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TAXATION, REVENUE AUTHORITIES AND ETHICAL ISSUES

1.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- know the objectives, classification and principles of taxation,
- understand the provisions of the Federal Inland Revenue Service (Amendment) Act 2007, the Revenue Service's composition and functions,
- establish powers confered on the Federal Inland Revenue Service regarding administration and enforcement of various tax laws,
- appreciate the powers and objectives of the Service's enquiries,
- identify various types of assessment,
- know filing, assessment and collection procedures, and
- know the code of ethics expected of revenue officials.

1.1 THE OBJECTIVES OF TAXATION

The rationale for imposing taxes in a market economy such as Nigeria, stems from the government responsibilities which include:

(a) Provision of Public Goods

A pure public good is one that displays the following characteristics:

(i) displays zero marginal cost, that is, no extra cost is incurred in supplying the good to more than one person;

(ii) individuals cannot be excluded from consuming the good, even if they have no desire for it;

(iii) all members of society must consume the same amount; it cannot be rejected. For example, law and order.

An example of a pure public good is defence. The provision of national defence protects all members of society from external hostilities at zero marginal cost. No individual can be excluded and it cannot be rejected by those who disagree in principle. For example, pacifists.

If left to the market, individuals with no desire for the good would be unwilling to pay the price, yet at the same time, they could not be excluded from benefiting. Consequently, a free market would be inefficient in the provision of public goods, and they become the responsibility of the State.

(b) **Redistribution of Income and Wealth**

The mechanism for the redistribution of income and wealth by the use of transfer payments and benefits to those members of society who are less well off promotes social equality. Goverments are becoming increasingly socially aware and are seeking to reduce poverty and promote social welfare through income redistribution.

(c) **Promotion of Social and Economic Welfare**

Government often assumes a paternalistic role by providing 'merit' goods. Merit goods, such as health and education, unlike public goods, can be provided privately, but if left completely to market forces, merit goods would be under-consumed, and so there are benefits in the State providing such goods, as everyone benefits from living in a healthy and educated society. There are external benefits in the provision of merit goods as well.

In the same respect, demerit goods such as alcohol and cigarettes are discouraged by government in order to reduce the external costs to society. For example, health risks and pollution.

(d) **Economic Stability**

The government is responsible for avoiding high levels of inflation and unemployment in order to promote economic stability and sustainable growth.

(e) **The Single Economic Community of West Africa States (ECOWAS) Market**

With the introduction of the single market in the 1990's, there is more pressure on the government to be in harmony with other member States.

(f) **Regulation**

Legislation and regulatory controls imposed on producers in order to protect consumers, employees and the general public are the responsibilities of any socially aware government.

Given these general responsibilities, taxation can be a powerful tool in the hands of any government as a means of ensuring that the social, political and economic policies of the government in power are brought to fruition.

From the foregoing, we can deduce that there are four core objectives of a modern tax system:

(a) Revenue generation
Historically, taxes were raised in order to fund the monarchy and to pay for defence in times of warfare. Revenue generation is still a primary objective of a modern tax system to help finance public sector expenditure.

(b) Redistribution of income and wealth
The tax system is a means of ensuring the redistribution of income and wealth in order to reduce poverty and promote social welfare.

(c) Economic regulator
The tax system is a means of promoting economic welfare and creating a sound infrastructure for businesses.

(d) Harmonisation
The philosophy of the single market in ECOWAS is to provide for the free movement of goods/services, capital and people between member States, suggesting harmonisation to be a modern objective of ECOWAS tax systems.

How well the current Nigerian tax system fulfils these objectives will be discussed in later chapters.

1.2 THE CLASSIFICATION OF TAXES

A tax is a compulsory contribution imposed by government on her citizens in order to provide public goods and services and ensure their social and economic welfare. Taxes can be classified in the following ways:

1.2.1 Tax Base

Taxes have to be levied on one base or another, and a convenient way of classifying a tax is to do so according to what is being taxed. Three main tax bases are used in the present Nigerian tax system, namely:

(a) Income

(b) Capital

(c) Consumption

These bases may be further classified, for income - into Income Tax, and Company Tax; for capital - Capital-Gains Tax, and finally, in the case of consumption, into Value Added Tax and Excise Duties.

1.2.2 Direct and Indirect Tax

A direct tax is one levied directly on the person who is intended to pay the tax, whereas an indirect tax is borne by a person other than the one from whom the tax is collected. This classification can prove to be misleading at times, as the incidence of some direct taxes, for example, Company tax, can easily be shifted.

Examples of direct taxes are:
(a) Income tax
(b) Company tax
(c) Capital gains tax

Whereas, examples of indirect taxes are:
(a) Value added tax
(b) Custom and excise duties

1.2.3 Unit/ad Valorem

A unit or specific tax is levied on the volume of what is being taxed; many excise duties are specific taxes, for example, tobacco tax is charged by weight of tobacco.

An ad valorem tax is levied on the value of the tax base, for example income tax is charged at 10 per cent to 30 per cent, depending on the level and type of income.

1.2.4 Distribution of the Tax Burden

The way in which the burden of tax is distributed among the taxpaying community is another way in which taxes may be classified. The rates of tax can be set in such a way that they are:

(a) Progressive: Progressive taxes take an increasing portion as the value of the tax base rises and depends on the marginal rate of tax* being greater than the average rate of tax. **

(b) Proportional: Proportional taxes take a constant portion of the value of the tax base and depends on the marginal and average rates of tax being equal.

(c) Regressive: Regressive taxes take a declining portion as the value of the tax base rises and depends on the average rate of tax being greater than the marginal rate of tax.

$$\text{* The Marginal Rate of Tax} = \frac{\text{change in tax paid}}{\text{change in income}}$$

$$\text{** The Average Rate of Tax} = \frac{\text{total tax paid}}{\text{total income}}$$

1.3 THE PRINCIPLES OF AN 'IDEAL' TAX SYSTEM

No one really likes paying taxes, yet they are inevitable for the provision of social welfare. Despite the need for taxes in a modern society, the tax system adopted must be acceptable to the general public if dissension is to be avoided (for example, the Aba Women's riot caused by the introduction of a community tax).

In his book, *The Wealth of Nations (1776)*, Adam Smith proposed that a 'good' tax should display the following characteristics, it should:

(a) reflect a person's ability to pay;

(b) be certain;

(c) be convenient; and

(d) be administratively efficient and not cause economic distortion.

These principles still hold good today, and in a modern tax system, an 'ideal' tax should conform as far as possible to the following criteria:

1.3.1 Simple, certain and convenient

The tax should be relatively simple for taxpayers to understand their liability, and it should be administered in such a way that they are aware of the amount they should pay, and the due date for payment. Finally, the method of payment should not be inconvenient.

1.3.2 Flexible

The structure and rates of tax should be capable of being altered without too much difficulty to cope with changes in circumstances, if the system of taxation is to be used as a means of regulating the economy, which is one of the stated aims of taxation.

1.3.3 Administratively efficient

The costs of administering the tax should not be too high in proportion to the revenue raised. For example, one of the reasons for abolishing PAYE in some countries was that administration costs were higher than the revenue raised. The efficiency of a tax includes not only the costs incurred by the tax authorities, that is, administration costs, but also the costs incurred by the taxpayer in complying with the tax legislation, known as compliance costs.

Both administration and compliance costs should not be overlooked

when evaluating the tax system as they no doubt impinge on the welfare effects of the various taxes.

Compliance costs are, in practice, much more difficult to ascertain than administration costs. In his book, *Administration and Compliance Costs of Taxation,* Sandford C.T. refers to these costs as 'hidden costs' and suggested that compliance costs should be kept reasonably low in preference to administration costs for the following reasons:

(a) administration costs are met from public revenue, whereas compliance costs are regressive in nature, falling more heavily on smaller businesses, pensioners, etc., that is, on those persons least able to afford them; and

(b) increased administration costs would not create the same taxpayer resentment as increased compliance costs.

1.3.4 Neutral

A tax is said to be neutral if it does not distort economic choices. This distortion of economic choice is known as the excess burden of taxation, causing substitution effects resulting in economic inefficiency.

All economic activities have costs and benefits associated with them. For example, the cost of working could be said to be the loss of leisure time, and the benefit is the income received in wages; when taxation enters the equation, distortions are introduced by creating what is known as a tax wedge. This wedge is the difference between the marginal cost of the activity and the marginal benefits received, the degree of distortion depending on the size of the tax wedge.

Any tax that impinges on economic activity cannot be completely neutral in its effect, and indeed governments would not wish them to be, if they are to use fiscal policy as a means of manipulating the economy. In this respect, it is the degree of neutrality that is important when evaluating a tax system.

1.3.5 Equitable

Taxes must not only be fair, they must also be seen to be fair, if the taxpaying public is to find them acceptable. There is also a greater tendency for tax evasion when the tax system is perceived to be inequitable. It is often said that if there is widespread tax evasion, then it is the system of taxation that is at fault, and not the taxpayer.

There are two types of equity to be considered:

(a) Horizontal equity - requires that people in similar situations are treated in a similar way. Horizontal equity is easier to

achieve through the tax system than vertical equity as there are different attitudes as to what is a necessary degree of inequality. Equity is concerned with the distribution of the tax burden.

(b) Vertical equity - requires that people in unequal situations are treated with the necessary degree of inequality. Vertical equity would require the rich to pay more than the poor, which advocates a progressive system of taxation.

1.4 TRADITIONAL APPROACHES

There are two traditional approaches to the distribution of tax burden among the taxpaying community. These are:

1.4.1 Benefit theory

This theory is based on the idea that taxes should be levied in proportion to the benefit received. On the face of it, this approach would seem to be fair. However, in practice, the benefit is difficult to measure. For example, childless couples may not always feel they should contribute to the provision of State education, and yet indirectly they will derive a benefit from living in an educated community.

In a market economy, there will always be poor people who must be supported by the State by means of transfer payments paid for, out of taxation, and here the benefit theory is of little use as the benefits received by redistribution to the poor cannot be subjected to taxation.

By and large, the general public does not always see public spending on social goods and taxation as synonymous; there is always a large percentage of the population who feel that more money should be spent on health and education, while at the same time perceive that taxes are too high.

The benefit approach, which advocates that taxes should be paid by those who benefit the most from the expenditure, suggests a case for earmarking taxes for specific goods and services, for example, government expenditure on roads should be financed from taxes on car ownership, such as the vehicle licence and excise duties and taxes on fuel. In the absence of earmarked taxes, the road user would always wish to see money spent on roads and lower taxes on vehicle ownership. In fact, the vehicle licence was originally to be an earmarked tax, but currently finds its way into the general pool of tax revenue.

According to Musgrave in his book, ***Public Finance in Theory and Practice,*** earmarked taxes, or hypothecation, could increase efficiency and equity and lead to better expenditure decisions. The arguments

in favour of earmarked taxes put forward by Deran: *Earmarking an Expenditure – A survey and a new text* are that earmarking:

(a) applies the benefit theory of taxation;

(b) assures the minimum level of expenditure for government functions;

(c) can reduce the costs of specific projects by assuring continuity; and

(d) can overcome resistance to new taxes or increased rates of tax.

1.4.2 Ability to pay

Unlike the benefit approach, which would seek to match government expenditure with taxation in proportion to the benefit received, this approach is based on the idea that the burden of taxation should be spread in such a way as to give rise to an equality of sacrifice among the taxpaying community. For example, ₦5,000 is less of a sacrifice to a person earning ₦150,000 than to one earning ₦55,000 all other things being equal. In principle, the ability-to-pay approach would tend to satisfy vertical equity in that people in different situations should be treated differently and it would require a progressive system of taxation. If the tax system is to provide for both types of equity, items such as gifts and inheritances should logically be included in the tax base, that is, horizontal equity would require that a person who invests ₦10,000 in shares and another who invests ₦10,000 in non-income producing assets should be treated equally.

The main problem with this approach is deciding on the best indication of a person's ability to pay. In reality, it is no more helpful than the benefit theory in formulating tax policy.

Because equity is concerned with the fair distribution of the tax burden, it is also important to consider the incidence of a tax, since the person on whom the tax is levied, is not always the same as the effective incidence, that is, the person who actually bears the burden of the tax.

It is impossible for anyone tax to conform to all these principles. For example, in the pursuit of simplicity equity is often reduced, provisions for taxpayers in different situations can only be achieved by increased legislation, thereby making the system more complex. By the same token, equity may only be achieved at the expense of efficiency.

Which of these principles are considered to be most important is a matter of judgment and of course politics, and so we must be careful not to evaluate a tax on these criteria in absolute terms, but in the

degree to which they are achieved and how important the tax is in the tax system as whole.

1.5 INTRODUCTION TO TAX ADMINISTRATION

1.5.1 Tax Administration

Presently, there are three (3) tiers of government charged with the administration of tax in Nigeria: the Federal, State and the Local Governments.

Each tier of Government has its own tax authority, created by Federal Laws. The authorities include:

(a) **The Federal Tax Authority**
The Federal Inland Revenue Service (Establishment) Act 2007 (FIRS) provides for the Establishment of the Federal Inland Revenue Service (FIRS), its Management Board and so on.

(i) **Objective and Powers of the (Federal Inland Revenue Service**
The Federal Inland Revenue Service shall control and administer the different taxes and Laws specified in the First schedule of the Principal Act or other Tax Laws made or to be made from time to time, by the National Assembly or other regulations made thereunder by the Government of the Federation of Nigeria, and to account for all taxes collected.

The Service shall have a Board, known as the Federal Inland Revenue Service Board, which shall have overall supervision of the Service as specified under the Act.

(ii) **Membership of the Board**
These are:

- Executive Chairman: (who shall be experienced in taxation), appointed by the President and subject to confirmation of the Senate.
- Six members with relevant qualifications and expertise, who shall be appointed by the President to represent each of the six geo-political zones.
- A representative of the Attorney-General of the Federation.

- The Governor of the Central Bank of Nigeria or his representative.
- A representative of the Minister of Finance not below the rank of a Director.
- Chairman of Revenue Mobilisation, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 States of the Federation.
- The Group Managing Director of the Nigerian National Petroleum Corporation or his representative who shall not be below the rank of Group Executive Director or its equivalent.
- The Controller - General of the Nigerian Custom Service or his representative not below the rank of a Deputy Controller-General.
- The Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director, and
- The Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.

Note: The members of the Board, other than the Executive Chairman, shall be part time members.

(iii) **According to the Act, the Board shall:**

- Provide the general policy guidelines relating to the functions of the service;
- 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;
- Review and approve the strategic plans of the service;
- Employ and determine the terms and conditions of service - including disciplinary measures of the employees of the service;
- Stipulate remuneration allowances, benefits and pensions of staff and employees in consultation

with the National Salaries, Incomes and Wages Commission; and

- 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) **The State Tax Authority**
State Internal Revenue Service (SIRS) (Section 85A, B & C of Personal Income Tax Act Cap P8 LFN 2004).

(i) *Joint State Revenue Committee*
According to the Act, each State of the Federation should have a joint State Revenue Committee, comprising:

- The Chairman of the State Internal Revenue Service who acts as Chairman of the Committee;
- The Chairman of the Local Government Revenue committee;
- A Representative of the Bureau of Local Government Affairs - (from the rank of Director and above);
- A Representative of the Revenue Mobilisation Allocation and Fiscal Commission, as observer;
- State Sector Commander of the FRSC as observer;
- Legal Adviser of the State Internal Revenue Service; and
- Secretary to the Committee - usually a staff of the SIRS.

(ii) **Functions of the Joint State Revenue Committee, The Commitee is expected to:**

- implement decisions of the Joint Tax Revenue Service;
- advise the Joint Tax Revenue Service, the State and Local Governments on revenue matters;
- harmonise Tax Administration in the State;
- enlighten the public generally on State and Local Government revenue matters; and
- execute such other functions as may from time to time be assigned by the Joint Tax Revenue Service.

(c) **The Local Government Tax Authority**
Local Government Revenue Committee (Section 85 D & E of Personal Income Tax Act Cap P8 LFN 2004).

(i) *Composition*
The Revenue Committee shall comprise:

- the supervisor for Finance as Chairman;
- three Local Government Councillors as members; and
- two other persons experienced in revenue matters to be nominated by the chairman of the Local Governments on their personal merits.

(ii) *Function*
The Revenue Committee 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.

1.5.2 Taxing Power

Under the 1999 Constitution of the Federal Republic of Nigeria, only the Federal Government has the exclusive power to legislate and impose Stamp Duties and Taxes on Incomes, Profits and Capital Gains, both for individuals and corporate bodies, by way of Acts. It exercises the powers through the Joint Tax Revenue Service.

Prior to 1993, various States imposed one form of tax or the other by way of Edicts. The promulgation of the Personal Income Tax Act 104 of 1993, repealed all such Edicts and replaced them with a uniform structure throughout the Federation.

Whilst, the power to impose taxes on individuals and corporate bodies is under the Exclusive list of the Constitution - that is, exclusive to the Federal Gevernment, the collection of the taxes is under the Concurrent List, which means that the power to collect the various taxes has been split between the three tiers of Government (Act) 21 of 1993.

1.5.3 Limitations of Tax Administration

The following are constraints to effective Tax Administration in Nigeria:

(a) Poor Public Enlightenment;

(b) Inadequate funding of Tax Authorities;

(c) Dearth of Qualified and / or experienced Tax Officials at the State and Local Government tiers of Government;

(d) Tax evasion;

(e) Improper use of Tax Consultants;

(f) Lack of will power on the part of Tax Authority personnel (Administrative ineffectiveness);

(g) Loop holes in the Law; and

(h) Poor Governance.

1.6 HIGHLIGHTS OF NIGERIAN TAXES

Personal Income Tax Act CAP P8 LFN 2004

This Act identifies taxable persons, establishes their assessable income and proceeds to tax such income. The Act also establishes the residence of the taxpayer and the source or origin of his/her income.

Two forms of Taxes fall under this Act: Pay-As-You-earn (PAYE) that is, from employment, and taxes from trade or business.

Whilst, States Internal Revenue Service administer Personal Income Tax for residents in their States, the Federal Inland Revenue Service (FIRS) administers the Tax in the Federal Capital Territory. So, whilst residents of the FCT pay taxes to the FIRS, the civilians in the police and military formations pay to their States of residence.

(a) **Companies Income Tax Act CAP C21 LFN 2004**

This is a Federal Law operated by the Federal Inland Revenue Service. It deals with the taxation of all Limited Liability Companies in Nigeria, with the exception of those engaged in Petroleum Operations which are assessed under the Petroleum Profit Tax Act Cap P13 LFN 2004 . Companies Income Tax is chargeable on the income of all companies registered and operating in Nigeria, except those specifically exempted by the Act. Once a company is incorporated under the Companies and Allied Matters Act (CAMA) 1990 (as amended), the profits of such a company are assessable to Nigerian Tax, whether or not the profits have been derived from, brought into or received in Nigeria.

Any Company not incorporated under CAMA, but is operating in Nigeria, shall be subject to Nigerian Tax, only to the extent of profits attributable to its operations in Nigeria.

The Act imposes a tax at a particular rate (currently 30%) upon the profits of any Company - accruing in, derived from, brought into or received in Nigeria in respect of any trade or business, etc.

(b) **Industrial Development (Income Tax Relief Act CAP P17 LFN 2004**

This Act, which is otherwise known as the Pioneer legislation provides incentives for investment in certain types of industries.

The industries include those:

(i) Not being presently operated in Nigeria;

(ii) That though in existence, have prospects for further development in Nigeria; and

(iii) Considered as expedient in the public interest, to encourage their establishment and development.

The industries are classified as Pioneer industries by the Ministry of Industries, and their products as Pioneer products. For such Companies:

(i) There is a Tax Holiday for an initial period of three (3) years, which could be extended for a further (two) 2 years, on application.

(ii) Dividends paid out of profits earned during the pioneer status period, are exempted from tax in the hands of the recipients.

(iii) Losses incurred during the pioneer status period are deemed to have been incurred immediately after the end of the Pioneer period and will be available for relief as provided for under the principal Act (Companies Income Tax Act Cap C21 LFN 2004).

(iv) Qualifying Capital Expenditure incurred during the Pioneer period, is deemed for Capital Allowances purposes, to have been incurred on the day immediately after the Pioneer period.

Prospective investors are advised to study the provisions of the Act in greater detail.

(c) **Petroleum Profits Tax Act CAP P13 LFN 2004 (PPT)**

The taxation of Petroleum Operations started in Nigeria in 1959, with the enactment of the Petroleum Profits Tax Act.

In view of the importance of Petroleum operations as a major source of revenue for the government (over 80% of the nation's annual foreign exchange earnings), the ownership and the control of all natural Petroleum products (Crude Oil & Gas) wherever situate in Nigeria, is vested in the Federal Government.

The administration of the tax is under the Federal Inland Revenue Service (FIRS) which has the sole responsibility for the assessment and collection of the Tax from Oil producing companies operating anywhere in Nigeria.

Petroleum Operations under this Act, involves Petroleum Exploration, Development, Production and the sale of Crude Oil and Gas.

Activities of Petroleum Companies taxed under this Act, are regarded as being engaged in the Upstream operations Sector of the Oil and Gas Industry. Conversely, companies engaged in Petroleum refining, Petroleum Marketing and Gas utilisation projects, are classified as being engaged in the Downstream operations sector of the Oil and Gas Industry. This latter class (Downstream Operations) is taxed under the Companies income Tax Act CAP C21 LFN 2004.

(d) **Value Added Tax Act CAP VI LFN 2004**

This Tax was first introduced as Value Added Tax Decree 102 of 1993. It is a consumption tax which impacts on the final consumer. A taxpayer only suffers this tax, if certain classes of goods or services are paid for.

VAT is collected by the Federal Inland Revenue Services, and the current rate is 5% of the value of taxable goods and services.

(e) **Capital Gains Tax Act CAP C1 LFN 2004**

The management of the Capital Gains Tax Act with respect to corporate bodies, individuals resident in the Federal Capital Territory and non-resident individuals (individuals outside Nigeria), has been placed under the administration of the Federal Inland Revenue Service. This is with regard to returns, assessments, appeals, collections, recovery and repayments, offences and penalties as well as litigation.

The management of the Act with respect to individuals (except Non-residents) is placed under the administration of the State Internal Revenue Service.

(f) **Education Tax Act CAP E4 LFN 2004**

This tax applies to all companies registered in Nigeria. It imposes a tax at the rate of 2% on the assessable profits of all incorporated bodies.

The objective is to generate separate funds for the sustenance of the country's tertiary institutions. The tax is administered by the FIRS, which transfers all the collections to the Education Tax Fund Revenue Service of Trustees, who in turn manage the fund.

Note: Under the Petroleum Profits Tax Act CAp P13 LFN 2004, Education Tax is charged before arriving at the Assessable profits, thus: $^{2}/_{102}$ x Profits before the Education Tax Charge.

(g) **Stamp Duties Act CAP S8 LFN 2004**
Stamp Duties are duties based on Instruments otherwise called Written Documents. It is important to Stamp Instruments otherwise, such Instruments will not, except in criminal proceedings, be admitted in evidence, or be available for any purpose whatsoever in a claim for title or right.

The Stamping rates vary from instrument to instrument and the duties are collectable by both the Federal Inland Revenue Service and States Internal Revenue Service.

Where one of the parties is a corporate body, the tax is payable to the Federal Inland Revenue Service while others pay to the State Internal Revenue Service.

(h) **Custom and Excise Duties Management Act CAP C45 LFN 2004**
A major source of revenue for the Federal Government is Custom Duty, which is payable, by importers of specified goods. The tax is charged solely by the Federal Government and collected through the Nigerian Customs Service. Excise duty is levied on a variety of locally produced goods. It was abolished in 1998 but was partially re-introduced from 1st January 1999. It is also collected through the Nigerian Customs Service. The rates vary depending on the nature / classification of the goods or products.

1.7 REVENUE'S POWER OF ENQUIRIES

The powers of the Inland Revenue to make enquiries in respect of a corporate body are contained in the following:

Section 2(1), CITA, CAP C21 LFN 2004:
"The due administration of the Act and the tax shall be under the care and management of the Revenue Service who may do all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Minister".

Section 42

"In addition to the annual return which must voluntarily be rendered by each company, the Revenue Service may, by notice in writing to any company when and as often as it thinks necessary, require that company to deliver within certain reasonable time, any other form of return as regards such matters as to which a return is required or prescribed by CITA."

Section 43(1) contains further provisions as follows:

"For the purpose of obtaining full information in respect of the profits of any company, the Revenue Service may give notice to any person requiring him, within the time limited by such notice to -

(i) complete and deliver to the Revenue Service any return specified in such notice;

(ii) attend personally before an officer of the Federal Inland Revenue Department for examination with respect to any matter relating to such profits;

(iii) produce or cause to be produced for examination at the place and time stated in such notice, which time may be from day to day for such period as the Revenue Service may consider necessary, for the purpose of such examination, any books, documents, accounts and returns which the Revenue Service may deem necessary;

(iv) give orally or in writing any other information, including name and address specified in such notice.

Provided that a person engaged in banking shall not be required to disclose any information unless a disclosure is required in a letter signed by the Chairman of the Board". (Bank and Other Financial Institution Act (BOFIA) 2004) as amended.

Section 43(2) requires that a minimum of seven days notice must be given for any person to comply with the request of the Revenue Service except that an officer of the Revenue Service not below the rank of a Chief Inspector of Taxes may act without giving such notice.

Section 43(3) provides for penalty in respect of contraventions by any person engaged in banking in Nigeria. The penalty on conviction is a fine of ₦5,000 in the case of a body corporate and ₦500 in the case of an individual.

Section 44(1) requires every person engaged in banking to prepare a return at the end of each month specifying the names and addresses of new customers of the bank and, not later than the seventh day of the next following month, to deliver the return to a tax authority of the area where the bank operates, or where such customer is a company, to FIRSB.

A new Section 41B effective 1/1/99 requires every company operating in the Nigerian Stock Exchange business environment to file with the Revenue Service a return in the prescribed form, of its transactions during the preceding calendar month. Such is to be filed not later than seven days after the end of each calendar month.

Where in respect of any trade or business carried on in Nigeria by any company, (whether or not part of the operations is carried on outside Nigeria), the Revenue Service:

(i) is satisfied that there is reasonable ground for suspecting an offence involving any form of total or partial non-disclosure of information or any irregularity or offence in connection with, or in relation to tax, has been committed; and

(ii) is of the opinion that evidence of the offence or irregularity is to be found in the premises, registered office, any other office, or place of management of the company or in the residence of the principal officer, factor, agent or representative of the company, the Revenue Service may authorise any officer of the Revenue Service to enter, if necessary by force, the premises, registered office, any other office or place of management or the residence of the principal officer, at any time from the date of such authorisation by the Revenue Service and conduct a search (Section 45A (1)).

On entering the premises with a warrant under this Section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purpose of arriving at a fair and correct tax chargeable on the company or as evidence for the purposes of proceedings in respect of the tax offence (Section 45A (3))

The officer can obtain the assistance of the police to carry out the search. Section 45A (4).

Any person on whom such notice or warrant is served under the provision of this Section shall:

(i) cooperate fully with the person or persons authorised to conduct a search by allowing easy access to the premises to be searched and to the items or documents that may be required for the investigation;

(ii) answer all questions and queries put to him/her in the course of the search;

(iii) put in accessible position and facilitate the removal of all items that may be required to assist the investigation (Section 45A(6)).

(a) **Offence and Penalty**

"Any principal officer, agent, factor or representative of the company on whom a warrant of search is served who refuses to cooperate with the persons or persons authorised to search or does anything tantamount to failure to cooperate or engages in act or acts resulting in abuse, physical assault or similar misbehaviour, shall be guilty of an offence and liable on conviction to a fine of ₦10,000 or to imprisonment of not less than 6 months or to both such fine and imprisonment" (Section 45A (7).

(b) **Revenue Service's power to assess and charge on turnover of trade or business**

Where in the opinion of the Revenue Service:

(i) a trade or business carried on by a company shows no assessable profits or assessable profits lower than could be expected to arise therefrom; or

(ii) the true amount of the assessable profits of the company cannot be readily ascertained; the Revenue Service may assess and charge that company for that year of assessment on such fair and reasonable percentage of the turnover of the trade or business as the Revenue Service may determine.

(c) **Artificial Transaction**

Where the Revenue Service is of the opinion that any disposition is not in fact giving effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate so as to counteract the reduction of liability to tax affected or reduction which would otherwise be affected by the transaction and any company concerned shall be assessable accordingly.

Transactions between persons, one of whom either has control over the other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other persons, shall be deemed to be artificial or fictitious if, in the opinion of the Revenue Service, those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length. A company in respect of which any direction is made under Section 18, shall have a right of appeal in like manner as though such direction were an assessment.

The Revenue Service is also empowered in other corporate tax legislations namely: Petroleum Profits Tax Act, Value Added Tax Act and Capital Gains Tax Act.

The Revenue Service is empowered to do all such things as may be deemed necessary and expedient for the assessment and collection of the tax under CITA 1990. All Revenue Service' enquiries would qualify as one of all such things that may be deemed necessary and expedient for the assessment and collection of tax. Revenue enquiries would be undertaken towards the achievement of the following objectives:

(i) The due administration of the Companies Income Tax Act CAP C21 LFN 2004;

(ii) The due administration of the tax under the Act;

(iii) Proper assessment of the taxes;

(iv) To encourage voluntary compliance with tax laws;

(v) Due collection of the taxes;

(vi) To enable the Inspector of Taxes agree the taxpayer's accounts;

(vii) To ensure compliance with the tax laws; and

(viii) Collection of taxpayers' information that would be stored for future use.

The Revenue Service is given powers in the Act to obtain further information from taxpayers. These are contained in Sections 42 and 43 of CITA which are considered as appropriate.

(d) Revenue Department's Procedures

The procedure for administering the tax is the same for Federal Inland Revenue Service and State Internal Revenue Service. They operate through divisions and departments, to achieve specified objectives.

(e) Assessment Procedures

(i) Due Date for Filing

Companies that are liable to pay tax are expected to file their tax returns on the due date. For an on-going business, the due date for filing, is six months from the company's accounting year end. For newly incorporated companies, the due date for filing is six months from the accounting year-end or eighteen months from the date of incorporation, whichever is earlier.

(f) Filing Requirements

(i) Government Assessment Filing

Under Section 41 of CITA, CAP C21 LFN 2004, a taxpayer under the Government Assessment system is expected to submit:

- audited accounts;
- tax computation;
- capital allowances computation;
- a statement of profits from every source; and
- a declaration that the returns reflect a true and correct position of the operations of the company and that the details are true and complete.

(ii) Self-Assessment Filing

A company filing self-assessment is required under Section 40B of CITA, to include the following:

- computation of the tax payable for the assessment year; and
- evidence of payment to the designated bank of the tax payable or the relevant instalment thereof.

(g) Assessments

(i) Government Assessment

Where the returns filed are accepted by the Revenue Service, they form the basis of the assessment for the year. Where they are rejected, the Revenue Service assesses on "Best-of-Judgment" basis under Section 47(2) of CITA. Where the taxpayer fails to file, the Revenue Service is empowered under Section 47(3) to estimate the assessment.

Where the Revenue Service makes a discovery that a taxpayer has not been assessed or that it has been assessed at less than it ought to have been assessed, the Revenue Service is empowered under Section 48 of CITA to raise additional assessment anytime within six years from the date of the assessment.

Where, under the proviso of Section 48 of CITA the non-assessment or under-assessment is due to any form of fraud,

wilful default or neglect by the company, the Revenue Service can go back for a longer period than the six years' limitation.

(ii) **Self Assessment**

The company assesses itself under this system. It also requires full disclosure in respect of the incomes from all the sources. The returns are not, under internal regulation, to be subjected to the routine process of desk audit but are to undergo field audit to confirm compliance.

(iii) **Final and Conclusive Assessment**

An assessment which has become final and conclusive cannot be reopened without the discovery of new facts. An assessment becomes final and conclusive under the following conditions:

- where no valid objection is made within the statutory time limit of 30 days from the date of the service of the notice of assessment;
- where an appeal against the decision of the Revenue Service is not made to the Body of Appeal Commissioners within 30 days from the date of the Notice of Refusal to Amend;
- where an appeal is not made to the Federal High Court within 30 days from the date of the decision of the Body of Appeal Commissioners.

(h) **Collection Procedures**

(i) **Self Assessment**

An assessment is payable on the due date of payment. The due date of payment is determined as follows:

- For companies having 31 December as their accounting year-end, the due date of payment is 30 June of the succeeding year;
- For companies having 30 September as their accounting year-end, the due date of payment is 31 March of the succeeding year;
- For companies having any period from January to 30 June as their accounting year-end, the due date of payment is 1 January of the succeeding year;

- For all other cases, it is six months from the end of the accounting year.

Where the assessment is not paid on the due date of payment, penalty at 10% per annum and interest at commercial rate will be added. Instalmental payment concession may also be denied.

(ii) Government Assessment

- **Undisputed Assessment**

  Undisputed assessment is payable within two months from the date of the service of the notice of assessment. If that date expires after 14 December of the year of assessment, the due date of payment is 14 December.

- **Disputed Assessment**

  An assessment which has been under objection or appeal but which is resolved, the due date of payment is one month from the date of the amended or revised assessment. Where the one month period expires after 14 December, the assessment is payable on that date. Where the assessment is not paid on the due date of payment, 10% penalty and interest at commercial rate will be added.

(iii) Assessment Section

The Assessment Section is staffed mainly with professionally qualified chartered accountants, graduates of accounting, law and economics and so on. Recently, engineers with bias for petroleum operations are being employed. This is to meet the challenges of all the various business operations in the different sectors of the Nigerian economy. This category of members of staff are called "Inspectors of Taxes". They are in the professional cadre.

Functions

They are responsible for examining the tax returns [audited accounts, schedules (of capital allowances, bad/doubtful debts and others) and the tax computations made by taxpayers to the Tax Office]. They scrutinise the tax returns, raise tax queries and inquiries based on the tax returns and enter into correspondence with the taxpayer and taxpayers' representatives. They vet the "Self Assessment Returns" with a view to ensuring compliance. "Additional Assessment" where applicable are raised on taxpayers.

Finally, when all issues on a year's tax returns are resolved, it is the duty of an Inspector of Taxes to write a letter of agreement of the tax returns to the taxpayer or taxpayer's representative (Section 41(b) CITA CAP C21 LFN 2004).

Certain banks have been designated by the Revenue Service into which taxpayers are to pay the tax due. With the operation of the self-assessment scheme, evidence of payment of the tax due to a designated bank has to be submitted to the tax office when the tax return is filed.

The Revenue Service (tax authority of State/Federal) shall at the beginning of every year of assessment, (generally within the first 3 months of the year) call for tax returns to be made by taxpayers. The 'call' is to be published in at least two National Newspapers. It is, however, obligatory for every company to file a self-assessment tax returns, with or without this notice. All these provisions affect all taxpayers including individuals, group of individuals and partners of a partnership.

(iv) **Collection Section**

The collection Section is staffed mainly with graduates from the Universities and Polytechnics. There is need for highly skilled and experienced tax officials to deal with processing of e-payments, especially with regards to Petroleum Profit Tax (PPT). It is the requirement of the Tax legislations that all tax assessments shall be made in the currency in which the transactions, giving rise to the assessments, were effected. It therefore follows, that payment of such assessments shall be made in the currency of the tax assessments. This is done without conversion to Naira. Government through the Tax Revenue Service may direct that a particular foreign currency be converted to any other currency as it deems fit, but the Naira is not required to be converted to any other currency. The main foreign currencies of transactions are the US Dollar, UK Pound Sterling and the French Franc. The Italian 'Lira' is occasionally accepted. All other foreign currencies are to be converted to any of the three principal currencies mentioned above as the Government deems fit.

Collection cannot be effected without assessment, except in respect of "Withholding Tax'. In addition, payment of PPT instalments do not call for tax assessments. It is based on the PPT Estimates (Self-Assessment) of the paying company. At the end of the year and not later than the end of May (5 months after the year end of an oil producing company), every oil producing company shall file a full PPT returns with the Federal Tax Revenue Service, and an assessment,

reflecting the total PPT due, less all the PPT instalments paid and the (13th instalment) PPT Payable, shall be made on the company.

(i) Monthly Tax Reconciliation

At the Federal level, the country is divided into zones. Each Zone has many Tax Offices. At the end of each month and not later than 10 days in the month that follows a month of tax collection, every Zone organises a 'Tax Reconciliation Meeting' in which every tax office submits its total tax assessment and total tax collections from both current and back-year assessments, from penalties, interest and pre-operation levies. These figures from all the offices in a Zone are collated to give single total figures under each subheading to form the Zonal tax assessment and collection for the month.

A meeting of all Zonal offices is held at the Revenue House, (Headquarters) in Abuja where each Zonal Officer explains and defends the Zone's figures. These figures are then collated to form the Revenue Service's revenue collection for the month. This is done not later than the 15th day of the month following the month of collection. This figure forms part of the monthly Revenue Sharing of the Public Accounts Committee.

1.8 ETHICAL ISSUES – THE FIRS

Generally, civil service has a long history of conservatism and also under strict rule of secrecy. As a matter of fact, on appointment, every civil servant is put on oath called "Oath of Secrecy". Under this oath, a civil servant is bound not to divulge Government information to anyone under any circumstance whatsoever except when legally required by law (Law Courts). There is a saying that "A Civil servant is to be seen and not heard'. Any violation of this oath of secrecy is unethical and may lead to summary dismissal.

As regards tax matters, the ethics of tax practice in the Tax Office is more stringently applied. Under no circumstance would a Tax Official discuss the tax matters of a taxpayer with another person, except there is authorisation by the taxpayer concerned.

In a situation where the taxpayer is related, in any form, to a revenue official, the tax file of such a taxpayer is never allowed to be handled by the related tax official. Where such a relationship exists but it remains unknown to the tax authority, there is the fear of being detected by either Tax Inspectorate Unit, Tax Audit Unit or the Special Investigation Unit. These checks and balances ensure that the tax administration ethics are not impugned upon. They check unethical behaviour in the Tax Offices. Tax officials are required

to disclose their interest so that they are excused from participating when and if tax issues requiring management decision or appeal/court decisions arise.

(a) **The Civil Service Ethics**

The Revenue Service is an integral part of the Civil service. The ethical issues in the Revenue Service therefore flow from the Code of Ethics in conducting Government business. It could be said that the civil service enjoyed abundant recognition during the colonial days. At that time, the best talents were sought for and attracted into the Civil Service. This was up to the period prior to the Nigerian oil boom. From the period of oil boom to the present day, it appears that the Civil Service image has waned drastically. The old job security is lost, rest after retirement has become very painful. In order to rebuild the image of the Civil service including the Revenue Service, the Civil service developed "code of ethics" to guide and shape the Civil service. Senior officials are required to keep, practice, teach, maintain and improve upon the code of ethics. The junior officials must be made to fall in line. The "code of ethics" includes the following:

(i) **Discipline**
All officers must be well disciplined. Rules and regulations must be adhered to. Senior officers must show good examples for the junior ones to follow.

(ii) **Loyalty**
All officers must be loyal to the Government. They must give good and adequate service in return for their salaries.

(iii) **Honesty**
Officers should be honest in the performance of their duties. They should bear in mind that their salaries are paid, for the duties they perform and hence, they should not demand or receive something, that is, either in cash or in kind from anyone in the discharge of their official duties.

(iv) **Courage**
Every officer is expected to be courageous in the performance of his/her duty and to work hard and accept challenges of a busy office. They must do what is morally right which automatically enhances the reputation of the Officers and the Service.

(v) **Courtesy**
Officers must be polite to colleagues, especially to members of the public, as polite instructions are generally easier to be obeyed and complied with. The members of the public generally cherish courteous treatment.

(vi) **Tact**
Officers must be very skillful in handling/dealing with difficult situations without offending those involved. This is especially necessary in the Tax Office. Other ethical issues include cooperation, avoidance of delay, industry tidiness, kindness, efficiency, good attitude to public and National consciousness.

The Tax Officials in the Revenue service, as part of the Civil Service should follow the above code of ethics, work by it, teach it and live by it.

1.9 SUMMARY AND CONCLUSIONS

In this chapter, readers must have learnt about the following:

(a) Provisions relating to the establishment of Revenue Service's / Committes's compositions and functions.

(b) The extensive power of the Revenue to make enquiries in writing and by physical presence in the taxpayer's place of business. The assistance of police may be used by the Revenue Service in carrying out its duties. Any one that obstructs tax officers in carrying out their official duties shall be guilty of an offence and liable to a fine or imprisonment or both fine and imprisonment.

(c) Power of the Revenue Service to assess taxpayers on turnover and to disregard transactions that can be considered artificial or fictitious.

(d) Revenue Department procedures especially on assessment and collection procedures.

(e) Monthly tax Revenue Reconciliation at the Zonal and at the Headquarters levels.

(f) Ethical issues as regards taxpayers and tax matters on non-disclosure to unauthorised persons. Oath of Secrecy in the Civil Service and a body of "Code of Ethics" for civil servants.

(g) The legality of the actions of tax administrators and the extent of their limits.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

1.10 REVISION QUESTIONS

1.10.1 MULTIPLE CHOICE QUESTIONS

1. The purpose of `revenue enquiry' is to
   (A) find faults in tax returns of taxpayers.
   (B) raise additional tax assessments.
   (C) ensure that government revenue is increased.
   (D) engage taxpayers in correspondence.
   (E) confirm that the figures in the returns are correct.

2. Revenue enquiry is
   (A) a letter requesting for information about the future operations of a taxpayer.
   (B) a letter detailing line of business of a taxpayer.
   (C) an annual complimentary letter to management.
   (D) a letter introducing new lines of business operations.
   (E) a letter asking for more information, based on tax returns

3. A taxpayer is expected to make his tax return
   (A) at the beginning of every tax year.
   (B) when a notice of request from the revenue office is received.
   (C) not later than the end of March every year.
   (D) at the end of every year.
   (E) not later than six months of the end of his accounting year.

4. Corporate taxpayers are now to file "self-assessment returns". This means that the taxpayer
   (A) pays the tax he feels that is enough.
   (B) assesses himself, files his returns and attaches evidence of payment of the self-assessed tax.
   (C) assesses himself and pays the tax after the revenue office confirms the tax as correct.
   (D) assesses himself based on cash sales received, files his returns and attaches evidence of payment of the self-assessed tax.
   (E) assesses himself based on his trading net profit.

5. The Tax Office is to issue a tax clearance certificate to a taxpayer if the taxpayer
   (A) has paid all assessed taxes for the three previous years.
   (B) has a small amount of withholding tax not yet remitted to the Revenue
   Office.
   (C) has tax queries unattended to during a previous year.
   (D) has not submitted tax return for a previous year.
   (E) has distributed Christmas gifts to officials of the Tax Office.

1.10.2 SHORT ANSWER QUESTIONS

1. The residence of a company that has its Head Office in Lagos and Branch office in Abuja is ....

2. Tax payable by all companies not filing Self Assessment returns within three months of the start of a tax year is known as ....

3. States Internal Revenue Revenue Services deal with which group of taxpayers?
4. Companies that fail to commence business after six months of incorporation pay ....
5. Two consequences of lateness in filing or failure to file self-assessment are ....

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

2

TAX AUDIT AND INVESTIGATION

2.0 LEARNING OBJECTIVES

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

- the objectives of tax audit;
- how to conduct a tax audit;
- the basis of the power of the Revenue Service to audit;
- the reasons for tax investigation; and
- how to conduct a tax investigation.

2.1 INTRODUCTION

An Audit

An audit is an examination usually by an independent person, of a set of the accounting books, records, documents, etc, from which a set of financial statements has been prepared.

Objectives of Statutory Audit

The objectives of an audit are to express an opinion as to whether:

(a) Proper books have been kept;

(b) The financial statements are in agreement with the books;

(c) The requirements of the applicable legislations, for example, CAMA, 1990 (as amended) have been complied with;

(d) Applicable Accounting Standards (both local and international) have been adhered to;

(e) The financial statements give a true and fair view of the state of the financial affairs of the enterprise as at its balance sheet date; and

(f) The financial statements give a true and fair view of the result of the operations of the enterprise for the period under audit.

Specialised Audits

Specialised audits are normally involved whenever special attention is

needed on a special issue that are not part of the objectives of statutory audits. When a specialised audit is carried out, the auditor would cover in his report the particular objectives that were to be achieved as set out in the auditor's terms of reference.

2.2 TAX AUDITS

Tax audits are similar to special audits. They are additional to statutory audits and are carried out by tax officials from relevant tax authority(ies). The approach and scope of work would be slightly different from that to be carried out for audit under CAMA, 1990.

Power of the Revenue Service to Audit

Prior to the introduction of the self-assessment scheme, there was no specific provision in CITA for tax audit. Subsection 4 of Section 43 was introduced to empower the Inland Revenue to carry out tax audit. The subsection states: "Nothing in the foregoing provisions of this Section or in any other provisions of the Act shall be construed as precluding the Revenue Service from verifying by tax audit any matter relating to entries in any books, documents, accounts or returns as the Revenue Service may from time to time specify in any guideline.".

