added to the tax and the provision of the VAT Act relating to collection and recovery of unremitted tax, penalty and interest, shall apply; and

- (ii) The FIRS shall notify the taxable person of the tax due, together with the penalty and interest, and if payment is not made within 30 days from the date of such notification, the FIRS may proceed to enforce payment as provided for, in the next paragraph.
- (q) (i) Any tax, penalty or interest which remains unpaid after the period specified for payment, may be recovered by the FIRS through proceedings in the Value Added Tax Tribunal;
- (ii) A taxable person who is aggrieved by an assessment made on him may appeal to the Value Added Tax Tribunal; and
- (iii) A further appeal, beyond the Value Added Tax Tribunal, shall be made to the Federal Court of Appeal.

21.16 VAT ENFORCEMENT AND PRACTICE

21.16.1 VAT Visits

VAT inspectors from the local VAT office, from time to time, visit the premises of every VATable person for the following purposes:

- (a) To ensure compliance with the VAT law;
- (b) To ensure that amounts deducted as VAT are promptly accounted for;
- (c) To examine method of keeping transactions and offer suggestions where necessary; and
- (d) To educate VAT agents on new developments in the system.

21.16.2 VAT Drive

This is to take place periodically at the instance of the Zonal Coordinators. Such tax drives are to stimulate the collection of VAT proceeds from defaulters.

21.16.3 VAT Audit and Investigation

This is to be instituted on regular basis by the headquarters. It involves checking both VAT officers and VAT payers' records to ensure strict compliance with the provisions of the Act and accountability of the proceeds collected.

21.17 BENEFITS AND DEMERITS OF VAT

21.17.1 Merits

- (a) Reliable source of government revenue
- (b) It eliminates the narrow scope and cascading effect of the repealed sales tax.
- (c) It is a consumption tax, hence very easy to collect.

- (d) Fairness is established because consumers pay the tax in line with their consumption of goods and services received.
- (e) It can be used as a tool of fiscal policy. Items can be exempted; tax rate can be changed to achieve specific economic objective.

21.17.2 Demerits

- (a) High administrative cost on the part of the government.
- (b) High cost of keeping records by the companies/agents.
- (c) Injustice in the distribution of the VAT proceeds.
- (d) Corruption on the part of tax officials can render VAT ineffective.
- (e) Problem of inadequate information can make VAT administration ineffective.

21.18 DEFINITIONS OF CONCEPTS

“Agency of Government” includes a Ministry, department, statutory body, public authority and an institution of the Federal, State and Local Government.

“Authorised Officer” means an officer who has been authorised by the Service to perform any function under or in pursuance of this Act;

“Board” means the Federal Inland Revenue Service Board;

“Building” means any house, including any garage, dwelling apartment, hospital and institutional building, factory, warehouse, theatre, cinema, store, mill building and similar roofed structure, affording protection and shelter, radio and television masts, transmission line, tower, vehicle and other similar structure but excludes mobile homes, caravans and trailers;

“Business” includes any trading, commercial or manufacturing activity or any vocation in the nature of providing service, in return for monetary or similar consideration;

“Chairman” means the Chairman of the Federal Board of Inland Revenue;

“Company” means a company as defined under the Companies and Allied Matters Act 1990 (as amended), and a corporate body that may be formed under any other written law and includes any association, whether incorporated in or outside Nigeria;

“Entertainment” includes any exhibition and performance in which admission of persons is subject to payment by such persons, but does not include the following:

- (a) Plays on stage and performances, which are carried out by educational institutions, approved by the Minister, for the time being, responsible for education as part of learning;

- (b) Sport, game or other cultural performance conducted under the superintendence of the Ministry, charged with the responsibility for culture and social welfare;
- (c) Entertainment of a charitable, educational, medical, scientific or cultural nature, as may be approved in writing by the Board, prior to the date of the entertainment for the benefit of the public; and
- (d) Entertainment organised by a non-profit making, charitable, educational, medical, scientific or cultural society registered under the law, where the entertainment is in furtherance of the objectives of the society as may be approved in writing by the Board, prior to the date of the entertainment;

“Exported Service” means service performed by a Nigerian resident or a Nigerian company to an entity resident outside Nigeria.

“Import” means bringing in or carrying to be brought in, goods and services from another country or from an export processing zone;

“Imported Service” means, service rendered in Nigeria by a non-resident person, to a person inside Nigeria.

“Importer” means any person who imports taxable goods;

“Input tax” has the meaning assigned to it in Section 12 of the Act;

“Invoice” means any document issued as an evidence of demand for payment;

“Manufacturer” means any person who engages in the manufacture of goods and includes a person who has manufactured for him or on his behalf by others, goods made to his specification or design;

“Manufacturing” means the process by which a commodity is finally produced, including assembling, packaging, bottling, re-packing, mixing, blending, grinding, cutting, bending, twisting and joining or any other similar activity;

“Minister” means the Minister responsible for matters relating to finance.

“Motel” means premises on which accommodation, flats services, apartments, beach cottage, holiday cottages, game lodges, are provided, but excludes the following:

- (a) premises run by a charitable or religious organisation registered under the relevant law for charitable or religious purposes;
- (b) premises operated by a medical institution approved by the Minister for the time being responsible for health, for the use of the staff of that institution; and

- (c) premises whose supply is under a lease or license of not less than one month, unless by prior arrangement, the occupier may without penalty, terminate that lease or license on less than one month's notice.

“Output tax”, has the meaning assigned to it in Section 14 of this Act;

“Owner” means in respect of any goods, aircraft, vessel, vehicle, plant or any other goods, a person, other than an officer acting officially, who holds out himself to be the owner, manufacturer, agent or the person in possession of or beneficially interested in, or having control of or power of disposition over the goods, aircraft, vessel, vehicle, plant or other goods;

“Registered Person” means any person registered under Section 8 of the Act;

“Restaurant” means any establishment carrying out the business of restaurant services, and includes cafeterias, fast food outlets, snacks bars, food stalls at exhibitions or sports arenas and similar establishments but excludes:

- (a) An establishment operated for charitable or religious purposes;
- (b) An establishment run by an educational or training institution, approved by the Minister for the use of the staff and students of those institutions; and
- (c) An establishment run by a medical institution, approved by the Minister for the time-being responsible for health, for the use of the staff and students of the institution.

“Restaurant Services” means the supply of foods or beverages, prepared for immediate consumption, whether or not such consumption is on the premises of the restaurant and including outside catering;

“Service” means the Federal Inland Revenue Service;

“Supplies” means any transaction, whether it is the sale of goods or the rendering of services for a consideration, that is, for money or money's worth;

“Supply of Goods” means any transaction where the ownership title in the goods, is transferred or where the agreement expressly contemplates that this will happen and in particular, includes the sale and delivery of taxable goods and services used outside the business, the letting out of taxable goods on hire or lease, and any disposal of taxable goods;

“Supply of Services” means any services provided for a consideration;

“Tax” means Value Added Tax imposed and charged under Section 1 of the Act;

“Taxable goods and services” means the goods and services listed in the schedule to the Act;

“Tax period” means one calendar month commencing from the beginning of the month to the end of the month;

“Taxable person” includes an individual or body of individual, firm, corporations sole, trustee or executor or a person who comes out in a place of economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of government acting in that capacity.

“Transaction at arm’s length” means a transaction on normal open market commercial terms;

“Vehicle” includes for the purpose of the Act, every description of a means of conveyance, or the transportation by land, of human beings or goods;

“Vessel” means a mode of transportation or conveyance by water, of human beings or goods;

“Wholesaler” means a person who obtains his stock predominantly from the manufacturers and sells in bulk to the retailers.

21.19 CHAPTER REVIEW

This chapter introduces the nature and incidence of Value Added Tax (VAT), specifying the classes of Goods and Services exempted from the tax and the current applicable rate. A brief write-up of the three (3) variants of VAT is also given, as well as entries in a typical VAT Account. The breakdown of the ratio applied in sharing VAT proceeds as between the Federal, State Governments/ FCT Abuja and the Local Governments respectively.

The chapter also addresses issues bordering on returns, remittances, recovery, refund of tax as well as matters relating to the administration of the tax as well as VAT enforcement and practice in all its ramifications.

Details of offences and related penalties are highlighted, as well as glossary of definitions of certain titles/terms encountered under the VAT Act.

21.20 WORKED EXAMPLES

21.20.1 Questions

- (1) 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 31 December 2013.

	₦
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 31 December 2013; and give reasons. Ignore penalties and interest.

- (2) Olabisi Limited is a manufacturing outfit based in Mowe, Ogun State. The company sold its VATable products to a wholesaler, Ake Enterprises, for N2,000,000. The wholesaler in turn sold the products to a retailer, Mrs. Ojelade, for N3,500,000, who finally sold to consumers for N4,200,000. Assume there was no closing inventory at each stage of the transactions.

Required:

Compute total VAT payable to Federal Inland Revenue Service.

- (3) With regards to VAT, write short notes on the following:
- The gross product type variant
 - The income type variant
 - The consumption type variant
- (4) Shode-Abiala Ventures Limited is a small scale producer of chemicals. The company bought materials worth N4,000,000 during the year 2013 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 31 December 2013.

21.20.2 Suggested Solutions

- (1) Jonathan Ekpudu Trading Company
 Computation of VAT Payable
 For the year ended 31 December 2013

	₦
Output tax (Turnover) W1	1,447,643
Less: Input tax (Purchases of raw materials) W2	<u>959,079</u>
VAT payable	<u><u>488,564</u></u>

Comments

- (a) The VAT Act 2004 allows Input tax as a deduction from Output tax to be limited to the tax on goods purchased or imported directly for resale and goods which form the stock in trade used for direct production of any product on which the Output tax is charged,
- (b) VAT paid on any overhead, service and general administration of business outfit which otherwise can be expensed through the Statement of Comprehensive Income shall not be allowed as Input tax.
- (c) VAT paid on any capital item and asset shall be capitalized along with the cost of acquisition and shall not be allowed as Input tax.

Working Notes:

(W1) Output Tax
 $= \frac{5}{105} \times \text{₦}30,400,500$
 $= \text{₦}1,447,643$

(W2) Input Tax
 $= \frac{5}{105} \times \text{₦}20,140,650$
 $= \text{₦}959,079$

(2) **Computation of Total VAT Payable to the FIRS
For the Relevant Tax Year**

Stages	Computations	₦	VAT Payable ₦
(a) Manufacturer	Sales value	2,000,000	
	Gross VAT at 5%	100,000	
	Net VAT	100,000	100,000
(b) Wholesaler	Sales value	3,500,000	
	Gross VAT at 5%	175,000	
	Net VAT		
	(₦175,000 – ₦100,000)		75,000
(d) Retailer	Sales value	4,200,000	
	Gross VAT at 5%	210,000	
	Net VAT		
	(₦210,000 - ₦175,000)		35,000
	Total VAT payable to FIRS		<u><u>₦210,000</u></u>

- (3) (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. 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.

(4) **Shode-Abiala Ventures
Computation of VAT Payable
For 2013 Tax Year**

Output VAT	₦
$(\frac{5}{105} \times \text{₦}7,650,000)$	364,285.71
Less: Input VAT	
$(\frac{5}{105} \times \text{₦}4,000,000)$	190,476.19
Total VAT payable	<u><u>173,809.52</u></u>

Skills level

Taxation

CHAPTER

22

Stamp Duties

Contents

1. Purpose
2. Introduction
3. Forms of Stamp Duties
4. Administration of Stamp Duties
5. Commissioner of Stamp Duties
6. Territorial Limits
7. Provision Applicable to Instruments
8. Mode of Calculating Ad Valorem Duty
9. Methods of Stamping of Instruments and Adjudication
10. Stamping of Instruments After Execution
11. Lost Instruments
12. Instruments not Properly Stamped
13. Transactions Attracting Stamp Duties
14. Exempted Instruments
15. Implications for Non-stamping of Instruments
16. Definitions of Terms
17. Chapter Review
18. Worked Examples

STAMP DUTIES

22.0 PURPOSE

After studying this chapter, readers should be able to:

- (a) understand the nature of Stamp duties;
- (b) appreciate the administration of Stamp duties Act; and
- (c) gain knowledge and understanding of other Issues relating to Stamp duties.

22.1 INTRODUCTION

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 1 April 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.'

22.2 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) Payment receipt
- (ii) Bank notes or bills payable at sight
- (iii) Cheque leaves
- (iv) Guarantor forms
- (v) Proxy forms
- (vi) Admission as Solicitor or Notary Public

- (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) Bills of exchange
- (ii) Companies' share capital
- (iii) Mortgage and Debenture loans
- (iv) Promissory notes
- (v) Property valuation
- (vi) Share Capital of Companies

22.3 ADMINISTRATION OF STAMP DUTIES

Stamp duty is administered by both the Federal Government and State Governments. The Federal Government is the only competent authority to impose, charge and collect duties upon Instruments specified in the Schedule to the Act, if such Instruments relate to matters executed between a company and an individual, group or body of individuals.