An integral part of the self-assessment scheme is the need to periodically verify the tax return filed by taxpayers through a tax audit process. The tax audit exercise essentially is meant to enable the Revenue authority to further satisfy itself that audited financial statements and the related tax computations submitted by the taxpayer agree with the underlying records. This periodic check is carried out by the tax audit branch.

Objectives of Tax Audit

The objectives are to enable the tax auditors determine whether or not:

(a) Adequate accounting books and records exist for the purpose of determining the taxable profits or loss of the taxpayer and consequently the tax payable;

(b) The tax computations submitted to the tax authority by the taxpayer agree with the underlying records; and

(c) All applicable tax legislations have been complied with.

Other objectives of tax audit are:

(a) Provision of an avenue to educate taxpayers on various provisions of the tax law;

(b) Discourage tax evasion;

(c) Detect and correct accounting and/or arithmetical errors in tax returns;

(d) Provide feedback to the management on various provisions of the law and recommend possible changes;

(e) Identify cases involving tax fraud and recommend them for investigation;

(f) Forestall taxable persons' failure to render tax returns;

(g) Forestall taxable persons' rendering incomplete or inaccurate returns; and

(h) To encourage voluntary compliance which is one of the strong reasons in support of the self-assessment scheme.

Tax audit is usually conducted by a group of experienced support staff of the Revenue authority.

2.3 THE TAX AUDIT BRANCH

In the past, that is, before the current reform exercise at the FIRS, the Tax Audit Branch was under the directorate of Assessment, Intelligence, Tax Audit and Special Investigation and reports to the management through the Director. However, with the reform, each of the Integrated Tax Offices (ITO's), is expected to have its own resident Tax Audit Unit.

2.4 TYPES OF TAX AUDIT

The two types of tax audit are:

(a) Desk Audit; and

(b) Field Audit.

Desk Audit

As soon as a tax return is received in the Inland Revenue's office, such would be subjected to examination by the Inspector. This examination is carried out in the tax office. It is carried out on routine basis, indicating that most, if not all, returns submitted to the tax office, are subject to this audit.

The focus of the desk audit would be to ensure completeness of the items submitted for tax purposes. The Inspector carrying out a desk audit will also look for apparent errors or mistakes in the tax computations and/or in the accompanying documents and records. The outcome of a desk audit may lead to the conduct of a field audit whenever additional information or documentary evidence is required to satisfy the Inspector of Taxes carrying out the desk audit.

Field Audit

A field audit is more elaborate and comprehensive than a desk audit. It is usually carried out outside the Inland Revenue's office, in the taxpayer's business premises. The need to carry it out in the taxpayer's premises is to enable the tax auditors carry out the examination of applicable documents and also obtain appropriate information directly from the officials of the business.

2.5 THE TAX AUDIT PROCESS

2.5.1 Pre Assessment Stage

The tax audit branch carries out audit exercise only on companies that have been referred to it by the management. The ultimate authority for referral of cases for audit lies with the Chairman through the Director of Assessment. The usual channels for recommending cases for audit include:

(a) **The Management:** The technical committee, the chairman and the directors could refer cases directly to the branch.

(b) **Zonal Coordinator:** The zonal coordinator may also recommend cases for tax audit through the Director of assessment.

(c) **Area Tax Controllers:** Desk officers through their area tax controllers (ATC), recommend cases for tax audit. The ATC would then pass such recommendations to the Director of assessment.

(d) **Tax Audit Inspectors:** Sometimes, in the course of the audit of a company, it might become imperative to conduct composite audit, that is widening the tax audit exercise of a company to cover others within the same group or those with substantial transactions with the company undergoing audit. In such instances, the tax auditor may recommend that ongoing audit be extended to cover related companies.

2.5.2 Assessment Stage

The stages in the audit process are as follows:

(a) Selection of taxpayer to be audited;

(b) Preliminary review of taxpayer's file;

(c) Notification of Taxpayer;

(d) Pre-audit meeting followed immediately by field audit;

(e) Post audit meeting;

(f) Interim Audit Report;

(g) Post audit review by Regional/Headquarters Audit;

(h) Reconciliation meetings; and

(i) Final Audit Report.

2.5.3 SELECTION OF TAXPAYER TO BE AUDITED

The guidelines and criteria for selection of files for audit are to be determined by the Audit Headquarters. The selection of cases for audit is a management function.

The criteria which would vary from one type of business to the other include, but are not limited to, the following:

(a) Self-assessment taxpayers – at least two years since the last audit of the taxpayer.

(b) Taxpayers with refund claims – especially arising from excess withholding tax credits and, or other named reasons.

(c) Taxpayers with nil returns or continuous loss situation.

(d) Taxpayers with very low adequacy ratios.

(e) Based on routine industry checks or sectorial audit (project audit).

(f) Based on lead information received from Intelligence or other FIRS departments or external sources.

(g) Transfer pricing arrangements.

(h) Tax planning schemes.

(i) Claims under Double Taxation Agreement (DTA).

(j) Secondary files – relationship with another taxpayer by way of holding, subsidiary, associated or related companies, could be criteria for selecting companies for audit.

(k) Industrial group's compliance evaluation and profitability comparison.

(l) Verification of poor or extraordinary performance.

(m) Referrals resulting from desk examinations.

(n) Information resulting from examination, audit and investigation of other taxpayers.

(o) Random sampling.

(p) Firms making unusual requests or taking extraordinary decisions such as centralising an erstwhile decentralised operation.

(q) Information from intelligence unit of the tax authority.

(r) Directive from higher government authority.

2.5.4 PRELIMINARY REVIEW OF TAXPAYER'S FILE

This is aimed at preparing both the Audit Department and the audit team that will be involved in the audit exercise for the audit task ahead. It involves obtaining basic information about the taxpayer, analytical review of taxpayer's performances using ratio analysis and highlighting risk areas for the audit exercise.

This review will also lead to the determination of the appropriate tax audit strategies to be adopted, which include, recommendation on the audit approach, number of days/weeks required, level of experience and technical skills required, number and location of officers to be assembled for the field audit exercise. This procedure will be reviewed and approved by the Regional/Headquarters Audit, as appropriate.

Preliminary Activities

Before audit executives set out, certain preliminary activities must take place. These are:

(a) gathering of the files and grouping them into the number of audit teams to be established;

(b) audit teams to acquaint themselves with background information about their cases;

(c) prepare audit checklists to be used in respect of each company to ensure that all necessary areas of audit activities are covered;

(d) design interview format (if necessary) for each company, depending on the problems, so as to ensure that all grounds are covered;

(e) assign specific duties to audit team members.

Audit Checklist

The complexities of some businesses and/or the need for comprehensiveness, make the preparation of audit checklist necessary at the planning stage of a tax audit. The checklist is used during the audit exercise to ensure that a thorough job is done. It also ensures that the exercise is undertaken systematically and not in a haphazard manner. Thus, it makes the audit work to be faster, orderly and properly completed. The activity items listed in the checklist are ticked off as performed one after the other as the work progresses, until the audit is completed.

Background Information

The following are basic information to be extracted from the taxpayer's file:

(a) Name of the company;

(b) Registered address;

(c) Business address;

(d) Date of incorporation;

(e) Date of commencement of business;

(f) Tax file number;

(g) Nature of business;

(h) External auditors/tax consultants and their addresses;

(i) Bankers/addresses;

(j) Solicitors and secretaries;

(k) Share capital (authorised and issued);

(l) Shareholding structure;

(m) Names of directors/number of shares held;

(n) Associated companies/addresses;

(o) Litigation details, if any;

(p) Period covered during the last audit or investigation exercise; and

(q) Accounting year end.

Analytical Review of Tax Returns

The officer-in-charge will use the following records to determine the

taxpayer's performances and areas of tax audit focus:

(a) Last audit or investigation report (if any).

(b) Financial Statements:

- (i) Chairman/Directors/Auditors' reports;
- (ii) Balance Sheet and Profit and Loss Accounts;
- (iii) Cash flow Statements; and
- (iv) Notes to the Accounts.

(c) Tax Returns.

From the above, a spreadsheet of Balance Sheet, Profit and Loss Accounts and Notes to the Accounts of the years to be covered is prepared.

Ratios

The relevant ratios, out of the followings, would be computed and interpreted:

(a) **Liquidity/Solvency**

These are ratios designed to measure taxpayer's ability to meet his obligations.

- (i) Current (or Working capital) Ratio
- (ii) Acid Test (or Quick) Ratio
- (iii) Working Capital Turnover
- (iv) Assets Turnover

(b) **Efficiency (Activity)**

These are ratios that measure effectiveness of taxpayer in using his assets.

- (i) Account Receivable to Turnover Ratio
- (ii) Age of Accounts receivable
- (iii) Inventory Turnover
- (iv) Working Capital Turnover
- (v) Asset Turnover

(c) **Equity Position and Coverage**

These are ratios that measure the balance between the resources

provided by the creditors and owners of the company.

(i) Debt Equity Ratio

(ii) Debt to Total Assets Ratio

(iii) Book Value per ordinary share

(d) **Profitability**

These are ratios that measure the ability of the taxpayer to generate an excess over turnover.

(i) Profit Margins on Sales

(ii) Return on Investment

- Return on Total Assets
- Return on Owners equity

(iii) Ratio of Tax already assessed to Net Profits

(iv) Ratio of Cost of Sales to Turnover

The tax auditor should bear the following tax evasion tendencies in mind:

(a) Understatement of income.

(b) Overstatement of expenses.

(c) Undervaluation of stocks.

(d) Creation and maintenance of secret reserves.

(e) Post dating sales (what happens to the related costs when income is post dated).

(f) Omission of income.

Proper interpretation of these ratios will lead to determination of the risk areas for tax audit focus.

2.5.5 Notification of Taxpayer

On completion and approval of the preliminary review by the Head of the unit, the taxpayer or his tax consultants will be notified of the field audit, which will then be carried out in the company's premises.

The notification letter will state the following:

(a) Period (years) that the audit exercise will cover.

(b) List of records/documents to be made available for the audit.

The company should be notified that this list is not exhaustive.

(c) Date and time of commencement of audit exercise.

(d) Names of the Inland Revenue officials that will carry out the audit.

Members of the audit team are expected to carry their identity cards. The identity cards should only be shown on request by the taxpayers but should neither be taken away from the auditors nor allowed to be photocopied.

2.5.6 Pre-Audit Meeting followed by Field Audit

(a) The field audit exercise must commence with a preliminary meeting with the management of the company usually represented by the Managing Director and/or Financial Director or their representatives.

The Company's Tax Consultants where necessary are also expected to be in attendance at this meeting.

(b) The meeting is aimed at:

(i) Informing the taxpayer of the purpose of the audit.

(ii) Confirming background information of the taxpayer earlier obtained in the assessment file.

(iii) Getting other relevant information that are not available in the file.

(iv) Familiarisation with the company's accounting and operational systems which include, but not limited to, the following:

- whether the company operates manual or computerised accounting system
- whether the accounting system is on cash or accrual basis
- the invoicing system in place for sales and purchases
- whether all cash received are banked intact before expending therefrom

(v) Giving the taxpayers the opportunity to express their views on the audit.

(vi) Seeking the cooperation of the taxpayer in terms of providing books and records and explanation where necessary.

(c) The team leader is expected to chair the meeting while a member of the audit team is expected to take minutes of the meeting.

(d) Part of the functions of the team leader is to approve the draft of the minutes and ensure that the final copy is produced and signed on the field by the officer that prepared it, the team leader and the company's representative, as well as the tax consultant where necessary. A copy of the signed minutes must be given to the representatives of parties concerned.

2.5.7 Post Audit Meeting

A post audit meeting should be held immediately after the end of the field audit, between the tax auditors and the taxpayers and their representatives at the taxpayer's premises. The purpose of this meeting is to obtain any further outstanding information/document that may be available only from the taxpayer's management and to answer outstanding questions that arose during the field audit work.

Minutes of the meeting should be documented in writing, signed by both parties and a copy given to both parties. This marks the end of the field audit and departure from the taxpayer's premises.

2.5.8 Interim Audit Reports

Preliminary Reports: Sometimes, the scheduled officer of a case, would come across material issues, in the course of the preliminary review of the assessment file, that should be brought to the notice of the management. In such an instance, a preliminary report would be prepared and sent to the chairman detailing such issues.

Interim Reports: After the field audit, but before the conclusion of the audit exercise, progress reports could be called for by management. The team leader should collate the individual reports of all the team members and write the Interim Audit Report. The report should highlight details of all the findings that may result in additional tax assessment as well as areas of possible dispute with the taxpayer and suggestions on how to resolve them.

The report should be addressed to and reach Regional audit or Headquarters as appropriate within one week of the post audit meeting.

2.5.9 Post Audit Review by Regional/Headquarters Audit

The Regional/Headquarters Audit will review the Interim Audit Report as soon as it is received, by giving clear directives on all reported

matters, after due consideration of the technical issues involved based on the prevailing tax laws, as well as the generally accepted accounting principles. This will form the basis for the reconciliation meetings.

2.5.10 Reconciliation Meetings

This is a meeting between the tax auditors (with representatives of Regional/Headquarters Audit present as appropriate) on the one hand and the taxpayers (and their representatives and tax consultants) on the other hand. The purpose of the meeting is to resolve all outstanding issues arising from the field tax audit exercise with a view to determining the additional tax due and resolving all disputes in accordance with the tax laws of Nigeria.

After the reconciliation meeting, additional assessment may be issued as appropriate with notices, while outstanding matters treated to a logical conclusion.

However, in the case of any formal objection by the taxpayer, the reasons for the objection will be considered and notice of amended assessments or notice of refusal to amend the assessment will be issued as appropriate.

Objections by the tax payer to the additional assessment should be made within reasonable time, otherwise the additional assessment become final and conclusive. Where notice of refusal to amend is issued, the tax auditor should ensure that due process is strictly adhered to in documentation, record keeping and correspondences as these may affect the success of FIRS' defense against any appeal filed by the taxpayer before the Body of Appeal Commissioners.

It should be noted that all further appeals lie with the High Courts, Court of Appeal and Supreme Court. All that transpired at the reconciliation meeting should be documented in form of minutes, which will be signed and distributed to all parties.

2.5.11 Final Audit Report

The audit report is very important and should be rendered immediately an audit is completed. It contains all important items about the company and the audit work done. Audit reports tend to expose system's weaknesses and shoddy audit job is also easily revealed. The report will state the findings and details of tax liabilities, if any. An audit report should always be completed with the auditors'

recommendations. Such recommendations may include the need for extended audit, special investigation and even prosecution.
Based on the minutes and outcome of the reconciliation meetings, the final audit report will be written by the Audit team leader. The report which should be addressed to the Regional/Headquarters Audit, will state in detail, the additional assessments agreed at the reconciliation meeting as well as those disputed.

The additional assessments agreed should be separated from those disputed. Both should be analysed in tabular form under various taxes (CIT, WHT, CGT, VAT, PAYE etc) for each year of assessment concerned. The report should indicate details of how each additional assessment was arrived at. The Regional/Headquarters audit will consider the report within a reasonable time of its receipt and issue clear directives for issuance of notices of additional assessments, amended assessments and notice of refusal to amend assessment, as appropriate. The report will also form the basis of FIRS defence in case of an appeal to the Body of Appeal Commissioners, in which case, a copy of the report will be sent to the Legal Adviser for follow-up.

2.6 TYPES OF AUDIT EXERCISE

(a) Routine Sector Audit

This audit covers companies operating within a specific industry, for example, banking, construction, Oil servicing, shipping. The objective is primarily to ascertain and assess the overall compliance level in the particular industry.

(b) Routine Zonal Audit

The tax audit branch is located within the Lagos zone and thus operates more actively within the zone. However, periodic audit tours of other zones are carried out. Companies within such zones irrespective of industry are visited and audited. The new dispensation makes the audit unit reside in the Tax Office that has jurisdiction over the taxpayer's file.

(c) Special Purpose Audit

Apart from routine audits, sometimes management would direct the branch to carry out audit to achieve a specified purpose. Such instances include:

(i) Verification of taxpayers' claims for tax refunds;

(ii) Dispute between taxpayers and the Area Office on specific issues;

(iii) Suspected cases of tax evasion;

(iv) Value Added Tax audit; and

(v) Management's directives.

2.6.1 Technical Procedures

Technical procedures refer to the process of carrying out tax audit. It involves planning, organising and executing all activities required to effectively carry out the audit. The process could be grouped as follows:

(a) **Allocation of Audit Cases:** All referred cases must be allocated to individual inspectors who would be the schedule officer for each case. The criteria for allocating cases are mainly the level of competence of an inspector considering the urgency attached to the audit, the technicality involved, size of the company and other relevant factors.

(b) **Pre-Audit Visit Activities:** The schedule officers' first task would be to obtain the company's assessment file (and sometimes, the collection file) from the Area Office for the purpose of extracting relevant financial data. After the extractions, a comprehensive file review would be done and a report written. The report will show the background information of the company, the tax history, relevant performance ratios, and comments on tax queries raised by the Area Office, areas of potential audit risks and recommendation as to outcome of the audit.

(c) **Circularisation letters:** These may be sent to identified third parties for independent confirmation of certain information.

(d) **The Field Audit:** An audit team comprising Inspectors and a team leader would visit the company to carry out the field examination of the company's records. The duration of the field work depends on the volume and complexity of the company's operations.

(e) **Reconciliation Process:** After the field audit, the summary of the audit findings would be sent to the company and its tax consultants for their reaction and a date is then fixed for reconciliation. The reconciliation involving the review of additional, written representations, interviews and meetings would then begin until after all contentious issues have been resolved. Thereafter, a final letter of intent detailing the

Revenue's position on the unresolved issues and computation of any additional tax would be sent to the taxpayer.

(f) **Assessment:** The relevant notices of additional/revised assessment are raised after the letter of intent has been sent. Also, the withholding tax Section would be advised to pursue collection of any withholding tax that may become due as a result of the exercise.

(g) **Objections:** Objections to the additional assessment could be raised either immediately after the letter of intent has been received by the taxpayer or after the notices of additional assessment have been raised. In either case, a review of the working papers or whole file would be initiated with a view to ascertaining the validity of the company's objection. Sometimes a revisit would be made to the company to verify any new documents available. Having confirmed that the position adopted by the Tax Audit is right, notices of refusal to amend the assessments would be raised after obtaining the headquarters' authority to do so. The case could then be referred to the legal Section for litigation.

(h) **The Final Report:** Once all objections, if any, have been disposed of, a final report of the tax audit exercise would be made to the management. The major elements of the report would include: the background information of the company, the pre- and post audit tax adequacy ratio, the audit work performed, major audit findings, tax yield, recommendations and conclusions.

2.7 AUDIT PROGRAMME

This is a schedule of audit work expected to be performed on each item of the accounts such as income/turnover, expenditures, assets and liabilities.

Benefits of the Audit Programme

The audit programme would be useful in the following areas:

(a) It will provide details of the work, which the team leader requires individual members of the team to perform.

(b) It will provide information as to how much of the audit work has been completed as at a particular date, and how much is outstanding.

(c) Provides a record of audit responsibility by providing a record of the audit staff members responsible for each part of the completed work.

(d) Facilitates audit supervision and control, giving senior members of the audit team information and knowledge regarding the progress of the work done to date.

(e) Ensures continuity in the audit work, should there be a change in the personnel constituting the audit team, with new members being able to see at a glance the outstanding work to date, thus providing a basis for planning and staffing the audit team.

(f) Provides an avenue for the team leader to allocate his available staff in the most productive and efficient manner possible.

(g) It is a time management tool.

The thrust of a tax audit will be that of verification of the figures and other information submitted by the taxpayer for tax purposes.

The primary purpose of tax audit has been expanded to monitor and maintain the confidence in the integrity of the newly introduced self-assessment system. It helps to improve voluntary compliance by detecting and bringing into account those who do not pay the correct amount of tax.

Tax audit is a routine exercise and the outcome usually leads to reassessment or referral for special investigation if tax evasion is suspected.

2.8 TAX INVESTIGATIONS

Investigations, as distinct from tax audits, are called for when there are problems in, for example, an organisation either affecting the whole or particular segment of the organisation. Such could be required when a large fraud is suspected or when evidence of mismanagement abound and an interested party requires that the effect on the enterprise be quantified for management decision-making purposes.

In an investigation, the scope of work is wider than that of a tax audit. The details of checking and depth of the work will also likely be more than that required for an audit exercise.

Tax investigation, is similar to any other form of investigation. It is not carried out on routine basis as that of an audit. For example, a statutory audit of the accounts of a company must be carried out every year, whereas investigation may not be carried out in the same company for several years.

Tax investigation would be carried out when a taxpayer is suspected to have committed fraud. Suspected cases of tax evasion could lead to investigation. These could be due to: failure to file tax returns; filing of incomplete or inaccurate returns; failure to register for tax purposes etc.

Special Investigation results from suspicion or actual knowledge of the existence of tax evasion or tax fraud. It is conducted by tax inspectors who have special training and competence in investigation techniques. They can request for assistance of police investigators and enforcers, if necessary. The principal aim of investigation is to expose all the circumstances of the fraud or tax evasion and to obtain evidence for possible prosecution. Tax investigators have been given greater power than tax auditors. They can seal up a business premises to facilitate their work and obtain all the documents needed to substantiate the evidence of tax evasion and fraud.

2.9 STAGES OF TAX INVESTIGATION

Actual investigation of tax cases involve the following stages:

(a) **Surveillance or Pre-Investigation Activities:** This involves checking and cross checking, obtaining more information on the alleged tax fraud. It involves discrete analysis of data, reports and complaints. These have to be done speedily or the offence could become compounded.

(b) **Evidential Audit or Investigation:** At this stage, the investigators move into the business premises of the suspected party to conduct in-depth tax audit, take charge of any evidence discovered, secure a warrant of arrest and have the suspect arrested if necessary. At this stage, any individual may be invited for investigation. Also, thorough searches of individuals, offices and apartments may be conducted to obtain relevant evidence that might be useful in prosecuting the case.

(c) **Case Preparation:** This involves the collation of evidence, the interrogation of suspects, and careful examination and analysis of seized documents to assess their relevance to the case and potency in the law courts. At this stage, the case can still be dropped if the evidence is weak.

(d) **Arraignment:** This is the stage where the case goes to court for criminal prosecution. All the evidence collected and witnesses secured are made available to the prosecutor who is thoroughly briefed on the case .

(e) **Termination of Investigation:** Investigation in a case of criminal tax fraud or tax evasion can be terminated at any stage, if the following conditions obtain:

   (i) Insufficient evidence.

   (ii) Criminality is not involved; may be what happened was tax avoidance and not tax evasion or fraud.

   (iii) There can be termination by law where continuation can no

longer be sustained under the provisions of the law. An example is where such a case becomes statute-barred.

(iv) If the suspect dies or becomes medically or legally insane.

2.10 INVESTIGATION/INTELLIGENCE DIVISION

The Investigation/Intelligence Division of the Federal Inland Revenue Service is in charge of all investigations and intelligence activities of Inland Revenue.

The roles and responsibilities of the Head of the Division are as follows:

(a) Articulate and direct policies and programmes aimed at achieving the objectives of the division;

(b) Define key operating / guiding principles;

(c) Design strategies for deterring violations of tax laws and hence ensuring tax compliance;

(d) Set up procedures for case referrals from Tax Offices;

(e) Set up proactive processes and define parameters for identifying potential cases of violations;

(f) Address emerging areas of fraud. for example, e-commerce, fraudulent financial reporting;

(g) Collate and maintain reliable statistics of investigations/intelligence work;

(h) Coordinate the activities of all the units in the division;

(i) Develop and implement appropriate training program for field officers on how to conduct investigation/intelligence work, preparing a case for court, computer searches for evidence gathering and data recovery; etc.;

(j) Partner with other experienced tax jurisdictions in the area of information sharing, latest developments in taxation, including emerging areas of tax fraud, computer searches and data recovery;

(k) Liaise with the various regulatory agencies on issues of tax violations;

(l) Provide law enforcement agencies with information sufficient to prosecute violators;

(m) Provide management with an update of cases prosecuted;

(n) Develop and maintain a system of records to track and report on cases, their progress and results;

(o) Recommend amendments to tax laws in order to plug all areas of tax leakages; and

(p) Budget and plan for financial, material and human resource requirements of the Division.

2.11 CIVIL INVESTIGATIONS UNIT

The activities of this unit revolve around the following:

(a) Investigate tax avoidance schemes

Examples are:

(i) Artificial transactions – Section 18 of CITA that is any transaction carried out primarily to obtain tax benefits (reduction or avoidance or deferral of tax or increase in refund of tax etc).

(ii) Creating an offshore company for purposes of reducing tax payable. For example instead of having the Nigeria company buy direct from a foreign supplier, a related offshore company is set up in a tax haven country to do this and will in turn sell the product at a higher amount to the Nigeria company thereby diverting profits offshore. Another example would be when a profitable division is moved offshore. The key is to determine if in fact it is operating off shore.

(iii) Treaty shopping. This involves shopping for the best tax rates offered by treaty countries and then carry out transaction in such a manner to take advantage of those tax rates.

(iv) Back to back loans (to avoid Withholding Tax (WHT)).

(v) Allege purchase of foreign assets at inflated amounts, which results in excess capital allowances claim.

(vi) The use of tax havens and its detrimental impact on the tax system could be significant, both in terms of revenue and compliance.

(vii) Income splitting arrangements.

(b) Investigate cases for tax refunds.

(c) Review cases for mergers and acquisitions.

(d) Issue warrants for search and seizure under Section 45A.

(e) Refer cases to criminal investigations unit where there are indications of deliberate intention to evade tax or commit fraud. etc.

(f) Identify areas for amendments to tax laws in order to plug all areas of tax leakages.

2.12 CRIMINAL INVESTIGATION UNIT

The criminal investigation Unit is responsible to:

(a) Investigate, penalise and recommend prosecution in cases of tax evasion. With tax evasion, you have fraud with "mens rea", the amounts are clearly taxable (suppression of income, fictitious expenses) and does not require an amendment to the tax law. Evasion transactions are done knowing that it was unlawful to do. Normally criminal charges are laid which could result in fines and /or a jail term in addition to the tax and penalties. Examples are:

   (i) Arrangements premeditated to reduce tax payable;

   (ii) Understatement or non disclosure of income;

   (iii) Overstatement of expenses;

   (iv) Creation of fictitious assets and expenses;

   (v) Disproportionate share of expenses and income between offshore and onshore entities;

   (vi) The use of artificial transactions;

   (vii) Complex management structure and associated entities that would result in tax evasion;

   (viii) Non filing of tax returns or filing of incorrect returns; and

   (ix) Denial of Federal Inland Revenue Service access to records.

(b) Investigate and liaise with relevant agencies for prosecution in cases of:

   (i) Fraudulent diversion of Federal Inland Revenue Service taxes such as Withholding tax, Value Added Tax, etc.;

   (ii) Fraudulent payment of income tax and other taxes through use of falsified withholding tax receipts;

   (iii) Abuses by companies and Government agencies in Value Added Tax / Withholding Tax deduction and remittance; and

   (iv) Fraudulent procurement of Tax Clearance Certificate, revenue receipts, Withholding Tax Credit notes.

(c) Carry out search and seizure where such would result in obtaining relevant document for an investigation.

(d) Analyse and evaluate evidences obtained to establish criminal violation, follow up with assessment, penalties and prepare case for prosecution.

(e) Identify the areas for amendments to tax laws in order to plug all tax leakages.

(f) Assist in preparing evidence for prosecution of violators.

(g) Liaise with the National Drug Law Enforcement Agency (NDLEA), Economic and Financial Crimes Commission (EFCC), Nigeria Deposit Insurance Corporation (NDIC) and Central Bank of Nigeria (CBN) to investigate violation of tax laws in cases of white-collar crimes such as money laundering.

2.13 INTELLIGENCE UNIT

The main function of this unit will be to gather and analyse information and thus maintain a database of information for civil/criminal investigation and the Federal Inland Revenue Service in general. Specifically, the unit will:

(a) Liaise with Tax Offices to obtain information on returns filed, Stop-taxpayers, late tax payers, etc for database;

(b) Liaise, on a regular basis, with banks and the Corporate Affairs Commission to obtain information on new accounts (Section 44), new companies, that is, non-filers;

(c) Liaise with Ministries/Government parastatals on contracts for current and prior years, for cross-checking the returns filed by the companies.

(d) Gather and review information in newspapers, magazines, journals, radio and television for signs of potential civil or criminal violations;

(e) Use intelligence techniques (for example, surveillance techniques and computer database searches) to gather information on a company's businesses, financial activities, etc.;

(f) Carry out special enforcement programs on suspected targets;

(g) General intelligence collection;

(h) Refer cases to the civil or criminal investigation unit after carrying out relevant analysis;

(i) Obtain information from third parties; and

(j) Obtain and review published financial statements of offshore companies.

2.14 ASSESSMENT OF INVESTIGATION/INTELLIGENCE DIVISION

The perceived strengths and weaknesses of the Investigation/Intelligence Division are:

(a) **Strengths**

(i) Top management support;

(ii) Quality staffing with Inspectors of high integrity and professional competence preferably chartered accountants, economists and lawyers;

(iii) Enforcement powers in the tax laws such as power to seal up company premises, to issue warrants after due consultation with the management in the case of resistance; and

(iv) FIRS legal unit's continued assistance in the prosecution of tax offenders and advising on legal issues.

(b) **Weaknesses**

(i) Internal and external interference.

(ii) Obstruction of investigation through abuse of the judicial process.

(iii) Conflicts between Tax Audit Section in Tax offices and civil investigation unit.

(iv) Delays through lack of cooperation from taxpayers in the provision of necessary documents and records.

(v) Inadequate funding due to budgetary constraints.

(vi) Inadequate experience in criminal investigation.

(vii) Reliance on external bodies such as the Nigerian Police, Economic and Financial Crimes Commission, etc.

(viii) Inadequate Infrastructure - Computers and Equipment to perform necessary duties and unstable power supply.

2.15 SUMMARY AND CONCLUSIONS

This chapter defines tax audits and investigations and explains its objectives. It also describes the two types of tax audits and explains the process of carrying out a tax audit especially under the pre-self assessment period and under the current self-assessment regime. There is explanation on preliminary matters to be addressed before an audit is commenced, what to do during an audit and what needs to be done in concluding an audit, both in the taxpayer's office and in the tax auditors' office.

These include the preparation of audit checklist, preliminary meeting between the taxpayer's representatives and the tax auditors, analytical review of tax returns, post audit meetings and final audit report as well as raising of additional assessment, if any, to conclude a tax audit.

However, in the case of tax investigation, an intelligence unit of the tax authority is involved in sourcing for tax information as regards incomes from all sources received by, or paid to a named taxpayer.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

2.16 REVISION QUESTIONS

2.16.1 MULTIPLE CHOICE QUESTIONS

1. Tax Audit is carried out by government tax officials for the purpose of

   (A) finding faults with taxpayers
   (B) ascertaining the correctness of the figures contained in the tax returns of taxpayers or otherwise
   (C) obstructing the smooth operations of taxpayers' businesses wherever situated in Nigeria
   (D) forcing taxpayers to pay additional taxes
   (E) embarrassing taxpayers.

2. The Tax Audit unit of the Tax Office was established to

   (A) ensure taxpayer's compliance with the relevant tax laws
   (B) ensure uniformity in the tax administration
   (C) guide statutory auditors of companies in the performance of their duties
   (D) provide information to taxpayers
   (E) monitor the operations of companies.

3. With the operations of the Tax Audit Unit

   (A) more taxpayers have been brought into the tax net
   (B) many taxpayers have ceased business
   (C) tax revenue has increased due to compliance on the part of taxpayers
   (D) there is no need for desk officers to raise queries on tax returns
   (E) more taxpayers have escaped the tax net.

4. An interim audit report is issued during the course of a tax audit when

   (A) the taxpayer does not cooperate with the tax auditors
   (B) the tax auditors come across material issues necessary to be brought to the notice of the tax head office and the taxpayer alike
   (C) the tax auditors have concluded the review of additional assessment
   (D) material and important tax matters have been concluded
   (E) the tax auditors are disturbed by the conduct of the taxpayers.

5. A final audit report is issued by Tax Audit Team on the outcome of an audit exercise. The report is addressed to the

   (A) management of the taxpayer
   (B) tax consultant of the taxpayer

(C) chairman of the Federal Inland Revenue Service Board
(D) statutory auditors of the taxpayer
(E) regional Headquarters Audit of the Federal Inland Revenue Service.

2.16.2 SHORT ANSWER QUESTIONS

1. After the field audit exercise but before the conclusion of the audit exercise, the tax audit leader prepares an ....

2. Tax Audits are carried out by ....

3. The two types of Tax Audit are .... and ....

4. Tax Audit has compelled taxpayers to ....

5. Immediately after the Field Audit, a meeting between the tax auditors on the one hand and the taxpayers and their representatives on the other hand, at the taxpayer's premises, designed to obtain any further information /documents from the taxpayer's management and to answer any other outstanding questions arising from the Field audit, is known as ....

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

3

TAX APPEAL TRIBUNAL AND INTERPRETATION OF TAX LAWS

3.0 LEARNING OBJECTIVE

After studying this chapter, readers should be able to:

- interprete tax laws, using decided cases;
- know the Composition and Jurisdiction of Tax Appeal Tribunal (Tax Appeal commissioners);
- understand what constitutes an appeal;
- know the procedure for raising objections to tax assessments;
- know the procedure for the hearing of appeals;
- know the procedure to be followed for further appeals to the High Court or Court of Appeal; and
- know the Taxpayers rights in a dispute.

3.1 INTRODUCTION

If any taxpayer disputes a tax assessment raised on him by the tax authority, he may give notice of objection if the objection is turned down, the taxpayer may seek redress with the Tax Appeal Tribunal.

3.2 ESTABLISHMENT OF A TAX APPEAL TRIBUNAL

The Tax Appeal Tribunal was established by section 59(1) of the Federal Inland Revenue Service (Establishment) Act 2007, as provided for in the fifth schedule to the Act.

3.2.1 Power of the Minister

According to the Act, 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.

3.2.2 Composition of the Tribunal

The tribunal shall consist of five members (hereinafter referred to as "Tax Appeal Commissioners") to be appointed by the Minister.

Appointment and meetings of the Tribunal

(a) A Chairman for each zone shall be a legal practitioner who has been so qualified to practise for a period of not less than 15 years, with cognate experience in tax matters.

(b) A Chairman shall preside at every sitting of the Tribunal and in his absence the members shall appoint one of them as the Chairman.

(c) the quorum at any sitting of the Tribunal shall be three (3) members.

(d) A person shall not be qualified for appointment as a Tax Appeal Commissioner unless he is knowledgeable in 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.

(e) A Tax Appeal Commissioner shall hold office for a term of three (3) 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 of 70 years whichever is earlier.

(f) A Tax Appeal Commissioner may by notice in writing under his hand addressed to the Minister resign his office:

Provided 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.

(g) A Tax Appeal Commissioner may be removed from office by the Minister on the grounds of gross misconduct or incapacity after due inquiry has been made and the Tax Appeal Commissioner concerned has been informed of the reasons for his removal and given an opportunity of being heard in respect of the reasons.

(h) The salary and allowances payable to and the terms and conditions of service of the Tax Appeal Commissioners shall be determined by the Revenue Mobilisation Allowance and Fiscal Commission and shall be prescribed in their Letters of Appointment:

Provided that neither the salary and allowances nor the other terms and conditions of service of a Tax Appeal Commissioner shall be varied to his disadvantage after appointment.

(i) If for reason other than temporary absence, any vacancy occurs in the office of a Tax Appeal Commissioner, then the Minister shall appoint another person in accordance with the provisions of this Act to fill the vacancy.

3.2.3 Constitution of a Tribunal

The question as to the validity of the appointment of any person as a Tax Appeal Commissioner shall not be the cause of any litigation in any court or tribunal and no act or proceedings before the Tribunal shall be called into question in any manner on the ground merely of any defect in the constitution of the Tribunal.

3.2.4 Appointment of Secretary to the Tribunal

(a) The Minister shall appoint for each place or zone where the Tribunal is to exercise jurisdiction a Secretary who shall:

(i) subject to the general control of the Tax Appeal Commissioners, be responsible for keeping records of the proceedings of the Tribunal;

(ii) be the head of the secretariat and responsible for the day-to-day administration; and

(iii) be responsible for the direction and control of all other employees of the Tribunal.

(b) The official address of the Secretary appointed for each zone shall be published in the Federal Gazette.

3.2.5 Appointment of Other Staff of the Tribunal

(a) The Minister shall appoint such other employees as he may deem necessary for the efficient performance of the functions of the Tribunal and the remuneration of persons so employed shall be determined by the National Salaries and Wages Commission.

(b) The employment in the Tribunal shall be subject to the provisions of the Pension Reform Act and, accordingly, officers and employees of the Service shall be entitled to pensions and other retirement benefits as are prescribed under the Pension Reform Act.

3.3 JURISDICTION OF THE TRIBUNAL

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

(i) Companies Income Tax Act, CAP 60 LFN 1990;

(ii) Personal Income Tax Act No 104, 1993;

(iii) Petroleum Profits Tax Act CAP 354 LFN 1990;

(iv) Value Added Tax Act No 102, 1993;

(v) Capital Gains Tax Act CAP 42 LFN 1990; and

(vi) any other law contained in or specified in the First Schedule to the Act or other laws made or to be made from time to time by the National Assembly.

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

3.4 CRIMINAL PROSECUTION

Where in the course of its adjudication, the Tribunal discovers evidence of possible criminality, the Tribunal shall be obliged to pass such information to the appropriate criminal prosecuting authorities, such as the office of the Attorney-General of the Federation or the Attorney-General of any State of the Federation or any relevant law enforcement agency.

3.5 APPEALS TO THE TRIBUNAL

3.5.1 Notice of Appeal

A notice of appeal against an assessment shall specify the following particulars:

(a) the official number of the assessment, the date and the year for which it was made;

(b) the amount of total profits on which the tax was charged;

(c) the amount of the tax charged;

(d) the date of service of notice of refusal by the Revenue Service to amend the assessment;

(e) the precise grounds of appeal against the assessment. These must be the same as the grounds stated in the notice of objection to the Revenue Service; and

(f) address for service of any notice, correspondence or other documents to be given to the appellant by the Secretary to the Appeal Commissioners.

All notices, documents or correspondences to be given to the Appeal Commissioners shall be addressed to the Secretary to the Appeal

Commissioners, in writing, before the hearing of the appeal.

A company may discontinue any appeal by it, on giving notice, in writing, to the Secretary to the Appeal Commissioners at any time before the hearing of such appeal.
Notwithstanding that a company has given notice of appeal against an assessment, the Revenue Service may revise the assessment in agreement with the company. The Revenue Service shall give notice of such agreement in writing to the Secretary to the Appeal Commissioners, at any time before the hearing of the appeal and such appeal shall be discontinued.

3.5.2 Notice of Refusal to Amend

When a notice of refusal to amend has been received by any company, the company, if it desires, can appeal against the assessment upon giving notice (notice of appeal) in writing to the Secretary of the Tax Appeal Tribunal, within thirty days from the date of service of the notice of refusal . The date of service is the date on the notice of refusal to amend and not the date of receipt of the notice by the company. A late appeal may be accepted, upon an application being made to the Tax Appeal Tribunal, if there is reasonable excuse for the delay, for example, postal delays.

3.5.3 Appeals from Decisions of the Service (FIRS)

(a) A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws referred to in paragraph 4.3 (a) above, may appeal against such decision or assessment or demand notice within 30 days of the service of notice(s) of assessments.

(b) An appeal under this schedule shall be filed within a period of 30 days from the date on which a copy of the order or decision which is being appealed against is made, or deemed to have been made by the Service and it shall be in such form and be accompanied by such fee as may be prescribed provided that the Tribunal may entertain an appeal after the expiry of the said period of 30 days, if it is satisfied that there was sufficient cause for the delay.

(c) Where a notice of appeal is not given by the appellant as required under (a) above, within the period specified, the assessment or demand notices shall become final and conclusive and the Service may charge interests and penalties

in addition to recovering the outstanding tax liabilities which emain unpaid from any person through proceedings at the Tribunal.

3.5.4 Appeals by the Service

Service aggrieved by the non-compliance by a person in respect of any provision of the tax laws, it may appeal to the Tribunal where the person is resident giving notice in writing through the Secretary to the appropriate zone of the Tribunal.

3.5.5 Procedure before Tax Appeal Tribunal

(a) As often as may be necessary, Tax Appeal Commissioners shall meet to hear appeals in the jurisdiction or zone assigned to that Tribunal.

(b) Where a Tax Appeal Commissioner has a direct or indirect financial interest in any appeal pending before the Tribunal or where the taxpayer is or was a client of that Tax Appeal Commissioner in his professional capacity, he shall declare such interest to the other Tax Appeal Commissioners and refrain from sitting in any meeting for the hearing of that appeal.

(c) The Secretary to the Tribunal shall give seven clear days notice to the Service and to the appellant of the date and place fixed for the hearing of each Appeal, except in respect of any adjourned hearing for which the Tax Appeal Commissioners have fixed a date at their previous hearing..

(d) All notices, documents, other than decisions of the Tribunal, may be signified under the hand of the Secretary.

(e) All appeals before the Tax Appeal Commissioners shall be held in public.

(f) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(g) At the hearing of any appeal if the representative of the Service proves to the satisfaction of the Tribunal hearing the appeal in the first instance that:

(i) the appellant has for the year of assessment concerned, failed to prepare and deliver to the Service returns required to be furnished under the relevant provisions of the tax laws mentioned in 4.3 (a) above.

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

(iii) it is expedient to require the appellant to pay an amount

as security for prosecuting the appeal, the Tribunal may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the Service, before the day of the adjourned hearing, an amount, on account of the tax charged by the assessment under appeal, equal to the tax charged upon the appelant for the preceeding year of assessment or one half of the tax charged by the assessment, under appeal, whichever is the lesser plus a sum equal to ten percent of the said deposit, and if the appellant fails to comply with the order, the assessment against which he has appealed shall be confirmed and the appellant shall have no further right of appeal with respect to that assessment.

(h) The Tribunal may, after giving the parties an opportunity of being heard, confirm, reduce, increase or annul the assessment or make any such order as it deems fit.

(i) Every decision of the Tribunal shall be recorded in writing by the Chairman and subject to the provisions of paragraph 16, a certified copy of such decision shall be supplied to the appellant or the Service by the Secretary, upon a request made within 30 days o such decision.

(j) Where upon the hearing of an appeal:

(i) no accounts, books or records relating to profits were produced by or on behalf of the appellant;

(ii) such accounts, books or records were so produced but rejected by the Tribunal on the ground that it had been shown to its satisfaction that they were incomplete or unsatisfactory;

(iii) the appellant or his representative, at the hearing of the appeal, has neglected or refused to comply with a notice delivered or sent to him by the Secretary to the Tribunal, without showing any reasonable cause; or

(iv) the appellant or any person employed, whether confidentially or otherwise, by the appellant or his agent (other than his legal practitioner or accountant acting for him in connection with his ability to tax has refused to answer any question put to him by the Tribunal, without showing any reasonable cause, the Chairman of the Tribunal shall record particulars of the same in his written decision.

3.5.6 Procedure following Decision of the Tribunal

(a) Notice of the amount of the tax chargeable under the assessment as determined by the Tribunal shall be served by the Service upon the taxpayer or upon the person in whose name such taxpayer is chargeable.

(b) An award or judgement of the Tribunal shall be enforced as if it were a judgement of the Federal high Court upon registration of a copy of such award or judgment with the Chief Registrar of the Federal high Court by the party seeking to enforce the award or judgement.

(c) Notwithstanding that an appeal is pending, tax shall pe paid in accordance with the decision of the Tribunal within one month of notification of the amount of the tax payable in pursuance of subparagraph (a) of this paragraph.

3.6 APPEAL TO THE FEDERAL HIGH COURT

(a) Any person dissatisfied with a decision of the Tribunal constituted under this Schedule may appeal against such decision on a point of law to the Federal High Court upon giving notice in writing to the secretary to the Tribunal within 30 days after the date on which such decision was given.

(b) A notice of appeal filed pursuant to subparagraph (a) above shall set out all the grounds of law on which the appellant's case is based.

(c) If the Service is dissatisfied with the decision of the Tribunal, it may appeal against such decision to the Federal High Court on points of law by giving notice in writing as specified in (a) to the Secretary within 30 days after the date on which such decision was given.

(d) Upon receipt of a notice of appeal, the Secretary to the Tribunal shall cause the notice to be given to the Chief Registrar of the Federal High Court along with all the exhibits tendered at the hearing before the Tribunal.

(e) The Chief Judge of the Federal High Court may make rules providing for the procedure in respect of appeals made under this Act and until such rules are made, the Federal High Court rules relating to hearing of appeals shall apply to be hearing of an appeal under this Act.

3.7 RIGHT TO LEGAL REPRESENTATION

(a) A complainant or appellant, as the case may be, may either appear in person or authorise one or more legal practitioners or any of its officers to represent him or its case before the Tribunal.

(b) Every individual or company in a case before the Tribunal shall be entitled to be represented at the hearing of an appeal by a solicitor or chartered accountant or adviser provided that, if the person appointed by the taxpayer to be representative in any matter before the Tribunal is unable for good cause to attend hearing thereof, the Tribunal may adjourn the hearing for such reasonable time as it deems fit, or admit the appeal to be made by some other person or by way of a written address.