The State Governments shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.

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.

22.4 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.
- (e) Adjudication: A Commissioner may be required to express opinion on the amount of duty to be paid on any executed instrument.

22.5 TERRITORIAL LIMITS

Section 23(4) of the Act, provides that any unstamped or insufficiently stamped instrument, which has been first executed at any place outside Nigeria, may be stamped, at any time within thirty days after it has been first received in Nigeria on payment of the unpaid duty only.

22.6 PROVISION APPLICABLE TO INSTRUMENTS

The duties to be charged upon the several instruments specified in the Schedule to the Act are those set out in the said Schedule. The duties charged are accounted for in a manner prescribed by the Minister after consultation with the Governors of the States.

22.7 MODE OF CALCULATING *AD VALOREM* DUTY

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.

22.8 METHODS OF STAMPING OF INSTRUMENTS AND ADJUDICATION

22.8.1 Methods of Stamping

The stamping of duties can be effected through the underlisted methods:

- (a) Affixing adhesive stamp
- (b) Affixing postage stamp in lieu of adhesive stamp
- (c) Embossing with dies
- (d) Printing on the instruments

22.8.2 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.

22.8.3 Benefits of Adjudication

- (a) It is the first step in disputing the Stamp Duties office's view of the correct amount of duty

- (b) It shows the document is genuine.
- (c) It satisfies the statutory requirement
- (d) It makes instrument once adjudicated, admissible for all purposes notwithstanding any objection as to the duty to be paid.

22.8.4 Limitations of Adjudication Process

- (a) Where a court has ruled that an instrument has not been duly stamped, subsequent adjudication cannot retrospectively make it duly stamped.
- (b) The process cannot prejudice rights that have been asserted before adjudication.

22.9 STAMPING OF INSTRUMENTS AFTER EXECUTION

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 (₦20), 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 ₦20 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.

Section 23 of the Stamp Duties Act provides a table that shows the person that is liable to pay liability.

Title of instrument as described in the schedule	Person liable to penalty.
Bond, covenant or instruments of any kind whatsoever.	The obligee covenantee or other person taking the security.
Conveyance on Sale.	The vendee or transferee.
Conveyance or transfers operating as voluntary disposition inter vivos.	The grantor or transferor.
Lease	The lessee
Mortgage bond, debenture, covenant and warrant of attorney to confess and enter up judgement.	The mortgagee or obligee, in the case of a transfer or reconveyance the transferee, assignee or disponent or the person redeeming the security.
Settlement	The Settler

22.10 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.

22.11 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.

22.12 TRANSACTIONS ATTRACTING STAMP DUTIES

The Instruments that are required by law to be stamped are as follows:

- (a) Leases;
- (b) Contract Notes;
- (c) Bills of Lading;
- (d) Agreements;
- (e) Duplicates and Counterparts;
- (f) Marketable Securities;
- (g) Mortgages;
- (h) Notarial Acts;
- (i) Policies of Insurances;
- (j) Receipts;
- (k) Settlements;
- (l) Share Warrants;
- (m) Warrants for Goods;
- (n) Appraisement;
- (o) Instrument of Apprenticeship;
- (p) Bank Notes, Bills of Exchange and Promissory Notes;
- (q) Conveyances of Sale;
- (r) Other Conveyances;
- (s) Exchange Partition or Division;
- (t) Letters of Powers of Attorney and Voting Papers; and
- (u) Capital of Companies.

22.13 EXEMPTED INSTRUMENTS

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; and
- (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.

22.14 IMPLICATIONS FOR NON-STAMPING OF INSTRUMENTS

Instruments that are supposed to be stamped by law at the time it was first executed but not stamped have some implications, which are as follows:

- (a) Such an instrument shall be given in evidence.
- (b) Such an instrument is not admissible whether directly or for collateral purpose. The secondary evidence of the instrument is not admissible either.
- (c) Cross examination upon an unstamped instrument is not allowed.

22.15 DEFINITIONS OF TERMS

Some of the definitions given in the Act include:

“Accountant – General” means the Accountant-General of the Federation;

“Commissioner” means a Commissioner of Stamp Duties, appointed as hereinafter provided;

“Company” includes banks and other financial institutions;

“Die” includes any plate, tool, or implement whatever used, under the direction of Minister of Finance and Economic Development or his counterpart in the state, as the case may be, for expressing or denoting any duty, or rate of duty or the fact that any duty or penalty has been paid, or that an instrument is duly stamped, or is not chargeable with any duty, or for denoting any fee, and also any part of any such plate, type, tool or implement;

“Duty” means any Stamp duty for the time being chargeable, under this or any other Act and also includes any fee chargeable hereunder:

“Executed” and “execution” with reference to instruments not under seal, means signed and signature;

“Government” includes the Government of the Federation or of a State and any department thereof, Local government council, and an officer acting in his official capacity, on behalf of the Government area, and not on behalf of the Federation or of a State or any department area, and not on behalf of a private person;

“Instrument” includes every written document;

“Marketable security” includes a security of such description as to be capable of being sold in any stock market;

“Material” includes any platform upon which words or figures can be expressed;

“Money” includes all sums expressed in naira or in any foreign currency;

“Stamp” also means a stamp impressed by means of a die, as an adhesive stamp for denoting any duty or fee;

“Stamped” with reference to Instruments and material, applies as well to Instruments and material impressed with Stamps by means of a die as to Instruments and material having adhesive Stamps affixed thereto;

“Stock” includes any share in any Stock transferable at the Central Bank of Nigeria, Promissory notes, and any share in the stocks or funds of any foreign State or Government, or in the capital stock or funded debt of any local authority, corporation, company or society in Nigeria or foreign corporation, company, or society; and

“Write”, “written” and “writing” includes every mode in which words or figures can be expressed upon material.

22.16 CHAPTER REVIEW

The chapter explains Stamp Duties and its importance to the legalisation of Instruments, under the Stamp Duties Act, CAP S8 LFN 2004. Some definitions have been provided for a number of terms used in the Act. The Administration of the Act, stating:

- (a) The powers of adjudication of the Commissioner of Stamp Duties;
- (b) The territorial limits; and
- (c) Stamping authority as between Federal and State Governments, with the understanding that duties are to be charged at the respective rates specified for the various instruments listed in the Schedule to the Act.

The mode of calculating Ad Valorem Duty, that is, duty rate that varies with the value of the subject matter of the Instrument, was also discussed. The chapter concludes with a comprehensive listing of Transactions/Instruments that would require stamping for legalisation, as well as those specifically exempted, according to the Act.

22.17 WORKED EXAMPLES

22.17.1 Questions

- (1) Write short notes on the following:
 - (a) Fixed duties
 - (b) Ad Valorem duties
 - (c) Denoting stamp
 - (d) Adjudication
- (2)
 - (a) Discuss briefly the administration of Stamp Duties in Nigeria.
 - (b) List any **TEN** instruments that are chargeable to Stamp Duties.
 - (c) What are the functions of Commissioner for Stamp Duties?
- (3) In relation to Stamp Duties, what is the status of a lost instrument?

- (4) In relation to Stamp Duties in Nigeria, write short notes on the following:
- (a) Penalties for Late Stamping
 - (b) Form of Stamp Duties

22.18.2 Suggested Solutions

- (1) (a) **Fixed Duties**
 These are duties that do not vary with the consideration for the document being stamped. The same duty is payable irrespective of the value of the instrument. Examples include payment receipt, cheque leaves and bank notes
- (b) **Ad Valorem Duties**
 These are duties that vary with the amount of consideration and in accordance with a scale stated in the relevant schedule fixed by the government. Examples include Bills of exchange, share capital, Life Assurance Policy and Promissory notes.
- (c) **Denoting Stamp**
 Where an instrument which is being transferred has been duly stamped, the instrument of transfer does not need to be duly stamped again. The instrument of transfer will merely carry a stamp denoting the amount of duty already paid.
- (d) **Adjudication**
 This is the process of determining the correct amount of duty, usually convincingly, by the Commissioner of Stamp Duties.
- (2) (a) **Administration of Stamp Duties in Nigeria**

Stamp duty is managed by the Commissioner of Stamp Duties who may be appointed from within the Service. The duty of a Commissioner may be performed by any one of the Commissioners where there are more than one.

An instrument must be sent to the Commissioner of Stamp Duties for adjudication.

The Federal Government is the only competent authority to impose, charge and collect duties upon Instruments specified in the Schedule to the Act, if such Instruments relate to matters

executed between a company and an individual, group or body of individuals.

The State Governments shall collect duties in respect of instruments executed between persons or individuals, at such

rates to be imposed or charged as may be agreed with the Federal Government.

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.

- (b) Instruments subject to stamp duties
 - (i) Leases;
 - (ii) Contract Notes;
 - (iii) Bills of Lading;
 - (iv) Agreements;
 - (v) Duplicates and Counterparts;
 - (vi) Marketable Securities;
 - (vii) Mortgages;
 - (viii) Notarial Acts;
 - (ix) Policies of Insurances;
 - (x) Receipts;
 - (xi) Settlements;
 - (xii) Share Warrants;
 - (xiii) Warrants for Goods;
 - (xiv) Appraisement;
 - (xv) Instrument of Apprenticeship;
 - (xvi) Bank Notes, Bills of Exchange and Promissory Notes;
 - (xvii) Conveyances of Sale;
 - (xviii) Other Conveyances;
 - (xix) Exchange Partition or Division;
 - (xx) Letters of Powers of Attorney and Voting Papers; and
 - (xxi) Capital of Companies.

- (c) The Commissioner of Stamp Duties is responsible for:
 - (i) The overall administration of the office;
 - (ii) Assessing the instruments and imposing penalties where applicable;
 - (iii) Stamping or embossing the instruments with the appropriate stamp denominations;
 - (iv) Keeping custody of stamping instruments such as dies, stamping/embossing machine etc; and
 - (v) Adjudication.

(3) Status of a lost instrument

- (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.

(4) (a) Penalties for Late Stamping

The failure to stamp an instrument is not a criminal offence. The Stamp Duties Act, 2004 provides a tariff of penalties for late stamping.

The general rule is that the person presenting the instrument for stamping after the date of the execution must pay the unpaid daily duty; a penalty of N20 and a further penalty, if the unpaid duty exceeds N20 of interest on such duty at 10% per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty.

(b) Forms of Stamp Duties

There are two forms of Stamp Duties. These are:

- (i) **Fixed Duties:** These are duties which do not vary with the consideration for the document.
- (ii) **Ad Valorem Duties:** These are duties which vary with the amount of the consideration for the document, in accordance with scale of rates provided in the Schedule to the Act.

APPENDICES

APPENDIX I

GLOSSARY OF TERMS

Initial Allowance

This is the first variant of Capital Allowances relief granted in the year of assessment in the basis period of which, a qualifying Capital Expenditure was incurred. It is granted once in the lifetime of an asset, so long as it is beneficially, owned and used by the same owner.

Instrument

Written Document, that could be tendered in evidence, in a Court of Law, Appeal Tribunal, etc.

Investment Allowance

This is an incentive granted where a company has incurred expenditure on Plant and Equipment or on Plant and Machinery. It is not taken into Account in ascertaining the Tax Written Down Value of qualifying expenditure.

Itinerant Worker

An individual who, during an assessment year, customarily works in multiple places in order to earn daily wages.

Multiple Taxes

Various and most times similar types of taxes imposed on Taxpayers by the different tiers of Government.

Nigeria

Includes the submarine areas beneath the territorial waters of the Nigerian Nation and the submarine areas beneath any other waters which are or at any time shall in respect of mines and minerals become subject to the legislative competence of the National Assembly of the Nigerian Nation.

Nigerian Company

A Nigerian company is defined as one incorporated under the Companies and Allied Matters Act or any enactment replaced by that Act.

Pension Fund

Means a Society, Fund, Contract or Scheme, the assets of which are held under irrevocable trusts and any scheme established by a law in Nigeria or elsewhere, the main objects of which are, in the opinion of the Board, the provision of non-assignable and non-commutable retirement pensions or annuities for an individual or benefits for his dependants, after his death, or for any group or class of individuals and their dependants.

Pension Reform Act, 2014

Progressive Tax

This is a graduated form of tax, which applies higher rates of tax, as income increases. The objective of the tax is the redistribution of Income from the well to do, to the less privileged.

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.

Provident Fund

Means a Society, Fund or Scheme, (not a Pension Fund), established under irrevocable trusts or a law in Nigeria or elsewhere, the objects of which are the provision of retirement benefits for an individual or benefits for his dependants, after his death, or for any group or class of individual and their dependants.

Provisional Tax

Provisional Tax, is usually an amount equal to the tax paid in the immediately preceding assessment year, by a Company, and is regarded as a payment on account of the tax, that may be payable by the Company for the current year.

Qualifying expenditure

Capital expenditure incurred in a basis period that is qualified for the grant of Capital Allowances.

Resident in Nigeria

In relation to a Company, means a Company the control and management of the business of which, are exercised in Nigeria.