Powers and Procedures of Tribunal

(a) The Tribunal may make rules regulating its procedures.

(b) The Tribunal shall, for the purposes of discharging its functions under this Schedule, have power to:

- (i) summon and enforce the attendance of any person and examine him on oath;
- (ii) require the discovery and production of documents;
- (iii) receive evidence on affidavits;
- (iv) call for the examination of witnesses or documents;
- (v) review its decisions;
- (vi) dismiss an application for default or deciding matters exparte;
- (vii) set aside any order or dismissal of any application for default or any order passed by it exparte; and
- (viii) do anything which in the opinion of the Tribunal is incidental or auxillary to its functions under this Schedule.

(c) 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.

(d) The Minister may make rules prescribing the procedure to be followed in the conduct of appeals before the tribunal.

(e) However, each party to an appeal shall bear its own cost.

3.8 FURTHER APPEALS TO THE COURT OF APPEAL

An appeal against the decision of the Federal High Court at the instance of either party shall lie to the Court of Appeal.

3.9 INTERPRETATION OF TAX LAWS

A very important aspect of taxation is the interpretative role of the judiciary. The legislature (National Assembly, in the case of Nigeria) makes the tax laws but the courts interprete the laws. The judicial pronouncements (decided cases) provide the guidelines for the application of the laws.

In practice, the interpretation is not restricted to cases decided in Nigeria but are more often and very extensively extended to cases decided in other countries with similar tax practices as Nigeria, particularly the Commonwealth countries and the USA. Cases are, therefore, cited in respect of authorities from the UK, Canada, Australia, New Zealand, India, East Africa and the USA, as guide to the determination of Nigerian tax cases.

Under Section 3(1)(a) of the Personal Income Tax Act, 1993, tax is chargeable on gain or profits from a "trade, business, profession or vocation". The law did not provide a definition of what constitutes 'a trade', 'a business', 'a profession' or 'a vocation'. Recourse had to be made into the interpretations by the courts as guidelines to determine what constitutes each of the sources of income. The courts do not always provide from the cases, absolute definitions that could be applied at all times. For example, in the case of trading, each transaction has to be looked into to see if it bears any trace of the "badges of trade". If a particular transaction being considered has such a trace, then it constitutes trading. If it does not, then such transaction is not trading."

3.10 DEFINITION OF 'TRADE'

There are many decided cases on the issue of trading, some of which are considered as follows:

(a) **In Fry v. Burma Corporation Ltd 15 T.C. 113:** trade was defined as follows: "Trade" refers to the various activities of commerce – the winning and using the products of the earth..... or the offering of services for a reward, such as conveyance and the like."

(b) **What constitutes trading?**

An important determinant is the motive factor. In Rutledge v. C.I.R. 14 T.C 490, a taxpayer bought a large quantity of toilet papers from a bankrupt company while on a business visit to Berlin. He sold the papers at a profit which was held assessable to tax. The Lord President

Clyde held that the taxpayer purchased the "vast quantity of toilet paper obviously for no other conceivable purpose than that of selling it at a profit". It follows therefore, that the motive behind a transaction could be a determining factor as to whether or not it would qualify as "trading".

(c) **In I.R.C v. Livingstone 11 T.C. 538** the consideration was whether the transaction was isolated or repetitive.
It was held that a trade "consists of a course of dealing and not a single or isolated transaction. This is not to say that an isolated transaction in other circumstances could not be regarded as trading

(d) **C.I.R. v. Frazer 24 T.C. 498. Nature of Transaction**
The taxpayer, a woodcutter who bought a large consignment of whisky and sold it at a profit claimed he was not trading. The court held that "the purchase of a large quantity of a commodity like whisky, greatly in excess of what could be used by himself, his family and friends, a commodity which yield no pride of possession .... I can scarcely consider to be other than an adventure in a transaction in the nature of a trade..".

3.11 CAPITAL AND REVENUE RECEIPTS

Income Tax is a tax on income. This excludes capital receipts. From many decided cases, it is possible to differentiate between receipts, which are revenue in nature, and, therefore, assessable to income tax and those that are capital in nature and therefore not assessable to income tax. Some of the cases and the principles established are:

(a) A consideration was whether the receipts are annual payments or have recurrent characteristics.
In Asher v. London Film Production Ltd, K.B. 133, 140, It was held that fixed payments are capital receipts while recurrent payments are revenue receipts.

(b) A lump sum received to surrender rights to annual royalty payments was held to be capital receipt, following the case of British Borneo Petroleum Syndicate Ltd v. Cropper, 1 All E.R. 104.

(c) Following the case of Van den Berghs Ltd v. Clark 19 T.C. 390 payments received for termination of an agreement that affects the whole profit – making outfit of a taxpayer is capital.

(d) In Glenboig Union Fireclay Co. Ltd v. C.I.R, 2 T.C. 427, it was held that

"a price paid for sterilising the asset from which otherwise profit might have been made" was held to be capital receipt.
Principles of Differentiating Capital Expense (Which is not deductible) from Revenue Expense (which is deductible)

(a) From Vallambrossa Rubber Co. v. Farmer 5 TC 529, it follows that capital expenditure is what is "spent one-off, "whereas revenue expenditure is to "recur every year".
(b) In British Insulated & Helsby Cables Ltd v. Atherton case 10 TC 155 it was held: "when an expenditure is made not only one-off, but with a view to bringing into existence an asset or advantage for the enduring benefit of a trade, I think there is very good reason..... For treating such an expenditure as properly attributable, not to revenue, but to capital".

(c) In Ounswoth v. Vickers Ltd 6 TC 671, It was held that an expenditure that cannot be put against any particular work but seen as serving the business as a whole is a capital expenditure.

(d) Following Anglo – Persian Oil Co. Ltd v. Dale 16 T.C 253, Payments attributable to circulating and not fixed capital should be debited to revenue account.

Readers are referred to Decided Cases in Appendix IV.

3.12 SUMMARY AND CONCLUSIONS

This chapter gives a comprehensive procedure for appeals to the Tax Appeal Tribunals (Appeal Commissioners) where the Tax Payer and the Revenue cannot mutually agree on the tax due. It discusses the composition and matters relating to Appeal Commissioners and other staff such as appointment, tenure of office, and so on.

The right of appeal of the Taxpayer and the Tax Authority to seek further redress from the Federal High Court and Court of Appeal was also discussed.

In addition, decided cases on different areas of dispute between taxpayers and tax officials were also discussed.

In conclusion, good knowledge of the procedure for appeals to the Tax Appeal Tribunal and decided tax cases will improve tax practice in the country. Areas of conflict between tax practitioners and tax officials will be reduced considerably and this will be better for the country.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

3.13 REVISION QUESTIONS

3.13.1 MULTIPLE CHOICE QUESTIONS

1. The Chairman of Tax Appeal Tribunal is appointed by the Minister from among

   (A) top civil servants
   (B) legal practitioners with not less than 15 years cognate experience
   (C) judges and lawyers only
   (D) traders, businessmen and permanent secretaries
   (E) religious leaders and Commissioners of Finance.

2. The notice of appeal must state precisely the grounds and

   (A) the reference number and date of assessment
   (B) the amount of tax on the assessment under dispute
   (C) why the assessment is considered excessive
   (D) all of the above
   (E) only the portion the taxpayer wants to pay.

3. On the determination of an appeal by the Appeal Commissioners
   (A) Both parties must agree and comply
   (B) The taxpayer must pay according to the decision of the Appeal Commissioners
   (C) The tax official shall calculate penalty and interest on the tax from the date of assessment
   (D) The taxpayer is immediately arrested and kept in custody until payment is made
   (E) Either party is entitled to appeal against the decision provided the amount of tax invaded is in excess of ₦400.00.

4. A tax under appeal
   (A) is not collectible until the appeal is determined
   (B) is enforceable by the use of bailiff
   (C) is to be paid by taxpayer before the appeal is heard and determined
   (D) is cancelled (remitted) from the books of the tax office
   (E) is double in the tax office for time wasting.

5. Appeal against the decision of the Tribunal is
   (A) not allowed
   (B) to the Supreme Court directly
   (C) to the joint sitting of the Federal Revenue Service of Inland Revenue and Joint Tax Revenue Service
   (D) to the Federal High Court
   (E) to the Court of Appeal.

3.13.2 SHORT ANSWER QUESTIONS

1. A quasi-court of 'first instance' to settle tax disputes is known as the ....

2. An aggrieved taxpayer is entitled to appeal against a tax assessment by ....

3. All notices and/or documents to be delivered to the Appeal Commissioners, shall be addressed to ....

4. An aggrieved taxpayer may be represented before the Tribunal by ....

5. The tax charged by any assessment, which is not or has not been the subject of an objection or appeal by the Company, shall be payable within .... after service of notice on the company, and not later than .... of the year of assessment in which the tax was charged.

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

4

TAX PLANNING AND TAX AVOIDANCE

4.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- understand tax planning.
- understand tax avoidance.
- be able to distinguish between tax avoidance and tax evasion.
- understand the nature and scope of engagement letters to Tax Consultants and corresponding letters of Acceptance by Tax Consultants.
- identify clients documents to be kept and maintained by Tax Practitioners.
- identify records to be kept by Tax Payers.
- understand the nature and information required for Registration of Tax Payers with the Tax Authorities.
- give suitable replies to tax queries.
- communicate effectively with other Stakeholders on Clients' tax matters.

4.1 TAX PLANNING

The main taxes in Nigeria can be classified into Direct and Indirect taxes as follows:

4.1.1 Direct Taxes

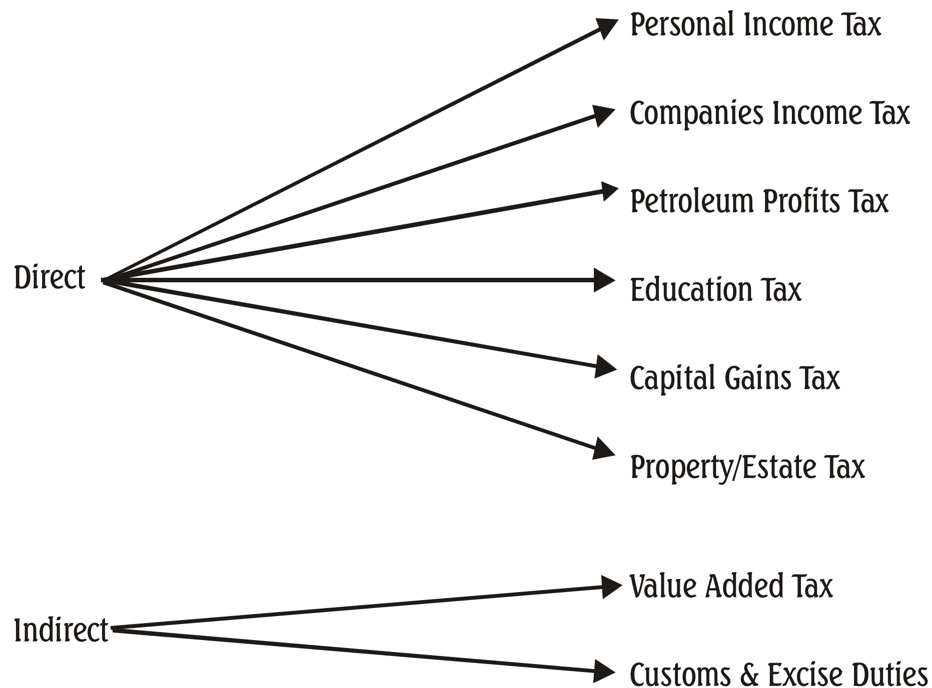
These are charged on a taxpayer's income, profits or other gains. They are paid by the taxpayer directly to the tax authority. The direct taxes are Personal Income Tax (payable by individuals), Companies Income Tax (payable by companies other than those engaged in Petroleum Operations), Petroleum Profits Tax is payable by companies engaged in petroleum operations, Education Tax is payable by companies, whilst Capital Gains Tax is payable by both individuals and corporate bodies.

4.1.2 Indirect Taxes

Indirect taxes are taxes imposed on commodities (goods), professional services and instruments, before they reach the ultimate consumer,

client or owner respectively and are paid by them, not as taxes (i.e. not to the tax authorities), but as part of the selling/legalization price/ cost, of the commodity, service or instrument, as the case may be. Examples of indirect taxes include: Value Added Tax, Custom Duties, Excise Duties and Stamp Duties.

A simple guide do determining what tax is indirect, is to acknowledge the fact that once the tax burden is not borne directly by the entity that remits the tax to the relevant tax authority, then it is an Indirect Tax.



Tax planning involves taking conscious efforts to consider the tax that will be payable by a taxpayer at a future date and how such tax can be minimised. It is clear that payment of tax is an outgoing from the viewpoint of a taxpayer. With respect to profits/income tax, the amount that can be retained by the tax payer from the profits/income of his business/investments is reduced by the amount of tax that such taxpayer has to pay. Payment of tax in any country is regulated by the laws of each country. It is a statutory obligation that everyone has to comply with. Stiff penalties including imprisonment terms are usually in place in the tax legislation of each country to ensure that the taxes are paid. Since legally and morally, there may not be any way out other than to pay the tax stipulated by the laws of the country, it has been the consensus from the days of old, that taxpayers are not under any obligation to pay more tax than is necessary. Consequently, taxpayers have resorted to devising several means of ensuring that they pay the minimum possible tax.

Tax planning involves anticipating a set of circumstances and the identification of opportunities to minimise or defer tax liabilities within the law. It involves arranging affairs to ensure that the maximum allowances, exemptions and reliefs are enjoyed. Consideration would be given to the likely effect on the tax liabilities, of the timing of fixed assets acquisitions and disposals. The choice of the accounting date of a business entity, can also have a significant effect on the tax payable by that business. The impact of the commencement rules in the tax legislation, on the taxable profits of the taxpayer, ought to be considered in tax planning, before deciding on the taxpayer's accounting date. Planning with regards to the time that the profit is earned and the timing of the payment of the applicable tax on such profit, could result in significant financial advantage to a continuing business. When a business ceases to trade permanently, the date of cessation can also impact the amount of its tax liability. In tax planning, the tax-conscious business person and the expert tax adviser, working together, can very often significantly reduce the tax liability that would be otherwise payable.

Tax planning requires detailed knowledge of tax legislation and its application to particular circumstances, identifying and taking advantage of loopholes, if any. It should also be noted that tax planning involves taking note of the applicable taxation legislation, to ensure that the tax laws are properly complied with by taxpayers, such that all taxes due are paid as at when due.

4.1.3 Tax Planning Checklist

The matters in the under-listed checklist should be considered while planning tax:

(a) List of approved taxes and levies

(b) Timing of fixed assets acquisition

(c) Timing of fixed assets disposals in view of balancing adjustments

(d) Timing of capital allowances claim and amount to claim

(e) Hire of assets as alternative to outright purchase – full hire charge is tax deductible.

(f) Where to invest

(g) Making specific instead of general provisions

(h) PAYE properly deducted

(i) Withholding Tax properly deducted

(j) Note Critical Dates:

(i) Filing of Tax Returns

(ii) Filing of Notice of Objection

(iii) PAYE Monthly Remittances

(iv) PAYE Year-end Returns and Final Payment

(v) Withholding Tax Remittances to Revenue

(vi) VAT Returns and Remittances to Revenue

(vii) National Social Insurance Trust Fund (NSITF)

(viii) National Housing Fund (NHF)

Due Dates for income tax payment, to avoid penalty and interest

(k) In Capital Gains Tax (CGT), consider Roll-over Relief

(l) CGT Rate is 10%. Stocks and Shares now exempted from CGT. Invest in Stocks and Shares rather than in Buildings.

(m) Consider Current Tax Incentives

(i) Pioneer companies

(ii) Rural Investment allowance

(iii) Investment tax credit

(iv) Export processing zone allowance

(v) Export free zone exempt profit

(vi) Exempt profit of solid minerals mining

(vii) Hotel income exempt from tax

(viii) Investment tax credit – spare parts fabrication

(ix) Investment tax credit – replacement of obsolete plant

(x) Gas industry incentives

(n) Consider exempt income and profits (Section 19 CITA)

(o) Investment options – low or no tax investment opportunities

(p) Dividend distribution out of franked investment income.

(q) Employees remuneration-

Split to allow for maximum receivable free of tax

Consider the effects of benefits in kind on taxable remuneration.

4.2 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. For example, avoidance of Value Added Tax can be achieved by anyone that does not buy the goods and/or services on which VAT is levied. Far from boycotting the goods or services, tax avoidance schemes are carried out after a critical review of the tax laws. The taxpayer would then implement devices to exploit loopholes in the tax laws that would enable him avoid or minimize tax. It should be noted that to a very large extent, tax avoidance is legal once it is done within the limits permissible by the tax laws.
The dictum established by the lord President (Lord Clyde) in the case Ayrshire Pullman Motor Services and David M. Ritchie v. C.I.R. several years ago still holds good.

The lord President's statement is reproduced as follows:
"No man in this country is under the smallest obligation, moral or otherwise, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow – and quite rightly – to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is in like manner entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue."

In Federal Revenue Service of Inland Revenue v. American International Insurance Company (Nig.) Plc, Belgore C. J. stated:
"Tax is an obligation not a duty. One is not a bad citizen if one can organise his business or trade in a legal manner to minimise his tax liability. He could and he should resist within legal means any unduly wide interpretation or unconventional implication of legislative intent of a tax law that might increase that burden. He can do so without being ashamed of walking in the street as a patriotic citizen. A shrewd business acumen and a legitimate protection of sweat of labour are not dishonest acts or an act having any moral turpitude. It is being pragmatic and practical. Being capitalistic might leave much to be desired but among what is left is not illegality."
When tax avoidance schemes are stretched to the limit, transactions would be seen only in mere form and lacking in substance. This will be because such transactions were entered into just for tax avoidance purposes. There may be no commercial effect. When this signal is present, the Revenue Service would want to step in to disallow such transactions.

To the extent that no tax law would be contravened in several tax avoidance schemes, tax avoidance is legal. This is clear from the opinions of the courts as reproduced earlier. When loopholes in tax legislation have been exploited for tax avoidance purposes, certainly the laws would not have been broken. High rates of tax could make the cost of elaborate avoidance schemes

worthwhile. This will support the view that the existence of widespread tax avoidance is evidence that the tax system requires radical reform.

The possible reaction of the Revenue Service to where loopholes in the tax legislation have been exploited is to take steps to block the loopholes. Thus specific legislation would be passed to block particular loophole or loopholes. Such is referred to as specific anti-avoidance legislation. With one loophole blocked, the taxpayer would search out other loopholes and exploit same. There are therefore, bound to be several and unending specific anti-avoidance legislation to effectively stop the taxpayer willing to carry out tax avoidance schemes. As the legislature cannot accurately foresee all schemes which the determined taxpayer could device, consideration would be given to the promulgation of general anti-avoidance legislation.

4.2.1 Anti-Avoidance Legislation

The two possible forms of anti-avoidance legislation are:

(a) Specific legislation to block known tax avoidance devices.

(b) General anti-avoidance legislation which vests the Revenue with power to disregard all transactions entered into that could be proved to have been entered into, solely for tax avoidance purposes.

The following are some advantages and disadvantages of each of these:

(a) **Specific Anti-Avoidance**

(i) **Advantages**

- Its provisions make the law imposing tax on a particular transaction clear and certain in its application.
- Ineffective or inadequate legislation can be readily amended.

(ii) **Disadvantages**

- May make an already complex legislation more complicated and less comprehensible to taxpayers, detracting from the simplicity canon of taxation.
- The taxpayer would seek further loopholes and again exploit such for further tax avoidance which may create an unending need for further legislation.

(b) **General Anti-Avoidance**

(i) **Advantages**

- The number of anti-avoidance legislations is reduced, consequently minimising the complexity of the tax laws.
- Provisions exist in the tax legislation to discourage all future tax avoidance, that is schemes that are considered to have violated the spirit of the tax laws.

(ii) **Disadvantages**

- Provisions are general, vague and could lack precision.
- Too much reliance is placed on discretion of tax officials for its application. The tax officials could exceed the intention of the legislature in certain respects or fail to carry it out in full in some others.

In the United Kingdom, specific anti-avoidance legislation exists that gives their Tax Authories the power to set aside certain tax avoidance schemes. Tax avoidance schemes that could be cancelled are:

- where there existed a pre-ordained scheme, involving a number of steps, aimed at tax avoidance; or
- where steps are inserted for tax purpose without a commercial or business purpose regardless of whether they have a business effect.

The taxpayer will have a defence if he can show that:

- the transaction or transactions were carried out either for bona fide commercial reasons or in the ordinary course of business, and
- none of the transactions had as their main object or one of their main objects the obtaining of a tax advantage.

Introduction of general anti-avoidance rules have been considered in the UK. The conclusion was that general anti-avoidance rules might be the way forward. Such have to be drafted so that there is no infringement on the rights of taxpayers and that normal commercial transactions are not jeopardised in the process.

It was reported that general anti-avoidance rules have been tried in Australia, New Zealand and Canada with little success. This could further strengthen the view that specific legislation may be more desirable.

In Nigeria, besides few specific anti-avoidance provisions scattered throughout the tax Acts, CITA Section 18 contains the general anti-avoidance provisions regarding Companies taxation. Similar provisions are contained in PITA Section 17 and PPTA Section 13 relating to Personal taxation and Petroleum Profits taxation, respectively.

CITA Section 18

Where the Revenue Service is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments be made in respect of tax liability as it considers appropriate so as to counteract the reduction of tax liability which would otherwise be affected by the transaction and any company concerned shall be assessed accordingly.

Transactions between persons, one of whom either has control over the other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious, if in the opinion of the Revenue Service, those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length. A company in respect of which any direction is made under this Section, shall have a right of appeal in like manner as though such direction were an assessment. The whole idea of these provisions is that where any disposition is not in fact given effect to, the consequence of which is that a tax liability which should normally arise from such disposition did not arise, the Revenue Service would want to step in. This provision is intended to cover cases where the purported transaction, if recognised as valid, would enable the taxpayer to avoid payment of income tax on that which is truly his taxable income.

The transaction(s) would be considered as artificial, that is not genuine or fictitious.

When these situations are established, the tax authority may disregard such disposition. In the alternative, the authority may direct that such adjustments shall be made in respect of the income of an individual, or an executor, or a trustee, as the authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction.

Summaries of two UK cases are quoted below for further illustration.

Ramsey (WT) Ltd. v. IRC (1981) STC 174

The taxpayer had implemented an elaborate tax avoidance scheme with the sole purpose of reducing a liability to CGT by creating allowable losses. The House of Lords held that although every transaction in the scheme was genuine, they were self-cancelling and the court should look at the effect of the transaction, which was to avoid tax. The scheme as a whole produced neither gain nor loss and so should be disregarded for tax purposes.

Furniss v. Dawson (1984) STC 153

The Ramsey principle was extended in this case beyond the self-cancelling transactions. A scheme would also be rejected where steps in the transaction are inserted that have no commercial purpose other than to avoid tax.

4.3 TAX AVOIDANCE AND TAX EVASION

Although tax avoidance is not an offence, the Revenue Service has power to set aside tax avoidance schemes that result in artificial or fictitious transactions. Taxpayers carrying out tax avoidance schemes will not be subject to criminal prosecutions.

Contrary-wise, tax evasion is illegal. Tax evasion is the act whereby the taxpayer can achieve the minimisation of tax through illegal means. Tax evasion involves outright fraud and deceit, for example, through deliberate omission of a source of the taxpayer's income from his return or deliberate understatement of any income. In Nigeria, tax evasion on a large scale is through failure to render tax returns. Tax evasion may be achieved by:

(a) understating income,

(b) overstating expenditure,

(c) making false claims for allowances and reliefs, and

(d) omission from tax returns of chargeable income.

Tax evasion is usually more prevalent when the tax system is perceived to be unfair. Lack of transparency in governance may also encourage tax evasion.

The Revenue Service views any case of tax evasion seriously. If discovered, the Revenue Service will go further to reopen the relevant assessments beyond the normal statutory limit of six years. A tax evader may be charged to court for criminal offences with the consequent fines, penalties and, at times, imprisonment. However, unless the amount involved is large and the taxpayer is unwilling to cooperate, the Revenue Service will usually resort to out of

court settlement with a lump sum payment by the taxpayer in settlement of the tax and penalty that would have been lost if the evasion were not discovered.

Tax avoidance and tax evasion can be compared as follows:

Tax Avoidance	Tax Evasion
1. Legal	1. Illegal
2. Achievable through exploiting loopholes in the tax laws	2. Achievable through deliberate action of fraud and deceit or rendering incorrect returns
3. Results in taxpayer paying minimum tax possible without breaking the law	3. Results in taxpayer not paying correct tax or paying minimum tax through the breaking of the tax laws
4. Supported by the courts in decided cases	4. No support by the courts.
5. No criminal liability	5. Tax evader could be charged to court for criminal offences with the consequent fines, penalties and, at times, imprisonment
6. When stretched to the extreme, the scheme could be disregarded(set aside) by the Revenue Service applying appropriate anti-avoidance legislation	6. At any level, Revenue Service will frown at tax evasion
7. No Revenue Service investigation as a result of tax avoidance. Prior years assessments will not be reopened.	7. Revenue Service investigation will be instituted. Revenue Service has the power to open prior assessments beyond the statutory six-year limit.

4.4 COMMUNICATION WITH CLIENTS

There is always the need for timely communication with Clients on matters relating to appointment and acceptance of offer to act as Tax Consultant, as well as updates on represention to the Tax Authorities. Tax Payers are of two categories:

(a) Individual Tax Payers, and
(b) Corporate Tax Payers.

Individual Tax Payers file tax returns to State Internal Revenue Service, while Corporate Tax Payers (usually Companies) file returns with the Federal Inland Revenue Service.

It is, therefore, important that when appointing Tax Consultants, Clients must specify the scope of assignment in the Letter of Engagement. The Tax Consultants must also be guided in accepting any job and understand their obligations as Tax Agents, liaising between the Clients, Tax Authorities and other third parties.

4.4.1 Appointment of Tax Consultant

Appointment of Tax Consultant is usually communicated vide Letter of engagement emanating from the Tax Payer to the Tax Consultant.

A typical Letter of Appointment is shown below:

ILLUSTRATION 4-1

Letter of Appointment as Tax Consultant written on the Letterhead of DDB NIGERIA LTD.

25th April, 2009.

The Managing Partner
XYZ Consult
28A, Jaja Way
Ikeja, Lagos.

Dear Sir,

APPOINTMENT AS TAX CONSULTANTS

We refer to the discussion held recently with our Directors on Tax and related matters and hereby confirm that management has today approved your firm's appointment as Tax Consultants to our Company with immediate effect.

Please note that their services to be rendered include, Employees', Directors' and Company' Tax matters.

You are to please liaise with our Financial Controller, who will provide you with all necessary information and financial statements / records which you might require in the course of carrying out the assignment.

We propose a meeting with you for next Wednesday April 30, 2009 by 2 pm at our Ikeja head office to finalise the details.

We look forward to mutually beneficial relationship between our Company and your organisation.

Thank you.

Yours faithfully,
for: DDB NIGERIA LTD

(Signed)
(MANAGING DIRECTOR)

CC: The Tax Controller
Federal Inland Revenue Services
Integrated Tax Office, Lagos.

4.4.2 Acceptance of Offer as Tax Consultant

The Acceptance of offer as Tax Consultant to a Tax Payer is the indication of the readiness of the Tax Consultant to render the specific services requested and to provide other special assignments to the Client(s) from time to time.

The Consultant from inception should understand the nature and scope of the assignment in order to provide adequate services to the Client(s). Issues relating to Professional Fees should be fully discussed at the inception of the contract of service.

Acceptance of offer must be communicated in writing to each client as illustrated below:

ILLUSTRATION 4-2 Specimen Letter of Acceptance

5th May, 2009.

The Managing Director
DDB Nigeria Limited
4, Rewrite Way
Surulere, Lagos.

Dear Sir,

ACCEPTANCE OF OFFER AS TAX CONSULTANTS

Your letter of 25th April, 2009 on the above subject matter refers.

We confirm our firm's acceptance of your offer to act as Tax Consultants to your organisation.

From the contents of your offer letter, we understand that we shall provide tax related and advisory services to your company, its Directors as well as Employees. We will also only represent your interest with the relevant Tax Authorities from time to time.

We shall be pleased to meet with you as scheduled.
Thank you.

Yours faithfully,

(Signed)

Managing Consultant
for: XYZ Consult

4.5 CLIENTS DOCUMENTATION AND RECORDS

After accepting the offer to act as Tax Consultant to any Taxpayer, necessary documentation and information, should be put in place.

4.5.1 Documentation/and information to be maintained/provided by Clients

The Company's (client's) officers, should have maintained the following document/records:

(a) Certificate of Incorporation.

(b) Certified True Copies (CTC) of Memorandum and Articles of Association (MEMAT).

(c) CTC of Forms on Directors (CAC 7), Allotment of Shares (CAC 2), Appointment of Secretary (CAC 2.1) and Notice of Registered office (CAC 3).

(d) Certificate of Increase in Share Capital including Stamp Duties, Registration fees, Board's Resolution, etc.

(e) Contracts, Rents and other Agreements.

(f) Financial matters:

- (i) Signed Audited Financial Statements
- (ii) Books of Account, Ledgers, Trial Balance (Hard & Soft copies)
- (iii) Fixed Assets Register and Title documents
- (iv) Accounts and Procedural Manual
- (v) Payment Vouchers, Receipts, etc
- (vi) Banking & Cash transaction documents
- (vii) Monthly Payroll and Directors' Emolument.

(g) Correspondencies with Tax Authorities and other third parties.

(h) Minutes of Board of Directors' and Annual General Meetings (AGM).

(i) Tax and other payment receipts, assessments, forms, Tax Clearance Certificates, etc.

(j) Other Financial and Non-Financial documents including appointment letters.

The above should be kept intact in a safe place, because they may be required for sighting by the Revenue Authorities, during registration, filing of assessments and tax examinations.

4.5.2 Documentation/data to be maintained by the Tax Consultant

The following documentation/data, among others, will be maintained by the Tax Consultants in respect of each Client. The documents which will either be kept in the permanent file or forwarded to the relevant tax office will include the following:

(a) CTC of Incorporation documents i.e. Certificate of Incorporation, MEMAT, Directors, Shareholders, Secretary and Share Capital details, etc.

(b) Engagement Letters

(c) Company Auditors' details if different from that of Tax Consultant.

(d) Audited Financial Statements, Capital Allowances, Income Tax, Education Tax and other Computations.

(e) Trial Balance, detailed Analysis and Schedules on the Financial Statements.

(f) Correspondences with the Client, tax authorities and third parties.

(g) Registration documents in respect of Income Tax, Value Added Tax (VAT), PAYE, Withholding Tax and other Levies.

(h) Records of Billings and outstandings.

(i) Other documents, financials and non-financials.

4.6 COMMUNICATION WITH TAX AUTHORITIES

The Tax Authorities rely on documents and first hand information provided by any Tax payer (or the tax Consultant), in determining the possible tax liabilities of the Tax Payer.

Additional infromation from third parties such as Banks, Insurers, Landlords, Tenants, Suppliers, Customers, Shareholders, Registrar of Companies and Other Stakeholders may be required by the tax authorities for assessment purposes.

Under the provision of the Federal Inland Revenue Service (Amendment) Act, 2007 and other Tax Legislations, Relevant Tax Authorities have rights to receive or demand for additional information from Tax Payers and third parties, on matters affecting any Tax Payer.

Communication with Tax Officials will usually cover the following:

(a) Registration with Tax Authorities for Income and Other Taxes using Standard questionnaire.

(b) Filing of Tax Returns time limits provided by the Tax Laws.

(c) Self Assessments and Objections to Best of Judgement (BOJ) assessments.

(d) Tax Queries and Replies.

They are fully discussed as follows:

4.6.1 Registration with Tax Authorities

The FIRS and SIRS have a Standard Questionnaire which are expected to be followed by Taxpayers for the registration under the provisions of CITA, PITA, PPTA and other Tax Legislations/Acts.

The following details together with CTC of Incorporation documents (Originals to be submitted for verification), will be provided in a formal letter addressed to the Chairman of the relevant tax authority, in respect of every prospective Tax Payers:

(a) Name, Registration Number and Date of Incorporation / Registration.
(b) The Registered or Home address (as applicable).
(c) The Business address.
(d) Names and addresses of the Directors.
(e) Names and addresses of the Shareholders together with their shareholdings.
(f) Any other Directorship held by the Directors.
(g) The precise Nature of business.
(h) Whether or not the business has any predecessor(s).
(i) The Date of commencement of business.
(j) The Accounting year end.
(k) Details of Company Secretary (where applicable).
(l) Details of the appointed Auditors and Tax Consultants.

(m) Details of appointed Bankers.
(n) Any other Information which may help the tax authority in this regard.

VAT Registration

A Vatable Person or VAT Agent is required to also file application for VAT registration at the nearest FIRS office. The application will be supported with CTC of the registration documents.

4.6.2 Filing of Tax Returns

Any company registered in Nigeria must submit relevant information to the tax authority within six months of existence or at commencement of operations (whichever is earlier). An Individual must also provide relevant information in the specified format (Form A) at the begnning of every assessment year.

Filing of Tax Returns for Individuals and Corporate persons are done using prescribed self assessment forms, with supporting documents.

The following are usually forwarded to FIRS as tax returns, within Eighteen months of Companies Incorporation or six months after the end of the Accounting year end (whichever is ealier):

(a) Signed Audited Financial Statements together with a covering letter from the Tax Consultant.
(b) Capital Allowances and Income Tax Computation.
(c) Self Assessment Forms for Income and Education Tax.

4.6.3 Self Assessment for Individuals

Tax Returns for Individuals are submitted at the beginning of every assessment year. The Self Assessment Form (Form A) is completed, stating various sources of Income and Allowances / Reliefs claimable. The Assessment forms must be signed and dated by the Tax Payer.

It is relevant to note here that, tax payments to both FIRS and SIRS are now made vide E-Payment at designated banks. The E-Payment has therefore reduced the level of written communication with the Tax Authorities.

Best of Judgement (BOJ) Assessment

Where the Tax Payer fails to file Self assessment forms and pay the normal tax within the time limit specified under the law, BOJ assessment is raised on the affected Tax Payer.

A valid objection must be raised within 30 days of service of such notice, stating valid grounds of objection.

ILLUSTRATION 4-3

Objection to BOJ Assessment

ABC Ltd is a trading company which has been operating in Nigeria for over ten years. The Company duly registered for both Income Tax and VAT and has been filing returns regularly.

Unfortunately, the Company's Accounts for the year ended 31st December, 2007 could not be signed by the Directors until 1st August 2008, when the Managing Director returned from his medical trip abroad. A BOJ assessment for ₦4.5m was served on the Company with date of service of 30th July 2008. The Tax Consultant filed and paid for self assessment on 2nd August, 2008 as follows:

Income Tax	₦2.75m
Education Tax	₦260,000

The Tax Authority imposed a Late Returns Penalty (LRP) of ₦25,000 on the Company thereafter.

Required:
As a Tax Consultant with many years of experience, you are required to write a suitable Letter of Objection to the BOJ assessement, to the Tax Office.

SUGGESTED SOLUTION 4-3

5th August, 2008

The Tax Controller,
Federal Inland Revenue Service,
Integrated Tax Office,
Noshaking Way, Ikeja.

Dear Sir,

ABC Ltd - TIN NO 00010002149
Objection to BOJ Assessment No YC/A/110/2008/1 oF 30th July 2008 for ₦4.5M

We write to raise formal objection to the above quoted BOJ Assessment of ₦4.5m raised on our Client, Messrs ABC Limited for the 2008 Assessment.

Please consider the following grounds of objection:

(a) Our client has been a good Corporate Tax Payer and has been meeting its tax obligations over the years.

(b) The Company's Accounts were audited on time, but could not be signed by the Directors until the end of July 2008, due to ill health of the Managing Director. Photocopy of his Medical reports for treatment received in Toronto, is attached for your perusal.

(c) The BOJ Assessment was served on the Company few days ago, just as we paid the Self assessments.

(d) Tax Returns and Self Assessment payments for Income Tax, Education Tax and LRP were submitted to your office on 2nd August 2008. Please see copies attached.

We will therefore be grateful if you would please discharge the BOJ Assessment of ₦4.5 on compassionate ground and substitute with the Self Assessment Returns for ₦2.75m Income tax, as per our Computation.

We sincerely thank you for your cooperation.

Yours faithfully,

(Signed)
XYZ Consult.

4.6.4 Tax Queries and Replies

Queries

Tax queries emanate from desk examinations of tax, returns by Tax Officials. Returns are examined, asking for supporting documents in order to ascertain whether or not the tax payers income has not been understated, reliefs not overstated or that the expenses deducted from the Income the period, were ***"wholly, exclusively, necessarily and reasonably incurred"*** in the production of those incomes.

Tax Queries may not follow any specific pattern, but Tax Practitioners must have a better understanding of the Tax Payer's operations, and possess adequate technical know - how, with relevant field experience.

The following issues may be raised from related documents, collected or verified by tax officials, in order to eliminate any private or capital expenditure from the tax returns and also guide against tax avoidance shares to some reasonable extent:

(a) Whether there exists, supporting documents for Assets, Liabilities Income and Expenditures in the name of the Tax Payer.

(b) Whether private expenses were included in the Accounts

(c) Whether relevant documents such as Certificate of Acceptance, Input VAT, Invoices, supporting invoices, Premium claims, invoices on administrative and operating expenses, etc agreed with amounts stated in the Accounts.

(d) Whether PAYE deducted from salaries and Withholding Taxes from Supplies or Professional fees were promptly remitted.

(e) Whether Capital expenditures in form of cost of increase in Capital or Incorporation expenses, general Bad Debts and Depreciation have been written back to profit.

(f) Whether losses and carry forward rules have been adequately observed.

Replies

When replying to tax queries, tax practitioners should endeavour to be more ethical and use subtle language as much as practicable. The Consultant should avoid quoting decided cases or tax laws when one is not too sure that circumstances or scenarios are similar.

Apart from the above, the Consultant should make use of relevant supporting documents from both the client's office and his working papers. Third party documents not relevant to the queries raised, should not be forwarded as an attachment.

Finally, the Tax Consultant should not be seen to be involved in any practices which could be construed to be Tax Evasion, fraud or outright criminality.

4.7 COMMUNICATION WITH OTHER STAKEHOLDERS

Communication with other Stakeholders is specifically required to gather additional information on the clients' business.

4.7.1 Communication with Former Tax Consultant and Auditors

To satisfy professional ethics, an Incoming tax consultant is required to liase with the former Consultant and/or Auditors previously in charge of the Client's tax matters.

In this circumstances, the Incoming Consultant needs to:

(a) confirm whether or not there exists any professional reason(s) why they should not accept the appointment.

(b) obtain relevant documents, Audited Accounts, tax computations and background information on the new assignment.

(c) plan the assignment very well.

4.7.2 Communication with Others

The Tax Consultant may also need to obtain further information in respect of the Client, from the following:

(a) Bankers - for Bank Statements in support of bank charges and to vouch certain entries.

(b) Insurers - For premium paid.

(c) Pension Fund Administrator - For Pension Fund Certificate, to support exemptions.

(d) Other Professionals, that is, Lawyers for Legal advice.

The Tax Consultant must obtain written permission from the Client, in support of third parties evidence. One should exercise the duty of reasonable care in making use of any third parties' evidence.

4.8 SUMMARY AND CONCLUSIONS

This chapter deals with tax planning, tax avoidance as tax schemes that tax payers could utilise to achieve tax savings, such tax savings schemes are only allowed if obtained through legitimate exploitation of loopholes in tax laws. Tax evasion effected through fraud is subject to criminal prosecution and is subject to fines and/or imprisonment. This chapter also discusses communication with clients, relevant tax authorities and related parties.

Current issues about tax registration, self-assessment, e-payment, objections and tax queries procedures were equally discussed.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

4.9 REVISION QUESTIONS

4.9.1 MULTIPLE CHOICE QUESTIONS

1. For how many years could prior years assessments be reopened in the case involving Tax Evasion.

   A. beyond 10 years
   B. beyond the statutory six - year limit
   C. beyond the statutory four - year
   D. exactly 21 years.

2. The following are two ways through which tax evasion could be achieved.

   A. Understating income and understating expenditure
   B. Understating income and overstating expenditure
   C. Overstating income and overstating expenditure
   D. Understating Expenditure and overstating income

3. One of the disadvantages of a general anti-avoidance tax Legislation is:

   A. Provisions do not exist in the tax legislation to catch all future tax avoidance
   B. Reliance are not placed on the discretion of tax officials for its application
   C. Provisions are general, vague and could lack precision
   D. The Tax Legislation are drafted by non-professionals.

4. The major difference between tax avoidance and tax evasion is that

   A. Tax avoidance is treated under CITA, while tax evasion is treated under PITA.
   B. Tax avoidance is legal, while tax evasion is illegal.
   C. Tax avoidance is illegal, while tax evasion is legal.
   D. Tax evasion is treated under Tort, while tax avoidance it treated under Criminal code.

5. One of the advantages of specific anti-avoidance tax legislation is that it ....

   A. minimises complexity in the tax laws.
   B. provide necessary provision to catch future tax avoidance.
   C. makes Tax Officials job very easy.
   D. makes tax queries very easy for Tax Officials.

6. Letters written by Revenue Officials requesting for more information on certain issues, after reviewing audited accounts is known as:

   (A) Tax Audit
   (B) Tax Clearance
   (C) Tax Query
   (D) Investigation
   (E) Back Duty

7. Some of these are examples of vital documents which a Tax Consultant must obtain from a Client Company from inception

   (A) Certificate of Incorporation, MEMAT, Import Licence
   (B) Certificate of Incorporation, MEMAT, Directors List, Letter of Engagement, previous Audited Accounts
   (C) Certificate of Incorporation and Annual Returns
   (D) Annual Returns, TCC of Employees, Import Licence
   (E) Debtors List, Trial Balance, Audited Accounts

8. What constitutes a valid objection to Tax Assessment?

   (A) Amount of Tax, Date and Number of Assessment, Grounds of Objection in writing
   (B) Relevant Laws and Previous Tax Clearance Certificate
   (C) Payment of 50% of the Assessment, qualification of the Tax Consultant, Superior Argument.
   (D) Three years Tax Clearance, Grounds of objection in writing, Relevant Laws.
   (E) 60% of Tax Payable, Penalty for late returns, Good relationship with the Tax Officials.

9. Which of the following is likely to be a requirement for VAT Registration of a new Company?

   (A) Tax Clearance Certificate
   (B) Tax Identification Number
   (C) Incorporation documents
   (D) Bank Statements
   (E) Directors Personal Tax Receipts.

10. For an Objection on BOJ assessment to be valid, it must be raised within:

   (A) 60 Days of the Service of the assessment
   (B) 21 Days of the Service of the assessment
   (C) 7 Days of the Service of the assessment
   (D) 30 Days of the Service of the assessment
   (E) Within a year.

4.9.2 SHORT ANSWERS QUESTIONS

1. Explain `Tax Planning'.
2. State the two possible forms of anti-avoidance legislation.
3. State the advantages of specific anti-avoidance tax provisions.
4. State the disadvantages of specific anti-avoidance tax provisions.
5. What is the defence available to the taxpayer when his tax avoidance scheme is challenged?

6. A Company that fails to file returns within the stipulated time limit could be assessed on ....

7. An Individual or Company who is not satisfied with any assessment has the right to .... against it.

8. What is the due date for filing self assessment of an old Limited Liability Company whose accounting year end is 31st October?

9. To escape tax liability, any Tax Payer breaking the tax law is guilty of ....

10. In replying Tax Queries, for ease of proper identification, the Tax Consultant must state the Company's name and its ....

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

5

TAXATION OF INCOMES, OFFENCES AND PENALTIES

5.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Distinguish between Earned and Unearned Incomes, of Individuals;
- Know the various Incomes that are chargeable or exempted from personal tax under the Personal Income Tax Act CAP P8 LFN 2004;
- Understand the principle of allowable and disallowable expenses or deductions;
- Determine various reliefs and allowances to be deducted before arriving at the chargeable income, for the relevant years of assessment;
- Prepare Personal Income Tax Computation reflecting Earned Income, Unearned Income, Statutory Income, Allowable Charges, Net Statutory income, Reliefs, Taxable / Chargeable Income and Tax due based on Tax Tables or Minimum Tax;
- Understand nature and formation of Partnership;
- Compute Partners' Assessable Income;
- Calculate Partners' Adjusted and Chargeable Incomes for admission, death or retirement of Partners under commencement and cessation rules; and
- Compute Income Tax payable by each Partner for the relevant years of Assessment.

5.1 INTRODUCTION

Taxation is a common phenomenon all over the world. Most countries cannot do without the imposition of tax, to boost its revenue generation. There are many definitions given to taxation by different authors. However, taxation can be explained as a weapon used by any Government to share from the wealth of an individual or corporate body. Hence, it can be concluded that taxation is generally an imposition.