Residue of Qualifying expenditure

Companies chargeable under PPTA

The residue of qualifying expenditure, in respect of any asset, at any date, is the total qualifying expenditure incurred less the total of annual Capital Allowances granted to that date, in respect of the asset. It should be noted that the amount for Petroleum Investment Allowance, is not to be deducted from Qualifying expenditure, in arriving at the residue.

Regressive Tax

This is a tax that decreases as the Taxpayer's Income increases. This type of tax is rarely applied.

Self-Assessment

Under the Companies Income Tax Act CAP C21 LFN 2004, every Company/Taxpayer is required to assess itself based on forecast taxable income for the year of assessment, and pay the tax thereon to the Federal Inland Revenue Service.

Settlement

In relation to a settlement, includes a person who makes or establishes a settlement either directly or indirectly. It includes a person who has provided or undertaken to provide funds directly or indirectly, for the purpose of the settlement.

Tax

In simple terms, tax is a compulsory contribution imposed by a Government, on the Incomes, profits, goods, services, spending or properties of Corporate entities, trusts, settlements and individuals. Such taxes when collected are used for carrying out governmental functions, such as maintenance of Law and Order, provision of Infrastructure, Health, Utilities and Education. It is also a Fiscal tool for controlling the economy.

Trust

The term 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.

Tax Avoidance

Tax avoidance arises in a situation where the taxpayer arranges his financial affairs in a form that would make him pay the least possible amount of tax without breaking any of the Tax laws.

Tax Evasion

Tax evasion is an act, whereby a taxpayer either refuses to pay Tax, or acts in such a way as to minimise tax liability, through illegal means. Tax evasion involves outright fraud and deceit, for example through deliberate omission of a source of the taxpayer's income from returns filed, or deliberate understatement of any income.

APPENDIX II

STUDY AND EXAMINATION TECHNIQUES

This appendix contains notes on:

- (a) Using the questions and answers provided in the manual;
- (b) Effective study; and
- (c) Examination technique.

2.1 Questions and answers

1. These questions are either
 - (a) Questions intended to test the understanding of the points arising out of the particular Chapter; or
 - (b) Examination questions inserted at a stage where it is considered the student will be best able to give a reasonable answer.
2. Most answers are given in outline, but some examination answers go a little further, in order to provide greater guidance and provide students with the basis for study.
3. When answers are *comprehensive*, you could not be expected to write them in the time allowed. *Do not* worry, if you feel you cannot write such answers; you are not expected to. But you *must* grasp the main points or principles involved, which will form the basis for good marks in an examination.
4. Do not worry, if your answer differs, there is often more than one approach. You must satisfy yourself however, that it is *only* the approach that differs, and that you have not missed the fundamental principles.
5. Authors' Comments. These have been included, to give *additional* points or elaborate on matters arising out of the subject covered by the question, to which it is felt, you should give some thought.

Using the answers

6. Have a shot at each question yourself, *before* consulting the answer, you will achieve nothing if you do not do this. Write your answer out in full or jot down the main points. *Do not* hurry to the answer.
7. Look at the answer. (See para 5 in the case of examination answers). Study the particular area *thoroughly* now, making sure of your understanding. *Repeat* the process outlined in para 7 and this paragraph, after a suitable interval. You *must* do this, to get any benefit at all. Make sure the main points *stick*.
9. Just browsing through the answers will really get you *nowhere*. You *must* test yourself, by *writing* down your version of the answer.

2.2 Effective study

Introduction

1. These notes are intended for those who are new to studying for examination subjects, although those who are not may also benefit. They

have been written in relation to study, involving the reading of *textbooks*, and they apply to *all* subjects. It is often very difficult to pick out the important principles from such books. Careful reading of these notes, will be of benefit even in studying the manual.

General

2. Study, means more than *just reading* a piece of literature. It means, *close concentrated reading*, with a *notebook* at your side. Unless you are one of a *few* people who can absorb material by *just one* general read through it, do not kid yourself.
3. Read a small area, *making notes* as you go along. Then ask yourself – “what have I just learnt?” *Write* down what you think it was all about. Then look again and you may be surprised to find you have missed a *keypoint* or points – they *must* be down in your notebook and eventually in your head.

Compilation of notebook

4. A *well-compiled* NOTEBOOK is a must. Use block capitals or different colour inks, to *headline* the main areas and subdivisions of those areas. Notes made during lectures or private study, should *not* go straight into your NOTEBOOK. Take them down on a “rough” paper and write them in your NOTEBOOK, *as soon as possible* after the lecture or study period, thinking about what you are writing.

Memory aids

5. **Mnemonics** are very useful – if the sequence of points in the textbook *is not* significant, *change it* if it makes for a better mnemonic.
6. **Association** of the points with familiar objects, which will serve to recall them, is also useful.
7. Some people memorise things by *saying* them over and over *out loud*, others have to *write* them down *time* after *time*.
8. Many students have *small blank cards* and using one side of each card for each study area, put down the main points. They carry the cards everywhere with them and use every opportunity to study them. As they are small they are easily carried. It is surprising how much of your day can be utilised this way.

Programme

9. Map out a programme for yourself; set targets and *achieve* them. One thing is certain, studying is not easy, but it is *not* too difficult, if you go about it in an orderly purposeful way. Many students fail their examinations through bad preparation. Tackle your studies as you would a project at work, systematically. Allocate a number of hours each week to each subject. Try fixing specific times for each subject, then keep to them, by refusing to let anything keep you from your planned task.

Revision

10. Revise periodically. The nearer the examination gets, the more you should concentrate on the major headlines in your notebook and less with the supporting details.

2.3 Examination technique**First impressions**

1. However well prepared you may be, you are still likely to look at the paper on the day and say to yourself, after a quick look at the questions, "There's not much *here* I can do".
2. The atmosphere of the exam room has something to do with this. Try to blot everything from your mind, other than the job in hand. *Concentrate* hard. If you feel a bit panicky (most people do – despite the apparent looks of serenity around you) grip the table, take a deep breath, and *get on with it*. Remember things are *never* as bad as they seem!