5.2 TAX LEGISLATION

The principles and practices adopted in the Nigerian Personal Income Tax (PIT) were handed down by the British Colonial Administration. The administration and law of the PIT in Nigeria is therefore in general conformity with what obtains in most other commonwealth countries of the world and such other countries that had the benefit of British colonialism. After Nigeria's

independence in 1960, the first set of indigenous tax laws in use for PIT were:
(a) The Finance law of Eastern Nigeria of 1956
(b) The Income Tax Law of Western Nigeria of 1957
(c) Income Tax Management Act (ITMA) of 1961
(d) The Personal Income Tax (Lagos) Act of 1961
(e) The Northern Nigeria Personal Income Tax Law of 1962.

The Personal Income Tax (PIT) in Nigeria is under the Concurrent Legislative list of the 1999 Constitution.

5.3 DEVELOPMENTS IN NIGERIAN TAXATION

(a) Income Tax Management Act 1961

There were various tax systems operating in the Northern, Western and Eastern regions of Nigeria before the Raisman Fiscal Commission of 1958 which recommended that there should be a uniform basic principle for taxing incomes throughout Nigeria. It was this recommendation that was embodied in the Nigerian (Constitution) Order in Council 1960, which resulted eventually in the enactment of the Income Tax Management Act 1961 (ITMA 1961). ITMA 1961 was the precursor to CITA 1961, 1979 and 1990 as well as the Personal Income Tax Decree (now Act) of 1993.

(b) 1975 Amendments

In 1975, the Income Tax Management (Uniform Taxation Provisions) Decree No 7 was promulgated. This decree unified reliefs and rates throughout the country with the key advantage of resolving, to some extent, the proliferation of various tax laws in the different States of the Federation.

(c) 1985 Amendments

The Finance Miscellaneous (Taxation Provisions) Decree 1985 introduced some reforms into the tax provisions such as:

(i) increases in personal allowances

(ii) tax authorities were empowered to request any bank for information about customers (individuals).

(iii) the basis of computing capital allowances changed from reducing balance to straight-line method.

(iv) capital allowance claimable was restricted to 75% for manufacturing business and $66\frac{2}{3}$% for other businesses but with no limit for agricultural businesses.

(v) Interest on loan for agricultural and export purposes were to be treated as exempted from tax.

(vi) Losses carried forward to be limited to four years for businesses other than agricultural business.

(d) **1987 Amendments**

The amendments to the Nigerian tax laws in 1987 included:
(i) slight increase in personal allowances;
(ii) review of some capital allowances rates; and
(iii) treatment of withholding taxes on interest and dividend as final tax payable; in other words, they are treated as Franked Investment Income (FII).

(e) **1990 Amendments**

The following slight amendments were made:
(i) significant improvement in capital allowances rates; and
(ii) manufacturing businesses now to enjoy 100% capital allowance claimable.

(f) **1992 Amendments**

The amendments include:
(i) increase in personal income tax reliefs and allowances; and
(ii) amendment in the table of tax rates.

(g) **1993 Act**

In 1993, the Personal Income Tax Act was promulgated as Decree No 104, which replaced ITMA 1961 as amended up to the point of abrogation. The Act provides for the taxation of every individual or corporate sole or body of individuals (e.g. partnership), that are deemed to be resident for that year, in the relevant state and increase in the table of rates, for the taxation of individual under PITA.

5.4 RENDITION OF RETURNS OF INCOME BY INDIVIDUALS

An Employee is expected to render returns of income at the beginning of each year. This returns is made on a form specially created for the purpose. Form A is provided for the use of the employee wherein the employee provides information as regards the income to be earned during the year. Such income ranges from fees, commission, bonus, allowances or any other income to be earned as a result of one's employment including all benefits-in-kind.

5.5 DETERMINATION OF RESIDENCE

The determination of residence is very central to personal income taxation under the Nigerian laws. This is so for the following two reasons:

(a) There are many taxing authorities and many taxing statutes.

(b) Individuals within the country are free and prone to movement within the country and to pursue their business endeavours wherever they choose in order to maximise their earnings.

As a result of the above, there is need for definite rules to enable each taxpayer to know where to discharge his/her tax obligations and to reduce or eliminate friction between the various tax authorities.

The following rules are to be observed in the determination of residence under the Personal Income Tax Act CAP P8 LFN 2004.

(i) Foreign Employment

Foreign employment is an employment, the duties of which are performed wholly or partly on behalf of an Employer who is in a Country other than Nigeria.

The gain or profit from a foreign employment shall not be deemed to be derived from Nigeria if:

- the Employee is not in Nigeria for a period or periods amounting to 183 days or more in any twelve months period commencing in a calendar year and ending either within that same year or the following year.

- the remuneration of the Employee is liable to tax in that other Country.

(ii) Nigerian Employment

Nigerian employment is any employment that satisfies the following:

- Duties are wholly performed in Nigeria; and

- The Employer is in Nigeria.

The gain or profit arising from Nigerian employment is taxable in Nigeria, even if it is from an employment by a Government in Nigeria.

The gain or profit from any employment performed in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits fromthe employment are received in Nigeria or not.

It must also be noted further, that 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 from Nigeria.

Meanwhile, it is important to point out that no tax can be assessed on any individual whose residence in a tax territory cannot be proved for a year of assessment.

An individual who holds foreign employment shall be deemed to be resident in the territory in which the principal office of his Employer is located.

On the other hand, an individual who holds a Nigerian employment shall be deemed to be resident in the territory in which he has a place or principal place of residence during a year of assessment.

A place of residence in relation to an individual is a place available for domestic use in Nigeria on a relevant date and does not include Hotel, Guest or Rest House or other places for temporary lodging.

Where an Individual has more than one place of residence in a year of assessment, it is important to determine the principal place of residence of the Individual. The principal place of residence can be defined as the place where the Individual normally resides.

(iii) **Other Employments**

An employee whose remuneration is subject to income tax in Nigeria for a year of assessment but who is not deemed to be a Nigerian resident shall be deemed to hold a foreign employment and if he has no Employer's principal office, shall be assessable to tax by the Federal Inland Revenue Service rather than by any State of the Federation.

(iv) **Federal Subjects**

Those referred to as Federal Subjects are those who earn incomes that are subject to Nigerian Income Tax but who are not resident in any State in Nigeria, or who, by the nature of their duties, are subject to constant movement both in and outside Nigerian borders.

These categories of Taxable Persons include:

- Residents of the Federal Capital Territory, Abuja.
- Members of the Nigerian Armed Forces.
- Members of the Nigerian Police Force.
- Officers of the Nigerian Foreign Service.
- Foreign Residents who earn incomes in Nigeria.

The above categories of Persons are taxed by the Federal Inland Revenue Service rather than by any State in which they may be temporarily resident.

(v) **Pensioners**

The following rules of residence apply to Pensioners:

- Nigerian Pensioners are deemed resident in their places or principal place of residence as at 1st of January in the year of assessment.
- Where the individual Pensioner has no place of residence in Nigeria and he is wholly paid by the Government of a territory in Nigeria, he is deemed resident in that territory.
- Where the pension is not a Nigerian pension, the earner shall be deemed resident in the territory in which the principal office of the pension fund or other person authorising the payment in Nigeria is situated.

5.6 CHARGEABLE PERSONS

Every human being or association of human beings resident in the appropriate tax jurisdiction and engaged in trade or business or obtaininig taxable remuneration are ordinarily regarded as taxable.

It follows from the above, that if a person has no income or has receipts that are not taxable, he cannot be taxed under the Personal Income Tax Act (PITA).

Similarly, certain Societies or Persons, because of their nature or the nature of their activities, may not be taxed, provided they refrain from engaging in trade.

Section 1 of PITA imposes tax on the income of:

- Individuals, Communities and Families; and
- Any Trustee or Executor under any Settlement, Trust or Estate.

(a) Fundamental Principles

There are certain fundamental principles involved in the taxation of Chargeable Persons listed above. Those principles are as follows:

(b) Individuals

In the case of individuals other than an itinerant worker, members of the Armed Forces and Police, Officers of the Nigerian foreign service, residents of the Federal Capital Territory, Abuja and Persons who are resident outside Nigeria but who derive income or profit in Nigeria, tax for any year of assessment may be imposed by the State in which the individual is deemed to be resident for that year.

(c) Itinerant Worker

An itinerant worker is any individual that does not have a permanent principal place of resident in a year of assessment. Tax may be imposed by any State in which the itinerant worker is found during the year.

Where an itinerant worker moves to a new State mid-year, credit must be given against his tax payable for an amount equal to what he had paid during the same year to other Tax Authorities. However, where an itinerant worker has been assessed to tax and he has not paid or has paid only part thereof, the unpaid tax would be put in abeyance during his absence and if he returns, he would be obliged to pay, but credit would be given to him for any tax he may have paid to other tax authorities during his absence not exceeding the amount of the unpaid tax. Example of itinerant worker is a musician.

(d) Communities

In the case of a village or other indigenous communities, tax may be imposed for any year only by the law of the territory in which that community is to be found. Tax may be charged on:

(i) the estimated total income of all its members;

(ii) the estimated total income of those of its members whose income is impracticable in the opinion of the relevant tax authority to assess individually; or

(iii) the amount of any communal income which in the opinion of the relevant tax authority in relation to such community, it is impracticable to apportion with certainty between its members.

(e) **Families**

In the case of family incomes in which the interests of the members of the family cannot be determined or are uncertain, tax may only be imposed by the tax authority of the territory in which the members of that family who customarily receive that income in the first instance, reside.

It is important to note that in dealing with communities and families, the implication of the principles explained above is that, where the income of the community or family can be readily determined and shared among the members of that community or family, the incomes are supposed to be so shared and the individual members on receiving their shares, are to be assessed to tax in the state in which they are ordinarily resident.

(f) **Trustees**

In the case of an income arising to a Trustee of any settlement or trust or estate or to an Executor of any estate of a deceased person, tax may only be imposed by the tax authority of the territory in which the trust is located and not necessarily the state where the trustee is resident. Where the Trust derives its income from more than one territory, the Federal Inland Revenue Service becomes the relevant tax authority.

(g) **Armed Forces Members, etc**

The following categories of Persons are subject to tax directly by the Federal Inland Revenue Service, irrespective of where they reside:

(i) Employees of the Nigerian Army, Air Force, Navy and Police force other than those employed in a civilian capacity.
(ii) Officers of the Nigerian Foreign Service.
(iii) Residents of the Federal Capital Territory, Abuja, and
(iv) Persons resident outside Nigeria who derive profits or income from Nigeria.

5.7 CHARGEABLE INCOMES

Chargeable Incomes are the incomes on which Chargeable Persons are to be assessed to tax under PITA. These incomes include:

(a) Gains or profits from any trade, businesses, profession or vocation carried on by the Chargeable Person.

(b) Salaries, wages, fees, allowances or other gains or profit from employment.

(c) Bonuses, premiums or other perquisites granted to an employee.

(d) Gains or profits including any premium arising from a right granted to any other persons for the use of occupation of any property.

(e) Dividends, interests or discounts

(f) Any other profits, gains or other payments.

The following are, however, excluded from taxation:

(i) Re-imbursement to an employee for expenses incurred by him which does not constitute a profit or gain.

(ii) Medical or dental expenses incurred by an employee.

(iii) Cost of passage to or from Nigeria incurred by an employee.

(iv) Any sum paid in respect of maintenance or education of a child.

(v) Any compensation for loss of employment.

There are certain test prescribed by law to which the above chargeable income must be subjected to and by which their allowability or otherwise will be determined under the Personal Income Tax Act. The Act provides that income tax is payable on incomes accruing in, derived from, brought into or received in Nigeria.

(a) Accruing in Nigeria

This relates to incomes generated in Nigeria whether or not the recipient of the income is in Nigeria or whether the income was actually received in Nigeria or not. The activities that result in the income may not even have taken place in Nigeria. The income of staff members of Foreign Embassies, is a typical example.

(b) Derived from Nigeria

This category of incomes have every similarity to incomes "accruing

in" except that the activities resulting in them could only have taken place in Nigeria while those of the other may have taken place elsewhere.

(c) **Brought into Nigeria**

These are incomes that are made elsewhere and brought into Nigeria. They may be the whole or part of a larger profit. The important thing is that it was earned and received elsewhere and then remitted into Nigeria.

(d) **Received in Nigeria**

This category of income is also similar to those "Accruing in" in that the income may have been earned in or outside Nigeria. The important distinction here is that this category of income is received in Nigeria while those "accruing in" Nigeria may have been received outside Nigeria.

For clarity purposes, income taxable in Nigeria must have:

(i) Nigerian based earner, whatever its source;

(ii) Nigerian source, wherever the earner is based; and

(iii) Nigerian destination irrespective of its source or the domicility of its earner.

5.8 TYPES OF INCOME

Generally, there are two broad categories of incomes and these are earned and unearned incomes.

(a) **Earned Incomes**

In relation to an individual, earned incomes, mean incomes derived from a trade, business, profession, vocation or employment, carried on or exercised by him. It means incomes that were earned through physical, intellectual or artistic exertion, as opposed to those earned passively through investment. Earned incomes include profits, salaries, wages, commission, bonuses, etc.

(b) **Unearned Incomes**

These are incomes derived from sources other than employment, business or reward for services rendered. Mainly, unearned incomes are investment incomes such as rental incomes, dividends, royalties,

earnings from trademark, patents, etc. It also includes gifts, inheritance and bequeathals.

5.9 EXEMPT INCOMES

Exempted incomes under the Personal Income Tax in Nigeria, include the following, amongst others:

(a) The official emoluments of the holders of the office of the President, Vice – President, the Governor of a state, the Deputy Governor or anybody acting in those capacities.

(b) All consular fees received on behalf of a foreign state or by a consular officer or employee except where the officer is a Nigerian, working in Nigeria.

(c) An income in respect of which tax is remitted or exempted under the provisions of the Diplomatic Immunities and Privileges Act.

(d) The income of a Local Government or Government Institution.

(e) The income of any ecclesiastical, charitable or educational institution of a public character.

(f) Wound and disability pension granted to members of the Armed Forces or of any recognised national defence organisation.

(g) Pension granted to a Person under the provisions of the Pensions Act relating to widows and orphans.

(h) The income of a trade union, registered under the Trade Union Act.

(i) Gratuities.

(j) The income of a Cooperative Society.

(k) The income of a statutory or registered friendly society.

(l) A sum withdrawn or received by an employee from a pension, provident or other retirement or other benefits scheme, fund or society approved by the Joint Tax Revenue Service.

(m) The income of a person other than a citizen of Nigeria from employment in technical assistance scheme with the Government of the Federation or a State.

(n) Interests accruing to a person not resident in Nigeria. These interests are on Government loans from international institutions, deposit accounts or transfers made wholly in foreign currencies, loans raised in the United Kingdom.

(o) Dividends paid to a person by a company incorporated in Nigeria provided:

(i) the equity participation of the person in the company paying the dividend is either wholly paid for in foreign currencies or by assets brought into Nigeria between 1st January, 1987 and December 31, 1992.

(ii) The person to whom the dividends are paid owns not less than 10% of the equity share capital of the company.

(iii) The tax free periods for (i and ii) above are limited to 5 years in the case of agricultural and agro-allied companies and 3 years for others beginning from the year of assessment following the year the capital was brought into Nigeria.

5.10 BENEFITS IN KIND OR PERQUISITES

Benefits –In-Kind are benefits provided by the Employer to an Employee(s). They are other benefits received by an employee apart from the normal salary and allowance. Perquisites are benefits not monetised.

These benefits include:

(a) Provision of Assets

Where assets such as motor vehicles, furniture, equipments, etc are provided for the use of an Employee by the Employer, the amount of benefits-in-kind is determined as follows:

(i) If the asset is owned by the Employer, the benefit is 5% of the cost of the asset; and

(ii) If the asset is rented or hired, the benefit is the rent or hiring charge paid to the Landlord or Hirer.

(b) Provision of Accommodation

An Employee that is favoured with the use of an accommodation by the Employer would be deemed to have enjoyed a sort of benefits-in-kind from such employment. The benefits derived are determined as follows:

(i) Asset Owned: the annual rate or rateable value of the asset is used for the purpose.

(ii) Asset Rented: amount of rent paid.

(c) **Domestic Servant**

Where the employer engages the services of Steward, Driver, Wash-man, House-Maid, etc for the advantage of an Employee, the cost incurred in form of remuneration by the Employer to these people shall be regarded as benefits-in-kind in the hands of the Employee and thereby liable to tax.

(d) **Provision of Utilities**

Where the Employer pays any amount in respect of energy consumption bills, telephone bills and others to an Employee, such amounts are deemed to be additional income in the hands of the Employee.

5.11 NON-TAXABLE ALLOWANCES

The Personal Income Tax Act specifically exempts some allowances from tax. These allowances include:

House Allowance

(a) Before 1988-tax year, ₦720 per annum was tax exempt.

(b) From 1988 to 1991, the lower of ₦5,064 and 20% of the basic salary

(c) From 1992 to 1998, allowable allowance increased to the lower of 28% of basic salary and:

i) ₦10,000 for Lagos and Abuja residents

ii) ₦6,000 for state capitals

iii) ₦4,000 for other areas

(d) From 1999 to 2000 tax years, rent allowance not more than ₦100,000 was tax free.

(e) From 2001 to date, the tax-free rent allowance increased to ₦150,000 per annum or 28% of basic salaries, whichever is higher.

NB With effect from 1996, where the Employer pays rent of the Employee's residence directly to the Employee's Landlord, such amount will be considered as an allowable deduction for company tax purposes to a maximum of 100% of the Employee's basic salary per annum.

Transport Allowance

(a) Before 1988, transport allowance of ₦600 per annum was tax exempt.

(b) Between 1988 and 1991, allowable allowance was ₦1,740.

(c) Effective from 1992 to 1998, it increased to N2,436.

(d) Between 1999 and 2000 tax years, allowable allowance was increased to ₦15,000.

(e) From 2001 to date, tax-free allowance was increased to ₦20,000

Meal Allowance: – ₦5,000 per annum

Utility Allowance: – ₦10,000 per annum

Entertainment Allowance: – ₦6,000 per annum

Leave Allowance/Grant: – maximum of 10% of annual basic salary.

5.12 RELIEFS

Reliefs are meant to reduce the tax burden of the Individual in recognition of his personal financial responsibilities. They are deductions allowed to an individual taxpayer in a year of assessment to reduce the Chargeable Income of such individual. The reliefs include:

(a) **Personal Allowance**

This is granted to every Taxpayer who earns income irrespective of his/her age. The allowance is calculated on Earned Income. This allowance is granted to both residents and non-residents and could also be referred to as earned income allowance. Allowable amount of personal allowance are as follows:

Between 1985 and 1986 tax years;

(i) Where earned income is less than ₦6,000, the allowance was ₦1,200 plus $12\frac{1}{2}$% of earned income in excess of ₦6,000

(ii) Between 1987 and 1989, personal allowance was ₦1,000 plus $12\frac{1}{2}$% of earned income.

(iii) Between 1990 and 1997, the allowance was ₦2,000 plus 15% of earned income.

(iv) Between 1992 and 1997, the allowance increased to ₦3,000 plus 15% of earned income.

(v) With effect from 1998 to date, the allowance is ₦5,000 plus 20% of earned income.

(b) **Disabled Person Allowance**

This is an allowance granted to a Taxpayer who is disabled and who uses special equipment and the services of an attendant in the course of his paid employment. The allowance is in addition to personal allowance. Before 1998 tax year, it was the lower of ₦2,000 or 10% of earned income with effect from 1998, the allowance was increased to the higher of ₦3,000 and 20% of earned income.

(c) **Wife Allowance**

This allowance was given to every married man up to 1991 assessment year but was abolished with effect from 1992, probably to eliminate discrimination against women.

(d) **Children Allowance**

This is granted to any Taxpayer who on the first day of the preceeding year maintained a natural offspring or an adopted child. Conditions for claiming the allowance are:

(i) The number of children shall not exceed four.

(ii) The child shall be maintained by the individual in the preceeding year of assessment

(iii) The child shall be less than 16 years of age on the first day of the preceeding year.

(iv) If the child is more than 16 years of age, the allowance can still be granted, if the child is still receiving full time instruction in a recognised educational institution or was under articleship or indenture in a trade or profession.

(v) No deduction shall be granted in respect of a married child whatever his/her age.

(vi) No deduction shall be granted to a husband and his wife in respect of the same set of children.

(vii) No additional allowance will be granted on account of educational cost on any of the children.

(viii) Where the cost of maintaining a child is shared between two or more persons, the tax authority reserves the right to apportion the allowance between those persons.

(ix) A widow who re-marries, can still claim the full allowance in respect of the children of the deceased husband, up to a maximum of four.

The allowable allowances are as follows:

- Before 1987 tax year, it was ₦250 per child per annum
- Between 1987 and 1991, it was ₦400 per child per annum
- Between 1992 and 1994, it increased to ₦500 per child per annum.
- In 1995, it was ₦1,000 per child per annum.
- Between 1996 and 1997, it increased to ₦1,500 per child per annum.
- With effect from 1998 to date, it increased to ₦2,500 per child per annum.

(e) **Dependant Relative Allowance**

The allowance is granted under the following conditions:

(i) The Relative must be the widowed Mother of the individual's spouse or he must be a close relative of the individual or his spouse who is incapacitated by old age or infirmity and therefore incapable of self-maintenance.

(ii) The income of the Dependant in the preceeding tax year must not be more than the amount of the allowance.

(iii) Where two or more persons maintain a relative, the amount of allowance shall be apportioned between them in proportion to the sums incurred.

(iv) A husband and his wife can claim dependant relative allowance where each maintains separate relatives.

The Amount of allowance claimable is equal to:

- Before 1987- ₦400 per annum.
- Between 1987 and 1994 – ₦600 per annum.
- Between 1995 and 1997 – ₦1,000 per annum.
- From 1998 to date – ₦2,000 per dependant for maximum of two dependants.

(f) **Life Assurance Allowance**

This allowance is given in respect of life insurance premium paid by an individual during the preceeding year of assessment for himself or for his wife. The amount that can be claimed is subject to the following:

(i) Up to 1991 tax year:
The lower of:

- Premium paid
- 20% of net statutory total income
- 10% of capital sum assured
- Overriding limit of ₦2,000

(ii) Between 1992 and 1995, it was the lower of:

- 10% of total income
- Premium paid
- Overriding limit of ₦5,000

(iii) With effect from 1996, the allowance is the actual amount of premium paid.

NB: The above includes any contribution made to an approved pension, provident or other retirement benefit scheme or fund.

(g) **Donation to Research & Development Companies**

With effect from January 1st 1987, donations made to a research center or company floated exclusively for research purposes are allowed as relief. The amount claimable is the lower of:

(i) Actual amount of donation, and
(ii) 10% of the taxpayer's chargeable income.

(h) **Equity Participation in Research & Development Company**

With effect form 1987 tax year, an individual is allowed to claim as a relief, the amount of his equity holding in a company floated exclusively for research purposes or 25% of his total income whichever is lower. Where the amount cannot be fully relieved in a year, the unrelieved amount can be carried over to subsequent years until such amount is fully relieved.

The following conditions must be met by the R & D Companies before the relief is granted to the Taxpayers:

(i) The company must be a Nigerian company incorporated on or after January 1st 1987.

(ii) The main objective of the company must be to carry out the business of research and development.

(iii) Research projects must commence within two months after incorporation of the company.

(i) **General Charges**

These are charges that do not relate to any income but allowed as deductions in arriving at the chargeable income of an individual taxpayer. The charges include:

(i) Professional subscription.

(ii) Mortgage loan interest i.e Annual Interest on loan for an owner - occupier residential house.

(iii) Alimony payment made by a husband to his divorced wife. The amount is ₦300 and is unaffected by the abolition of wife allowance.

5.13 OFFENCES AND PENALTIES

There are many offences and prescribed penalties in the Personal Income Tax Act in order to: maintain the integrity of the tax system, encourage compliance and minimise the cost of collection.

The offences and penalties include the following:

(a) **Failure to submit Returns:** where the offence is failure to submit returns, a further sum of ₦40 daily for the period of continued failure shall be payable and in case of default of the payment, the defaulter shall be sentenced to six months imprisonment upon conviction.

(b) **Non-compliance with Notice:** where a person fails to comply with the requirements of a notice duly served on him, or to attend in answer to a summons served on him, he would be guilty of an offence and be liable on conviction to a penalty of an amount equal to the income tax chargeable on him for the preceeding year of assessment.

(c) **Incorrect Returns:** A person who makes incorrect returns by omitting or understating any income liable to tax is guilty of an offence and liable on conviction to a fine of ₦200 and double the amount of tax, which has been undercharged.

(d) **False statements and Returns:** Anybody who makes a false statement in respect of deduction, set-offs, relief's, etc or abets, aids, assists or counsels, shall be guilty of an offence and liable on conviction to a fine of ₦1,000 or imprisonment for five years or both.

Further to the above, a Tax Officer who:

(a) Demands for any amount in excess of the authorised assessment; or

(b) Withholds for his own use any tax collected; or

(c) Renders false returns of the amount of tax collected; or

(d) Defrauds a person, embezzles or uses his position to deal wrongly with a tax payer, is guilty of an offence and liable on conviction, to a fine of ₦100 or imprisonment for three years or both.

5.14 MINIMUN TAX

Minimum Tax was introduced to ensure that Taxpayers do not escape being taxed due to heavy capital allowances and reliefs.

(a) Up to 1989 tax year, minimum tax payable by an individual taxpayer was:

1% of total income where the taxpayer has no taxable income as a result of large relief or where taxable income produces tax liability that is lower than the minimum tax.

(b) Between 1990 and 1992, minimum tax was reduced to 0.5% of total income. Furthermore, an individual who earns ₦3,000 or below shall suffer minimum tax but would not be required to render returns of his income.

(c) Between 1993 and 1994, minimum tax remained at 0.5% of total income. However, individuals earning ₦5,000 or below were exempted from both the normal tax and minimum tax but were required to file returns of their income.

(d) Between 1995 and 1996, minimum tax remained at 0.5% of total income but individuals with earned income of ₦7,500 or below were exempted from normal tax only.

(e) The earned income that was exempted from tax was increased to ₦10,000 in 1997 and subsequently to ₦30,000 in 1998. This is applicable only to a person whose source of income in a year of assessment is from employment. Such a person will not be required to file any tax returns but he is not exempted from minimum tax of 0.5% of his total income.

5.15 TAX TABLES

Applicable tax rates used in calculating the tax payable by an individual taxpayer from 1996 tax year to date are as given below:

(a) **Between 1996 and 1997**

1st ₦10,000 @ 5%
Next ₦10,000 @ 10%
Next ₦20,000 @ 15%
Next ₦20,000 @ 20%
Above ₦60,000 @ 25%.

(b) **Between 1998 and 2000**

1st ₦20,000 @ 5%
Next ₦20,000 @ 10%
Next ₦40,000 @ 15%
Next ₦40,000 @ 20%
Above ₦120,000 @ 25%

(c) **With effect from 2001**

1st ₦30,000 @ 5%
Next ₦30,000 @ 10%
Next ₦50,000 @ 15%
Next ₦50,000 @ 20%
Above ₦160,000 @ 25%

5.16 PERSONAL INCOME TAX COMPUTATION FORMAT

	₦	₦
Earned Income		
Salary		xx
Commission/Bonus		xx
Pension		xx
Benefits-In-Kind/Perquisites		xx
Fees/Allowances		xx
Trading Income		xx
Total Earned Income		xx
Unearned Income		
Dividend (gross)	xx	
Rent (gross)	xx	
Interest (gross)	xx	
Director's Fees	xx	
Total Unearned Income		xx
Statutory Total Income		xx
Deduct: General Charges		
Mortgage Interest paid	xx	
Approved Subscription	xx	
		(xx)
Net Statutory Total Income		xx
Deduct Personal Reliefs		(xx)
Taxable/Chargeable Income		xx
Tax Due (using tax table)		xx

ILLUSTRATION 5-1

Mr. Udem has been in employment of a company for ten years and also runs a private business centre on part-time basis.

Mr. Udem income from various sources for the relevant years are stated thus:

2008	₦
Salary and wages	420,000
Christmas Bonus	42,000
Overtime	73,000
Benefit in kinds	64,000
Profit from business centre operation (2007)	194,000
Profit from business centre operations (2008)	260,000
Other Income in 2008	
Dividend (Gross)	14,000
Rent (Gross)	80,000

Mr. Udem is married with three children, all of them are below 16 years. He also maintains his aged mother up to ₦42,000 per annum. He pays ₦15,000 as annual mortgage interest on his personal building and an approved subscription in the sum of ₦12,000 per annum.

You are required to compute

(a) Mr. Udem Chargeable Income for 2008 Assessment Year

(b) Tax Due on him for 2008 using Current Tax Table

SUGGESTED SOLUTION 5-1

MR. UDEM
INCOME TAX COMPUTATION
FOR 2008 ASSESSMENT YEAR

		₦	₦
Earned Income:			
(a)	Salaries & Wages		420,000
	Christmas Bonus		42,000
	Over time		73,000
	Benefit in kinds		64,000
	Allowances		99,100
			698,100
(b)	Trading Profit (PYB)		194,000

Total Earned Income		892,100
Unearned Income:		
Dividend Gross	14,000	
Rent Gross	80,000	
Total Unearned Income		94,000
Statutory Total Income		986,100
Deduct General Charges:		
- Mortrage Interest	15,000	
- Subscription	12,000	27,000
Net statutory total income		959,100
Less: Personal relief (W1)		192,920
Chargeable Income		766,180
Tax Due (W2)		164,145

W1: Calculation of Reliefs:

	₦
- Personal Allowance (₦5000 + 20% of ₦892,100)	183,420
- Children Allowance (₦2,500 x 3)	7,500
- Dependant Relative	2,000
	192,920

W2: Calculation of Tax Due:

1st ₦30,000 @ 5%		1,500
Next ₦30,000 @ 10%		3,000
Next N50,000 @ 15%		7,500
Next N50,000 @ 20%		10,000
Next N606,180 @ 25%		151,545
Tax Borne		173,545
Deduct Tax suffered at source:		
Dividend - ₦14,000 @ 10%	1,400	
Rent - ₦80,000 @ 10%	8,000	9,400
Net Tax Payable		164,145

5.17 TAXATION OF INCOME FROM PARTNERSHIP

5.17.1 INTRODUCTION

A Partnership is defined as "An association of two or more persons agreeing to carry on business with a common view of making profit".

A Partnership can be formed for the purpose of carrying on a trade, profession or vocation. Because Partnership involves more than one person, it can only operate successfully through agreed conditions, which are usually spelt out in a Partnership Agreement or Deed.

Partnership Agreement will spell out the rights and obligations of each partner which will include:

(a) Name of the Partnership;

(b) Capital Contribution;

(c) Rate of Interest on Capital and Drawing;

(d) Partners Drawings;

(e) Partners Salaries; and

(f) Profit / Losses Sharing Ratio.

5.17.2 FUNDAMENTAL PRINCIPLES TO PARTNERSHIP COMPUTATION

The following fundamental principles are to be noted in dealing with partnership computations:

(a) Salaries, interest on partners capital and leave passages of the partners are allowable expenses in determining the profit of the partnership;

(b) Salaries, interest on partners capital and leave passages costs are taxable in the hands of the individual partners;

(c) The partner's share of profits is taxable in his hands along with (b) above;

(d) Partners are allowed to trade in their own right, subject to the partnership agreement and the incomes from such a trade are to be aggregated with their incomes from the partnership for tax purposes;

(e) Where a partner trades with his own partnership firm and earns income, such as interest on loan or rental from hired accomodation, such incomes are to be treated as those in (b) above;

(f) When the income that accrues to a partner under (b) above, is a loss, such a loss shall be set off against the income in (d) above, such that if the loss in (d) is higher, the balance shall be regarded as the loss he has sustained in the trade;

(g) Where a partnership place of business is different from that of one or more of the partners, the tax authority of the place of location of the principal office of the partnership shall be responsible for determining the partnership income or loss and its allocation between the partners and having determined the income/loss accruing to each partner, it is the duty of that tax authority where the partnership is located, to supply the information to the tax authorities where the non-resident partner(s) are located; and

(h) An appeal against an assessment in relation to (g) above shall be to the tax authority where the partnership is located.

5.17.3 DETERMINATION OF PARTNERS INCOME

Since a partnership is not a legal person, it cannot be assessed to tax as an entity. It is the individual partner's incomes that can be assessed to tax. For the individual partner, the taxable income is made up of the following:

(a) Partner's salary;
(b) Partner's costs charged into the accounts;
(c) Passages costs charged into the accounts; and
(d) Partners share of the profits.

The above will be aggregated with all other incomes of the partner from other sources, to arrive at his total income which will be chargeable to tax for the relevant period.

As applicable in the sole proprietorship, it should be emphasised that determining the profit of a partnership, is purely an accounting issue. Also, where no records (or inadequate records) are kept, the incomplete records accounting procedure or the application of capital accretion method by which the increase in the net worth of a business enterprise within the relevant trading period is determined, are used to determine the profit of the partnership.

However, in computing the adjusted profit to be shared by the partners, leave passages, interest on capital and partners salaries should not be added back. If they are added back, those portions of the income will be assessed to tax twice, since they will also feature separately as

taxable incomes in the hands of the partners who earn them. So, it should be borne in mind that if salaries, interests on capital and private passages costs have been charged to the accounts in arriving at the profits, they are not to be added back in the computations. Where they have not been charged to the accounts they should be deducted from the profits to be shared by the partners to avoid double taxation. This is because like those items (the quantum of which are already agreed in the partnership agreement) the profit to be shared will be charged to tax.

ILLUSTRATION 5-2

ABUJA, LAGOS and BENIN were in partnership in the law firm of ABUJA, LAGOS, BENIN & Co. The company has the following Profit and Loss Account for the year ended 31st December, 2008:

				₦	₦
	Gross earnings				2,100,000
Less:	Staff salaries			500,000	
	Utility bills			35,000	
	Office rentals			50,000	
	Office expenses			25,000	
	Bad Debts			55,000	
	Interest on Loan -				
		ABUJA =	10,000		
		LAGOS =	15,000	25,000	
	Interest on Capital -				
		ABUJA =	10,000		
		LAGOS =	7,500		
		BENIN =	5,000	22,500	
		Depreciation		7,500	
		Consultancy costs		345,000	(1,065,000)
		Net Profit for the period			1,035,000

Notes

(i) Capital allowance agreed for the period was ₦7,500.

(ii) Of the staff salaries, an equal amount of ₦72,000 per annum was paid to each of the partners

(iii) BENIN owned the building that housed the chambers

(iv) Only ₦30,000 of the Bad Debts was determined to be bad. The remaining ₦25,000 is just a provision at 5% of Debtors.

(v) The ratio of interest on capital paid to the partners reflects their contributions and their share of profits.

Required:

(a) Compute the adjusted income of the partnership for the year;
(b) Calculate the Profit shared by each Partner; and
(c) Calculate the income of each partner for tax purposes.

SUGGESTED SOLUTION 5-2

ABUJA, LAGOS & BENIN

(a) Calculation of Adjusted Income in a Partnership

	₦	₦
Net Profit per Accounts		1,035,000
Add: Depreciation	7,500	
Provision for Bad Debts	25,000	
		32,500
		1,067,500
Deduct Capital Allowances		(7,500)
Adjusted Profit		1,060,000

(b) Calculation of the Profits shared by each Partner

Adjusted profit available for sharing =	1,060,000
Adjusted profit actually shared	= (1,035,000)
Retained Profit	25,000

Given: The Ratio of interest on capital
= The ratio of contribution to capital
= The ratio of sharing of profit

	10,000	to	7,500	to	5,000
	4	to	3	to	2
as between	ABUJA		LAGOS		BENIN

ABUJA = $\frac{4}{9} \times \frac{1,035,000}{1}$ = ₦460,000

LAGOS = $\frac{3}{9} \times \frac{1,035,000}{1}$ = ₦345,000

BENIN = $\frac{2}{9} \times \frac{1,035,000}{1}$ = ₦230,000

(c) **Calculation of Assessable Income of each Partner**

ABUJA	LAGOS	BENIN	
	₦	₦	₦
Profit shared	460,000	345,000	230,000
Interest on capital	10,000	7,500	5,000
Interest on Loan	10,000	15,000	-
Office Rental	-	-	50,000
Assessable Incomes	**480,000**	**367,500**	**285,000**

ILLUSTRATION 5-3

Erewa, Sola and Wole have been in partnership as Accountants for about ten years. The operational performance of the partnership for the year ended 30 June, 2008 was as follows:

		₦	₦
Gross Profit			4,520,500
Deduct:			
Salaries & Wages		355,000	
Transport & Travelling		162,400	
Insurance		78,000	
Rent & Rates		210,000	
Office Expenses		641,600	
Professional fees		100,000	
Bad debt Provisions		441,000	
Staff Loan written off		59,000	
Depreciation		1,062,000	
Interest on Loan by Erewa		115,500	
Interest on Capital Accounts:			
Erewa	₦75,000		
Sola	₦105,000		
Wole	₦120,000	300,000	(3,524,500)
Net Profit for the year			976,000

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 ₦404,500 to an old people's home.

(iii) Capital allowances agreed with the Revenue is ₦950,000

(iv) Erewa and Wole are married with two children each 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
(c) The tax payable by each of the partners.

SUGGESTED SOLUTION 5-3

(a) **EREWA, SOLA AND WOLE**
COMPUTATION OF ADJUSTED INCOME OF THE PARTNERSHIP FOR 2009 YEAR OF ASSESSMENT

	₦	₦
Net Profit for the year		976,000
Add Disallowable Expenses:		
Bad Debts Provision	441,000	
Office Expenses (Donation)	404,500	
Depreciation	1,062,000	
Staff Loans Written Off	59,000	1,966,500
Adjusted / Assessable Income		2,942,500

(b) **COMPUTATION OF PARTNERS' CHARGEABLE INCOMES**

	EREWA	SOLA	WOLE
	₦	₦	₦
EARNED INCOME			
Interest on Capital	75,000	105,000	120,000
Share of Profit (5:7:8)	735,625	1,029,875	1,177,000
	810,625	1,134,875	1,297,000
UNEARNED INCOME			
Interest on Loan	115,500	-	-
	926,125	1,134,875	1,297,000
Deduct:			
Capital Allowance (5:7:8)	(237,500)	(332,500)	(380,000)
TOTAL INCOME	688,625	802,375	917,000
Deduct:			
Reliefs:			
- Personal Allowance	(167,125)	(231,975)	(264,400)
- Children Allowance	(5,000)	-	(5,000)
CHARGEABLE INCOME	**516,500**	**570,400**	**647,600**

(c) **COMPUTATION OF TAX PAYABLE BY PARTNERS**

	EREWA	SOLA	WOLE
	₦	₦	₦
CHARGEABLE INCOME	516,500	570,400	647,600
Tax Liability			
First ₦30,000 @ 5%	1,500	1,500	1,500
Next ₦30,000 @ 10%	3,000	3,000	3,000
Next ₦50,000 @ 15%	7,500	7,500	7,500

Next ₦50,000 @ 20%	10,000	10,000	10,000
Over ₦160,000 @ 25%	89,125	102,600	121,900
Tax Payable	**111,125**	**124,600**	**143,900**

ILLUSTRATION 5-4

Dejo, Akanni and David have been in partnership for many years, providing specialised engineering services to the oil sector. Accounts are made to 31 December each year. The following are the adjusted profits:

	₦
Year ended 31 December, 2005	144,000
Year ended 31 December, 2006	165,000
Year ended 31 December, 2007	240,000
Year ended 31 December, 2008	220,000

Additional information is provided thus:

(i) Partners are to share profit in the ratio 1:2:1

(ii) Salaries are drawn in this order:

Dejo	₦36,000
Akanni	₦24,000
David	₦18,000

(iii) Interest on Capital is 6%

(iv) The Capital account of each partner is:

Dejo	₦15,000
Akanni	₦30,000
David	₦21,000

(v) On 31 May 2007, Dejo retired and Dandy was admitted on 1 June of same year on a salary of ₦18,000. He brought in a capital of ₦21,000 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 2007 year of assessment.

(b) "Partnership income is subject to commencement rules," briefly itemise these rules.

SUGGESTED SOLUTION 5-4

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

2007 is the year of cessation; Basis period is 1/1/2007 - 31/5/2007
Income Assessable:

	Dejo	Akanni	David	Dandy
	₦	₦	₦	₦
Profit	25,000	82,500	41,250	35,000
Salary (5 months)	15,000	24,000	18,000	10,500
Interest on Capital	375	1,800	1,260	735
	40,375	108,300	60,510	46,235
Basis period is	1/1/07 - 3/5/07 (Actual)	1/1/06 - 31/12/06 (PYB)	1/1/06 - 31/12/06 (PYB)	1/6/07 - 31/12/07 (Actual)
Note Ref.	1	3	3	2

NOTES:

1. Dejo is deemed to have ceased business on 31/5/2007, having retired on same date. Accordingly, applying the cessation provisions, he is assessed in 2007 tax year on his income from partnership for the period 01/01/07 - 31/5/07, namely:

	₦
- Salary (5/12 x N36,000)	15,000
- Interest on capital N15,000 at 6% x 5/12	375
Share of profit - (Y/E 31/2/07	
(Profit - Y/E 31/12/07 x $^{5}/_{12}$ x $^{1}/_{4}$)	
(₦240,000 x $^{5}/_{12}$ x $^{1}/_{4}$)	25,000
	40,375

The Internal Revenue Service may revise Dejo's assessment for 2006 tax year unto actual if this will produce a higher assessable income than PYB on which he would hitherto have been assessed.

2. Dandy will be deemed to have commenced business on 1, June 2007, being the date of his admission into partnership. Consequently, the commencement provision will apply to the determination of his income for 2007 assessment year and will, therefore, be assessed on actual basis, that is, actual income of the period 1/6/07 - 31/12/07, namely:

		₦
-	Salary 7/12 x ₦18,000	10,500
-	Interest on capital - ₦21,000 at 6% x 7/12	735
-	Share of profit ₦240,000 (profit) Y/E 31/12/07 x 7/12 x 1/4 (profit share)	35,000
		46,235

3. Both Akanni and David the continuing partners will continue to be assessed on proceeding year basis. Consequently, for 2007 assessment year, their assessable income is the share of each of them from the partnership income for the year ended December 31, 2006, namely:

			₦
-	Adjusted profit - Y/E 31/12/06		165,000
	Shared as follows:-		
-	Dejo-	$^1/_4$ x ₦165,000	41,250
-	Akanni -	$^1/_2$ x ₦165,000	82,500
-	David -	$^1/_4$ x ₦165,000	41,250
			165,000

As stated in note 1 above, Dejo's Share of ₦41,250 may be assessed on him in 2006 assessment year if it is higher than his assessment on preceeding 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 date 12 months after, 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 preceeding year of assessment.

(iv) A retiring partner's income will be determined by reference 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 preceeding year basis.

5.18 SUMMARY AND CONCLUSIONS

This chapter discusses the incomes of individuals and partners chargeable to tax under Personal Income Tax Act (PITA) after allowing for deductions and reliefs. Profit from trade, profession or vocation are taxed in the hands of partners in a partnership.

Tax Tables are usually provided to determine the tax payable.

Commencement and cessation rules that apply to individuals also apply to partnerships.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

5.19 REVISION QUESTIONS

5.19.1 MULTIPLE CHOICE QUESTIONS

1. Under Partnership and Individual Tax, the following are false except one.
   (A) Capital Allowances for other businesses is restricted to 70%.
   (B) Capital Allowances for manufacturing businesses is now restricted to 75%.
   (C) Capital Allowances for Agric businesses is granted in full.
   (D) Capital Allowances is the samething as Personal Reliefs.
   (E) Capital Allowances is not restricted at all

2. At the beginining of each year, an Employee is expected to render returns to relevant Tax Authority through information provided in
   (A) Income Tax Form H_2
   (B) Form A
   (C) Form M and H_1
   (D) Personal Income Tax Relief Form
   (E) Self Assessment Form

3. An Itinerant Worker under the Personal Income Tax Act is defined as an Individual who:
   (A) resides in Federal Capital Territory.
   (B) works as Tax Inspectors.
   (C) does not have a permanent principal place of residence in a year of assessment.
   (D) who does not have Chargeable Income for relevant year of assessment.
   (E) works in two states within a year.

4. Chargeable Income includes:
   (A) Profits from trade, salaries, balancing allowance
   (B) Profits from trade, salaries, compensation for loss of office,
   (C) Profits from trade, salaries & wages, cost of passage to or fromNigeria, Benefits in kind
   (D) Profits from trade, salaries, bonuses, rents, dividends, interest, balancing charge , benefit in kind etc.

(E) Profit from trade balance charge and compensation for loss of office.

5. The "principle place of residence" of a partner is ....
   (A) His state of origin
   (B) That place in which he resides at 1st January of an Assessment year.
   (C) That place nearest to his usual place of work.
   (D) His place of work.

6. Earned income of a Partner
   (A) Income from trade, business, profession, vocation or pension only.
   (B) Income received but not worked for.
   (C) Income received by way of gift.
   (D) Income from a trade, business, profession, vocation, interest on capital, commissions, etc.

7. The income accruing to partners under partnership agreement is administered by one of the following:
   (A) Federal Internal Revenue Service
   (B) The Joint Tax Revenue Service
   (C) Federal of State Ministry of Finance
   (D) The State Revenue Service of Internal Revenue

7.18.2 SHORT ANSWER QUESTIONS

1. Personal Income Tax in Nigeria is regulated by the Law called ....

2. The Original Tax Law before the one mentioned above as ....

3. The Personal Income Tax in Nigeria is treated under the .... list of the 1999 Federal Constitution.

4. Mr. Peter Berrnard's Salaries and Allowances as a Gardner in 2008 was N30,000 and his tax liability was below the minimum specified.
   - Does he need to file Tax Returns?
   - What then is the Minimum Tax Payable?

5. Give four examples each of Earned and Unearned Income.

6. Under the Personal Income Tax Act CAP P8 LFN 2004, Income tax is payable on incomes accruing in, derived from, ... or received in Nigeria.

7. Define Partnership.

8. Mention three items concerning rights and obligations of partners usually spelt out in any partnership agreement.

9. For Individual Partner, taxable income is made of ...., ..., ... and ....

10. In computing the adjusted profit of the partnership, partners leave passages, interest on capital and salaries are to be added back - True or False.

11. Is it true or false that Relief available in Individual Tax Computation are also applicable to partners in Partnership?

Answer questions 12 & 13 from the following:
Timmy and Badmus are into partnership as Solicitors. The following was the results of their operations for year ended 30th September, 2008:

		₦'000	₦'000
Gross Profit			25,000
Interest on Capital - Timmy		1,000	
Staff cost		2,800	
Depreciation		1,400	
Rents		900	
Administrative Expenses		1,020	
Salaries-	Timmy	1,200	
	Badmus	1,400	(9,720)
Net Profit			15,280

NB:
- Rent was paid to Badmus.
- Capital Allowance was ₦1.2m
- Profit or loss are shared equally.
- Unallowable Donation included in Administrative expenses was ₦220,000.

12. Compute Partnership Adjusted Profit.

13. Compute each Partner's Taxable Income.

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

6

TAXATION OF INCOME FROM SETTLEMENT, TRUSTS AND ESTATES

6.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Ascertain Income from Settlement, Trust and Estate;
- Determine income, allowable charges and beneficiaries' income distribution of the Estate; and
- Identify chargeable persons for the relevant years of assessment.

6.1 INTRODUCTION

The assessable income of a trustee, executor or a beneficiary of a settlement or Trust for any tax year, shall be the income of that person on preceding year basis, derived from business, profession or vocation.

6.2 USEFUL DEFINITIONS

6.2.1 Settlement

A Settlement is a means by which enjoyment of an estate or part of it is transfered to another person, either through a disposition, trust, covenant, agreement, arrangement or transfer of assets by reference to a Trust Deed for the benefit of persons specified.

6.2.2 Trust

This is an equitable obligation binding a person called Trustee, to deal with a property over which a control is exercised (which is called trust property) for the benefit of persons (beneficiaries) of which he himself may be one.

6.2.3 Estate

It is the aggregate of the properties possessed by person including his goods, money and other type of property.

6.2.4 Executors

A person appointed by the Will of a deceased person to administer his estate after his death.

6.2.5 Administrator

A person that is appointed by the Court to administer the Estate of an Intestate or of a Testator where an Executor has not been appointed or if appointed, does not act.

6.2.6 Administration Period

It 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.

6.2.7 Annuitant

A person receiving an annual payment from the estate which may be charged on the income or capital of specific assets of the estate.

6.2.8 Life Tenant

It is the right of the person on the income or property held in trust for life.

6.2.9 Remainder Man

A person who has a right to the capital of the settlement when the life interest terminates.

6.2.10 Legatee

A Legatee is the person to whom a legacy is bequeathed.

6.2.11 Settlor

A Settlor includes a person by which a settlement was made or entered into directly or indirectly and includes a person who has provided funds directly or indirectly for the purpose of the settlement or has made with any other person reciprocal arrangement for that other person to make or enter into the settlement.

6.2.12 Income of Settlements, Trust and Estates

This is the income of a Settlor or the person who created the trust or settlement. It includes all such incomes derived from, received in, or brought into Nigeria.

6.2.13 Beneficiary

A person entitled to both capital and income of the estate. Usually, his right terminates after a specific period of his life time.

6.3 CHARGEABLE PERSONS

Annuitant

Income derived from the estate by a person is chargeable to tax on **actual year basis** and the annuitant is entitled to personal reliefs and allowances.

Beneficiaries, Trustees or Executor

Income derived from the estate will be liable to tax on **actual year basis.** The beneficiary is entitled to personal reliefs and allowances, but the trustee or executor will not receive any relief or allowances.

Settlor

The person who created the trust in circumstances where he can direct the disposition of the income or the right thereto.

Allowable Expenses

The following are the amount deductible from the income of trust or estate:-

(i) Any expenses of the trustee or executor relating to the settlement, trust or estate.

(ii) Any annuity or fixed annual amount paid out of the income of the settlement, trust or estate.

(iii) Agreed capital allowances.

6.4 COMPUTED INCOME FORMAT

	₦	₦
Income from estate		xxx
Deduct Charges:		
Allowable expenses	xx	
Authorised expenses of Trustees	xx	
Fixed annuity	xx	(xx)
Adjusted income		xxx
Less: loss relief (if any)		(xx)
		xxx
Less: Capital Allowance		(xx)
Expected Income distributable		xx

ILLUSTRATION 6-1

The records of FAROUK EL NAFATY settlement created in favour of ADE, BALA and CATE as at 31/12/2008 are as follows:

	₦
Rental income (Gross)	24,000
Trading income	10,000
Dividend (Gross)	18,000
Sundry income	12,000

The following additional information is available:

(a) Each beneficiary is entitled to 1/5 share of the net distributable income.

(b) Interest on debt repayment by the settlement is ₦2,000.

(c) Fixed annuity to beneficiary is ₦3,000.

(d) Trustee remuneration per trust deed:-

   (i) Fixed ₦1,000 each (2 Trustees)

   (ii) 2% of total income

(e) Administrative and other expenses - ₦3,800

(f) Under the terms of the trust deed, the trustee made discretionary payments to ADE, BALA & UFOMA as follows:

		₦
ADE	-	3,000
BALA	-	2,800
UFOMA	-	1,500

(g) Capital allowances - ₦8,024

(h) The children have no other income.

(i) ADE, BALA and UFOMA are only entitled to personal allowances.

Required:

Compute aggregate income due to the Estate and Tax Payable by ADE, BALA and UFOMA.

SUGGESTED SOLUTION 6-1

FAROUK EL NAFATY ESTATE: COMPUTATION OF INCOME
2009 YEAR OF ASSESSMENT

	₦	₦
Rental income		24,000
Trading income		10,000
Dividend		18,000
Sundry income		12,000
		64,000

Deduct charges:			
Administrative and other expenses		3,800	
Trustee remuneration - Fixed		2,000	
Fixed annuity		3,000	
Interest on debt		2,000	
Trustee remuneration (2/102 x 53,200)		1,043	(11,843)
			52,157
Less: Capital Allowances			(8,024)
Computed income			44,133
Discretionary Payments:			
ADE		3,000	
BALA		2,800	
UFOMA		1,500	(7,300)
			36,833
Specific:			
ADE	1/5 x 36,833 -	7,367	
BALA	1/5 x 36,833 -	7,367	
UFOMA	1/5 x 36,833 -	7,367	(22,101)
Trustees Net Income			14,732

AGGREGATE INCOME FROM THE ESTATE

	ADE	BALA	UFOMA	Annuitant	Trustee	Total
	₦	₦	₦	₦	₦	₦
Annuity	-	-	-	3,000	-	3,000
Discretionary	3,000	2,800	1,500	-	-	7,300
Residue	7,367	7,367	7,367	-	14,732	36,833
Total Income	10,367	10,167	8,867	3,000	14,732	47,133
Less:						
Personal Relief						
(N5,000+20% of E.I.)	(7,073)	(7,033)	(6,773)	-	-	
Chargeable Income	3,294	3,134	2,094	3,000	14,732	
Tax Due:						
1st 30,000 @ 5%	164.70	156.70	104.70			

6.5 SUMMARY AND CONCLUSIONS

This chapter deals with the treatment and classification of incomes as they relate to Settlements, Trust and Estates.

The chapter demonstrates the distribution of computed income between the Trustees and various Beneficiaries after deducting allowable charges.

In addition, the chapter identifies the Chargeable Persons who bears the final tax burden.

Finally, the tax computation of Beneficiaries is as applicable to that of Individuals under PITA where Reliefs are deducted before subjecting the chargeable income to tax.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

6.6 REVISION QUESTIONS

6.6.1 MULTIPLE CHOICE QUESTIONS

1. An agreement whereby a sum of money is set aside to make provision for other person(s), or a device by which the enjoyment of an estate under the same deed or will may be had by persons in succession, is known as:-
   A. Oath
   B. Property Deed
   C. Testament
   D. Trustee's Pledge
   E. Settlement

2. A person who is authorised to administer a trust, or hold's property on behalf of another person(s), is known as:
   A. Settlor
   B. a Trustee
   C. a Testator
   D. an Executor
   E. Beneficiary

3. A person or trust to whom a legacy is bequeathed, that is one receiving a specific bequest from an estate is known as:
   A. Executor
   B. Trustee
   C. Settlor
   D. Legatee
   E. Beneficiary

4. A person who has a right to the capital of a settlement when the life interest terminates, is known as:
   A. Remainder man
   B. Annuuitant
   C. Settlor
   D. Beneficiary
   E. Administrator

5. A person who is entitled to both capital and income of an estate, and whose right usually terminates after a specific period of his/her life time, is known as:-
   A. Legatee
   B. Life Tenant
   C. Beneficiary
   D. Settlor
   E. Remainder man

6.6.2 SHORT ANSWER QUESTIONS

1. A Trust is created when an Estate or Property is held by a person known as .... for the benefit of the ....

2. An .... is the aggregate of the properties of a person either during his life time or on his death.

3. An .... is a person receiving an annuity which may be charged on the income of an Estate.

4. Persons liable to pay tax due from Settlements, Trust and Estates include the Beneficiary, the Settlor and the ....

5. What are deductible charges as they relate to computation under Trust or Settlement?

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

7

WITHHOLDING TAX

7.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- ♦ Know the roles of Agents in withholding tax collection;
- ♦ Identify various transactions that attract withholding Tax;
- ♦ Determine payments due to either FIRS or SIRS; and
- ♦ Be conversant with payments schedule and the various rates in use.

7.1 INTRODUCTION

Withholding Tax (WHT) is an advance payment of tax, which is deducted at source on certain transactions and later applied, where it is not a final tax, as tax credit in the settlement of the income tax liability of the year to which the payment that suffered the deduction relates.

Arising from this definition are the following peculiarities of the tax:

(a) Withholding Tax is a deduction at source, which gives the taxpayer no option as to whether to pay it, or not.

(b) Withholding Tax is an advance payment in lieu of the income tax to be paid later. This means that it is not a separate tax.

(c) Withholding Tax being an advance payment of income tax cannot be used later as credit for any other tax such as Education Tax or Value Added Tax.

(d) Some withholding taxes are regarded as final tax. Where this is so, the income from which they have been deducted can no longer be brought into account for tax purposes.

(e) As Withholding Tax is to be utilised as credit for the income tax liability of the year to which the income relates, it means that one cannot use it to settle back year or future year tax liabilities, until the account of the year to which the WHT relates has been finalised, and tax fully settled with the withholding or part thereof, still remaining unutilised.

Withholding tax as a collection device, was introduced in a limited form by the CITA and later expanded in terms of coverage.

7.2 MERITS OF WITHHOLDING TAX

The advantages of withholding tax are numerous and these have made the tax more and more attractive. They include the following:

(a) It helps to strengthen the tax machinery by engaging numerous officials and collecting agents in tax work, despite the fact that they are not government workers.
(b) As a result of (i) above, tax collection becomes cheaper.
(c) Withholding Tax helps to bring obscure transactions into the tax net.
(d) Withholding Tax helps to bring unknown taxpayers into the tax net.
(d) As a result of (iii) and (iv) above, Withholding Tax helps broaden the base of the tax and increase the quantum of collection.
(f) Withholding Tax makes tax payment less cumbersome to the taxpayer who may not bother going to the tax office in order to pay his tax.
(g) Withholding Tax ensures a regular flow of tax revenue to Government.
(h) Withholding Tax reduces the incidence of tax evasion
(i) Withholding Tax helps educate the taxpayer and the tax agent about taxation.
(j) Withholding Tax enhances voluntary compliance

7.3 ENABLING LAWS

Sections 68, 69, 70 and 71 of Personal Income Tax Act 104 of 1993 (as amended) deal respectively with Withholding Tax deductions from rent, interest or royalties, dividends and directors fees paid to individuals. On the other hand, section 60, 61 and 62 of CITA cap 60 LFN 1990 (as amended) deal respectively with deductions from interests, rent and dividends paid to corporate bodies. Section 72 of Decree 104 and 63 of CITA cap 60 deals with deductions of tax at source in general. It is under these sections that the application of Withholding Tax could be widened to include building contracts, contract supplies, consultancy and professional services, which are not specifically mentioned in the CITA.

7.4 WITHHOLDING TAX RATES, REMITTANCES AND TAX AUTHORITIES

Taxes are to be withheld from corporate bodies and individuals at the rate listed in the table below and remitted to the relevant tax authority within 30 days from the date the amount was deducted or from the time the duty to deduct arose, whichever comes up earlier.

Failure to deduct or remit to the State Internal Revenue Service (SIRS) taxes withheld from Individuals is an offence punishable on conviction with a fine of 200% of the tax not withheld or not remitted in addition to payment of the tax itself plus interest at the prevailing commercial rate. Similarly, failure to deduct or remit to the Federal Inland Revenue Service (FIRS) taxes withheld

from Corporate bodies is an offence punishable on conviction with a fine of ₦5,000 in addition to the tax deductible or deducted plus interest at the prevailing commercial rate.

Table 10.1: Rates of Withholding Taxes in Nigeria

Type of Payments	Companies Rate (F. I. R. S)	Individual Rate (S. I. R. S.)
Royalty	10%	5%
Rents (including hireof Equipment)	10%	10%
Dividends	10%	10%
Interests	10%	10%
Commissions	10%	5%
Consultancy & Professional Services	10%	5%
Technical Services	10%	5%
Management Services	10%	5%
Directors fees	-	10%
Building construction	5%	5%
Contract supplies	5%	5%

Comments:

(a) The deduction from companies are payable to the FIRS.

(b) The deduction from individuals are payable to the SIRS on the basis of residence.

(c) The deductions from individuals are payable to the FIRS, when they are made from residents of the FCT, Abuja, members of the Nigerian Armed Forces and Police, Officers of the Nigerian Foreign Service and persons resident outside Nigeria who derive income from Nigeria.

Withholding taxes on dividend, interest, rent and royalties when suffered by non-residents are final taxes. Also, with effect from January 1996, Withholding tax on interest and dividend are final taxes when suffered by Nigerians.

7.5 OPERATION OF THE WITHHOLDING TAX

Any individual or corporate body making any of the payments listed in the table above is an unpaid agent of the relevant tax authority for the collection and remittance of Withholding Tax at the appropriate rate. The deduction has to be made, with only the net paid to the Creditor. The total monthly deductions are to be remitted to the relevant tax authority with a bank draft made payable as may be specified by the relevant tax authority. In the case of Withholding Tax payable to FIRS the cheques are to be drawn in favour of "FGN, FIRS, Withholding Tax Account".

7.6 CURRENCY OF DEDUCTION

The currency in which tax is to be deducted is the currency of transaction. Where the currency of the transaction is a foreign one, the amount is to be assessed in the foreign currency and paid to the Central Bank of Nigeria (CBN). The CBN would then make the conversion using the ruling rate and then credit the appropriate Government account with the sum.

7.7 PAYMENT SCHEDULE

Each withholding tax cheque being paid to the Revenue Service 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) Names of the taxpayers who suffered the deductions;
(b) Their addresses;
(c) The nature of their activities/services;
(d) Their tax file numbers;
(e) The total amounts payable;
(f) The rate of tax applied;
(g) The rate of tax withheld;
(h) The balance paid to the taxpayer;
(i) The tax period of the contract for which returns were being made;
(j) The date of payment; and
(k) The cheque number and date.

7.8 CREDIT NOTES

As soon as payment is made to the bank or the Withholding Tax section of the tax office, credit notes must be issued in favour of the names (taxpayers) contained in the schedule. The credit notes are to be forwarded by the collection agent to the taxpayers who suffered the deductions immediately. This is because the credit notes are to be used in claiming tax credits at the various tax offices where their cases are handled. It is important to emphasis that the presentation of a letter from the collector agent showing that a taxpayer has suffered deductions is not enough for the FIRS to give credit. Similarly, Government treasury receipts issued by other Government Departments showing that they have deducted tax from a taxpayer is not enough to grant tax credit since only the FIRS can collect tax for the Federal Government, while only the SIRS can collect tax for the States.

7.9 PAYMENT CERTIFICATE, TREASURY RECEIPT, REFUNDS AND SET-OFFS

A payment Certificate is to be issued in favour of the tax agent when payments are made to the tax office. It should contain the total on the cheque. This is the only documentary evidence that tax agent would have pending the

issuance of the Treasury Receipt which would be done only after the payment cheque has been cleared.

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 Revenue Service has obligation to grant a refund or carry forward the overpayment as the case may be.

7.10 DUAL ROLES OF COLLECTION AGENTS

Withholding Tax collection agents play a dual role since January 1994 when VAT was introduced:

(a) They act as agent in the deduction of Withholding Tax from contract sums payable to their contractors.

(b) They also act as agent in the collection of VAT from their contractors when such contractors are paid. This however, is where the VAT has been built into a contract. Where it was not, the awardee of the contract pays the VAT as the consumer of the contract service.

7.11 WITHHOLDING TAX AND VAT ON CONTRACTS

The distinction between deduction of Withholding Tax from contract sums and collection of VAT from contractors when they are paid is very important. Incidentally, both withholding Tax and VAT on contracts now carry the same tax rates of 5%. So, on each contract, two cheques of equal amounts are to be prepared; one for WHT withheld and the other for VAT collected. The WHT 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 go to the FIRS under the Nigerian tax laws.

7.12 PROBLEMS OF WITHHOLDING TAX ADMINISTRATION

There are many problems associated with the administration of WHT. These include:

(a) **Non-deduction:** Some organisations pay their contractors without deduction of withholding tax. the reason may be either:

(i) to help them; or
(ii) out of ignorance; or
(iii) as a result of orders from above.

This is a very serious offence against the law.

(b) **Non-remittance:** Some tax agents deduct and fail to remit but rather

prefer to make use of the money in their operations. This is nothing but stealing from both the state who will suffer revenue diminution and the taxpayer who will not be able to take credit for the deductions. When such cases are uncovered, the Revenue Authority should always endeavour to apply the necessary sanctions .

(c) **Wrong Rates:** Wrong rates are often applied either ignorantly or to help the taxpayer. In this regard, it is important to note that the rate to be applied is the rate applicable at the time of payment/deduction and not the rate prevailing when the contract was awarded/executed.

(d) **Credit Notes not Despatched:** When the taxpayers are not given credit notes, they are not given credit for tax withheld. They insist that they have suffered the tax, while the Revenue Service insists on seeing the credit notes since the deductions may have been diverted or paid to the wrong tax authority.

(e) **Incomplete / Incorrect Information:** Incomplete or Incorrect Information on the payment schedule may result in the issuance of a defective credit note. This may lead to problems in granting tax credit for tax withheld.

(f) **Payment to Wrong Tax Authorities:** There have been cases in which taxes withheld from companies are paid to the SIRS and those collected from individuals are remitted to the FIRS, when these happen the axpayers cannot take credit since no tax authority will give credit for taxes not collected by it. The answer to this is honesty by the tax authorities. They should have the courage to re-direct such payments.

(g) **Cases of Lumping:** In some cases, deductions from both individuals and corporate bodies are lumped together in one cheque and paid to either the FIRS or SIRS. In this situation, even the payment schedule attached cannot help since only one composite cheque is attached for money that is for two different tax authorities. Such cheques should be returned to enable the collection agent to issue separate cheques to the appropriate tax authorities.

(h) **Wrong Classification of Activities:** Where the rates of tax deduction are different, wrong classification of activities can result in either overpayment or underpayment. The major problem of misclassification of activities, however, is for example, when contract supplies are classified as across the counter purchases, which would lead to total non-payment of tax.

(i) **Dishonoured Cheques:** Incidents of dishonoured cheques have become the exception rather than the rule : Therefore, treasury receipts

are not issued until the cheques are cleared. The prevalence of dishonoured cheques was partly responsible for the introduction of direct payment of tax to designated banks.

(j) **Failure to co-operate:** Tax officials need to go round from time to time to monitor the extent of co-operation by collection agents. Very often they meet with hostile reception by people who should know better such as Permanent Secretaries, Directors, Chairmen of Government Parastatals, etc. Each time there is a Withholding Tax inspection, it is necessary for the following to be made available for examination:

- Cash Books;
- Contract File;
- Cheque Stubs;
- Copies of payment schedule;
- Payment Certificate; and
- Payment Vouchers.

7.13 SUMMARY AND CONCLUSIONS

In this chapter, various transactions which must suffer deductions of withholding tax were identified and defined.

Though, there are usual problems of administration and set- off of Withholding tax in practice, attempt has been made to specify different and similar rates charged by both the Federal Inland Revenue Service and State Internal Revenue Services.

Issues such as payment schedules, currency of deduction, treasury receipts, administration problems and set - off procedures were extensively discussed.

Companies and individual are identified as agents of Federal Government in deducting withholding tax as provided by different tax laws.

The Administration of withholding tax was also discussed stating clearly the rates, difficulties always encountered and remittances procedures.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

7.14 REVISION QUESTIONS

7.14.1 MULTIPLE CHOICE QUESTIONS

1. Types of payment that attracts Withholding taxes are:

   A. Rent, Dividends, Profit, Pool betting, etc.
   B. Rent, Dividend, Royalty, Interest, Commission, Directors' fees,
   C. Rent, Dividend, Royalty, Interest, Outright Sales, etc.
   D. Rent, Dividends, Profit, Outright Sales of goods & services.
   E. Rent, Alimony, Electricity, etc

2. Which one of the following is not on the list of approved taxes and levies to be collected by a State Government?

   A. Capital Gains Tax (Individual)
   B. Stamp duties on instruments executed by individuals
   C. Withholding taxes (Corporate)
   D. Road Taxes
   E. Pools betting, lotteries, gaming and casino taxes.

3. Withholding tax on rent by a Company to an individual landlord, is to be remitted to the

   A. Local Government Revenue Office of the LandLord
   B. State Internal Revenue Office
   C. State Rent Tribunal
   D. Federal Housing Authority
   E. Federal Inland Revenue Service

4. Directors fees that suffer Withholding tax are those paid to:

   A. Personnel Directors
   B. Finance Directors
   C. Non-Executive Directors
   D. Managing Directors
   E. Directors of Engineering / Operations.

5. Failure to deduct or remit Withholding tax withheld from corporate bodies, to the Federal Inland Revenue Service (FIRS), is an offence punishable on conviction with a fine of:

   A. 200% of the tax not withheld or remitted
   B. 100% of the tax not withheld or remitted plus interest
   C. N5,000 fine, plus the withheld tax with interest at commercial rate.
   D. N10,000 fine, plus interest at 10% per annum
   E. N5,000 fine, plus interest at Central Bank rediscount rate.

7.14.1 SHORT ANSWER QUESTION

1. Withholding Tax is an advance payment of tax which is deducted at ....
2. Rate of Withholding tax on rent of an individual is ....
3. Rate of Withholding tax for Audit fees due to Sola Owoyele & Co. is ....
4. Withholding tax on dividend is final tax. True or False?
5. Some Withholding tax credits are allowed to be set off from final tax of the taxpayer. True or False?

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

8

VALUE ADDED TAX

8.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Understand the nature of Value Added Tax (VAT) and its administration; and
- Know other issues relating to VAT.

8.1 INTRODUCTION

Value Added Tax (VAT) is an indirect tax like excise duty, first levied under the Value Added Tax Act (the Decree) No. 102 of 1993 (as amended), with effective date of 1 December, 1993. The Act repealed the Sales Tax Act, 1986. It is now known as Value Added Tax Act, Cap. V1, LFN 2004. The tax is charged on the supply of goods and services. The vendor has the responsibility to collect it from the purchaser (persons or companies), on behalf of the Federal Inland Revenue Service. Individuals who are not charged with the responsibility of collecting PAYE are not required under the Act to collect VAT. The tax is charged and payable on the supply of all goods and services, other than those exempted.

8.2 GOODS EXEMPTED FROM VAT

(a) All medical and pharmaceutical products.
(b) Basic foods items: processed food items do not seem exempted.
(c) Books and educational materials.
(d) Baby products.
(e) Fertiliser, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
(f) All exports.
(g) Plant and machinery imported for use in the Export Processing Zone.
(h) Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations.
(i) Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.

8.3 SERVICES EXEMPTED FROM VAT

(a) Medical services.
(b) Services rendered by Community Banks (now Micro Finance Banks), Nigerian Agricultural Cooperative Rural Development Bank (NACRDB) and Mortgage Institutions.
(c) Plays and performances conducted by educational institutions as part of learning.
(d) All exported services.
(e) Goods and services purchased for the use of diplomats and donor funded projects.

8.4 RATE

The tax is computed at the rate of 5 per cent of the value of all Vatable goods and services; and the value of Vatable goods and services is determined as follows:

(a) If the supply is for money consideration, its value is deemed to be the amount which, with the addition of the VAT chargeable, is equal to the consideration; and
(b) If the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value.

ILLUSTRATION 8-1
Olumo Ltd sells a bottle of Wine for ₦600 prior to the introduction of VAT in 1993. As from 1 December, 1993, the selling price should be ₦600 + 5%, that is ₦600 + ₦30 = ₦630.

Note:
The Honorable Minister of Finance may, by order published in the Gazette amend the rate of tax chargeable and also amend, vary or modify the list of exempted goods and services. The rate of VAT was moved up to 10% in 2007 but this was later reversed.

8.5 IMPORTED GOODS

The value of imported Vatable 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.

8.6 VAT RETURNS, REMITTANCES, RECOVERY AND REFUND

A Vatable person shall pay to the supplier the VAT on Vatable goods and services purchased by or supplied to him. The VAT so paid by a Vatable person is known as input VAT.

A Vatable person shall on supplying Vatable goods or services to his accredited distributor, agent, client or consumer, as the case may be, collect the VAT on those goods or services at the above-mentioned rate. The VAT collected by a Vatable person shall be known as an output VAT.

A Vatable person shall render to the Revenue Service, on or before the 30th day of the month following that in which the purchase or supply was made, a return of all Vatable 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 Vatable goods into Nigeria shall render returns on all the Vatable goods imported by him into Nigeria.

A Vatable person shall, on rendering a return:

(a) If the output VAT exceeds the input VAT, remit the excess to the FIRS; or

(b) If the input VAT exceeds the output VAT, a vatable person will be entitled to a refund of the excess VAT from the FIRS on production of such documents as may be required from time to time. An importer of Vatable goods shall, before clearing those goods, pay to the Revenue Service the VAT due on those goods.

The Nigerian Customs Services shall before releasing Vatable goods to its importer, demand the Value Added Tax Compliance Certificate issued by the FIRS on those goods.

8.7 INPUT VAT

The Input VAT to be allowed as a deduction from Output VAT is limited to the VAT 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 VAT is charged.

Consequently, Input VAT:

(a) On any overhead, service, and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); 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 deductions from output tax.

Every Ministry, statutory body or other agency of Government shall, at the time of making payment to a contractor, remit the tax charged on the contract to the nearest Local VAT Office (LVO).

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.

ILLUSTRATION 8-2

A pharmaceutical company who deals in Drugs also sell gift items in order to attract customer.
Details of sales and purchases for December 2008 were:

	₦
Sales pharmaceutical product	640,000
Sales of gift items and supply of perfumes	179,920
Total sales for the month	820,820

VAT paid on purchases for December 2008 amounted to N6,950

Required:
Calculate VAT payable to the tax office

SUGGESTED SOLUTION 8-2

CALCULATION OF VAT PAYABLE FOR DECEMBER 2008

	₦
Total sales	820,820
Less Good Exempted	640,900
Vatable Goods sold (including VAT @ 5%)	179,920
Sales excluding VAT ($^{100}/_{105}$ x ₦179,920)	(171,352)
Out VAT @ 5%	8,568
Input VAT	6,950
Net VAT Payable	1,618

8.8 ADMINISTRATION OF VAT, COMMITTEE AND TRIBUNAL

The Federal Inland Revenue Service is responsible for administering the Value Added Tax.

There is a committee known as the Value Added Tax Technical Committee comprising:

(a) The Chairman of the Federal Inland Revenue Service 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 Services; and
(e) Three representatives of the State Government who are members of the Joint Tax Revenue Service.

8.8.1 Functions

(a) To consider all the tax matters that require professional and technical expertise and make recommendations to the FIRS;

(b) To advise the FIRS on its duties in administering the tax; and

(c) To attend to such other matters as the FIRS may from time to time refer to it.

8.8.2 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 Tribunal 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:

- Shall be a legal practitioner of not more than 15 years post call experience; and
- Shall preside over the proceedings of the Tribunal.

(d) Members of each of the Zonal VAT Tribunals 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 servant in tax administration;

- 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; and

- 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:

- Has been absent for two consecutive meetings without the written permission of the Chairman of the Revenue Service, or

- Is incapacitated by illness, or

- 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

- Has been convicted of any felony or of any offence under any enactment imposing tax on income or profit;

The Minister shall make a declaration 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 Vatable 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 Vatable 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 Vatable 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 Vatable person to any provision of this Act, may appeal to the Zonal Tribunal where the Vatable 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 proceeding 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 assessment shall contain:

- The name and address of the Vatable person;
- The total amount of goods and services chargeable to VAT in respect of each month;
- An input VAT;
- Net amount of VAT payable;
- 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 Service or a Vatable 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 appeals 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 notices 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 Vatable person so appealing, shall be entitled to be represented at the hearing of the appeal by a legal practitioner, a qualified chartered accountant, or VAT 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 VAT payable or determined by the Tribunal, shall be served by the FIRS to the company and notwithstanding that an appeal is pending, VAT 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.

(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.

8.9 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.

8.10 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 due by or to 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.

8.11 OFFENCES AND PENALTIES

(a) 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) A person who:
 (i) Participates in, or
 (ii) Takes steps with a view to make 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 being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.

(c) A person, required to make an attribution, who:
   (i) fails to do so, or
   (ii) having done so, fails to notify the Revenue Service, is liable to pay a penalty of ₦5,000.

(d) 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.

(e) 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) 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;
   (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) 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) A Vatable 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) A Vatable person who fails to keep proper records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of ₦5,000 for every month in which the failure continues.

(j) A Vatable 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) A Vatable person, who fails to submit returns to the FBIR is liable to a fine of ₦5,000 for every month in which the failure continues.

(l) 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) 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 Vatable person fails to render returns or renders an incomplete or inaccurate returns, the FIRS shall assess, to the best of its judgement, the amount of tax due on the Vatable goods and services purchased or supplied by the taxable person.

(p) (i) If a Vatable 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 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.

(ii) The FIRSB shall notify the taxable person of the tax due, together with the penalty and interest. 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 remain unpaid after the period specified for payment may be recovered by the FIRS through proceedings in the Value Added Tax Tribunal.

(ii) A Vatable person who is aggrieved by an assessment made on him/her may appeal to the Value Added Tax Tribunal.

(iii) A further appeal from the Value Added Tax Tribunal may be made to the Federal Court of Appeal.

8.12 DEFINITION OF TERMS

"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.

"Revenue Service" means the Federal Inland Revenue Service Revenue Service.

"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 masks, transmission line, tower, vehicle and other similar structure but excludes mobile homes, caravans and trailers;

"Business" includes any trade, commerce or manufacture or any concern in the nature of trade, commerce or manufacture;

"Chairman" means the Chairman of the Federal Inland Revenue Service Revenue Service

"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) play on stage and performance which are carried out by educational institutions, approved by the Secretary 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 Revenue Service 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 objective of the society as may be approved in writing by the Revenue Service prior to the date of the entertainment;

“Import” means bringing in or carrying to be brought in goods and services from another country or from an export processing zone;
“Importer” means any person who imports taxable goods;

“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, packing, 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 Secretary 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.

"Owner" means in respect of any goods, aircraft, 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 include cafeterias, fast food outlets, snacks bars, food stuffs at exhibitions or sport arenas and similar establishments but excludes: -

(a) an establishment operated for a charitable or religious purposes;
(b) an establishment run by an educational or training institution approved by the Secretary for the use of the staff and students of those institutions; and
(c) an establishment run by a medical institution approved by the Secretary for the time - being responsible for the 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 performance of services for a consideration, that is, for money or money's worth;

"Supply of Goods" means any transaction where the whole property 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 leasing, and any disposal of taxable goods;

"Supply of Services" means any services provided for a consideration;

"VAT" means Value Added Tax imposed and charged under section 1 of the Act;

"Vatable goods and services" means the goods and services not exempted in the schedule to the Act;

"VAT period" means one calendar month commencing from the beginning of the month to the end of the month;

"Vatable person" a person who independently carries out in any place, an economic activity as a producer, wholesale trader, supplier of goods, supplier of services including mining and other related activities) or a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business; and includes a person and an 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 conveyance for 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.

8.13 SHARING OF VAT PROCEEDS

The VAT collected by FIRS is shared thus:

(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.

8.14 SUMMARY AND CONCLUSIONS

This chapter explains in detail the intention of VAT Act No 102 of 1993 (now VAT ACT CAP VI LFN 2004) and its implementation.

It extensively dealt with the administration of the VAT Act, and various understanding of Vatable persons, Vatable Income and services, Input / Output Goods and Services exempted from VAT, Returns, etc were also discussed.

Finally, the distribution of VAT proceeds by the three-tier of Government was also stated.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

8.15 REVISION QUESTIONS

8.15.1 MULTIPLE CHOICE QUESTIONS

1. The Enabling Law for the Value Added Tax in Nigeria is
   (A) VAT Act No. 104 of 1993
   (B) VAT Act No. 102 of 1993
   (C) VAT Act CAP VI 2004
   (D) VAT Act No. 94 of 1993

2. Which of the following is no longer exempted from Value Added Tax
   (A) Exported services;
   (B) Baby products;
   (C) Basic foods items;
   (D) Newspapers and magazines.

3. The value of imported goods is deemed to include the following, except
   (A) Import duties levied on the goods,
   (B) The imported price of the goods;
   (C) Insurance premium incurred after the goods has been cleared from the Port ;
   (D) VAT paid on the goods by reason of importation.

4. A member of Value Added Tax Technical Committee is
   (A) A Director in the Nigeria Customs Service;
   (B) The Legal Adviser to the VAT Tribunal;
   (C) The Comptroller-General of the Nigeria Customs Service;
   (D) A Director of Joint Tax Revenue Service;

5. A person who fails to notify the FIRS of his/her change of address under VAT Act is liable to pay a penalty of
   (A) ₦6,000,
   (B) ₦5,000.
   (C) ₦2,500.
   (D) ₦7,500.

8.15.2 SHORT ANSWER QUESTIONS

1. The VAT Act is now known as_______

2. The Value Added Tax is computed at the rate of________

3. VAT returns must be rendered on/before________

4. Mention any two items that must be specified in any Notice of appeal to Appeal Tribunal on VAT matters.

5. The members of each of the Zonal VAT Tribunal shall hold office for a period of ________

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

9

CAPITAL ALLOWANCES

9.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Understand the provisions of the Second Schedule to CITA dealing with Capital Allowances;
- Know the classification of Qualifying Capital Expenditure and the applicable Capital Allowances;
- Know the conditions stipulated in the Act for the granting of Capital Allowances to companies and how the allowances are granted;
- Understand how basis period for Capital Allowances computations is determined; and
- Prepare Capital allowances computations in line with the applicable provisions of CITA.

9.1 INTRODUCTION

The Second Schedule to CITA deals with companies Capital Allowances provisions. The substance of this schedule is very similar to the provisions of the Fifth Schedule to PITA dealing with this topic as it relates to individuals. Thus, any knowledge of Capital Allowances in Personal taxation, can be conveniently and successfully applied to Companies taxation, the general rules of computation being the same.

9.2 QUALIFYING EXPENDITURE

Qualifying expenditure means capital expenditure incurred in a basis period in connection with:

(a) Plant, machinery or fixtures;
(a) Buildings, structures or works of a permanent nature;
(c) Mines, oil wells or other sources of mineral deposits of a wasting nature;
(d) Plantations;
(e) Research and Development;
(f) Agricultural Plant;
(g) Public Transportation Motor Vehicles; and
(h) Public Transportation (inter-city) New Mass Transit Coach.

Any expenditure which is an allowable deduction in computing the profits of

the company's trade or business in accordance with the provisions of Section 20 of CITA, shall not be treated as qualifying expenditure.

9.3 ASSETS ACQUIRED ON HIRE-PURCHASE

When an asset is acquired under a hire-purchase agreement, the qualifying expenditure of such asset is the amount of installment paid by the hirer during its basis period, excluding any interest element in the installment. The interest element is an allowable deduction under Section 20 of CITA, in arriving at the profits of the company.

ILLUSTRATION 9-1

Hire-purchaser Nigeria Limited purchased a motor lorry on hire purchase on 10 June, 1987 for use in its business. The initial deposit paid by the company amounted to ₦37,500. The remaining purchase price being paid in twenty four monthly instalments of ₦4,687.50. The cash price of the lorry was ₦115,000.

It is to be assumed that the company paid all the instalments when due and that its accounts are made up to the 31 December every year.

Required:

(i) State the taxation implications of this transaction for Hire purchaser Nigeria Limited.

(ii) Compute the Capital Allowances for the relevant years of assessment.

SUGGESTED SOLUTION 9-1

The taxation implications of this transaction as far as Hire-purchaser Nigeria limited is concerned, are as follows:

(i) The interest element is an allowable deduction under Section 20 of CITA. Thus the total interest element will be spread in proportion to the amount paid in each accounting year and will be deductible in arriving at the profit of the company assessable to tax.

The interest element can be arrived at thus:

	₦
Amount of deposit	37,500
Total of instalments ₦4,687.50 x 24	112,500
Total hire purchase price	150,000
Less the cash price	115,000
Total interest element	35,000

The interest element can be apportioned to the relevant assessment years, using the sum of the digits method.

The sum of the digits for 24 instalments is (24 + 23 + 22 + 21 + 20 + 19 + 18 + 17 + 16 + 15 + 14 + 13 + 12 + 11 + 10 + 9 + 8 + 7 + 6 + 5 + 4 + 3 + 2 + 1) = 300

The interest apportionment will be arrived at thus:

Assessment year	Basis period that is Company's accounting period		Amount of interest
			₦
1988	1/1/87 to 31/12/87	129/300 x N35,000	15,050
1989	1/1/88 to 31/12/88	150/300 x N35,000	17,500
1990	1/1/89 to 31/12/89	21/300 x N35,000	2,450
			₦35,000

The interest element deductible in arriving at the assessable profit of the company for each of the assessment years is as shown above. It should be noted that the interest element has been apportioned proportionately on time and amount basis as would any other finance cost. In a more simplified situation, the interest could be apportioned on the straight line method.

(ii) The amount of the qualifying expenditure of the lorry is the cash price element of the total amount payable in each year of assessment. This can be arrived at as follows:

Assessment Year	*Total amount payable in basis period*	*Interest element as above*	*Cash price element*
	₦	₦	₦
1988	65,625	15,050	50,575
1989	56,250	17,500	38,750
1990	28,125	2,450	25,675
	150,000	35,000	115,000

Initial allowance for the relevant assessment years will be granted on the amounts of the cash price elements as shown above. Annual allowances will similarly be granted on the cumulative of the qualifying amounts at the end of each of the basis period. The amounts of the allowances will be:
Initial allowance Rate - 25%, Annual Allowance rate - 20%.

	₦	₦
1988		
Cash price payable for the year as above	50,575.00	
Initial Allowance: 25% thereof	12,643.75	
1989		
Cash price payable for the year as above	38,750.00	
Initial Allowance: 25% thereof	9,687.50	
1990		
Cash price payable for the year as above	25,675.00	
Initial Allowance: 25% thereof	6,418.75	
Annual allowance – Rate was 20%:		
1988 cash price element	50,575.00	
Less initial allowance	12,643.75	
		37,931.25
Annual allowance at 20% of ₦37,931.25		7,586.25
1989 Additional cash price	38,750.00	
Less initial allowance thereon	9,687.50	
		29,062.50
Annual allowance at 20% of ₦29,062.50		5,812.50
Add: annual allowance on 1988 expenditure		7,586.25
Total annual allowance for 1989		13,398.75
1990 Cash price element	25,675.00	
Less initial allowance thereon	6,418.75	
		19,256.25
Annual allowance at 20% of ₦19,256.25		3,851.25
Add: Annual allowance on 1988 expenditure		7,586.25
Annual allowance on 1989 expenditure		5,812.50
Total annual allowance for 1990		17,250.00

9.4 POINTS TO NOTE REGARDING CAPITAL ALLOWANCES

The following points should be carefully noted with regard to capital allowances:

(a) Capital allowances will be granted only if these conditions are satisfied:

(i) The company claiming must be the owner of the assets at the end of its basis period for a year of assessment; and

(ii) The assets must be used for the purpose of a trade or business carried on by the company.

Note that the ownership and usage should be on the last day of the basis period of a year of assessment. For this purpose, a period of temporary disuse is ignored.

Also when an asset has been acquired but has not been put into use at the end of the basis period, capital allowances can be claimed provided the first use to which the asset will be put after that date is the purpose of the trade or business of the company. If eventually the asset is not put to such use, the Revenue Service can raise such additional assessment as might be necessary to counteract the benefit obtained from granting the capital allowances.

(b) The grant is for a year of assessment and is usually against the assessable profits of the basis period for that year of assessment. In the event of insufficiency of assessable profits to cover the claim due after the applicable restrictions, the unrelieved amount can be carried forward to future assessment years with no time limit.

(c) A claim should be made by the company before any capital allowance can be granted. However, if no claim is made, some allowances can still be granted where the Revenue Service is of the opinion that it would be reasonable and just to do so, for example, where Best of Judgment (BOJ) assessments are raised.

(d) Where the basis period for any year of assessment is a period less than one year, for example, when the commencement provisions are being applied, the annual allowance for that assessment year shall be proportionately reduced.

(e) The relief is granted by deduction from the remainder of assessable profits in the computation of the company's total profits. The remainder of the assessable profits is the assessable profits plus any balancing charge and less any loss relief due, that is capital allowance relief is granted after giving effect to loss relief.

(f) Unutilised allowances in the year of permanent cessation of a trade or business carried on by a company shall be available for relief against the remainder of its assessable profits for the preceding year of assessment and so on for other preceding years up to the fifth year before the year of permanent cessation.

(g) Where a relief is to be granted to a company after the assessment has become final and conclusive in respect of any

assessment year, the Revenue Service may make such repayment or set-off of the tax, or any part of such tax, paid or charged for that year as may be appropriate, in lieu of making the deduction for the amount of the relief.

(h) The residue of expenditure is the total qualifying expenditure incurred less the total of any initial and annual allowances granted to date. Investment allowance should not be deducted from qualifying expenditure to arrive at the residue.

(i) In the year of permanent cessation of a trade or when an asset is disposed, balancing adjustment will need to be made. Balancing allowance will be granted when the proceeds of disposal or the value on the date of cessation is less than the residue of qualifying expenditure. A balancing charge, which will be limited to the capital allowances previously given, will be made if the value/proceeds is greater than the residue.

(j) There is no difference in the meaning of "disposed of" and "value of an asset" as contained in CITA Second Schedule paragraphs 12 and 13 respectively, and that contained in PITA Fifth Schedule dealing with personal taxation.

(k) The amount of capital allowances calculated is generally restricted to a percentage (at present 66 $^2/_3$%) of the assessable profits. Any company in the agro-allied industry or that which is engaged in the trade or business of manufacturing is not affected by this restriction. A company in the agro-allied industry is any company carrying on agricultural trade or business, as defined.

Agricultural trade or business is defined in the Act as any trade or business connected with:

(i) The establishment or management of plantations for the production of rubber, oil palm, coffee, tea and similar crops;
(ii) The cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains;
(iii) Animal husbandry, that is to say, poultry, piggery, cattle rearing, fish farming, and deep sea fish-trawling";

(l) Any expenditure allowable under Section 20 as a trade expense and deductible in the computation of the company's profit from its trade or business, cannot be treated as qualifying capital expenditure.

9.5 PLANT, MACHINERY OR FIXTURES

There is no definition of plant, machinery or fixtures in the Act. By legal pronouncements, the words have been interpreted as including all apparatus used for carrying on the business of the company including goods and chattels fixed or movable kept for permanent employment in the business. Items that can be regarded as the stock in trade, that is, goods bought or made for sale, by the company, will not qualify as plant and machinery.