Time allocation

3. *Allocate* each question *time* appropriate to the number of marks after first setting aside 15 - 20 minutes (of a 3 hour paper say), for initial reading of the questions, and final review of your answers. At the end of the allotted time for a question, *go on to the next* – remember, the *first* 5 or 10 marks on the *new* question are more readily picked up than the *last* 1 or 2 on the *previous* question.
4. The *temptation* will be to say "I'll write just *one* more sentence", but before you know where you are, you would have written *several* more and probably just managed to scrape another mark, whereas the same time on the next question, could have earned 5 or 6 marks. TIME ALLOCATION IS IMPORTANT.
5. Always leave some writing space, between your answers to each question, as you move on, because you may recall part of the answers to earlier questions, as you answer latter questions. Then you can quietly go back to update in the space reserved.
6. If you *are* running out of time write down the *main headings first*, leaving a few lines between each – at least the examiner will see that you had the overall picture. *Then* go back putting in as much supporting detail as you can.

General approach

7. Read the *instructions* at the top of the paper
8. Read the question paper once through. Make your choice of questions quickly. Pick the easiest (if one appears so) and *get on with it*.

Individual question

9. Read the question again carefully. The question will involve a key principle or set of principles. What are they? It is so easy to make the wrong decision at this stage, so read the question, underlining what appear to be the *key words*. This should help you. Irrelevancy has been heavily criticised by examiners.
10. Do not rush into action with your pen *yet*. Jot down on a piece of scrap paper, the *main headings* you will use in your answer. All this will take time – about 5 minutes or more, but the *careful thought* and outline answer represent *marks* already earned.
11. If the question is *set out* in a particular sequence, that is:
 - a.
 - b.
 - c.etc.
 then answer it *in that sequence* or you'll have a *hostile examiner* to cope with.
12. Use the particular terminology *used in the question*, the examiner can then *link the points* in your answer, to the relevant parts of the question.
13. Assumptions are sometimes required (for example because of the lack of standardisation of terminology in this subject). Having stated your assumptions, make sure that what you write is *consistent* with them. Do ensure, however, that your assumptions *are valid* and are *not* just a device for changing the *meaning* of the question to suit your knowledge!
14. Tabulate where appropriate, using block capitals, for your main headings and underline subheadings. Underline *words* or phrases which require emphasis. *Use a ruler*.
15. Leave a line *between* your paragraphs and subparagraphs. This makes for a *good* layout. However, do *not* write one very other line within paragraphs, or on one side of the paper only – examiners are waste conscious!
16. Write out each word clearly, don't forget you are not the examiner reading your answers. In your hurry, be legible.

Layout of Answers

17. Tabulate where appropriate, using block capitals, for your main headings and underline subheadings. Underline *words* or phrases which require emphasis. *Use a ruler*.
18. Leave a line *between* your paragraphs and subparagraphs. This makes for a *good* layout. However, do *not* write on every other line within paragraphs, or on one side of the paper only - examiners are waste conscious!
19. The use of different colour pens, where appropriate, is useful but do not overdo it. In fact one black and red felt-tip pen would be sufficient (use the felt-tip pens which have a *fine point*).

Charts and diagrams

20. A descriptive heading or title must be given to each diagram (using the one in the question if indicated).
21. Do not squeeze a diagram into a corner – *spread it out*.
22. Do not clutter your diagram up with too much detail – this defeats the object, which should be clarity.
23. Give a *key* to the symbols and the different lines you've used, and again – use a ruler.

End of examination procedure

24. Have a quick look at each answer, checking for grammatical errors and badly formed letters.
25. Ensure each answer sheet has your *number* on it and *do not* leave any lying on the table.

Conclusion

- 26 Good technique plays a *large* part in examination success; this is a *fact*. *Refuse* to be panicked, keep your head, and with reasonable preparation you *should* make it.
- 27 Remember – you do not have to score *100%* to pass.
- 28 A final point; once you're in the examination room, *stay there* and make use of every minute at your disposal.
- 29 Practice your technique, when answering the questions set in the manual.

APPENDIX III

BIBLIOGRAPHY

BOOKS

Arogundade, J.A (2010) : "Nigerian income Tax & its International Dimension", 2nd Edition, Ibadan, Spectrum Books Limited.

ATWA Taxation Study Pack (2009), 2nd Edition, Lagos, ABWA Publishers.

Ayu, I. A. "The Nigerian Tax Law" Spectrum Books Limited, Ibadan (1996).

Bassey O.U. (2013) : "Personal Income Tax in Nigeria", 1st edition, Lagos, CIBN Press Limited.

"Black's Law Dictionary" (Seventh Edition), West Group (1999).

CITN, "CITN Tax Guide & Statutes", CITN 2002.

Fasoto, G. F. : "Nigeria Tax Companion" (2001).

ICAN Taxation Study Pack (2009), Lagos, VI Publishers.

Jide Olakanmi & Co. (2012) : "Compendium of Tax Laws", 3rd Edition, Abuja, Panaf Press.

Kareem, W. A. : "Mayo - BPP ICAN Practice and Revision Kit PE II Taxation II", Mayo Associates Ltd and BPP Publishing Ltd, London.

Kareem W. A. : "Legal Framework for Effective Tax Administration in Nigeria" : A Critical Appraisal - LLB, Thesis.

Nulness Bany B. : "The Myth of Tax Progressiveness," BTR (1974).

Ojo, S.: "Elements of Tax Management and Practice in Nigeria," Sagibra Tax Publications Limited, 1998.

Ojo, S. (2009) : "Fundamental Principles of Nigeria Tax", 2nd Edition, Lagos, Sagibra Lax Publications.

Ola, C. S. : "Income Tax Law and Practice in Nigeria," Macmillan Publishers Limited, London, (1982).

Soyode, L. and Kajola, S.O (2006) : Taxation: Principles and Practice in Nigeria, 1st Edition Ibadan, Silicon Publishers.

Tilley, John : "Revenue Law," Butterworth (1970).

Wheatcroft, G. S. A. : "A Taxation Policy for Growth" (1968).

White House, C. & Stuart - Buttle, E. : "Revenue Law, Principles and Practice," London, Butterworths, (Eight Edition).

WORKSHOP / SEMINAR PAPERS

Ndekwe E. : "Taxation for Development in Nigeria".

Obi J. I. : "Recent Developments in the Law of Company Taxation in Nigeria".

"Report of the 19th Annual Senior Staff Technical Conference of FIRS - NIIA" (1989).