It is easier to categorise 'machinery' than 'plant'. To qualify as plant, an item must be functional. The question which will arise for this purpose is whether the item concerned is performing a role in the carrying on of the business or whether it is merely part of the setting within which the business is carried on. For example, the cost of a ship which was adapted to house a restaurant was disallowed as qualifying plant expenditure for capital allowances purposes, such is a qualifying building expenditure. In another case the court ruled that a structure which merely provided shelter could not be machinery or plant.

In applying the functional test, the nature of the business being carried on is very important in determining if the item is serving a functional purpose in providing a setting or if it is one for use in the trade. It must be borne in mind that what is part of the setting for one business may well constitute plant in another.

Expenditure on the following items, among others, is likely to be regarded as qualifying plant expenditure:

(a) Automatic doors, together with ancillary sensory and operating equipment
(b) Built-in racks, shelves and cupRevenue Services for storage
(c) A wide variety of handling and lifting equipment, such as cranes, lifts, escalators and other conveyance belts
(d) Fittings in canteens;
(e) Equipment for maintenance and refuse-disposal purposes; and
(f) Security systems.

Repairs and replacement

Repairs and replacement cost incurred with regard to any qualifying expenditure is an allowable deduction under Section 20 of CITA. Any such expenditure, therefore, cannot be treated as qualifying expenditure. At times,

there could be doubt as to whether particular repairs and replacement expenditure should be treated as an allowable deduction under Section 20 or as qualifying expenditure on which capital allowances are to be claimed. The deciding factor is whether the expenditure has been incurred to maintain the operating capability of the asset as it was when purchased or to enhance that operating capability. If it is the former, it is a revenue expenditure deductible in accordance with the provisions of Section 20, but if it enhances the operating capability, it should be treated as a capital expenditure and capital allowances claimed thereon.

9.6 BUILDINGS, STRUCTURES OR WORKS OF A PERMANENT NATURE

The distinction between industrial and non-industrial buildings is the same as in PITA. The definition of industrial building as given in the Second Schedule, paragraph 5(b) of CITA is reproduced below:

"Industrial building or structure means any building or structure in regular use:

(i) as a mill, factory, mechanical workshop or other similar purpose, or as a structure used in connection with any such buildings;

(ii) as a dock, port, wharf, pier, jetty or other similar building structure;

(iii) for the operation of a railway for public use or of a water or electricity undertaking for the supply of water or electricity for public consumption; and

(iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature."

Any building not falling into any of these descriptions will automatically be a non-industrial building.

It should also be noted that the cost of land is not considered to be qualifying expenditure. Capital allowances therefore, cannot be claimed on the cost of land included in the cost of any building. Such cost should be deducted from the cost of the building in the computation of the applicable capital allowances.

Buildings purchased

When a building is purchased, the relevant interest to the company making the purchase is the original cost of construction of the building or the price paid for it, whichever is lower. If the building is purchased second-hand, no initial allowance can be claimed by the purchaser but annual allowance can be claimed based on the amount of the relevant interest as defined above. When a building is purchased new, initial and annual allowances are claimable by reference to the relevant interest, that is the cost of construction by the original owner or the purchase price, whichever is lower.

9.7 MINES, OIL WELLS OR OTHER SOURCES OF MINERAL DEPOSITS OF A WASTING NATURE

This is covered among others in paragraphs 1 and 2, Second Schedule, CITA which contains similar provisions to PITA, Fifth Schedule, paragraph 2, but see comment under plantations below.

9.8 PLANTATIONS

Qualifying expenditure in connection with plantations is capital expenditure:
(i) On the clearing of land for planting
(ii) On planting (other than replanting)

The (c) part of paragraph 1, Schedule 2, CITA deals with qualifying mining expenditure and is as follows:

"(c) capital expenditure (hereinafter called "qualifying mining expenditure") incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in subparagraph (a) of this definition);"

"(d) capital expenditure (hereinafter called qualifying plantation expenditure") incurred in connection with a plantation:
(i) on the clearing of land for planting;
(ii) on planting (other than replanting);
(iii) on the construction of any works or buildings which are likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which are likely to become valueless when the concession comes to an end to the company working the source immediately before the concession comes to an end;
(iv) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existence and extent of the deposits; and
(v) on searching for or on discovering and testing deposits, or winning access thereto".

A critical look at (d) above will reveal that subparagraphs (iii), (iv) and (v) thereof have no bearing to plantations. In fact, they relate to mining expenditure and should, therefore, have been included under paragraph (c). This is the treatment in PITA which in the absence of any evidence to the contrary, is also expected to be the same in CITA. Clearly, this is an error in the drafting of the Law. Consequently, subparagraphs (iii), (iv) and (v) in paragraph (d) above should be taken as relating to paragraph (c) and the qualifying expenditure on mining and plantations respectively.

9.9 ALLOWANCES

Initial allowance

This is granted in the first year of acquisition on the cost of purchase of the asset whether purchased new or second hand (but see the exception in respect of building as already discussed).

For example, an initial allowance of ₦25,000 will be claimed for a qualifying expenditure amounting to ₦50,000 on an asset which attracts an initial allowance rate of 50%.

The initial allowance to be granted would be such an amount as the Revenue Service may determine to be just and reasonable where either the seller has control over the purchaser or the purchaser has control over the seller of the asset. Such amount shall not exceed the amount of the initial allowance which would have been allowable except for this provision.

In respect of qualifying expenditure on plant and machinery for the replacement of old ones, one-off 95% capital allowance in the first year shall be allowed. The 5% book value shall be retained until the final disposal of the asset. Provided that the aggregate capital allowances granted in respect of any asset shall not exceed 95% of the total cost of the asset. (New Section 6(3) inserted in Decree 1996 No. 32 effective from 1 January, 1996).

Investment allowance (CITA Section 28)

In addition to an initial allowance, investment allowance can be claimed in respect of qualifying expenditure incurred on plant and machinery.
The rate is 10% of the expenditure.

The provisions of CITA relating to initial allowance also apply to investment allowance, except that an investment allowance is not to be deducted from cost of the assets in arriving at the residue of qualifying expenditure.
Investment allowance cannot be claimed, or if already granted, shall be withdrawn if any of the following happened within a period of five years from the date of acquisition of the assets:

(a) any sale or transfer of the asset otherwise than to a person acquiring the asset for a chargeable purpose or for scrap;

(b) any appropriation of the asset to a purpose other than a chargeable purpose;

(c) any sale or transfer or other dealing with the asset being a case where it appears either:

    (i) That the purpose of obtaining tax allowances was the sole or main purpose of the company for incurring the expenditure or for so dealing with the asset; or

(ii) That the incurring of the expenditure and the asset being so dealt with, were not bona fide business transactions, or were artificial or fictitious transactions, and were designed for the purpose of obtaining tax allowances.

For the purpose of this Section "chargeable purpose" means the purpose of putting the assets to a use such that profits accrue or are intended to accrue therefrom and will be chargeable to tax.

Annual Allowance

This is granted annually and is computed on the balance of cost after the deduction of the amount of initial allowance claim on the asset. In the example of the item shown under initial allowance above, the annual allowance, assuming a rate of 25% shall be ₦6,250, that is, 25% of ₦(50,000 – 25,000). Annual allowance once calculated for particular fixed asset item will be the same amount for each of the years that the asset is in use until the cost of the asset is fully relieved. A nominal sum of ₦10 per item is retained in the books in the last year of claim of annual allowance. It is retained until the item is disposed of.

Where the basis period for any year of assessment is a period of less than one year, the annual allowance for that year of assessment shall be proportionately reduced.

ILLUSTRATION 9-2

New Business Nigeria Limited commenced a retail trade business on 1 October 2006 and makes up accounts to 30 September of every year. The following qualifying capital expenditure on plant and machinery were incurred:

Date	Amount
	₦
1/10/06	520,000
1/11/06	535,000
15/4/07	725,000

Required:
Compute capital allowances for the relevant years of assessment.

SUGGESTED SOLUTION 9-2

NEW BUSINESS NIGERIA LIMITED
COMPUTATION OF CAPITAL ALLOWANCES FOR THE RELEVANT YEARS OF ASSESSMENT

The annual allowance for the first year of assessment will be as follows:
First year of assessment is 2006 assessment year.
Basis period for capital allowance purposes is the period 1/10/06 to 31/12/06

		₦
Total qualifying expenditure during that period		1,055,000
Less: Initial allowance at 50%		527,500
Balance of cost after initial allowance		527,500
Investment allowance is also due, since the item is plant and machinery:	₦	
Investment allowance at 10% of ₦1,055,000	105,500	
Annual allowance:		
For a full year at 25% of ₦527,500	131,875	
But restricted to $^{3}/_{12}$ x ₦131,875, in view of number of months in the basis period being less than twelve.		32,969
Residue of expenditure carried forward- to the Second year of assessment		₦494,531

Whenever in doubt as to whether it is the initial or annual allowance that should be restricted when the basis period is shorter than twelve months, remember that – initial allowance is a one-off allowance and is therefore not to be restricted, while annual allowance is on an annual basis and is therefore to be proportionately restricted to the number of months in the basis period, if less than twelve months.

9.10 LEASING ASSETS (PARAGRAPH 18)

The part of the Act that deals with leasing assets is paragraph 18 of the Second Schedule, the substance of which has been reproduced below. It covers the various equipment leasing, including sale and lease back, schemes which are commonly operated by merchant banks and finance houses. With this provision it is the lessor (the owner of the asset under an operating lease) that can claim capital allowances in respect of the cost of the asset. The hire charge payable by the lessee is Section 20 deductible, as a trade expense. With regard to a finance lease, it is the hirer or lessee that can claim capital

allowances on the qualifying expenditure which is determined in the same manner as assets acquired under hire-purchase terms.

(a) **Where a company owning an asset**

(i) has incurred capital expenditure in respect thereof; or

(ii) 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 such person, the provisions of this Schedule shall apply as though such expenditure were incurred for the purpose of a trade or business carried on by the owner or lessor and as though the owner or lessor were using the asset for the purpose of such last-mentioned trade or business in the way in which and for the period or periods during which the asset is in fact in the first mentioned-trade or business.

(b) 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 provisions of this Schedule shall apply in the same way as it applies to an asset acquired by any owner or lessor of an asset for the purposes of his trade or business but shall so apply subject to the following modifications, that is to say-

(i) the qualifying expenditure within the provisions of this Schedule shall, in relation to any asset so acquired under that contract, be limited to the amount of the total lease payments due from the hirer or lessee, during his basis period excluding in the computation of such qualifying expenditure any interest charges payable under the contract;

(ii) any reference in this sub-paragraph (2) of this paragraph to any owner or lessor of any asset shall be construed as including a reference to a hirer or lessee under the finance lease contract and as excluding a reference to the person leasing the asset to the hirer or lessee under the contract.

(c) Subject to the provisions of this Schedule, where a company has incurred capital expenditure on plant and machinery or acquires same by virtue of sub-paragraph (2) of this paragraph, wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, there shall be due to the trade or business an investment allowance of ten per cent of such expenditure.

(d) For the purposes of this Schedule, the terms "operating lease" and "finance lease" shall have the meanings ascribed to them by the Statement of Accounting Standards on Leases (SAS No. 11).

9.11 CAPITAL ALLOWANCES RATES

The following are the current (2009) capital allowances rates:

		Initial allowance %	Annual allowance %
Buildings (Industrial & non-Industrial)		15	10
Mining		95	Nil
Plant:	Agric Production	95	Nil
	Others	50	25
Furniture and Fittings		25	20
Motor Vehicles:	Public Transportation	95	Nil
	Others	50	25
Plantation Equipment		95	Nil
Housing Estate		50	25
Ranching and Plantation		30	50
Research & Development		95	Nil

These rates were effective from the 2006 assessment year.

The following should also be noted:

(a) In respect of qualifying expenditure on plant and machinery for the replacement of old ones, a one-off 95% capital allowance in the first year shall be allowed. The 5% book value shall be retained until the final disposal of the asset. Provided that the aggregate capital allowances granted in respect of any asset shall not exceed 95% of the total cost of the asset.

(b) A company engaged in gas utilisation (downstream operations) shall be granted accelerated capital allowances after the tax-free period of three years, as follows:

(i) an annual allowance of 90 per cent with 10 per cent retention, for investment in plant and machinery,

(ii) an additional investment allowance of 15 per cent which shall not reduce the value of the asset.

(c) Investment allowance of 10% on qualified plant and machinery expenditure is available from the 1993 assessment year.

9.12 CLAIM FOR CAPITAL ALLOWANCES – OPTIONS

The following options are available with regard to Capital Allowance:

(a) Capital allowance must be claimed before it can be granted. This implies that normally it will not be granted when no claim is made by the company. Therefore a company that does not wish to be granted capital allowances in any particular assessment year can achieve that objective by not making a claim for such, in its tax computations.

(b) Where double taxation relief is applicable, paragraph 23 of Schedule 2, permits a company to elect that the initial or annual allowance due to it, be calculated at a lesser rate than that normally applicable as summarised under capital allowances rates above. When such election is made, the lesser rate desired by the company shall be the appropriate rate to be used to compute the amount of the capital allowances due to the company for that year of assessment.

9.13 BASIS PERIOD

The basis period for capital allowances is normally the same as that used in the computation of assessable income. For example if accounts are made up to 30 September every year, the basis period for the purpose of determining assessable income for 2005 assessment year will be the accounting year ended 30 September, 2004 that is period 1 October, 2003 to 30 September, 2004.

Capital allowances would be claimed for the 2005 assessment year using the same basis period thus:

Initial allowance - on assets purchased during period 1/10/2003 to 30/9/2004

Annual allowance -on residue of expenditure at 30/9/2003 plus the annual allowance amounts calculated on the additions during the year to 30/9/2004. If there are disposals in the year, the residue of such will be eliminated from the residue at 30/9/2003 before the annual allowance is calculated.

This rule will usually be disrupted at commencement and cessation of a business as there will be overlapping and gaps of periods during these occasions.

The provisions in the Act are:

(i) where two bases periods overlap, the period common to both is treated except for the purpose of annual allowances, as falling to the first basis period only.

(ii) where two bases periods coincide they shall be treated as overlapping and therefore rule (i) above will be applicable.

(iii) Where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, the interval shall be treated as part of the second basis period unless the year of assessment based on the second basis period is the year of permanent cessation of the trade, when the interval is treated as part of the first basis period.

ILLUSTRATION 9-3

XYZ Company Limited commenced business on 1 December 2001. Accounts are made up to 28 February of every year.

Thus, accounts have been prepared as follows:

1/12/2001 to 28/2/2002 3 months
1/3/2002 to 28/2/2003 12 months
1/3/2003 to 28/2/2004 12 months

The basis period for assessment will be as follows:

2001 Assessment year	1/12/2001 to 31/12/2001	1 month
2002 Assessment year	1/12/2001 to 30/11/2002	12 months
2003 Assessment year	1/12/2001 to 30/11/2002	Preceding year

The basis period for capital allowances purposes shall be as follows:

Assessment year	Initial Allowance	Annual Allowance
2001	Based on assets acquired during period: 1/12/2001 to 31/12/2001	Based on assets in use at 31/12/2001 which are the same as assets acquired during the period 1/12 to 31/12/2001
2002	1/1/2002 to 30/11/2002 (i) above applies for 2001 and 2002 assessment years here	Based on residue for 2001 plus or minus acquisition/ disposals in the period 1/1/2002 to 30/11/2002
2003	NIL Note that (ii) above operates for 2001 and 2002 assessment years. The necessary initial allowance would have been claimed in the 2001 and 2002 assessment years.	Based on residue for 2002

2004	1/12/2002 to 28/2/2003 Period 1/3/2002 to 30/11/2002 has already been treated above (Rule(i)).	Based on residue for 2003 minus disposal during period 1/12/2002 to 28/2/2003, if any. Annual allowance will also be calculated and claimed for assets acquired during period 1/12/2002 to 28/2/2003
2005	1/3/2003 to 28/2/2004 No overlapping nor gap	Based on residue for 2003 minus disposal during period 1/3/2003 to 28/2/2004, if any. Annual allowance will also be calculated and claimed for assets acquired in period 1/3/2003 to 28/2/2004.

It is at cessation that gaps can arise and thus it is only then that rule (iii) above can apply.

9.14 SUMMARY AND CONCLUSIONS

This chapter covers the Second Schedule to CITA, which contains the rules of capital allowances as they apply to corporate bodies chargeable to tax under CITA.

As depreciation of any asset is not an allowable deduction in the computation of adjusted profits of a company, capital allowance is granted instead. This chapter provides all the rules with respect to: classification of qualifying capital expenditure, claim and grant of capital allowances, determination of balancing allowance or balancing charge upon disposal of qualifying assets. The various points to note with respect to capital allowances have also been covered such that proper claim for capital allowances can be filed with the Inland Revenue.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

9.15 Revision Questions

9.15.1 MULTIPLE CHOICE QUESTIONS

1. In accordance with CITA Section 28, Investment allowance at 10% of the expenditure can be claimed in respect of qualifying expenditure incurred on:
   A. Industrial Buildings
   B. Non-industrial Buildings
   C. Mining
   D. Plant and Machinery
   E. Furniture and Fittings.

2. The amount of capital allowances calculated is to be restricted to a percentage of the assessable profits. The percentage currently (2005) applicable is:
   A. 75%
   B. 662/3%
   C. 331/3%
   D. 95%
   E. 50%3.

3. The restriction on Capital Allowances granted to a company engaged in Agricultural business is
   A. 75%
   B. 100%
   C. 50%
   D. Nil
   E. 25%

4. The restriction on Capital Allowances granted to a company engaged in Manufacturing is
   A. 331/3%
   B. 20%
   C. 662/3%
   D. 75%
   E. Nil

5. The Initial Allowance granted to a company for Qualifying Capital Expenditure on Motor Vehicles for Public Transaportation is
   A. Nil
   B. 50%
   C. $66^{2}/_{3}$%
   D. 95%
   E. $33^{1}/_{3}$%

9.15.2 SHORT ANSWER QUETIONS

1. Depreciation of any asset is a disallowable expenditure for tax purposes but ______________ is granted instead.

2. Residue of qualifying expenditure is the total qualifying expenliture incurred less the total of ____________ and _____________granted to date.

3. When the basis period of an assessment year is less than a period of twelve months the ____________ allowance for that assessment year shall be proportionately reduced.

4. Unutilised allowances in the year of permanent cessation of a trade or business carried on by a company shall be available for relief against the remainder of its assessable profits for and so on for other______________.

5. Capital allowances restriction is not applicable to any company engaged in the ______ industry or that which is engaged in the trade or business of __________.

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

10

CAPITAL GAINS TAX

10.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Know how Capital Gains Tax Act is administered;
- Understand the nature and objectives of capital gains tax;
- Understand the principle of allowable and disallowable expenditure as applicable to capital gains tax;
- Know the chargeable gains that are exempted from capital gains tax;
- Understand all the capital gains tax issues involved in acquisition and disposals of assets;
- Know the reliefs available in capital gains tax; and
- Be able to prepare capital gains tax computations in accordance with the provisions of the Capital Gains Tax Act, CAP C1 LFN 2004.

10.1 NATURE AND OBJECTIVES OF CAPITAL GAINS TAX

In the usual income tax computations, profits or losses on disposal of fixed assets are excluded by means of adjustments to the relevant accounting results. At the same time, balancing adjustment would be made in the capital allowances computation in respect of the difference between the proceeds of disposal and the tax written down value of such assets – balancing allowance will be granted if the proceed falls short of the written down value and a balancing charge if the proceed is higher. In the latter case, if the proceed is greater than the cost, the amount of the balancing charge would be restricted to the amount of capital allowances previously granted. This will be the difference between the cost of acquisition and the tax written down value of disposal. In such a situation, another surplus, that is the difference between the proceed and the cost, which has not been subjected to any taxation treatment arises. In taxation law and practice, all transactions of capital nature are excluded from income tax. In view of the fact that the surplus referred to is a capital receipt, it cannot be included in gains or profits for income tax purposes. However, such capital gains are subject to Capital Gains Tax (CGT) under the Capital Gains Tax Act (CGTA).

The Capital Gains Tax Act enacted in 1967, came into effect from the 1967/68 assessment year. In addition to the necessity to charge capital gains to

tax as illustrated above, the Act could also have been introduced to produce an additional source of revenue to Government to finance Nigeria's civil war.

The principal Act together with all amendments thereto has been re-enacted as Capital Gains Tax Act CAP C1 of the Laws of the Federation of Nigeria (LFN) 2004.

10.2 ADMINISTRATION OF CAPITAL GAINS TAX

The management of the Capital Gains Tax Act with respect to corporate bodies, individuals resident in the Federal Capital Territory (FCT) and Non-Resident Individuals (Individuals outside Nigeria), is placed under the administration of the Federal Inland Revenue Service. This is with regards to returns, assessments, appeals, collections, recovery and repayments, offences and penalties as well as litigations.

The management of the Act with respect to Individuals (except Non-residents), is placed under the administration of the States' Internal Revenue Services.

Certain provisions of the "Income Tax Acts" (detailed in a schedule attached to the Capital Gains Tax Act) shall apply in relation to capital gains tax as they apply in relation to income tax chargeable under those Acts subject to any necessary modifications – Section 43(1)

Appeals against any assessment to Capital Gains Tax (CGT) shall be made in accordance with Section 54 of CITA or Section 53 of the PITA as the case may be, to the Body of Appeal Commissioners established under the Companies Income Tax Act. Section 43(2) of CGTA.

CAPITAL GAINS

Capital Gains may be defined as gains arising from increases in the market value of Capital Assets, to a Corporate Body or Person who does not habitually offer them for sale, and in whose hands they do not constitute Stock-In-Trade.

It is the difference between the consideration accruing and sums excluded from the consideration, being cost and ancillary costs of disposal of a Capital Asset.

One guiding principle is to examine, the purpose for which an asset is bought and / or sold. Where an asset is acquired and / or kept for use or as an investment, proceeds on the disposal of any such asset shall be treated as a capital receipt and any gain thereon will be regarded as a Capital Gain.

On the other hand, where fixed assets are kept and sold regularly for gains

(profits), such disposal proceeds shall be treated as normal income receipts and taxed under the Personal Income Tax Act (PITA) or Company Income Tax Act (CITA).

CGT IMPOSITION

The Tax is imposed on gains arising out of the Ownership of a Capital Asset changing hands, either by exchange, transfer, Sales or Gift.

The Act as it is presently, is silent on gains arising from the appreciation in value of an asset, which has not changed hands over time.

Capital Gains Tax is chargeable on the total amount of the chargeable gains arising after deducting allowable expenses on the disposal of Chargeable assets, in a year of assessment.

Year of Assessment

A year of assessment in relation to Capital Gains Tax means, a year beginning with 1 January and ending with 31 December in the same calendar year with effect from 1969.

10.3 ALLOWABLE AND DISALLOWABLE EXPENDITURE

Deductions allowable (Section 14)

(a) Cost of acquisition or purchase price, including all costs incidental to the purchase.
(b) Improvement costs wholly, exclusively and necessarily incurred.
(c) Cost wholly, exclusively and necessarily incurred in establishing, preserving or defending the owner's title to or a right over the asset.
(d) Incidental costs of disposal.

These include:

(a) Fees, commissions or remuneration paid for professional services of surveyor or valuer; auctioneer, accountant: agent and or legal adviser;
(b) Cost of transfer or conveyance (including Stamp Duties);
(c) Advertisement cost to find a seller/buyer; and
(d) Cost reasonably incurred to make any valuation or apportionment required for the purpose of computing the capital gains including expenses in ascertaining market value where required.

Disallowable Expenditure

Sums allowable as a deduction in computing the profits or gains or losses of a trade for income tax purposes are not allowable deduction under Section 14 above (Section 15).

Insurance premiums on the asset are not allowable – Section 16.

10.4 RATE

Capital Gains Tax (CGT) is chargeable at 10% on capital gains arising from disposal of assets (20% applied up to 31/12/95).

10.5 COMPUTATION OF CHARGEABLE GAINS

Gains Chargeable

Section 3, CGT Act defined chargeable assets as meaning all forms of property, whether situated in Nigeria or not and including:

(a) options, debts and incorporeal property generally;

(b) any currency other than Nigerian currency; and

(c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired;

(d) stock and shares of every description (excluded from chargeable assets with effect from 1/1/98).

In respect of assets outside Nigeria and

(a) disposed by non-resident individual, or

(b) trustee of any trust or settlement, or

(c) a company whose activities are managed and controlled outside Nigeria

CGT is chargeable on that part of the gains (if any) received or brought into Nigeria when they are so dealt with (Section 4). This is what is termed 'remittance basis'. The amount of the gains chargeable is dependent on the whole or part which is remitted to Nigeria. If there is no remittance to Nigeria, there is no liability to Capital Gains Tax in respect of the disposals of those fixed assets.

Capital loss on disposal of any asset is not deductible from capital gains on disposal of any other asset even if both are of the same type (Section 5).

10.6 EXEMPTIONS FROM CAPITAL GAINS TAX

The following are exempt chargeable gains:

(a) Gains accruing to:
   (i) an ecclesiastical, charitable or educational institution of a public character;
   (ii) any statutory or registered friendly society;
   (iii) any cooperative society registered under the Cooperative Societies Law of any State; and
   (iv) any Trade Union registered under the Trade Unions Act.

   In so far as the gain is not derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society and the gain is applied purely for the purpose of the institution or society as the case may be (Section 27(1).

(b) Gains accruing to any Local Government Council (Section 28(1).

(c) Gains accruing to any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria; or

   Gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria in so far as the gains are not derived from the disposal of any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some person or authority (Section 28(2).

(d) Gains accruing on disposal of investments held as part of any superannuation fund or other statutory retirement benefits scheme to the same extent as income derived from the assets would be exempt under Section 20 of PITA (Section 29.1).

   Disposal of a right to, or any part of any sum payable out of any superannuation fund shall also not be chargeable (Section 29.2) "Superannuation Fund" means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Revenue Service under Section 21(1)(g) of PITA.

(e) Gains accruing on disposal by any person of a decoration awarded for valour or gallant conduct which he acquires otherwise than for consideration in money or money's worth (Section 30).

(f) Gains accruing from a disposal of Nigerian Government Securities (Section 31)
Nigerian Government Securities include Nigeria treasury bonds, savings certificates and premium bonds issued under the Savings Bonds and Certificates Act.

(g) Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers (Section 9).

(h) Gains accruing in connection with the disposal of an interest in or the right under any policy of assurance or contract for a deferred annuity on the life of any person (Section 33).

Some of the other exemptions and relief provisions in the Act are as follows:

(a) Section 35 exempts sums obtained by way of compensation or damages for any wrong or injury suffered by an individual to his person or in his profession or vocation. This includes wrong or injury for libel, slander or enticement. Sums obtained by way of compensation for loss of office exceeding ₦10,000 in any year of assessment is however chargeable.

(b) Section 36 exempts gains accruing on disposal of a dwelling house (with a maximum land area of up to one acre or such larger area as the Revenue Service may determine) which has been the individual's only or main residence throughout the period of ownership up to the time of disposal or up to the last twelve months before the date of disposal.

So far as it is necessary for the purposes of this Section to determine which of two or more residences is an individual's main residence for any period:

(i) the individual may conclude that question by notice in writing to the Revenue Service given within two years from the beginning of that period. This can be varied by a further notice in writing to the Revenue Service as respects any period beginning not earlier than two years before the giving of the further notice, and

(ii) the question shall be concluded by the determination of the Revenue Service. The individual may appeal to the Appeal Commissioners against that determination within thirty days of service of the notice by the Revenue Service.

(c) A gain accruing on disposal of tangible and movable assets shall not be chargeable gain if the total value of the consideration does not exceed ₦1,000 in a year of assessment (Section 37(1). If the proceeds

of disposal exceed ₦1,000 in an assessment year, the amount of CGT chargeable on the gain shall not exceed half the difference between the amount of that proceed and ₦1,000.

(d) A motor vehicle for carriage of passengers is an exempt asset for CGT purposes unless it is of a type not commonly used as private vehicle and is unsuitable to be so used (Section 38).

(e) Section 39 exempts assets acquired by way of gift and disposed of in a similar manner.

(f) Section 40 - exempts capital gains accruing to a diplomatic body

(g) Double taxation relief is applicable to CGT as it is applicable to income tax under PITA and company's income tax under CITA with the substitution of the words capital gains for income and profits and CGT for income tax.

(h) The following exemptions have been included with effect from 1993:
   (i) Gains arising from takeover, absorption or merger provided that no cash payment is made in respect of the shares disposed/ acquired (Section 32A).

   (ii) Gains arising in respect of disposals of securities in a Unit Trust provided the proceeds are re-invested (Section 32B)

(i) Stocks and shares of every description are exempted with effect from 1 January, 1998.

10.7 DISPOSAL AND ACQUISITION OF ASSETS

Meaning of `disposal'

Except as specifically exempted by the Act, there is a disposal of assets by a person where any capital sum is derived from a sale, lease, transfer, assignment, compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum, and in particular:

(a) Where any capital sum is derived by way of compensation for any loss of office or employment;
(b) Where any capital sum is received under a policy of insurance and the risk of any kind of damage or inquiry to, or the loss, or depreciation of, assets;
(c) Where any capital sum is received in return for forfeiture or surrenders of rights or from refraining from exercising rights;
(d) Where any capital sum is received as consideration for use or exploitation of any asset; and

(e) Without prejudice to paragraph (a) above where any capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation (Section 6(1).

It is also stated in the Act that disposal includes reference to part disposal.

When An Acquisition/Disposal Is Effective

Acquisition/disposal takes effect on the date of the contract to acquire/dispose of the asset or on a date at which there is an enforceable right to acquire or a binding duty to dispose of the asset or any right or interest therein, and in particular:

(a) Where any contract is to be performed subject to any condition, the date of acquisition/disposal shall be the date when the condition is satisfied, but where a consideration of such contract does not depend solely or mainly on the value of the asset at the time the condition is satisfied, the acquisition/disposal shall be treated as if the contract had never been conditional, in which case the effective date shall be the date of the contract.

(b) Where an option is conferred by virtue of any contract, the date of the acquisition or disposal of asset shall be the date when the option is exercised (Section 11).

Hire Purchase Transactions

Where a fixed asset is purchased under hire-purchase, the cost for tax purposes is the cash price of the asset. The hire-purchase charges which represent the interest charges are allowable deductions under Section 20 of CITA in arriving at the assessable profits.

Thus, for Capital Gains Tax purposes, if all the instalments have been paid before the date of disposal, it is the full cash price that is taken as the cost for Capital Gains Tax purposes. If the instalments have not been fully paid, the cost of the asset at the time of disposal will be the cash price portion of the instalments paid to the date of disposal.

ILLUSTRATION 10-1

Union Company Ltd. purchased a chargeable asset on hire-purchase. The deposit paid for the purchase was ₦250,000. The balance of the purchase price was to be paid in thirty-six monthly instalments of ₦25,000. The cash price of the asset is ₦790,000.
Calculate the capital gains tax due assuming the assets were sold as follows:

(a) For ₦1.25million after payment of twenty-four instalments
(b) For ₦1.3 million after full payment of all the instalments.

SUGGESTED SOLUTION 10-1

		₦'000	₦'000	₦'000
(a)	Disposal after 24 instalments paid			
	Sales price			1,250
	Less: cost of the asset:			
	Deposit		250	
	Instalments paid totaled (24 x ₦25,000)	600		
	Less: interest element (24 x ₦10,000)	240		
			360	
				610
	Capital Gains			640
	Capital Gains Tax at 10% thereof			₦64

		₦'000	₦'000	₦'000
(b)	Disposal after full payment of all instalments			
	Sales Price			1,300
	Less: Cost:			
	Deposit		250	
	Instalments paid (36 x ₦25,000)	900		
	Less interest element (36 x ₦10,000)	360		
			540	
				790
	Capital Gains			510
	Capital Gains Tax at 10% thereof			₦51

Calculation of Interest Element of each instalment	
Deposit	250
Total payable by instalments (36 x ₦25)	900
Total hire-purchase price	1,150
Less: the cash price	790
Total interest element	360
Total number of instalments (360 ÷ 36)	36
Interest element of each instalment	₦10

For simplicity, the interest element has been apportioned on the `straight-line' basis.

Bargains comprising two or more transactions

Section 20 CGTA provides:
Where a single bargain comprises two or more transactions whereby assets are disposed of, those transactions shall be treated for the purposes of computing capital gains as a single disposal.
Where separate considerations are agreed or purported to be agreed for any two or more transactions comprised in one bargain (whether transactions whereby assets are disposed of or not) those considerations shall be treated as altogether constituting an entire consideration for the transactions and shall be apportionable between them accordingly.

Where any apportionment under this Section shall result in lesser consideration than that agreed (or purported to be agreed) in the bargain being attributable to the disposal of the assets, the separate considerations agreed (or purported to be agreed) in respect of those assets shall be deemed to be the consideration for which those assets are disposed of.

Part Disposal

Where there is a part disposal, the cost of that part of asset disposed and that of the undisposed part shall be apportioned. The cost to be apportioned to the part disposed shall be in the proportion that the consideration for the disposal bears to the total value of the whole asset on the date of disposal. The value of the whole asset on that date is the consideration received in respect of the part disposed plus the market value of the part of the asset which remains undisposed (Section 17).

Thus if 'A' is the consideration received in respect of that part disposed of, and 'B' is the market value of the part which remains undisposed, then the apportionment will be based on the formula

$$\frac{A}{A + B}$$

which shall be applied in computing the cost and/or all other sums allowable as a deduction in computing the amount of the gain accruing on the disposal, the remainder being attributable to the property which remains undisposed of.

Connected persons

In tax practice, certain persons are treated as being so closely involved with each other that they have to be viewed as the same person or that transactions between them need to be treated differently from those 'at arm's length'.

These persons are referred to as 'connected persons'. Transactions between such persons may be regarded as artificial or fictitious for the purpose of determining the tax liability arising therefrom. This implies that the Revenue can make whatever adjustments as it considers necessary to counteract the reduction of liability to tax that could otherwise result from such transactions.

Transactions between connected persons

Where a person acquires an asset and the person making the disposal is connected with him, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction made otherwise than by way of a bargain at arm's length (Section 23(1 & 2).

The consideration shall be disregarded if less than the market value, and the consideration shall be deemed to be the market value.

Connected persons (Section 24)

(a) An individual is connected with his/her spouse and with his/her relatives and their spouses;
(b) A trustee of a settlement is connected with the settlor of that settlement, and with any person connected with the settlor;
(c) A partner is connected with the person with whom he is in partnership and with the spouse or relative of that person;
(d) A company is connected with another company if –
    (i) the same person controls both, or
    (ii) one is controlled by a person who has control of the other in conjunction with persons connected with him, or
    (iii) a person controls one company and persons connected with him control the other or
    (iv) the same group of persons controls both, or
    (v) the companies are controlled by separate group which can be regarded as the same by interchanging connected persons.
(e) A company is connected with another person who (either alone or with persons connected with him) has control of it; and
(f) Persons acting to secure or exercise control of a company are treated in relation to that company as connected with each other and with any other person acting on the direction of any of them to secure or exercise such control.

`Relative' is also defined in the Act as meaning, brother, sister, ancestral or lineal descendant.

Consideration

Consideration for asset acquired/disposed shall be deemed to be equal to the market value of the asset where any person acquires the asset:

(a) otherwise than by way of a bargain made at arm's length;
(b) wholly or partly for a consideration that cannot be valued or in connection with his own or another's loss of office or employment or diminution of emolument, or otherwise in consideration for or recognition of services or past services;
(c) as trustee for creditors of the person making the disposal (Section 7(1)).

Where a person donates an asset acquired by him by way of a gift (not being an acquisition on a devolution on death) or otherwise, the person receiving the donation shall, for all purposes of the Act, so far as it relates to the interest taken by him, be deemed to have acquired the asset:
(a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, for a consideration equal to that amount; and
(b) in any other case, for a consideration equal to the market value of the asset on the date of that disposal; and in this subsection "gift" does not include a donation mortis causa (Section 7(2)).

The conveyance or transfer by way of security of an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of the Act as involving any acquisition or disposal of the asset (Section 7(4)).

Where a person entitled to an asset by way of security or to the benefit of a charge or encumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or encumbrance his dealings with it shall be treated for the purposes of the Act as if they were done through him as nominee of the person entitled to it subject to the security, charge or encumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or encumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid (Section 7(5).

An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration (Section 7(6)).

Where an asset is acquired by a creditor in satisfaction of his debt or part thereof, the asset shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it, and if a chargeable gain accrues to the creditor on a disposal by him of the asset the amount of the chargeable gain (where

necessary) shall be reduced such that it will not exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part thereof (Section 7(7)).

Any amount that can be treated as income or profits for the purposes of the Income Taxes Acts shall be excluded from the consideration for a disposal of assets for capital gains tax computation (Section 13)).

Consideration payable by instalments

When the consideration is payable by instalments over a period exceeding 18 months, the chargeable gain accruing on the disposal shall be regarded as accruing in proportionate parts in the year of assessment in which the disposal is made and in each of the subsequent years of assessment up to the assessment year in which the last instalment is payable in the proportion of the amount of the instalments payable in each of the years. Such chargeable gain shall be deemed to accrue on the last day of each of the year of assessments in which the instalments are received (Section 18)).

No allowance is given for possible bad debts at the time of computing the capital gains tax payable. However, if any part of the consideration already brought into the computation is subsequently shown to the satisfaction of the Revenue Service as irrecoverable, such adjustment, whether by way of discharge, or repayment of tax or otherwise, shall be made as is required in consequence (Section 18(5)).

Death (Section 8)

On the death of an individual, any assets of which he was competent to dispose of shall for the purposes of the Act be deemed to be disposed of by him at the date of his death and acquired by the personal representatives or other person on whom the assets devolve for a consideration equal to:
(a) the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length if ascertainable, or
(b) in any other case, the market value of the asset at that date; (subsection 1).

The gains which accrue in consequence of subsection (1) of this Section shall not be chargeable to capital gains tax under the Act (subsection 2)
The personal representatives shall be treated as having the deceased's residence and domicile at the date of death (subsection 3).

On a person acquiring any asset as legatee:
(a) no chargeable gain shall accrue to the personal representatives; and
(b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it, (subsection 4).

In this Section:
"legatee" includes any person acquiring an asset under a testamentary disposition or on an intestacy or partial intestacy whether he takes beneficially or as trustee, and a donation mortis causa shall be treated as a testamentary disposition and not as a gift;

"personal representatives" means

(a) the executor, original or by representation, or administrator for the time being of a deceased person under any law in force in Nigeria;
(b) persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under any law in force in Nigeria or personal representatives as defined under paragraph (a) of this subsection, and references to personal representatives as such shall be construed as references to the personal representatives in their capacity as having such functions as aforesaid, (subsection 7).

Assets Lost or Destroyed (Section 19)

If a capital sum is received by way of compensation for the loss or destruction of an asset whether under a policy of insurance or not, a relief is available to the owner, if the amount is applied within three years of receipt in acquiring a replacement of the asset lost or destroyed.
The owner can claim:
(a) as if the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that neither a loss nor a gain accrued to him on the disposal; and
(b) as if the consideration for the acquisition of the new asset were reduced by the exccess of the amount of the capital sum received together with any residual value or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) above.

If part of what would have been the chargeable gain (but for this provision) is what is reinvested, then the relief available will be proportionally reduced.

10.8 RELIEFS

10.8.1 Delayed Remittances Relief

Section 42(1) - A person charged or chargeable for any year of assessment in respect of chargeable gains accruing to him from the disposal of assets situated outside Nigeria may claim that the following provisions of this Section shall apply on showing that:
(a) he was unable to transfer those gains to Nigeria; and

(b) that inability was due to the laws of the country where the income arose, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and

(c) the inability was not due to any want of reasonable endeavours on his part.

Section 42(2) - If he so claims, then for the purposes of capital gains tax:

(a) There shall be deducted from the amounts on which he is assessed to capital gains tax for the year in which the chargeable gain accrued to the claimant the amount as respects which the conditions in paragraphs (a), (b) and (c) of subsection (1) of this Section are satisfied, so far as applicable, but

(b) The amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the said conditions cease to be satisfied:

Section 42(3) - No claim under this Section shall be made in respect of any chargeable gain more than six years after the end of the year of assessment in which that gain accrues.

Section 42(4) - The personal representatives of a deceased person may make any claim which he might have made under this Section if he had not died.

10.8.2 Roll-Over Relief (Section 32 CGT Act)

If the consideration received on disposal of an old asset used only for the purposes of a trade is applied in acquiring a new asset in replacement to be used for the purposes of the trade and the old asset and the new asset are within one, and the same one, of the classes of assets listed in the Act, the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for CGT purposes as if the:

(a) consideration for the disposal of the old asset were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him, and

(b) value of the consideration for the acquisition of the new asset were reduced by the excess of the value of the actual consideration for the disposal of the old asset over the amount of the consideration which he is treated as receiving under paragraph (a) above.

The foregoing will not have any effect on the parties to the transactions involving the old or new assets other than the claimant. This is to say that the purchaser of the old asset will still be treated as acquiring that asset at the price which he has paid for it while the seller of the new asset will be treated as having sold the new asset at the price he received for it.

ILLUSTRATION 10-2

Mr. Niger sold his factory buildings which he acquired ten years ago for ₦500,000. The cost of acquisition at that time was ₦100,000. He acquired a new factory for ₦750,000 to enable him carry on his business.

SUGGESTED SOLUTION 10-2

For CGT purposes, and upon Mr. Niger making a claim, he will be treated,

(a) as if neither a loss nor a gain accrues to him on the disposal, that is the proceeds of disposal will be taken to be equal to the cost which is ₦100,000 and therefore no capital gains tax is payable; and

(b) as if the cost of acquisition of the new asset (₦750,000) were reduced by the excess of the actual proceeds of disposal of the old asset (₦500,000) over the amount of the proceeds which he is treated as receiving under para (a) (₦100,000), that is, ₦400,000 which would otherwise be the capital gain on the disposal of the old asset, will be deducted from the cost of the new asset.

Thus, the cost of the new asset for Capital Allowances and CGT purposes will be ₦350,000 (₦750,000 – ₦400,000). This is what is referred to as roll-over relief in CGT practice. The liability to CGT on gains which have been fully reinvested in the same asset used for the same trade being deferred until the replacement asset is finally disposed.

Note that where the insurance compensation money for the loss or destruction of a capital asset is applied within three years of receipt in acquiring a replacement asset, the above shall also be applicable if the owner so claims (Section 19).

Continuing with the example of Mr. Niger from above, the purchaser of Mr. Niger's factory will not be affected by this arrangement neither will the seller of the new factory as they will record their transactions

as having purchased and sold the factories for ₦500,000 and ₦750,000 respectively.

If only part of the proceeds of disposal is reinvested and the amount reinvested is greater than the cost of the old asset, the owner, if he so claims, shall be treated:

(a) as if the amount of the gains so accruing were reduced to the amount of the said part with a proportionate reduction in the amount of the chargeable gain, and
(b) as if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under para(a) above.

In other words, if the proceeds are not fully reinvested, the amount of relief available will be the proportion which the gain reinvested bears to the total gain accruing on the disposal.

For the foregoing to be applicable, the acquisition of the new asset should be completed within the period of twelve months before and twelve months after the date of the disposal of the old asset or at such earlier time as the Revenue Service may by notice in writing allow.

Where an unconditional contract for the acquisition has been entered into, this Section may be applied on a provisional basis without waiting to ascertain whether the new asset is acquired in pursuance of that contract. When the fact is ascertained, all necessary adjustments shall be made by making additional assessments or by repayment or discharge of tax, and shall be made notwithstanding any limitation in the Act on the time within which assessments may be made. The assets to which this Section applies are classified as follows:

Class 1 Assets

A – Land and building and any permanent or semi-permanent structure in the nature of a building, occupied (as well as used) only for the purposes of trade.

B – Fixed plant or machinery
Class 2 assets – Ships
Class 3 assets – Aircraft
Class 4 assets – Goodwill

If over the period of ownership, or any substantial part of the period of ownership, a part of a building or structure is partly used for the purposes of a trade, this Section shall apply as if the part so used is a

separate asset. It will be subject to any necessary apportionment for an acquisition or disposal (Section 32.7)

This Section shall apply in relation to a person who, either successively or at the same time, carries on two trades which are in different localities, but which are concerned with goods or services of the same kind, as if in relation to old asset used for the purposes of the one trade and new assets used for the purposes of the other trade, the two trades were the same (Section 32.9)

This Section shall apply with the necessary modifications in relation to a business, profession, vocation or employment as it applied in relation to a trade.

The expressions "trade," "business", "profession", "vocation", and "employment" have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of those Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced (Section 32.10).

10.9 OTHER MATTERS

(a) Artificial or fictitious transaction

Where the Revenue Service is of the opinion that any disposition is an artificial or fictitious transaction or where any transaction which reduces or would reduce the amount of any capital gains tax is artificial or fictitious, the Revenue Service shall disregard such disposition and may direct that such adjustments shall be made with respect to the liability of any person for the payment of capital gains tax as it considers appropriate so as to counteract the reduction of liability to capital gains tax effected or reduction which would otherwise be effected, by the transaction and any person concerned with such transaction shall be assessable accordingly (Section 21(1)).

Any person in respect of whom any direction is made under this Section shall have a right of appeal in like manner as though for the purposes of the Act, such direction were an assessment to CGT (Section 21(2)).

"Disposition" includes any trust, grant, covenant, agreement or arrangement: (Section 21(3)(a)).

Transactions between connected persons shall be deemed to be artificial or fictitious, if in the opinion of the Revenue Service those transactions have not been made on terms which might fairly have

been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length (Section 21(3)(b)).

In relation to any direction made under this Section, the provision of the Act as to appeals against an assessment shall have effects as if such direction were an assessment (Section 21(3)(c)).

(b) **Location of Assets**

For the purposes of the Act:

(i) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property;

(ii) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property;

(iii) subject to the following provisions of this Section, a debt, secured or unsecured, is situated in Nigeria if and only if the creditor is resident in Nigeria;

(iv) shares or securities issued by any governmental, municipal, local or native authority, or by any body created by such an authority are situated in the country of that authority or place where the authority is situated;

(v) subject to paragraph (d) of this Section, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated;

(vi) a ship or aircraft is situated in Nigeria if and only if the owner is then resident in Nigeria, and an interest or right in or over a ship or aircraft is situated in Nigeria if and only if the person entitled to the interest or right is resident in Nigeria;

(vii) the situation of goodwill of a trade, business or professional asset is at the place where the trade, business or profession is carried on;

(viii) patents, trade-marks and designs are situated where they are registered, and if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, trade-mark or design are situated in Nigeria if they, or any rights derived from them, are exercisable in Nigeria; and

(ix) a judgement debt is situated where the judgement is recorded (Section 25).

(c) **Assets Located Outside Nigeria (Section 4)**

Capital Gains Tax is payable on the Gains arising on the disposal of assets situated outside Nigeria, so long as the proceeds are received in, or brought into Nigeria.

The Tax is due:

(i) Where the disposal is by an individual who:
- ♦ is visiting Nigeria temporarily with no intent to establish residence, and
- ♦ spends more than 183 days out of a 12 month period, in Nigeria.

(ii) Where the disposal is by a Non-Nigerian Company, managed and controlled from outside Nigeria.

(d) **Other Provisions**

(a) Section 22(1) – Market value in relation to any assets means the prices which those assets might reasonably be expected to fetch on a sale in the open market.

(b) Section 22(2) – In estimating the market value, no reduction shall be made in the estimate on the account that the estimate is based on the assumption that the whole of the assets is to be placed on the market at one and the same time.

(c) Section 22(3) – In re-estimating the market value of any assets acquired, if the market value exceeds the consideration actually paid by the acquirer, the assets shall be deemed to have been acquired for the amount actually paid by the acquirer.

(e) **Anti-Avoidance Provision – Section 44(3)**

Without prejudice to the provisions of the Stamp Duties Act, the Minister with responsibility for matters relating to Stamp Duties shall demand tax clearance certificates when checking documents on sale by any company of landed property and other assets before accepting such documents for stamping.

Another anti-avoidance provision has been introduced with effect from 1 January 1993. It makes the production of evidence of tax payment a condition for effecting change of ownership of property, including shares and stocks (Section 44A).

10.10 SUMMARY AND CONCLUSIONS

This chapter deals with the taxation of gains that cannot be regarded as revenue income. Such gains are classified as capital gains, as they cannot be included in income for income tax purposes.

This chapter shows that capital gains tax will be due on chargeable capital gains arising on disposal of capital assets to the extent that such are not specifically exempted by the Act. The current rate of the capital gains tax is 10%.
Capital loss on disposal of an asset cannot be relieved against the capital gains on another asset even if the two assets are in the same class.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

10.11 REVISION QUESTIONS

10.11.1 MULTIPLE CHOICE QUESTIONS

1. In 2006, Mr. Bimbo purchased a piece of land for ₦1.5m. In 2008, there was a partial disposal for ₦0.8m. The market value of the undisposed portion of the land was ₦2.4m. The Capital Gains Tax payable is:-
   A. ₦40,500
   B. ₦42,500
   C. ₦85,000
   D. ₦41,500
   E. ₦41,000

2. Any Capital Gains arising from the disposal of a medal won at the Olympic Games, is:-
   A. Subject to taxation in the hands of the seller
   B. Subject to taxation at half (1/2) of the gains
   C. Exempt from Capital Gains Tax
   D. Subject to tax at 5%
   E. Subject to tax at 21/2%

3. Gains on the disposal of a dwelling house attract Capital Gains Tax at:-
   A. 5%
   B. Nil %
   C. Normal rate
   D. 20%
   E. $7^1/_2$%

4. In the computation of chargeable gains, the open market value will be used rather than the actual proceeds received, in which of the following instances?
   A. Where the transaction is between ICAN and JOHN HOLT PLC
   B. Where the transaction is between Julius Berger Plc and UAC Properties Plc
   C. Where the seller is the Uncle of the buyer
   D. Where the disposal is by public Auction to the highest bidder
   E. Where the transaction is court induced sale .

5. In January 2008, Mr. Goodluck Anthony purchased a piece of land for N22,000,000 at Barakiri in Bayelsa State. Soon after, he discovered the possibility of mineral deposits on the land. Mineral Diggers Nigeria Ltd bought the right of exploration for N6,000,000. The market value of the land then was N24,000,000. What is the chargeable gain on this transaction?
   A. ₦0.116m
   B. ₦0.5m
   C. ₦1.60m
   D. ₦1.66m
   E. ₦1.606m

10.11.2 SHORT ANSWERS QUESTIONS

1. Capital loss on disposal of any asset is __________ from capital gains on disposal of any other asset even if both are of the same type (Section 5 Capital Gains Tax Act CAP C1 LFN 2004)

2. What would the Revenue do for CGT purposes with regards to transactions between connected persons?

3. Chargeable capital gains are assessed on the __________ year basis under CGTA CAP C1 LFN 2004.

4. Explain briefly, the term, 'disposal' with reference to Capital Gains Tax.

5. Capital Loss arising from the disposal of any asset, is __________ from Capital Gains on disposal of any other assets whether of the same type or not.

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

11

TAX EFFECTS OF PRIVATISATION AND COMMERCIALISATION

11.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Appreciate the reasons for privatisation and commercialisation;
- Understand the tax implications of privatisation and commercialisation.

11.1 INTRODUCTION

In the 1960's, 1970's and 1980's, it was fashionable and considered sound economic policy for governments at different tiers in Nigeria, to establish and invest in statutory corporations and state-owned companies. This was the era when socialist, communist and welfarist ideologies held sway. Pride and nationalism were promoted at the expense of competitive economic management of national resources. Governments at different levels were thus involved in the acquisition, nationalisation and/or establishment of enterprises covering a broad spectrum of economic activities ranging from banking, insurance, broadcasting, tourism, transportation, steel and petro-chemicals. However, the fall in oil revenues in the past two decades has made it rather difficult for the government to sustain the required funding of these organisations. Many of the organisations experienced stunted developments and were plagued by inefficiencies.

11.2 REASONS FOR PRIVATISATION AND COMMERCIALISATION (P & C)

The inability of state-owned enterprises and organisations to deliver their mandates made it imperative that necessary reforms should be carried out. Some of the reasons for embarking on P & C were to:

(a) free government from unproductive financial subventions;
(b) address problems of excessive bureaucratic control and intervention;
(c) integrate the Nigerian economy into the mainstream of world economic order where private and competitive enterprise were taken over from State monopolies;
(d) tackle problems of management ineptitude and gross incompetence;
(e) eliminate operational complacency and crippling corruption;

(f) redress problems of inappropriate, and sometimes, obsolete technology;
(g) attract foreign direct investment;
(h) generate revenue for government; and
(i) create more employment opportunities in the long run due to the envisaged multiplier effect of the gains of privatisation and commercialisation.

11.3 TYPES OF PRIVATISATION AND COMMERCIALISATION (P & C)

Privatisation can be defined as the sale, transfer or removal of ownership and control from public to private entities in respect of state enterprises. Commercialisation involves the adoption of commercial, competitive and profit objectives in the management of public enterprises. It involves the jettisoning of socialist and monopolistic objectives that characterised the operation of public enterprises in the past. Generally, the memorandum and articles of association or enabling legislations setting up these enterprises are either amended or abrogated in order to reflect a new orientation. The changes to the enabling laws are however dependent on the magnitude of changes being effected. P & C are carried out in several variants, amongst which are:

(i) Total or 100% privatisation/commercialisation
(ii) Partial privatisation
(iii) Partial commercialisation
(iv) Management contracts (a variant of commercialisation whereby ownership of the affected enterprises is retained by the state while the management is outsourced to an outside and independent entity for purposes of better management)
(v) General and open ended privatisation with no restriction to the number of participating buyers
(vi) Core investor-based privatisation which requires that a core investor with proven financial, managerial and technical competence is selected to acquire and manage the enterprise.

11.4 PHASES OF PRIVATISATION AND COMMERCIALISATION IN NIGERIA

The P & C exercise in Nigeria was scheduled under three phases as follows:

Phase 1: This involved enterprises engaged in commercial and merchant banking, cement plants, petroleum marketing and others already quoted on the Nigerian Stock Exchange. This phase was to be completed by December 1999.

Phase 2: Enterprises of hotels, tourism and motor assembly.

Phase 3: They include the utilities: NEPA, NITEL and other companies such as Nigerian Airways, NAFCON, ALUMSCO, Petrochemical and Petroleum Refineries.

It is only the first phase that has been successfully completed.

11.5 PARTIES TO PRIVATISATION AND COMMERCIALISATION EXERCISE

The following organisations and groups have been identified as parties:

(a) The National Council on Privatisation (NCP)
(b) The Bureau of Public Enterprises (BPE)
(c) Technical and Financial Advisers
(These are world class investment bankers, legal and other consulting firms to be engaged in undertaking strategic review, restructuring and sale preparation for affected enterprises).
(d) Floatation Advisers

The important professional advisers in this group include:

(a) Issuing houses
(b) Solicitors to the issues
(c) Reporting accountants and auditors
(d) Stockbrokers to the issues
(e) Asset valuers.

It should be noted that these professionals may either be from within the country or from abroad.

11.6 TAX IMPLICATION

In order to discuss the tax implication of Nigeria's privatisation and commercialisation, the applicable provisions in the tax legislation would be considered. What would apply, depends on the state of the establishments and the percentage ownership of government before the privatisation or commercialisation.

11.7 GOVERNMENT'S PARTIAL OWNERSHIP

Where the establishment has been registered as a limited liability company, it would be subject to tax under CITA or under any other relevant Act. An example is National Oil Marketing Company Plc. This company has been subject to tax under CITA before the privatisation. At privatisation, all that has been done is that government has sold its shareholding in the company. This would not have an effect on the tax status of the company after the privatisation. This will be the case whether or not government had controlling shares in the establishment.

11.8 GOVERNMENT'S FULL OWNERSHIP

Going through Section 19 of the Companies Income Tax Act, CAP C21 LFN 2004 (as amended), the exemptions relating to government establishments are:

Profits or incomes are exempted from Tax, in so far as they are not derived from trade or business being carried on:
"The profits of any company or corporation established by the law of a State for the purpose of fostering the economic development of that State." (Section 19(k))

The privatised company will be liable to pay tax under the provisions of the relevant Tax Act and it will be easier for the Revenue Service to enforce as appropriate. With regards to those that have been paying the appropriate tax, privatisation will not have any further tax effect other than they would continue to pay company tax under the appropriate Tax Act.

Commercialisation would not have any particular implication, since as already indicated, all trading government establishments are liable to pay tax. This would indeed be more pronounced when they are commercialised.

Profits of government establishments that are exempted, even if they are derived from trade or business, relate to Local Government. Section 19(i) states:
"the profits of any company, being a body corporate established by or under any Local Government or under any local government law or Edict in force in any state in Nigeria."

There were no Federal Government establishments exempted in Section 19 of the Act. Thus all Federal Government trading establishments were liable to company's even before the privatisation exercise. If they have not been paying tax before, that implies that they have been contravening the nation's laws.

11.9 SUMMARY AND CONCLUSIONS

This chapter discusses the tax implications of both the privatisation and commercialisation exercise, depending on the level of divestment of Government in the affected establishments. It also explains the types of privatisation and commercialisation and their phases in Nigeria.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

11.10 REVISION QUESTIONS

11.10.1 MULTIPLE CHOICE QUESTIONS

1. Privatisation of government enterprise occurs when the government
   (A) sells a minority interest in its own enterprise to private investors
   (B) sells part of its enterprise to private investors
   (C) transfers ownership and control of its enterprise to private investors
   (D) retains control of its enterprise after disposing part of its enterprise
   (E) employs the services of private individuals to manage its enterprises.

2. Government-owned enterprises
   (A) pay taxes as and when due
   (B) pay only pay-as-you-earn (PAYE) on the incomes of their employees
   (C) are charged to tax at a lower corporate tax rate
   (D) are known to be good taxpayers
   (E) pay more 'Education Tax' to government than private enterprises.

3. After privatisation of a government owned enterprise, the company
   (A) is not an ordinary company under any tax law in Nigeria
   (B) remains under the control of government
   (C) reports back its activities to government to confirm its performance
   (D) automatically acquires direct and indirect tax exemptions
   (E) is required to file its tax returns and pay taxes to the relevant tax authorities.

4. Commercialisation of government enterprise occurs when
   (A) a government enterprise is called "commercial company"
   (B) government ensures that the enterprise is the only one in a particular business
   (C) government enterprise is transferred to be under the supervision of the Ministry of Commerce
   (D) a government enterprise is authorised to charge competitive rates for its goods and services
   (E) a government enterprise enters into "price charges" as directed by the government.

5. Privatised and commercialised government enterprises
   (A) are both the same thing
   (B) come under the same incidence of tax payments in Nigeria
   (C) are both under the same ownership and control
   (D) both charge competitive prices on the goods and services produced for public consumption
   (E) are both assessable to Best of Judgement Assessment by the tax office when they fail to render tax returns.

11.10.2 SHORT ANSWER QUESTIONS

1. The sale, transfer or removal of ownership and control from public to private entities, in respect of state enterprises is known as ....

2. The adoption of competitive and profit objectives in the management of public enterprises with a view to remaining economically viable, is known as ....

3. Under Section 19 (1) of the Companies Income Tax Act CAP C21 LFN 2004, profits of any company or corporation established by the law of a state for the purpose of fostering the economic development of that State is ....

4. A variant of commercialisation whereby ownership of the affected enterprises is retained by the state while the management is outsourced to an outside and independent entity for purposes of better management, is known as ....

5. Two reasons for Privatisation and/or Commercialisation is to .... and ....

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

12

PROFITS, ASSESSABLE PROFITS AND TAX PAYABLE

12.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Know the various profits or incomes that are exempted from companies tax under Companies Income Tax Act, CAP C21 LFN 2004 (CITA);
- Understand the principle of allowable and disallowable deductions as applicable to Companies chargeable to tax under CITA;
- Know how basis period of assessment is to be determined;
- Know how to aggregate income from all sources to arrive at total profits;
- Know the provisions of CITA with regards to loss relief; and
- Be able to prepare applicable assessable profits computations applying the provisions of CITA to new trade, ongoing trade, cessation of trade and change of accounting date.

12.1 INTRODUCTION

Companies income tax is chargeable on the income of all companies operating in the country except those specifically exempted under the Act. There is a clear distinction between Nigerian and non-Nigerian companies. A Nigerian company is defined as one incorporated under the Companies and Allied Matters Act, 1990, as amended. The total profits of such companies are assessable to Nigeria tax irrespective of whether or not all the profits have been derived from, brought into or received in Nigeria.

A foreign company (non-Nigerian company) is defined as any company or corporation established by or under any law in force in any territory or country outside Nigeria, that is, a company that is not incorporated under the Companies and Allied Matters Act.

The profits of a non-Nigerian company shall be subject to Nigerian tax only to the extent to which such profits are attributable to the company's operations in Nigeria, subject to provisions in the respective double taxation agreements, if any, available within the country where the foreign company is registered. Withholding tax of 10% is deductible from dividends, interests or royalties due to non-Nigerian companies arising in Nigeria.

In short, Companies income tax is chargeable on:

(a) The global profits of Nigerian companies irrespective of whether or not they are brought into or received in Nigeria. Dividend income to a Nigerian company is treated as Franked Investment income on which no income tax is due.

(b) The portion of the profits of non-Nigerian companies derived from such companies' operations in Nigeria.

(c) Dividends, interests or royalties due to non-Nigerian companies which are assessed at 10% (withholding tax rate) on the gross amount due and only the net is payable to the respective Companies.

12.2 IMPOSITION

Section 8 of Companies Income Tax Act (CITA) imposes tax at a particular rate (currently 30%) upon the profits of any company accruing in, derived from, brought into, or received in Nigeria in respect of:

(a) any trade or business;

(b) rent or any premium arising from a right granted to any other person for the use or occupation of any property. The treatment of rental income for Companies income tax purposes is the same as that for personal income tax.;

(c) dividends, interest, royalties, discounts, charges or annuities;

(d) any source of annual profits or gains not falling within the preceding categories;

(e) any amount deemed to be income or profit under a provision of the Act, or with respect to any benefit arising from a pension or provident fund, of the Personal Income Tax Decree;

(f) fees, dues and allowances (wherever paid) for services rendered. Any company entering into any agreement (whether oral or written) in respect of any service in this regard is required by the Act to make full disclosure in writing to the Revenue Service of the terms of such agreement (Section 10); and

(g) any amount of profits or gains arising from acquisition and disposal of short-term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.

Identification of a company

The incorporation number of a company and the Personal Identification Number (generated by FIRS), to which the provisions of Section 8 apply, shall serve as the identification number of the company and shall be displayed by the company on all business transactions with other companies and individuals and on every document, statement, returns, audited account and correspondence with revenue authorities, including the Department of Customs and Excise, Ministries and all Government agencies (Section 8A).

Where profits are accrued (CITA Section 11)

The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and irrespective of their being brought into or received in Nigeria.

"The profits of a company, other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria:

(a) if that company has a fixed base of business in Nigeria, to the extent that the profit is attributable to the fixed base;

(b) if it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorized to conclude contracts on its behalf or on behalf of some other companies controlled by it or which have controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profits are attributable to the business or trade or activities carried on through that person;

(c) if that trade or business or activity, involves a single contract for surveys, deliveries, installation or construction, the profit from that contract; and

(d) where the trade or business or activity is between the company and another person controlled by it or which has controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations, which, in the opinion of the Revenue Service, is deemed to be artificial or fictitious, so much of the profits adjusted by the Revenue Service to reflect arm's length transaction" (Subsection 2).

For the purposes of subsection (2)(a) of this Section, a fixed base shall not include:

(a) facilities used solely for storage or display of goods or merchandise; and

(b) facilities used solely for the collection of information.

12.3 TRADE OR BUSINESS

Companies are normally formed to carry out particular activities which will be specified in the "objects clause" of their respective memoranda of association. Therefore, in determining what constitutes a trade or business of a company, it is necessary to refer to the "objects clause" of its memorandum of association, to ascertain the activities that the company was registered to carry out. The carrying on of such activities will definitely constitute trade or business and the income therefrom will be subject to companies taxation in accordance with the provisions of the Act. Thus, a trade or business will include manufacturing and any other activities being carried on in pursuance of the

goal for which the company was incorporated. Furthermore, in view of the fact that a company will pursue all possible activities to keep it in business, it is only reasonable to conclude that the income from all such activities constitute chargeable transactions and will therefore be taxed except if they relate to capital items or are specifically exempted by other provisions of the Act. Neither the absence of a profit-making motive in particular transactions nor the fact that they are isolated and do not relate to the company's normal business could prevent the income from such transactions from being subjected to companies taxation.

12.4 DIVIDENDS

Tax is imposed on dividend income in Section 8 of CITA. The definition of dividend as given in subsection 3 of Section 8 of the Act is as follows:

(a) 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 shares, 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.

As in the taxation of individuals, the amount to be taken as the income of a company is the gross amount of the dividend and is deemed to arise on the day on which its payment becomes due.

The provisions of Section 15 CITA exempt certain dividends from tax. These are dividends:

(a) by a Nigerian company and satisfied by the issue of shares of the company paying the dividend (bonus shares); or
(b) by a Nigerian company, out of any profits exempted from tax by any provision of the Act or by the fact that the company enjoys a pioneer status; or
(c) out of any profits chargeable to tax under the provisions of the Petroleum Profits Tax Act.

Part of the 1985 amendments to the Act is to the effect that dividends received from a Nigerian company are to be regarded as Franked Investment Income (FII).

The 1987 amendment also exempts from tax, dividend derived by a company from another company incorporated in Nigeria provided that the equity participation on which the dividend is payable is:

(a) either wholly paid for in foreign currency or by asset brought into or imported into Nigeria.
(b) brought or imported into Nigeria between 1 January, 1987 and 31 December, 1992.
(c) not less than 10% of the equity share capital of the company paying the dividend.

For the purpose of this exemption, the tax free period starting from the year following that in which the new capital is brought into Nigeria shall be five years if the company is in the agricultural trade or business, or is engaged in the petrochemicals or liquefied natural gas business. It shall be three years in any other case.

The amount of the withholding tax deducted in connection with any dividend due to a non-resident recipient shall be the final tax on those payments, that is, no further tax is payable by non-resident recipients of any dividend income (Section 16(a)).

ILLUSTRATION 12-1

A company with total profits of ₦10,000 for an assessment year pays ₦50,000 dividend to its shareholders in respect of the accounts which form the basis for the assessment. The company will pay tax of ₦15,000 (30% of ₦50,000 assuming its turnover is more than ₦500,000) and not N3,000 (30% of ₦10,000) which would have been payable if the company did not declare the dividend.

12.5 AUTHORISED UNIT TRUST SCHEME

The provisions relating to Unit Trust Schemes are contained in Section 14A. The provisions of CITA shall, in respect of the income arising to the trustees of an authorised unit trust, have effect as if:

(a) the trustees were an investment company;
(b) the rights of the unit holders were shares in the company; and
(c) any income accruing to the trustees available to be paid to the unit holders were dividends on such shares.

The profits of an authorised unit trust scheme, on which tax may be imposed shall be the income accruing to the trustees from all sources of the investment of the unit trust and deducting therefrom sums disbursed as management expenses, including remuneration for the managers.
The treatment of tax deducted at source is the same as is applicable to any other company taxable under CITA.

In this Section -
"authorised unit trust" - is defined as "a unit trust scheme that is authorised by the Commission under Section 576 of the Companies and Allied Matters Act 1990 as amended to carry on the business of dealing in unit trust scheme;"

"unit trust scheme" - is defined as "any arrangement made for the purpose of providing facilities 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;"

"unit holder" - is defined as "any investor, beneficiary or person who acquired units in a unit trust scheme and who is entitled to a share of the investments subject to the trusts of a unit trust scheme;" while

"a trustee" - is defined as "the person in whom the property for the time being subject to any trust created in pursuance of the scheme is or may be invested (vested) in accordance with the terms of the trust.

12.6 EXEMPTIONS

Section 19 of CITA contains the list of profits or gains of companies or corporate bodies exempted from company taxation.

(a) Profits or incomes exempted in so far as they are not derived from trade or business being carried on:
   (i) the profits of any company being a statutory or registered friendly society;
   (ii) the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character;
   (iii) the profits of any company being a trade union, registered under the Trade Unions Act;
   (iv) the profits of any company or corporation established by the law of a State for the purpose of fostering the economic development of that State;
   (v) the profits of any company being a cooperative society, registered under any enactment or law relating to cooperative societies not being profits from any trade or business carried on by that company other than cooperative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other person or authority.

If any income in respect of the foregoing is derived from a trade or business, it is clear from the wordings of Section 19 that such shall become taxable.

(b) The following are also exempted from tax even if they are derived from trade or business being carried on by the bodies concerned:

(i) The profits of any company formed for the purposes of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Revenue Service may prescribe,

(ii) Dividend distributed by a Unit Trust,

(iii) Dividend derived by a company from another company incorporated in Nigeria, provided that:

- the equity participation of the recipient of the dividend in the company paying the dividend is either wholly paid for in foreign currency or by assets brought or imported into Nigeria between 1 January, 1987 and 31 December, 1992, and

- the company receiving the dividend is the beneficial owner of not less than 10% of the equity share capital of the company paying the dividend.

The dividend tax-free period shall commence from the year of assessment following the year in which the new capital is brought into Nigeria for the purpose of the trade or business in Nigeria of the company paying the dividend. If the company paying the dividend is in the agricultural trade or business, or is engaged in the petrochemicals or liquefied natural gas, the tax-free period shall be five years, while in any other case it is limited to three years.

(iv) The profits of any company engaged in petroleum operations within the meaning of Section 2 of the Petroleum Profits Tax Act in so far as those profits are derived from such operations and liable to tax under that Act. It should be noted that if any part of the profits of such company arises from other operations besides petroleum exploration, development and production and can therefore not be taxed under the Petroleum Profits Tax Act, such part is taxable under the Companies Income Tax Act.

(v) The profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria.

(vi) The profits of any body corporate being a purchasing authority established by an enactment and empowered to acquire any

commodity, for export from Nigeria as well as from the purchase and sale of that commodity.

(vii) The profits of non-Nigerian companies which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria.

(viii) Dividend, interest, rent or royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels. "Government approved channels" means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Second-Tier Foreign Exchange Market Act or any enactment replacing that act.

(ix) The interest on deposit accounts of a foreign non-resident company; provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1 January, 1990, through Government approved channels.

(x) The interest on foreign currency domiciliary account in Nigeria accruing on or after 1 January, 1990.

(xi) Dividend received from small companies in the manufacturing sector, in the first five years of their operation. Small companies are companies, with turnover of ₦1,000,000 and below, in an assessment year.

(xii) Dividend received from investments in wholly export-oriented businesses.

(xiii) The profits of any Nigerian company in respect of goods exported from Nigeria provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plants, equipment and spare parts.

(xiv) The profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided, that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies.

In respect of all the foregoing, appropriate withholding taxes are deductible in accordance with the provisions of Sections 60, 61, 62 of CITA in spite of the fact of the exemptions of the gains or profits from income tax.

The National Council of Ministers (Federal Executive Council) may exempt by order:

(a) Any company or class of companies from all or any of the provision of the Act; or

(b) All or any profits of any company or class of companies from any source, on any ground which appears to it sufficient.

The National Council of Ministers may by order amend, add to or repeal any exemption, in so far as it affects a company.

The following notices and order shall continue in force for all purposes of the Act:
(a) The Income Exemption (interest on Nigerian Public Loans) Notice;
(b) The Income Tax Exemption (Nigerian Broadcasting Corporation) order;
(c) The Railway Loan (International Bank) (Exemption of Interest) Notice.

Interest on Loans – Agricultural Trade and Others

Interest payable on any loan granted by a bank on or after 1 January, 1991 for the purposes of an agricultural trade or business shall be exempted from tax, provided that 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 obtained (Section 9(7)).

With effect from January 1 1991, the requirements are:

(i) The moratorium is not to be less than 18 months and
(ii) The rate of interest on the loan is not to be more than the base lending rate at the time the loan was obtained.

"Base lending rate" means the weighted average of the cost of fund to any bank.

Agricultural trade or business is defined in the Act as any trade or business connected with:

(a) the establishment or management of plantations for the production of rubber, oil palm, coffee, tea and similar crops:
(b) the cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains
(c) animal husbandry, that is to say, poultry, piggery, cattle-rearing, fish farming, and deep sea fish-trawling.

Decree 18 of 1998

Subsection 7 of Section 9 of the Act has been replaced with a new subsection 7 in Decree 18 of 1998. The new subsection 7 is as follows:
Interest on any loan granted by a bank on or after 1 January 1997 to a company

(a) Engaged in –
  (i) agricultural trade or business, or

  (ii) the fabrication of any local plant and machinery; or

(b) As working capital for any cottage industry established by the company under the Family Economic Advancement Programme (FEAP), shall be exempted from tax, provided

  (i) the moratorium is not less than eighteen months and

  (ii) the rate of interest on the loan is not more than the base lending rate at the time the loan was granted."

Thus, the provisions relating to the loans granted to agricultural trade or business on or after 1 January 1991 are, with effect from 1 January 1997, extended to the trade or fabrication of local plant and machinery as well as Family Economic Advancement Programme (FEAP) cottage industry.

Interest on loan for export business

Interest accruing from loans granted by banks in aid of export activities is exempted from tax in accordance with the Table in Schedule 3 to the Act. The Table, which is the table of tax exemption on interest on foreign and other loans, is reproduced below:

Table of Tax Exemption on Interest on Foreign and other loans

Repayment period Including moratorium	Grace period	% Tax Excemption Allowed
(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

The exemption is subject to the presentation of a certificate issued by the Nigerian Export Promotion Council stating that not less than 50% of a company's manufactured goods sold in the relevant accounting year were sold outside Nigeria and were not re-exported into Nigeria.

12.7 DETERMINATION OF PROFITS

For tax purposes, use is made of the accounts produced under the ordinary rules of accountancy, as it will be extremely difficult, if not impossible, to prepare new sets of accounts for tax purposes only. Besides the difficulties anticipated, there appears to be no justification for the unnecessary duplication of the efforts that would be required in the production of such accounts. It has been established in some decided cases, that in ascertaining the true profits of a trade for tax purposes, regard should be had to the correct principles of accountancy. Thus, in practice, adjustments that are considered necessary in view of the provisions of the Tax Acts, are made to accounting profits, to arrive at the profits for tax purposes. Such adjustments are usually in respect of:

(a) Expenditure charged but not allowable – disallowable expenditure;
(b) Items chargeable to tax but not credited in the profit and loss account;
(c) Items credited in the profit and loss account but not taxable; and
(d) Expenditure not charged but allowable.

There are adequate provisions in the Act which when considered in the light of normal taxation practice, can be applied to determine which items of a company's trading transactions will fall into any of the four categories listed above and for which adjustments will be necessary. The main guiding principle is that of allowable and disallowable expenditure.

12.8 ALLOWABLE DEDUCTIONS

All expenses of a company that are wholly, exclusively, necessarily, and reasonably incurred in the production of the profits, are allowable deductions. Thus any expense that can be proved to meet these conditions will be an allowable deduction in arriving at a company's chargeable profit unless such expense is specifically prohibited under any other provision of the Act.
In addition, the following items are stated in Section 20 of the Act, as allowable deductions provided they are incurred for the purpose of acquiring the profits being subjected to tax:

(a) Interest on money borrowed and employed as capital
(b) Rent and premiums in respect of land or buildings occupied for the purpose of acquiring the profits;
(c) Repairs and renewal costs relating to the premises, plant, fixtures, etc., used in the business;
(d) Bad and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Revenue Service to have become bad or doubtful of collection;
(e) Contributions to approved pension, provident or other retirement benefits fund, society or scheme;
(f) In the case of the Nigerian Railway Corporation, such deductions as

are allowed under the provisions of the Authorised Deductions, (Nigerian Railway Corporation) Rules, 1959;

(g) Any outlay or expenses incurred during the year in respect of:
   (i) salaries, wages or other remuneration paid to employees,
   (ii) cost to the company of any benefit or allowance provided for the senior staff and executives which shall not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry of Employment, Labour and Productivity and the Productivity, Prices and Income Revenue Service as the case may be; and

   (iii) the expenses proved to the satisfaction of the Revenue Service to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund.

(h) Section 22 allows for the deduction of the amount of reserve made out of profits for research and development subject to a ceiling of 10% of the total profits of the company before any deduction is made under this Section and Section 21 of the Act.

(i) Companies and other organisations engaged in research and development activities for commercialisation shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose.

Rental charges

Rental charges in respect of residential accommodation occupied by employees of the company are allowed up to a maximum of 100% of the basic salary of employees.

Property Holding Companies

The allowable deductions are limited to:

(i) expenses attributable to the maintenance of the property concerned; and
(ii) directors remuneration of up to ₦10,000 per annum per director payable to a maximum of three directors in any one company.

Repairs and renewals

The usual items under this heading are those expenses incurred in maintaining the earnings capacity of the assets of the company intact. In view of the fact that the keeping of such assets in good working condition is

very essential for the company to acquire profits, costs connected with such exercise must, by reasonable expectation, be allowable deductions.

However, costs incurred in increasing the earning capacity of any fixed asset are capital in nature and therefore will not be allowable deductions. Repair expenditure on newly acquired fixed assets might not qualify as an allowable deduction particularly if large amount is involved and the expenditure is incurred to bring the asset into a usable condition after its acquisition. Such cost is to be considered as capital and should be added to the cost of acquisition of the asset. It is important to take note that repair costs are incurred for the purpose of maintaining the earning capacity of the asset and this implies that such asset must be in use in the business at the time that the repair work is carried out.

Bad and doubtful debts

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

(i) They must relate to debts incurred in the ordinary course of the trade or business.

(ii) They must be identifiable to specific debts. General reserves against bad and doubtful debts are not allowable deductions.

(iii) Reserves no longer required are taxable (in the year that they are considered no longer necessary) if previously allowed.

(iv) Debts previously written off, allowed in tax computation, and later recovered are taxable as income for the year in which recoveries are made.

(v) Necessary evidence must be provided at the request of the Revenue Service to prove that the debts have become bad or estimated to be doubtful of recovery.

ILLUSTRATION 12-2

The bad and doubtful debts account of a company for a year showed the following:

	₦		₦
Trade debts written off	3,000	Reserves b/f:	
Reserves c/f:		Specific	10,000
Specific	12,000	General	6,000
General	5,000	Charged to P&L A/C	4,000
	20,000		20,000

In the profit and loss account of this company, the sum of N4,000 will be shown as the charge for bad and doubtful debts for the year. How this sum

has been arrived at can be reproduced in a statement form as follows:

		₦
Trade debts written off	(a)	3,000
Add: Increase in specific provision ₦(12,000 – 10,000)	(b)	2,000
		5,000
Less: reduction in general provision ₦(6,000 – 5,000)	(c)	1,000
Charged in profit and loss account		4,000

It will be easier from this statement to determine which amount should be adjusted for, in the tax computation in respect of this company's bad and doubtful debts charge, as follows:

(a) This will be an allowable charge as the amount written off is in respect of specific debts.
(b) The increase will also be allowable as the amount involved is also in respect of specific debts.
(c) The general provision would have previously been disallowed when created. Any subsequent release of this sort of provision cannot be taxable as it had never been allowed. Thus, the accounting profit will be reduced by the amount of the reduction in the general provision, resulting in a lower taxable profit than the accounting profit.

The only adjustment necessary in respect of the foregoing is a deduction of the sum of ₦1,000 in respect of (c) above from the accounting profit to arrive at the taxable profit of the company.

Thus, if a specific reserve for bad debts increases or decreases, no adjustment is necessary to the accounting profit, but in case of general reserve appropriate adjustment will need to be put through.

Donations

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

(a) Donations must be made out of the profits of the company (Section 21(2). Thus if a company makes a loss, whatever donations paid during that year should not be treated as allowable.
(b) Donations should not be expenditure of a capital nature.
(c) For any year of assessment, the maximum amount allowable is limited to 10% of the total profits of the company before deducting the donations.
(d) The donation must be made to any of the approved bodies.

NB: Following the provisions of the Companies Income Tax (Amendment) Act of 16th April 2007, Donations (whether of a revenue or Capital nature) made in respect of University and other Tertiary or Research institutions for research or any developmental purpose, or as an endowment out of profits of the period by a Company, shall not exceed an amount which is equal to 15% of the Total Profits or 25% of the Tax payable in the year of the donation, whichever is higher.

The Fifth Schedule to CITA which contains the list of the approved bodies, etc, to which donations may be made is reproduced below with necessary grouping to facilitate commitment to memory by readers. Donation to any body or institution whose name is not included on the list will not be an allowable deduction.

FIFTH SCHEDULE (Section 21)

Funds, Bodies and Institutions in Nigeria to which donations may be made under Section 21 of the Act are:

Youths/Philantropic Organisations

(a) The Boys Brigade of Nigeria.
(b) The Boys Scouts of Nigeria.
(c) The Girls Guides of Nigeria.
(d) The Nigerian Red Cross.
(e) The National Youth Council of Nigeria.
(f) The Nigerian Youth Trust.

Religious

(a) The Christian Council of Nigeria.
(b) Islamic Education Trust.

Medical

(a) Any hospital owned by the Government of the Federation or of a State or any University Teaching Hospital or any hospital which is carried on by a society or association otherwise than for the purpose of profits or gains, to the individual members of that society or association.

Educational

(a) Any educational institution affiliated under any law with any University in Nigeria or established under any law in Nigeria and any other educational institution recognised by any Government in Nigeria.
(b) The Institute of Medical Laboratory Technology.

(c) The National Library.
(d) A public fund established and maintained exclusively for providing money for the acquisition, construction, maintenance or equiping a building used or to be used as a school or college by the Government of the Federation or a state or by a public authority or by a society or association which is carried on otherwise than for the purpose of profit or gain to the individual members of that society or association.
(e) The National Braille Library of Nigeria.
(f) Van Leer Nigerian Educational Trust.
(g) The Institute of Chartered Accountants of Nigeria Building Fund.
(h) Nigerian Accounting Standards Revenue Service.
(i) Paterson Zochonis Nigeria Technical Education Trust Fund.
(j) Educational Cooperative Society.

Relief funds

(a) National Commission for Rehabilitation.
(b) A public fund established and maintained for providing money for the construction or maintenance of a public memorial relating to the civil war in Nigeria which ended on 15 January, 1970.
(b) Southern Africa Relief Fund.
(c) Any public fund established or approved by the Government of the Federation or any of the State Governments in aid of or for the relief of drought or any other national disaster in any part of the Federation.

Research

(a) The Cocoa Research Institute of Nigeria.
(b) The National Council for Medical Research.
(c) The National Science and Technology Development Agency.
(d) The Nigerian Institute for International Affairs.
(e) The Nigerian Institute for Oil Palm Research.
(f) The Nigerian Institute for Trypanosomiasis Research.
(g) National Science and Technology Fund.

Welfare

(a) A public institution or public fund (including the Armed Forces Comfort Fund) established or maintained for the comfort, recreation or welfare of members of the Nigerian Army, Navy or Air Force.
(b) National Sports Commission and its State Associations.
(c) The Nigerian Society for the Deaf and Dumb.
(d) The Society for the Blind.
(e) The Nigerian National Advisory Council for the Blind.

(f) Associations or Societies for the Blind in Nigeria.
(g) Training Centres and Residential Schools for the Blind in Nigeria.
(h) Rotary International (Polioplus programme).
(i) The Musical Society of Nigeria

Foundations/Endowment Fund

(a) Kewalram Chanrai Foundation Limited
(b) Afprint Foundation Limited
(c) University College Hospital Endowment Fund

Others

(a) The Nigerian Museum
(b) Nigerian Conservation Fund

References to donations made by a company do not include any payments made by the company for valuable consideration.

Research and Development

The allowability of amounts relating to research and development are in two Sections of the Act.

Section 20(g)(iii) allows expenses proved to the satisfaction of the Revenue Service to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund.

Section 22 allows the deduction of amount of reserves made out of the profits of that period by a company for research and development. The deduction to be allowed under this Section for any year of assessment shall not exceed 10% of the total profits of the company for that year as ascertained before any deduction is made under this Section and Section 21 (deductible donations) of the Act.

The effect of these two Sections can be summarised thus:
(a) Actual expenditure on research and development are allowable deductions in accordance with the provisions of Section 20.
(b) Reserve made out of profits for research and development expenditure are allowed as a deduction from profit subject to the ceiling fixed.

One thing to be noted though is that a company cannot make the deduction twice. If the deduction was made when the reserve was made, such cannot be deducted again when the actual expenditure is incurred.

In addition, subsection 3 of Section 22 provides for 20% investment tax credit on the qualifying expenditure of companies and other organisations engaged in research and development activities for commercialisation once the expenditure are incurred for that purpose.

12.9 DISALLOWABLE EXPENDITURES

Certain expenditures are disallowed for tax purposes. These are specifically listed in Section 23 of the Act and they should be added back to accounting profit even if their charge in the profit and loss account could be justified under ordinary rules of commercial accountancy. These are:

(a) Capital repaid or withdrawn and any expenditure of a capital nature;
(b) Any sum recoverable under an insurance or contract of indemnity;
(c) Taxes on income or profits levied in Nigeria or elsewhere. In case of tax levied outside Nigeria on profits which are also chargeable to tax in Nigeria and double taxation relief is not available, such tax will be an allowable deduction;
(d) Payments to unapproved pension, provident, savings or widows and orphans society, fund or schemes;
(e) Depreciation of any asset; (capital allowances are granted instead);
(f) All appropriations for profit; namely, dividends; general provision for bad and doubtful debts; write off of preliminary and formation expenses and expenses on issue or redemption of shares and other securities, etc.;
Pre-production expenses to the extent to which they are not of capital nature will be allowable deduction as such have been incurred for the purpose of producing the company's profit.
(g) Any expense of any description incurred within or outside Nigeria for the purpose of earning management fee unless prior approval of an agreement giving rise to such management fee has been obtained from the Minister;
(h) Any expense whatsoever incurred within or outside Nigeria as management fee under any agreement entered into after the commencement of this Section except to the extent as the Minister may allow; and
(i) Any expense of any description incurred outside Nigeria for and on behalf of any company except of a nature and to the extent as the Revenue Service may consider allowable.

12.10 WAIVER OR REFUND OF LIABILITY OR EXPENSE

Where the liability for an allowed expense is subsequently waived or released or a refund is received for the amount paid, the amount which is so waived, released, or refunded is deemed to be the income of the company in the year

in which the waiver, release or a refund is made or given. Similar provision is applicable in personal taxation practice.

It should be noted that where a waiver of a non-revenue item, for example, a loan is in favour of a company, such an amount shall only be subjected to Capital Gains Tax if applicable, NOT Income Tax, as the liability had not been previously treated as an allowed expense. If no CGT is due, such a waiver cannot be subject to tax.

12.11 BASIS OF ASSESSMENT

As earlier stated, the income tax year which is called an assessment year is the Government's financial or fiscal year. It runs from 1 January to 31 December of every year. (It was from 1 April to 31 March following, up to 31 March 1980). A company's accounting year will be related to the Government's year in which the operating result of such company is to be assessed to tax. An accounting period which is related to any particular assessment year is usually referred to as the "basis period" of that assessment year.

The general rules for determining basis period of assessments are contained in Section 25 of CITA.
The assessable profits of any company for each year of assessment, shall be the profits of the year immediately preceding the assessment year. This is referred to as the preceding year basis of assessment. Assessable profit as defined in CITA, is usually the accounting profit of the company as adjusted for tax purposes, that is, the adjusted profit that will be arrived at before reflecting the effect of any loss relief, balancing charge and or capital allowances.

Where a company's accounting year coincides with the Government fiscal year (assessment year) it is the accounting year ending within the preceding Government fiscal year that is taken as the preceding year. Where the accounting year of a company does not coincide with an assessment year, it is the profit of the accounting year ending on any day in the preceding assessment year that is taken to be the profit of the preceding assessment year.

ILLUSTRATION 12-3

Consider the cases of two companies making up their yearly accounts, one to 31 December and the other to 30 June, respectively. The years of assessment and relevant basis periods will be as follows:
Basis periods:

Assessment Year	(A) Where accounts are made up to 31 December	(B) Where accounts are made up to 30 June
2001	A/cs. for y/e 31/12/2000	A/cs. for y/e 30/6/2000
2002	A/cs. for y/e 31/12/2001	A/cs. for y/e 30/6/2001
2003	A/cs. for y/e 31/12/2002	A/cs. for y/e 30/6/2002
2004	A/cs. for y/e 31/12/2003	A/cs. for y/e 30/6/2003

Note that in (A) the basis periods coincide with the preceding Government fiscal years, since the accounting years of the company coincide with the Government accounting years. In (B), the company's accounting years do not coincide with the Government accounting years, nevertheless each of the company's accounting years ending on a date in each of the preceding government accounting years is used.

This will be the position, for as long as the companies continue to prepare their accounts to cover periods of twelve months, ending on those dates. However, exemptions to this rule are:

(1) On commencement of a new trade – first three assessment years
(2) On cessation of trade – last two assessment years
(3) On a permanent change in accounting date – the year of change and the two assessment years following.

The applicable procedures are summarised below:

New trade or business

First assessment year – Profit from date of commencement to the 31 December following:

Second assessment year – Profit of the first twelve months of operation.
Third assessment year – Profit of the preceding assessment year, that is the preceding year basis. Remember that if no twelve-month accounts have been prepared to end on a date in the preceding assessment year the second year's assessment is repeated as the assessment for the third year.
For the fourth and subsequent years, the preceding year basis rule will apply.

It should also be remembered that election can be made by the taxpayer, that is the company, to have the assessments for the second and third years based on the actual results for those years. The manner of making this election and applicable time limits are the same for both personal and companies taxation.