INDEX

A

Accounting year 38, 47, 48, 110, 182, 188, 225
Actual profit 183, 191, 200
Ad-valorem 338, 339
Additional assessment 40, 96, 111
Adjudication 337, 339, 340, 341, 344, 345, 346
Adjusted profit 121, 138, 140, 155, 178, 179, 182, 196, 197, 200, 266, 280, 281
Administration Period 145
Agriculture 273, 274, 275, 293
Allowable Expenses
166, 172, 284, 285, 295, 296
Annual allowance 208, 211, 212, 219, 226
Annuity 75, 81, 145, 146, 150, 152, 153, 155, 156, 157, 158
Assessable income 6, 16, 92, 93, 109, 110, 111, 117, 128, 135, 138, 139, 150, 160, 352
Assessable Profits 33, 182, 184, 190, 191, 194, 195, 196, 197, 199, 219, 221, 222, 224, 247, 252, 279
Assessment procedures 37, 38, 40, 47, 57
Assessment year 41, 42, 49, 52, 58, 62, 63, 68, 97, 100, 138, 173, 179, 182, 196, 197, 216, 220, 231, 238, 242, 249, 250, 252, 266, 271, 279, 286, 307, 351, 352
Authorised officer 324, 329, 326

B

Back duty assessment 40, 47, 50
Badges of trade 107, 109
Balancing allowance 123, 146, 204, 225
Balancing charge 115, 220, 224, 225, 239, 242, 249, 253, 258
Basic concepts 1, 2, 7
Basis of Assessment 181
Basis Period 122, 199, 299
Beneficiary 146, 147, 149, 150, 151, 152, 153, 154, 156, 158, 180, 254, 266
Benefits-In-Kind 89

C

Capital allowances 30, 122, 132, 152, 196, 197, 204, 206, 210, 213, 219, 220, 222, 223, 224, 231, 232, 240, 241, 243, 245, 246, 263, 299
Capital Expenditure 113, 199, 203, 204, 205, 225, 226, 227, 351
Carry Forward Loss Relief 116, 117, 230, 233
Case Laws 10, 17
Cessation of Business 111, 117, 191, 192, 220, 229
Change of accounting date 110, 182, 183, 188, 189, 197, 208, 214, 215

Commissioner of Stamp Duties
337, 338, 339, 340, 343, 344, 345, 346
Consumption Variant 318, 335
Currency of Deduction 303, 304, 307

D

Deferred tax 245, 260, 261, 262, 263, 264
Depreciation Ratio 277, 281
Devisee 145
Die 343, 344
Direct Tax 6, 15, 16, 251, 312
Disallowable expenses 124, 125, 130, 278, 281
Discretionary 143, 147, 154, 147, 152, 153, 154, 155, 156, 158
Dividend 120, 121, 125, 126, 153, 157, 158, 159, 160, 161, 166, 167, 168, 175, 176, 180, 239, 244, 245, 246, 247, 250, 253, 257, 302, 311
Dividend basis 239, 244, 246
Duty 12, 13, 25, 40, 47, 50, 92, 97, 131, 305, 339, 340, 341, 342, 343, 344, 345

E

Earned income 63, 64, 65, 69, 77, 83, 136, 156
Education Tax 224, 250, 251, 255, 258, 265, 266, 269, 270, 271, 272, 274, 297, 313
Employment income 62, 69, 89, 91, 93, 95, 97, 99, 101, 103, 105
Enabling laws 303, 304, 310
Enforcement Procedures 43, 46
Enterprises in free Trade Zones 273, 287
Entertainment tax 11
Estate 116, 143, 144, 145, 146, 147, 149, 151, 153, 156, 157, 206, 273, 274
Exclusively
111, 112, 123, 172, 176, 179, 206, 302
Exempted Instruments 337, 342

F

Federal Inland Revenue Service 10, 17, 20, 21, 23, 30, 31, 33, 34, 38, 40, 44, 45, 46, 47, 52, 53, 56, 57, 58, 146, 165, 180, 217, 221, 242, 244, 247, 266, 267, 270, 271, 277, 278, 279, 280, 286, 288, 306, 307, 308, 311, 316, 320, 321, 329, 331, 333, 353
Fixed Duties 338, 344, 345, 347
Foreign company 162, 167, 171, 276, 277, 279, 280, 291
Foreign employment 64, 87
Foreign employment 87
Franked Investment Income 126, 158, 176, 180, 252, 257, 262, 302, 311

Franked investment income 75,
176, 177, 178, 180, 258, 282, 302

G

Gratuity 76, 78, 79, 81, 91
Gross Emolument 74, 103
Gross income
74, 75, 125, 139, 283, 284, 285, 295, 296, 297
Gross Profit 118, 132, 170, 240, 241, 243,
244, 246, 250, 285, 296
Gross profit 241, 243, 285, 296

I

Imported Goods 46, 315, 318
Income 6, 30, 75, 103, 127, 153, 169, 176,
213, 214, 219, 220, 222, 223, 237, 241, 249, 258,
263, 277, 278, 281, 283
Income Tax
8, 10, 14, 17, 20, 23, 26, 33, 46,
52, 54, 58, 64, 68, 69, 74, 80, 83, 86, 125
129, 160, 166, 167, 169, 171, 183, 237, 241,
246, 254, 257, 274, 275, 281, 304, 335,
Income Tax Liability 241, 243, 245, 250, 312
Income Tax Variant 318, 335
Incorporated companies 20, 21, 27, 29, 46,
116
Indirect Taxes 5, 7, 15, 247, 251
Initial Allowance 226, 351
Initial allowance 114, 115, 204, 208, 211,
212, 218, 219, 300, 301
Input tax 320, 330, 334
Insurance companies 230, 231, 234, 282
Interest Income
Interest income 159, 166, 167, 283, 285,
295, 296
Investment allowance 115, 204, 205, 288
Investment and Securities Commission 293
Itinerant Worker 85, 97, 99, 351

J

Joint Revenue Association (JORA) 12
Joint State Revenue Committee 27
Joint Tax Board 20, 23, 25, 27, 30, 31, 66,
70, 78, 321

L

Leases 123, 342, 346
Legatee 145
Levies 1, 2, 8, 12, 15, 19, 28, 29, 34, 35
Life Assurance Premium 75, 78, 81, 91
Life Business 289, 290, 291, 297
Life Tenant 145

Loan interest exempted 174, 175, 178, 179
Local Government Revenue Committee 20,
26, 27
Loss Relief
107, 116, 229, 230, 233, 239, 249, 253, 258
Lost Instrument 342, 344, 347

M

Market Taxes and Levies 11, 28, 29, 35
Marketable Security 340, 343
Minimum Tax Basis 239
Mode of Calculating Ad Valorem Duty 337, 340,
344
Moratorium 163, 174, 175, 180
Multiple Taxes 1, 2, 11, 351

N

National Health Insurance Scheme
75, 78, 80, 91
National Housing Fund Contribution 75, 78, 80
Necessarily 111, 123, 172, 179, 180, 206
Net book value 262, 264
Net Profit 119, 120, 124, 132, 134, 136,
170, 171, 179, 241, 249, 258, 262, 263, 278, 280,
281, 282, 292, 294, 302
Nigerian Customs Services 320
Nigerian Dividend 160, 166
Nigerian Employment 87
Nigerian Export Promotion Council 175
Non-life insurance business 281, 282, 283
Non-resident individuals 28, 85, 98, 99
Non-Taxable Income 124, 169, 170, 174

O

Objectives of Taxation 2, 15, 18
Operation of the Withholding Tax System 303,
306
Output tax 320, 331, 334
Owner
43, 109, 112, 123, 124, 164, 168, 175,
204, 206, 225, 331, 351

P

Partnership Agreement 127, 128, 129, 248
Partnership Loss 127, 130
Payment Certificate and Treasury Receipt 303,
308
Pension 63, 64, 65, 69, 76, 78, 79, 80, 81,
82, 83, 91, 101, 103, 104, 112, 113, 288, 351, 352
Pension Fund 94, 105, 351, 352
Pension Reform Act 76, 81, 112, 113, 352
Penultimate year
191, 192, 218, 220, 223, 224

- Personal Income Tax Act 14, 20, 23, 26, 54, 68, 69, 74, 80, 83, 86, 129, 160, 167, 304
- Persons Chargeable 143, 169, 171
- Persons Chargeable to Companies Income Tax 169, 171
- Petrochemicals 161
- Place of Residence 63, 65, 68, 69
- Principal Place of Residence 63, 68, 69
- Principles/Canons 1, 9
- Profession 62, 64, 69, 86, 88, 89, 108, 110, 111, 112, 113, 146, 150, 321
- Progressive Tax 6, 15, 16, 352
- Proportional Tax 6, 15, 16, 352
- Provident Fund 112, 352
- Provisional Tax 41, 42, 49, 352
- Q**
- Qualifying agricultural expenditure 205
- Qualifying Building Expenditure 116, 205
- Qualifying Industrial Building Expenditure 116, 205
- R**
- Real Estate 109, 273, 274, 274, 275
- Reasonably 111, 112, 180
- Refund\$ 174, 303, 308
- Regressive Tax 6, 15, 16, 352
- Reinsurance business 285, 290, 296
- RELEVANT TAX AUTHORITY
- Relevant Tax Authority 127, 129, 143, 146
- Relevant tax authority 98
- relevant Tax Authority 110
- relevant tax authority 27, 30, 44, 45, 46, 47, 62, 66, 70, 90, 92, 93, 94, 95, 96, 97, 101, 104, 105, 110, 112, 114, 115, 121, 128, 129, 131, 151, 154, 161, 165, 198, 274, 275, 276, 291, 292, 307, 308, 309
- Relief 74, 77, 82, 83, 91, 102, 103, 104, 107, 116, 124, 126, 136, 137, 139, 155, 229, 230, 233, 239, 249, 253, 258, 273, 303, 304, 306
- Rental Income 79, 82, 120, 125, 152, 153, 154, 156, 157, 159, 163, 166, 168
- Repatriated interest 263
- Residual value 123
- Returns 30, 38, 39, 41, 43, 45, 47, 49, 320
- ROYALTY INCOME
- Royalty Income 159, 164, 168
- Rules on Loss Relief 229, 231
- Rural investment allowance 115, 205
- S**
- Settlement 59, 64, 143, 144, 146, 147, 149, 150, 151, 152, 153, 155, 156, 353
- Settlor 144, 145, 147, 153, 157
- Sole Proprietor 107, 120
- Sources of Nigerian Tax Laws 1, 2, 9, 16
- Specific Legatee 145
- Stamp Duties Act 20, 338, 339, 341, 344, 347
- State Board of Internal Revenue 20, 24, 27, 29, 31, 32, 131, 132, 153
- Statute Laws 10, 17
- Subsisting Business 182
- T**
- Tax Appeal Tribunal 51, 52, 53, 55, 56, 57, 58, 59, 60, 324
- Tax Authority 20, 101, 104, 110, 127, 143, 201, 303
- Tax Base 7, 16
- tax burden 7, 74
- Tax Clearance Certificate 37, 44, 45, 46, 47, 50
- Tax Effect 8
- Tax Impact 8
- Tax Incidence 7
- Tax Jurisdictions 19, 27
- Tax Payable 82, 91, 237, 241, 247, 253, 258, 263, 297
- Tax Period 332
- TAX RETURNS
- Tax Returns 19, 30, 37, 38, 39
- Tax Shift 8
- Tax Year 186, 192, 193, 194, 195, 196, 335
- Tax Yield 7
- Taxable goods and services 316, 320, 327, 331, 332
- Taxable income 77, 89, 120, 124, 125, 140, 170, 197, 353
- Taxable person 9, 25, 27, 30, 64, 274, 304, 318, 320, 322, 323, 326, 327, 328, 332
- Taxation 1, 2, 5, 14, 15, 18, 19, 37, 51, 61, 73, 85, 91, 107, 127, 143, 159, 169, 181, 203, 237, 273, 280, 281, 286, 289, 303, 304, 310, 315, 337, 355
- Tenement Rate 33, 165, 167, 275
- Territorial Limits 337, 340, 344
- Tertiary Education Tax 224, 265, 266, 269, 270, 271, 272, 274, 313
- Tertiary Education Tax 6, 31, 33, 213, 214, 220, 222, 223, 239, 245, 263, 269
- Tertiary Education Trust Fund 20, 265, 266, 271
- The Tax Appeal Tribunal 53, 55, 56, 58, 59, 60
- Trust 20, 99, 109, 144, 145, 146, 147, 149, 150, 151, 152, 153, 154, 157, 265, 266, 271,

273, 276, 286, 288, 293, 302, 353
Turnover Tax 98, 273, 286

U

Ultimate year 191, 192, 218
Unearned income 63, 65, 69, 75, 78, 82, 136
Unrelieved Loss 121, 122, 197, 220, 232, 234

V

Value Added Tax 7, 11, 20, 54, 87, 251,
275, 312, 315, 316, 320, 321, 324, 328, 332,
333
Value Added Tax Technical Committee 321
Vocation 62, 64, 69, 86, 88, 89, 108, 110,

111, 112, 113, 146, 147, 150, 329

W

Wholly 87, 91, 92, 111, 112, 123, 130,
161, 163, 172, 176, 179, 206, 287, 302
Will 144, 145, 146, 153, 157
Withholding Tax 91, 250, 251, 257, 258,
274, 303, 304, 305, 307, 308, 310, 312, 313
Withholding Tax Credit Notes 303, 307

Z

Zero-rate 315, 317, 319