ILLUSTRATION 12-4

Mr. Oluwalogbon established Goldmine Fisheries Limited in 1991 for the purpose of commercial fish production. The company commenced business on 1 January 1992. Its accounting date is 31 December each year while its adjusted profits for the first ten years are as follows:

Trading Periods	Adjusted profits/(losses)
	₦
Year ended 31/12/92	(100,000)
Year ended 31/12/93	30,000
Year ended 31/12/94	25,000
Year ended 31/12/95	20,000
Year ended 31/12/96	15,000
Year ended 31/12/97	35,000
Year ended 31/12/98	50,000
Year ended 31/12/99	(40,000)
Year ended 31/12/00	35,000
Year ended 31/12/01	30,000

Required: Compute the assessable profits for the relevant years (12 Marks)

ICAN PE II May 2004 (Question 6)

SUGGESTED SOLUTION 12-4

YOA		Basis Period Assessable	Assessable Profits
		₦	₦
1992	01/01/92 – 31/12/92 - Actual		
	Loss for year ended 31/12/92	(100,000)	NIL
	Loss c/f to 1993	(100,000)	
1993	1st 12 months - 01/01/92 – 31/12/92	(100,000)	
	Loss b/f from 1992	(100,000)	
	Loss c/f to 1994 restricted to actual loss sustained	(100,000)	NIL
1994	Preceding year basis - 01/01/93 – 31/12/93		
	Profit for year ended 31/12/93	30,000	
	Loss b/f from 1993	(100,000)	
	Loss c/f to 1995	(70,000)	NIL
1995	Preceding year basis-01/01/94–31/12/94		
	Profit for year ended 31/12/94	25,000	
	Loss b/f from 1994	(70,000)	
	Loss c/f to 1996	(45,000)	NIL

1996	Preceding year basis		
	Profit for year ended 31/12/95	20,000	
	Loss b/f from 1995	(45,000)	
	Loss c/f to 1997	(25,000)	NIL
1997	Preceding year basis		
	Profit for year ended 31/12/96	15,000	
	Loss b/f from 1996	(25,000)	
	Loss c/f to 1998	(10,000)	NIL
1998	Preceding year basis		
	Profit for year ended 31/12/97	35,000	
	Loss b/f from 1997	(10,000)	25,000
1999	Preceding year basis		
	Profit for year ended 31/12/98	50,000	50,000
2000	Preceding year basis		
	Loss for year ended 31/12/99	(40,000)	
	Loss c/f to 2001	(40,000)	NIL
2001	Preceding year basis		
	Profit for year ended 31/12/00		35,000
	Loss b/f from 2000		(40,000)
	Loss c/f to 2002	(5,000)	NIL
2002	Preceding year basis		
	Profit for year ended 31/12/2001		30,000
	Loss b/f from 2001	(5,000)	25,000

Notes:

(a) Since Goldmine Fisheries Limited is engaged in Commercial Fish Production, it qualifies to be regarded as an Agro-Allied Business, and losses incurred by an Agro-Allied Business can be carried forward indefinitely, that is, not restricted to four years.

(b) Readers were not required to compute the tax liability as it is the computation of assessable profits that was required in the question.

Cessation of trade or business

Year of Cessation– profits for the period 1 January to the date of cessation.

Penultimate Year– The assessment year before the year of cessation is termed the penultimate year. The assessment for this year which would have been based on the preceding year basis would be re-computed on actual year basis.

If the amount assessable on actual basis is greater than that on preceding year basis, the Inland Revenue will opt to have the assessment for that year revised to actual year basis.

It is to be noted that it is the Revenue that has this option at cessation. The taxpayer's option is available at commencement.

Where a company which has permanently ceased to carry on a trade or business subsequently receives or pays any sum which would have been included in or deducted from the profits of that trade or business if it had been received or paid prior to the date of cessation such sum is treated as having been received or paid on the date of cessation.

A company ceasing permanently to carry on a trade shall not be deemed to derive assessable profits from such trade for the year of assessment following that in which the cessation occurs.

Change of accounting date

When there is a change of accounting date the Revenue has power to compute as it deems fit the assessable profits for:

(a) the year of assessment in which the change occurs; and

(b) the two years of assessment following.

The assessable profits will be computed on the basis of the old and the new accounting dates for the three relevant years and the Revenue will decide on the alternative that produces higher assessable profits. Note that the preceding year rule is strictly observed throughout the computations.

ILLUSTRATION 12-5

Format Construction Nigeria Ltd., is an incorporated company in Nigeria with affiliates worldwide. It has been operating in Nigeria for many years and prepares its accounts to 31 December of every year. The controlling company for all the affiliates worldwide which has its registered office in Sweden had also been preparing its accounts to 31 December of every year, until 1993, when it decided at its Revenue Service meeting that all affiliated companies worldwide must submit copies of their 12 months audited accounts two months before 31 December of every year, beginning from 1993.

There are two alternatives the Revenue Service of Directors of Format Construction Nigeria Ltd. is considering:
To prepare accounts for the year ending within 1994, to end in:
a) June, 1994; or
b) September 1994

As a Tax Consultant, your advice is sought, so as to ascertain the financial year-end that would minimise the assessable profits on which tax is payable for those periods. The following information were provided:

	₦
Net Profit per accounts for 12 months ended 31 Dec. 1992	200,000
Net Profit per accounts for 12 months ended 31 Dec. 1993	500,000
Net Profit per accounts for 12 months ended 31 Dec. 1994	600,000
Net Profit per accounts for 12 months ended 31 Dec. 1995	700,000

Other information in respect of the accounts for the year ended 31st December are as follows:

	1992	1993	1994	1995
	₦	₦	₦	₦
Depreciation Charged	20,000	50,000	55,000	70,000
Loss on Sales of Assets Included			(5,000)	

You are required to:
Advise with supporting computations on the new accounting year-end which the Nigerian company should adopt.

SUGGESTED SOLUTION 12-5

Format Construction Nigeria Limited
The profits presented shall be adjusted for tax purposes

	1992	1993	1994	1995
	₦	₦	₦	₦
Profit per A/Cs	200,000	500,000	600,000	700,000
Add back:				
Depreciation	20,000	50,000	55,000	70,000
Loss on sale of assets			5,000	
Adjusted profits	220,000	550,000	660,000	770,000

The year of change with the proposal is 1994 assessment year. The Revenue will compute as they think fit the assessments for 1994 (the year of change), and 1995, 1996 (the two years following).

On the basis of June, as the new accounting date:
Alternative 1: Old Accounting Date, 31/12

		₦
1994	1/1/93 to 31/12/93	550,000
1995	1/1/94 to 31/12/94	660,000
1996	1/1/95 to 31/12/95	770,000

Alternative 2: New Accounting Date, 30/6

			₦
1994	1/7/92 to 30/6/93	6/12 x ₦220,000 + 6/12 x ₦550,000 =	385,000
1995	1/7/94 to 30/6/94	6/12 x ₦550,000 + 6/12 x ₦660,000 =	605,000
1996	1/7/94 to 30/6/95	6/12 x ₦660,000 + 6/12 x ₦770,000 =	715,000

Revenue compares the two, as follows:

Assessment Year	Old 31/12	New 30/6
	₦	₦
1994	550,000	385,000
1995	660,000	605,000
1996	770,000	715,000
Total for the three years	1,980,000	1,705,000

Revenue chooses the alternative that produces the higher assessable profits, that is, the assessments are:

	₦
1994	550,000
1995	660,000
1996	770,000

On the basis of 30 September:

The alternative on the basis of the old accounting date of 31 December, will be as before.

The Alternative on the New Accounting Date, 30/9			₦
1994	1/10/92 to 30/9/93	3/12 x ₦220,000 + 9/12 x ₦550,000 =	467,500
1995	1/10/94 to 30/9/94	3/12 x ₦550,000 + 9/12 x ₦660,000 =	632,500
1996	1/10/94 to 30/9/95	3/12 x ₦660,000 + 9/12 x ₦770,000 =	742,500

Revenue compares the two, thus:

Assessment Year	Old 31/12	New 30/9
	₦	₦
1994	550,000	467,500
1995	660,000	632,500
1996	770,000	742,500
Total for the three years	1,980,000	1,842,500

Revenue chooses the alternative that produces the higher assessable profits, that is the assessments for the three years are based on the accounting date of 31 December:

	₦
1994	550,000
1995	660,000
1996	770,000

Explanatory Note
Irrespective of whether the accounting date is June or September, the Revenue's option will produce the higher assessable profits and shall be that based on a 31 December accounting date. Thus, whether the company prepares the accounts for the year ending within 1994, to end in June 1994 or September 1994 will have no effect on the assessable profits for the years of assessment involved as it is the Revenue that has the option to make the election.

12.12 COMPANY IN PARTNERSHIP WITH ANOTHER

Where a company is engaged in a trade or business with any other person in Nigeria, that trade or business shall be deemed to constitute a separate source of profits, and the assessable profits of the company from that source shall be determined under the provisions of the Personal Income Tax Decree 1993 in like manner as would be the assessable income of any individual partner in that partnership – CITA Section 25(8).

In effect, the taxation rules for determining the incomes of a partner in a partnership are the same whether the partners therein are individuals or companies.

12.13 TOTAL PROFITS AND SOURCES OF PROFITS

The total profits of any company for any year of assessment shall be the amount of its total assessable profits from all sources for that year together with any additions thereto of the amount of balancing charge that may be applicable less deductions due for loss relief, investment allowance and capital allowance. This is the substance of the definition of total profits as given in subsection 1 of Section 27 of CITA.

The components of this definition which should be noted are: assessable profits from all sources; loss relief; capital allowances including investment allowances and balancing charge. Assessable profit as treated in this chapter is the accounting profit as adjusted for tax purposes but before having regard to any loss relief, capital allowances or balancing charge. Loss relief is considered in the next subparagraph of this chapter while investment and capital allowances as well as balancing charge are discussed elsewhere in this study pack. The reference to "profits from all sources" will now be discussed.

The definition of sources was not given anywhere in CITA. It is therefore uncertain how the business activities of each company are to be grouped for this purpose. The Federal Inland Revenue Service had in 1985 issued a circular in which there was a reference to what "sources" could mean. In that circular, examples of sources of profits were given as:

"...manufacturing of goods up to disposal of such goods, road construction, building construction, road transport, credit financing, equipment leasing, leasing of immovable property, investment in stock and shares".

Examples also given in the same circular in the case of an insurance company's sources of profits are:
"...group life, industrial life, ordinary life endowment, all risks, motor vehicle, fire, marine, workmen compensation, investment of funds...".

The rationale behind this classification is unknown and it is uncertain whether it will be acceptable to the general business community. Whether or not an acceptable classification is produced the most important thing to note is that each company might be required to produce separate profit and loss account for each separate activity that can be regarded as unrelated to the other ones.

This is with a view to being able to determine whether there are losses from particular sources which should not be aggregated with profits from other sources for the purpose of arriving at the total profits of the company. It is certain that producing such separate profit and loss accounts could be very cumbersome for companies having several lines of business activities; for example, UAC of Nigeria PLC and other conglomerates. Furthermore, the method of apportionment of joint costs or overheads of the company to arrive at the profit or loss from each source would need to be specified by the Revenue Service.

Perhaps CITA might need an amendment to incorporate the definition of the various sources and how the profit or loss from each source is to be determined vis-a-vis the apportionment of joint costs. The enactment of legislation dealing with group relief would also go to a large extent in eliminating the practical difficulties inherent in the existing provisions of CITA.

Decided Case

The position of the court in a recently decided case would shed further light on this issue of sources of profit. It is also a confirmation that taxpayers are free to challenge information in the Revenue's Circular that are not strictly in accordance with tax statutes. The case, Federal Revenue Service of Inland Revenue v. American International Assurance Company (Nig.) Plc was decided in favour of the company. The issue was whether within the context of CITA Section 14, life insurance and non-life insurance are one trade or business or two separate trades or businesses. The court held that it cannot be said that the company carrying on both life and non-life insurance businesses are carrying on two separate businesses for the purpose of Companies Income Tax Act. The company was said to be engaged in only one trade or business.

The requirement of Section 27(1) is that the assessable profits from all sources are to be aggregated. If a loss has been incurred from any one source, such cannot be aggregated with the profits from other sources to determine total profits. Such loss is to be carried forward for relief against future profits from the same source. Additions and deductions are then made for balancing charge and investment and capital allowances respectively to arrive at total profits. When the total profits have been arrived at, the tax rate (presently 30%) is applied on the total profits to arrive at the tax payable.

ILLUSTRATION 12-6

Consider a hypothetical company with the respective figures and three sources of profits for an assessment year as shown below.

			Total of assessable profits	Losses carried forward
		₦	₦	₦
1.	Trade profit	1,000		
	Trade losses brought forward	-		
			1,000	
2.	Property income	400		
	Less losses of the same source brought forward	(600)		
	Unrelieved loss		-	(200)
3.	Interest income		300	
Total of assessable profits			1,300	
Add balancing charge			200	
			1,500	
Deduct				
Investment allowance		-		
Capital allowances		350	350	
Total profits			1,150	

It is on these total profits that the tax rate will be applied, to arrive at the amount of tax payable. For example, the tax payable in the ILLUSTRATION above with a tax rate of 30% is ₦345, that is, 30% of ₦1,150. The ₦200 unrelieved loss from the property income source will be carried forward for relief against future profit from the same source; it cannot be set off against the ₦1,150 total profits.

Order of giving effect to Section 27(1)

The wordings of Section 27(1), regarding total profits of a company for any year of assessment can be interpreted and broken down into stages as follows-

Stage 1. Aggregate all assessable profits from all sources

Stage 2. To the total of the assessable profits from all sources
Add: Any balancing charge

Stage 3. Deduct
Any amount of loss relief due.

Stage 4. And also deduct
Any investment and capital allowance to be granted.

From the Illustration above, it is clear that these stages cannot be strictly adhered to as the effect of loss relief (stage 3) had to be shown in stage 1 to ensure that only the net assessable profits from each source are aggregated. Furthermore, the effect of any balancing charge as well as investment and capital allowances should also have been shown against the respective source where the relevant fixed assets had been employed. For example, it would appear ridiculous deducting capital allowances from interest income where no qualifying expenditure had been incurred for the purpose of earning such income.
Perhaps the aggregation which is in stage 1 should in fact be in stage 4, after the exercise in the other three stages would have been performed for each source of assessable profits wherever applicable and this is the treatment that is recommended.

It should be noted that the capital allowances restriction will still be applicable for any capital allowances to be deducted in computing total profits.

12.14 LOSSES

In arriving at the chargeable profits of a company, losses, if any, incurred in the preceding year of assessment are to be deducted. Contrary to what obtains in personal taxation, there is no current year loss relief available to companies. It is only the carry forward relief that is available.
Section 27 of the Act contains the provisions applicable to losses incurred by companies. Essentially, these are:

(a) The amount of the loss to be allowed should be that which the Revenue Service is satisfied as having been incurred by the company in a trade or business during a preceding year of assessment (Section 27(2)(a)). The reference to preceding year in the wordings of that Section of CITA emphasises that current year relief is not available for losses incurred by companies;
(b) In no circumstance shall the amount to be relieved exceed the total amount of the loss;
(c) Relief can only be against profits from the same trade or business in which the loss was incurred;

(d) Losses can be carried forward for a maximum of four years following that in which they are incurred. Losses incurred by any company engaged in agricultural trade or business can be carried forward with no time limit; and

(e) The loss available for relief should be computed on the same basis as that of assessable profit, for a year of assessment.

Terminal Loss Relief

There is no provision in the Act for the granting of relief for losses by a company in the year of assessment when its trade or business permanently ceases. Thus, there is no relief for any loss incurred in the last year of trade nor for any unrelieved loss accumulated up to the date of cessation.

The computation of the assessable income for the year of cessation will be on actual basis. Since a loss has been incurred for this period, assessment will be nil, for the assessment year concerned. However, there are provisions for the relief of unutilised capital allowances at the time of permanent cessation of a company's trade. Such capital allowances can be carried back to be relieved against the assessable profits of the preceding years up to the fifth year before the year of cessation (Sch. 2 para. 24(5)).

12.15 NORMAL COMPANY TAX RATE

For each year of assessment, tax is payable at the current rate of 30% of the total profits of every company; Section 29(1). The current (2008) rate of 30% was introduced from the 1996 assessment year. The rate can be altered at any time upon the passing of the appropriate legislation.
The total profits for any year of assessment has already been discussed.

Education tax will be payable at 2% of assessable profit. The assessable profit of a company must be known, before it's Education tax liability can be computed.

Minimum Tax (Section 28A)

Where in any year of assessment, the ascertainment of total assessable profits from all sources of a company results in:

(a) a loss; or

(b) no tax payable; or

(c) tax payable which is less than the minimum tax, the tax payable by the company shall be the minimum tax computed as follows:

A. Where turnover is ₦500,000 or below and the company has been in business for at least four calendar years:

(i) 0.5% of gross profits; or
(ii) 0.5% of net assets; or
(iii) 0.25% of paid up capital; or
(iv) 0.25% of the turnover
whichever is the highest.

B. Where turnover is higher than ₦500,000
Whatever is payable as computed in A above plus 0.125% of turnover in excess of ₦500,000.

The foregoing provisions do not apply to:
(i) a company carrying on agricultural trade or business
(ii) a company with at least 25% imported equity capital and
(iii) any company for the first four calendar years of its commencement of business.

For any year of assessment when minimum tax is payable, the capital allowances due for that year will still be computed and relieved as much as possible from the assessable profits of the year as if the tax payable is based on the assessable profits. Whatever capital allowances that cannot be relieved due to insufficiency of assessable profits can be carried forward to subsequent assessment years. The implication of this provision is that taxpayers will lose the capital allowances that could be relieved against the assessable profits regardless of the fact that the tax is not based on that assessable profits but on turnover, and so on, which will be the case when the minimum tax provisions are being applied. A way out is by not making a claim for capital allowance.

12.16 EDUCATION TAX

Enabling Law and Imposition of Education Tax

Education Tax was first introduced in Nigeria in 1993 with the enactment of the Education Tax Decree No 7 of 1993. The Act is currently known as Education Tax Act CAP E4 LFN 2004.
Education tax is payable on an annual basis by every registered company in Nigeria that is liable to tax under the Companies Income Tax Act and Petroleum Profits Tax Act. The rate of the tax is 2% of the assessable profit. By inference, a company, which has an adjusted/assessable loss, will not be liable to Education Tax.

Administration of Education Tax

The Federal Inland Revenue Service (FIRS) shall assess and collect education tax from Companies. When the FIRS is assessing a company for either Income

Tax or/and Petroleum Profits Tax, it is required to simultaneously raise the education tax assessment on such company. The tax is payable within 60 days after the Revenue Service has served notice of assessment on a company and the Revenue Service is empowered by the Act to devise such forms, as it may deem necessary, for the purpose of assessing and collecting the tax. At the moment, a Taxpayer is expected to file Self Assessment form for Education Tax at the time of filing its Company Tax Returns.

Establishment of the Education Fund & Revenue Service of Trustees

For the proper management and administration of education tax and education fund, a Revenue Service of Trustees was established.

The Revenue authority is expected to pay into the fund the tax collected under the Act and shall when doing so, submit to the Revenue Service of Trustees a return showing the names of the companies making the payment; the amount collected; the assessable profit of the companies for the accounting period; and such other information as may be required by the Revenue Service of Trustees.

The Revenue Service of Trustees is expected to administer and disburse the amount in the fund to Federal, State and Local Governments, Educational Institutions, including Primary and Secondary Schools but excluding Private Institutions. The amount in the fund is meant for the following:

(a) Rehabilitation, restoration and consolidation of education in Nigeria
(b) Works centers and prototype development
(c) Staff development and conference attendance
(d) Library system at the different levels of education
(e) Research equipment procurement and maintenance
(f) Higher education book development fund
(g) Redressing any imbalance in enrolment mix as between the higher educational institutions.
(h) Execution of the nine-year compulsory education programme.

The Revenue Service of Trustees shall consist of:

(a) A chairman
(b) Eight other members
(c) A representative each of the Federal Ministries of Finance and Education who shall not be below the rank of a Permanent Secretary.
(d) The Executive Secretary.

The Membership of the Revenue Service of Trustees shall reflect the Six Geo-Political zones of the Federation.

The members of the Revenue Service of Trustees shall:

(a) Be appointed by the President.
(b) Be persons with considerable experience from the public and private sectors to represent the business, financial and education sectors.
(c) Hold office for a term of four years and may be eligible for reappointment for a further term of four years and no more.
(d) Be paid such remuneration and allowances, as the President may from time to time determine.

Functions of the Revenue Service of Trustees

The Revenue Service shall have responsibility to:

(a) Monitor and ensure collection of the tax by the Federal Inland Revenue Service and ensure transfer to the fund;
(b) Manage and disburse the tax;
(c) Liaise with the appropriate ministries and/or bodies responsible for collection or safe keeping of the tax;
(d) Receive requests and approve admittable projects after due consideration;
(e) Ensure disbursement to various levels and categories of education;
(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 prepare annual audited reports;
(i) Review progress and suggest improvement within the provisions of the Decree; and
(j) Do such other things as are necessary or incidental to the objects of the fund or as may be assigned by the Federal Government.

The Revenue Service of Trustees shall administer, manage and disburse the tax imposed on the basis of:

(a) Equality among the six geo-political zones of the Federation.
(b) Equality among the states within a zone.
(c) Equality among the local governments or area councils within a state or the Federal Capital Territory, Abuja respectively.

Appointment of the Executive Secretary of the Fund

There shall be for the fund an Executive Secretary who shall:

(a) Be appointed by the President on the recommendation of the Minister of Education.
(b) Be a person with good knowledge in administrative matters.
(c) Be the chief executive and accounting officer of the fund.

(d) Have such qualifications and experiences as are appropriate for a person required to perform the functions of that office.
(e) Hold office for a period of 5 years and may be eligible for reappointment for a further term of 5 years and no more.

The executive secretary shall, subject to the general direction of the Revenue Service of Trustees, be responsible:

(a) For the day to day administration of the fund.

(b) For keeping the books and proper records of the proceedings of the Revenue Service of Trustees.

(c) For the administration of the secretariat of the Revenue Service of Trustees.

(d) For the general direction and control of all other employees of the fund.

ILLUSTRATION 12-7

Argungu Limited extracts of operating results per Audited Financial Statements for the year ending 31st October, 2008 are as follows:

	₦'000
Operating Profit	1,490
Depreciation Provision	610
Interest on borrowed fund	412
Provision for General Debts	390
Balancing Allowance	290
BAlancing Charge	220
Stamp Duty on Increase in Capital	180
Capital Allowances agreed	610

Required:
Compute Assessable Profit Education tax for the relevant year of assessment.

SUGGESTED SOLUTION 12-7

ARGUNGU LIMITED
Computation of Adjusted Profit & Education Tax
for 2009 Assessment

	₦'000	₦'000
Operating Profit per 2008 Audited Accounts		1,490

Add Back Disallowable Expenses		
Depreciation	610	
General Bad Debts Provision	390	
Stamp Duty on Increase	180	1,180
Add Balancing Charge		220
Assessable Profit		2,890
Education Tax Liability @ 2% of N2,890		57.8

NB:

Assuming Argungu Limited made a loss of ₦1.490m, this will result in adjusted loss of ₦90,000 (i.e. ₦1,490 - 1,180 - 220). The Company is therefore not liable to Education Tax assessment in 2009.

12.17 SMALL BUSINESS RATE

Certain companies referred to as Small Business with turnover of ₦1,000,000 (one million Naira) and below in the year of assessment shall be charged a lower rate of tax of 20% for four years from the commencement of the business. Section 29(6).

The lower rate will be applicable only to companies engaged in the business of:
(a) manufacturing, or
(b) agricultural production, or
(c) mining of solid minerals, or
(d) wholly export trade.

If it is assumed that a company is a manufacturer of certain goods and that the turnover in respect of the 2008 assessment year is ₦990,000 with profits of ₦250,000, the tax payable shall be 20% of ₦250,000 that is ₦50,000. In order to determine the rate of tax that should be applied to any company therefore, the nature of the business being carried on, as well as the turnover of the company in the assessment year, will need to be considered.

Furthermore, the ₦1,000,000 turnover limit, must not be exceeded, if the lower tax rate is to be applied.

It should be noted that small business rate was applicable with effect from

the assessment years 1988; 1989 ; and 1990 for companies in operation before 1 January, 1988. The turnover limit then was ₦500,000. Act No. 3 of 1993 provides for an extension of this benefit for an additional two years where the company shows evidence of good records and management and remained in the same line of business.

The turnover limit is now ₦1,000,000 for each assessment year, while the rate can be applied for the first four assessment years provided the annual turnover still qualifies the business.

12.18 PRE-OPERATION LEVY

A company which is yet to commence business after at least 6 months of incorporation shall, for each year it obtains a tax clearance certificate pay a levy of:

(a) ₦25,000 for the first year; and
(b) ₦20,000 for every subsequent year.

12.19 ADVANCE INCOME TAX PAYMENT

When a company wishes to pay dividend out of profit on which no tax has been paid, CITA Section 31(7) provides that tax at standard company tax rate is payable on the amount of the dividend. The provisions of Sections 15A and 16(B) of CITA is also to the same effect.

If any provisional tax has been paid by the company for the assessment year, this will be taken into account in determining the amount of tax payable under this Section.

The tax is payable before the dividend is paid and has nothing to do with withholding tax which will still be deducted normally.

The tax so paid will be taken as a deposit against the tax due from the company on the profits out of which the dividend is paid.

Thus, when the company wishes to settle its tax liability, the amount paid as deposit will be deducted from the total amount of the income tax liability of the company for that year.

ILLUSTRATION 12-7

A company is paying a dividend amounting to ₦500,000 in respect of the year ended 31 December, 2007 payable on 15 March, 2009. The tax adjusted profit of the company for the year is ₦800,000 after capital allowances. The company's audited accounts have been prepared and submitted to the

Revenue but no assessment has been received up to the date of payment of the dividend.

Under this situation, the company will need to pay a tax of ₦150,000 (30% of ₦500,000) prior to the payment of the dividend.

Thereafter, the dividend of ₦500,000 can be paid subject to deduction of applicable withholding tax.

When the company is assessed to tax, its tax liability will be as follows:

Total profit	₦800,000
Income tax at 30% thereon	₦240,000
Less tax paid in advance	150,000
Balance of tax payable	₦90,000

Note:

Under the self assessment scheme, companies are not expected to wait to receive assessments from the Revenue before settling their respective tax liabilities.

12.20 SUMMARY AND CONCLUSIONS

This chapter provides information about profits and sources of profits of corporate bodies that are subject to tax under the Companies Income Tax Act, CAP C21 LFN 2004.

Profits or gains of corporate bodies are taxed, while losses are allowed to be relieved against profits of subsequent years. Losses can be carried forward generally for a total of four years but there is no time limit for relief of losses incurred by companies engaged in agricultural business.

The bodies and associations whose income or profits are exempted from tax under the Act were listed. Some incomes are exempted on the condition that they were not derived from trade or business being carried on. Others are exempted even if they were derived from trade or business. Readers must have learnt the principle of allowable and disallowable deductions as applicable to companies chargeable to tax under CITA.

An allowable expenditure has to be that expenditure that is wholly, exclusively, necessarily, and reasonably incurred by the company in the production of the income.

It has also been shown how the basis period of assessment is to be determined for tax purposes.

It has been demonstrated that the preceding year basis rule is applicable generally in the taxation of companies except at commencement or cessation of business.

The global profits of Nigerian companies are taxable irrespective of whether or not they are brought into or received in Nigeria. On the other hand, the profits of non-Nigerian companies are chargeable under CITA to the extent that they are derived from such companies' operations in Nigeria subject to applicable exemptions in any available double taxation agreements. Companies profits chargeable to tax under CITA are assessed to Income tax at 30% of total profits and Education Tax @ 2% of Assessable Income.

A small business rate of 20% is applicable to companies with turnover of ₦1,000,000 (one million Naira only) and below in each year of assessment for four years from the date of commencement of the business.
The lower rate applies to companies that are engaged in the business of manufacturing; agricultural production; mining of solid minerals or wholly export trade.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

12.21 REVISION QUESTIONS

12.21.1 MULTIPLE CHOICE QUESTIONS

1. Under the Companies Income Tax Act, penultimate year computation is peculiar to:
   (A) cessation of business
   (B) commencement of business
   (C) merger and acquisition
   (D) dissolution of partnership
   (E) adjustment of profit

2. Income tax currently applicable to companies under Companies Income Tax Act is 30% of
   (A) Assessable Profit
   (B) Total Profit
   (C) Adjusted Profit
   (D) Chargeable Profit
   (E) Distributable Profit

3. The official emoluments of the following public officers are specifically exempted from tax in Nigeria, except
   (A) The President

(B) The Vice President
(C) Senators
(D) State Governors
(E) Deputy Governors

12.21.2 SHORT ANSWER QUESTIONS

1. It is a reality of business life that businesses make losses. List three basic principles governing the treatment of losses under CITA.

2. How does the self-assessment as re-introduced with effect from 1 January 1996, operate?

3. What are the benefits of self-assessment?.

4. What constitutes a valid objection in the context of assessments?

5. For the purposes of taxation, explain the meaning of –
   (i) Neglect
   (ii) Willful default; and
   (iii) Fraud

6. Under CITA, only expenditure that satisfy certain fundamental conditions qualify to be classified as allowable deductions in arriving at Adjusted Profits for any year of assessment. State any two of the conditions.

7. What is the relief available to a company that has a terminal loss in the year of assessment when its trade or business permanently ceases?

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

13

PERSONS CHARGEABLE, OFFENCES AND PENALTIES

13.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- understand the provisions of the Companaies Income Tax Act (CITA)
- know the persons chargeable to tax and the persons answerable to the tax office in respect of the tax chargeable under CIT.
- know who may be appointed as agent of the Revenue Service for CITA purpose
- know the various offences and related penalties under the provisions of CITA.

13.1 INTRODUCTION

Since a Company is a separate entity different from its shareholders, it is important that there should be a clear conception of how a Company can be charged to tax and who should be answerable for the organisation in that regard. Part VII (Sections 36 to 40) of the CITA contains the relevant provisions.

13.2 CHARGEABILITY TO TAX

Section 36 of CITA states that "A company shall be chargeable to tax:

(a) in its own name; or

(b) in the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria, in like manner and to like amount, as such company would have been chargeable; or

(c) in the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable if no receiver or liquidator had been appointed."

(a) and (b) above relate to a going concern company while (c) is in respect of any company in receivership or in liquidation.

13.3 PERSONS ANSWERABLE

Section 37 states: "The principal officer or manager in Nigeria of every company shall be answerable for doing all such acts, matters and things as are required to be done by virtue of the Act for the assessment of the company and payment of the tax." Though there is no reference to this in Section 37,

for a company in receivership or in liquidation "the principal officer or manager" is the receiver or liquidator, as appropriate.

13.4 DIRECTORS APPOINTMENT OF AGENT (SECTION 38)

The Revenue Service or Directors of a company may appoint any person to be the agent of any company. Any person so declared may be required to pay any tax, which is or will be payable by the company, from any of the company's money that is, or will be, in the possession of the agent. If the person declared as the agent fails to comply with such request, the tax shall be recoverable directly from the company.

Such a person, however, has a right of objection and appeal for any notice served upon him in accordance with the provisions of Section 38, as if such notice were an assessment on him personally.
Section 39 empowers the agents, or any other person answerable for the payment of tax on behalf of a company, to deduct from any of such company's money coming into his hands so much thereof as shall be sufficient to pay the tax.

13.5 COMPANY IN LIQUIDATION (SECTION 40)

Before any distribution can be made to the shareholders of a company in liquidation, the liquidator must ensure that he has made provision for the payment in full of any tax which may be ascertained payable by the company, including any tax deductions made by the company under any law in force in any part of Nigeria relating to the taxation of individuals.

13.6 COMPANY'S REPRESENTATIVE ON TAX MATTERS

Every company shall designate a representative who shall answer every query relating to the company's tax matters. Such a person should be knowledgeable in the field of taxation as may be approved from time to time by the Revenue Service (Section 41(6).

13.7 OFFENCES AND PENALTIES

Part XII of CITA contains provisions relating to offences and penalties. The following is a list of what constitute offences under the Act, together with the prescribed penalties on conviction:

Offences	Penalties
1. Contravention or failure to comply with any of the provisions of the	A fine of ₦20,000 and where the offence is the failure to furnish a

Act or any rule made thereunder: Section 71(1)	statement or information or to keep records required, a further sum of ₦20,000 for each and everyday during which such failure continues. In default of payment then to imprisonment for six months. This penalty is also applicable for an offence or contravention of any of the provisions of the Act for which no other penalty is specifically provided.
2. Failure to comply with the requirements of a notice served on any person under the provisions of the Act: Section 71(2)(a)	As for 1 above.
3. Failure, without sufficient cause, to attend or answer to a notice or summons served on any person under the provisions of the Act, or having attended, failure to answer any question lawfully put to him: Section 71(2)(b)	As for 1 above.
4. Making of incorrect returns, without reasonable excuse, by omitting or understating any profits liable to tax under the Act: Section 72(1)(a).	A fine of ₦200,000 and double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information has been accepted as correct.
5. Giving of incorrect information, without reasonable excuse, in relation to any matter or thing affecting the liability of any company to tax: Section 72(1)(b)	As for 4 above.
6. Knowingly making false statement or false representation for the purpose of obtaining any deduction, set-off, relief or repayment in respect of any company: Section 73(1)(a)	A fine of ₦200,000 or to an imprisonment for three years or to both such fine and imprisonment.

7. Aiding, abetting, assisting, counselling, inciting or inducing any other person –(i) to make or deliver any false return or statement under the Act; or (ii) to keep or prepare false accounts or particulars concerning any profits on which tax is payable under the Act; or (iii) unlawfully to refuse or neglect to pay tax: Section 73(1)(b)	As for 6 above.
8. (a) Any official of the Revenue Service or any of its employees shall also be guilty of an offence by: (i) demanding from any company an amount in excess of the authorised assessment of the tax; or (ii) withholding for his own use or otherwise any portion of the amount of tax collected; or (iii) rendering a false return, whether orally or in writing, of the amount of tax collected or received by him; or (iv) (a) defrauding any person, embezzling any money or otherwise using his position as to deal wrongfully with the Revenue Service; or (b) Collecting or attempting to collect the tax under the Act without being authorised under the Act to do so: Section 74	A fine equivalent to 200 percent of the sum in question or to imprisonment for three years or to both such fine and imprisonment.

The imposition of a penalty, fine or imprisonment under any of the situations above shall not relieve any company from liability to payment of any tax for which it is or may become liable (Section 75).

The provisions of CITA with regards to the offences and penalties also do not affect any criminal proceedings under any other enactment (Section 77). Offences under CITA shall be deemed to occur in the town where the registered office of the company is situated or at such other place, as the Revenue Service may decide (Section 78).

Other offences and penalties

The offences and penalties listed in Part XII of the Act which have been summarised above, are additional to those that are contained in other Sections of the Act.

Duty of Secrecy and confidentiality

Section 5(1) requires every person having any official duty or being employed in the administration of the Act to regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the profits or items of the profits of any company, as secret and confidential.
Any wrongful communication or attempt to communicate the information contained in these documents to unauthorised person(s) is an offence under Section 5(2) of the Act. Since Section 5(2) does not contain any reference to penalty, in accordance with Section 71(1) this penalties applicable on conviction shall be a fine of ₦20,000. (see penalty 1 above).

Obstruction of officials in their duties

Section 7(5) makes it an offence for any person to obstruct any officer of the Revenue Service in the exercise of his (the officer's) function under the Act or to use violence on such officer.
The penalties applicable on conviction as provided by this subsection are –

(a) in the case of a first offence, imprisonment for not exceeding three years or a fine of not less than ₦200,000 or both.
(b) in the case of a second or subsequent offence and in any case where violence is used on any such officer, imprisonment for six months without the option of a fine.

Investment allowance improperly claimed

Section 28(6) provides that, where any asset on which an investment allowance has been granted is sold, transferred or appropriated to another person or purpose other than a chargeable purpose within a period of five years from the date of purchase of the assets, the company is to give notice of such event to the Revenue Service.

Section 28(7) requires that, such notice to the Revenue Service should state the name and address of the person to whom the sale or transfer is made.

Section 28(8) empowers the Revenue Service to obtain information from any person about any sale or transfer of any asset on which the investment allowance has been granted or about any other dealing with the asset.
Section 28(9) provides for a penalty of ₦100,000 on conviction, plus the

amount of tax lost by granting of the investment allowances, for failure to comply with any of the foregoing provisions.

Failure to render a return

Subsections (1), (2) and (3) of Section 41 require every company to make and deliver to the Revenue Service a return together with its audited accounts and other schedules required in the computation of the taxable profits of the company. These documents are to be filed with the Revenue Service not later than six months after the close of the company's accounting year or in the case of a newly incorporated company, within eighteen months from the date of incorporation or not later than six months after the end of its first accounting period, whichever is earlier.

Subsections (4) and (5) of the same Section provide for the penalties for the contravention of the provisions in subsections (1), (2) and (3). Subsection (4) provides for a fine of:
₦25,000 in the first month in which the failure occurs; and
₦500 for each subsequent month in which the failure continues.

Where the offence can be proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, servant or agent of the company (or any person purporting to act in any such capacity), Subsection (5) provides that such person as well as the company shall be deemed to be guilty of the offence and shall, on conviction, be liable to a fine of ₦100,000 or imprisonment not exceeding 2 years, or both.

Failure by banks to disclose information

Section 43 empowers the Federal Inland Revenue Service to request for and obtain both verbal and written information from any person whatsoever for the purpose of obtaining full information in respect of the profits of any company. The Revenue Service also has power to examine any documents, books, and accounts of any other person for the same purpose. Persons engaged in banking business in Nigeria are also covered under this Section except that the letter to such person(s) requesting for the information, documents, etc. must be signed by the Chairman of the Revenue Service.

Where any person engaged in banking in Nigeria fails to comply with the request of the Revenue Service for necessary information, documents, etc. subsection (3) of Section 43 provides for the penalty. The penalty in respect of each offence is on conviction, a fine of ₦5,000 in the case of a body corporate, and a fine of ₦500 in the case of an individual.

Offences on Withholding tax

Section 64 of CITA contains provisions relating to penalty for failure to deduct Withholding tax on rents, interests, royalties, dividends or that to be deducted under the provisions of Section 63. The penalty which is also applicable where the payer, having deducted the tax, fails to remit over to the Revenue Service within 30 days from the date the amount was deducted is, on conviction, a fine of 200% of the tax not withheld or not remitted as the case may be in addition to the amount of the tax deducted plus interest at the prevailing commercial rate.

Failure to pay tax on due date

When any tax is not paid on the due date a penalty of 10% per annum of the amount of the tax payable shall also become payable (Section 65(1)). The Revenue Service shall serve a demand notice on the company and payment is to be made within one month from the date of service. Subsection (2) of Section 65 makes it an offence for any company, without lawful justification or excuse, not to pay tax and the penalty within the period of one month from the date of service of the demand notice.

There is no specific provision in Section 65 for the penalty payable by any company found guilty of this offence. Therefore in accordance with Section 71(1) a fine of ₦200,000 appears to be the only penalty applicable.
The Revenue Service may, for any good cause shown, remit the whole or any part of the addition due in respect of penalties and interest under Section 65(1). Section 65(3).

13.8 SUMMARY AND CONCLUSIONS

In this chapter, the detailed provisions as to persons cheargeable to Companies Income Tax are discussed.

Penalties for different offences in the CITA are also discussed with special references to withholding taxes. It concludes by stating very clearly penalties for non-remittance of returns for the purpose of companies income taxes.

(Refer to Comprehensive questions and suggested solutions in Appendix II, page 403)

13.9 REVISION QUESTIONS

13.9.1 MULTIPLE CHOICE QUESTION

1. Who is answerable to the Revenue Service under the Provisions of the Act in respect of a Company on liquidation?
   A. The Accountant

B. The Beneficiary
C. The Trustee
D. The Liquidator

2. Imposition of a fine or penalty under CITA relieve the Taxpayer from payment of Tax.
A. True B. False C. Not sure
D. Only imprisonment of Taxpayer will exempt him from payment of Tax.

3. What are the penalties under CITA for failure by a company to render tax returns on due date?
A. ₦5,000 in first month of default and ₦500 for each of the sebsequent month in which failure continues.
B. ₦25,000 first month of default and 31% of Tax due.
C. ₦25,000 in the first month of default and ₦5,000 for each of the sebsequent month in which failure continues.
D. ₦25,000 in the first month of default and ₦20,000 for each of the sebsequent month in which failure continues.

4. Penalties on conviction for obstructions of officials of the Revenue Service (FBIR) in the performance of their duties under CITA are
A. ₦100,000 fine only
B. ₦10,000 fine or imprisonment for a period not exceeding 10 years
C. ₦200,000 fine or imprisonment for a period not exceeding three years
D. ₦200,000 fine plus imprisonment for a period of five years

5. When a tax is not paid on due date, penalty of .... per annum and interest at a ruling commercial rate becomes payable.
A. 21%
B. 31%
C. 26%
D. 10%

13.9.2 SHORT ANSWER QUETIONS

1. Name the person(s) that are answerable to the Inland Revenue for doing all such acts, matters and things as required under CITA.

2. State the potential liability of a person appointed by a company, to act as the agent of any company with the Federal Inland Revenue Service.

3. State the rights of a person approved as the company's Agent to the Federal Inland Revenue Service.

4. What is the penalty for the offence "giving of incorrect information, without reasonable excuse, in relation to any matter or thing affecting the liability of any Company to tax?

5. State the penalty in CITA for the offence of "knowingly making false statement or false representation for the purpose of obtaining any deduction, set-off, relief or repayment in respect of any tax liability of a company".

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

14

PIONEER LEGISLATION

14.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- understand the major provisions of The Industrial Development Income Tax Relief Act, (IDA) and how they apply in tax computations of pioneer companies.
- identify what pioneer conditions for pioneer status
- know the importance of production day to a pioneer company.
- understand the income tax relief available to pioneer companies and the duration.
- be able to prepare income tax computations applying the provisions of CITA and IDA.

14.1 INTRODUCTION

One of the investment incentives available to industries in Nigeria is contained in the Industrial Development (Income Tax Relief) Act, which grants tax holidays to companies in the industries that meet the conditions for being designated "Pioneer Industries". The tax holiday is usually for an initial period of three years but can be extended for an additional two years maximum. The Industrial Development (Income Tax Relief) Act 1971 (IDA 1971), came into force on 1 April 1970.

14.2 PIONEER CONDITIONS

Where the National Council of Ministers (the Council) is satisfied that:

(a) any industry is not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria, or there are favourable prospects of further development in Nigeria of any industry; or

(b) it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria, it may declare the Industry a Pioneer Industry, and products of the Industry - Pioneer Products.

Application may at any time be made for the issue of a Pioneer Certificate to any company in relation to any such pioneer industry or pioneer product. Each application shall be accompanied by a non-refundable fee of ₦100 (one hundred Naira only).

A company that wishes to engage in an industry or manufacture products which have not been designated as pioneer may submit an application for the industry to be included in the list of pioneer industries and its products to be included on the list of pioneer products.

A successful applicant in either case is issued with a pioneer certificate, in which, conditions under which the income tax relief can be enjoyed, will be stated.

For any application for a pioneer certificate to be considered, the estimated cost of qualifying capital expenditure to be incurred by the company on or before production day shall not be less than:
(a) ₦50,000 in the case of an indigenous-controlled company; or
(b) ₦150,000 in the case of any other company.

14.3 APPLICATION FOR PIONEER STATUS

Application for pioneer status can be made by a company incorporated in Nigeria or by a group of persons on behalf of a company which is to be incorporated later. The application shall be on a prescribed form.
Every such application shall state the grounds upon which the applicant relies and if the application is for the issue of a pioneer certificate to any company, the applicant shall:
(a) state whether the company is, or the proposed company when incorporated shall be, an indigenous-controlled company;
(b) give particulars of the assets on which qualifying capital expenditure will be incurred by the company, including their source and estimated cost:
  (i) on or before production day, and
  (ii) during a period of three years following the production day;
(c) specify the place in which the assets are to be situated;
(d) state the probable production day;
(e) specify any product and by-product (not being a pioneer product) to be produced, and give a reasonable estimate of the quantities and value, of such product and by-product during a period of one year from production day;
(f) give particulars of the loan and share capital (or proposal in this regard) including the amount and date of each issue and the source from which the capital is to be or has been raised;
(g) in the case of a company already incorporated, give the name, address and nationality of each director and the number of shares held by him/her; and
(h) in the case of a proposed company, give the name, address and nationality of each promoter of the company.

14.4 PRODUCTION DAY

Subsection (1) of Section 6 of IDA requires that not later than one month after the material date, a pioneer company shall make an application in writing to the Industrial Inspectorate Director to certify the date of its Production Day.

The company shall propose a date to be so certified and give reasons for proposing that date.

For the purpose of this subsection, "material date" means –

(a) in relation to a pioneer company engaged in a pioneer industry consisting of the provision of services, the date on which the company is ready to provide such services on a commercial scale; and

(b) in case of manufacturing, processing, mining, agricultural or any other pioneer industry, the date on which the company begins to produce a pioneer product in marketable quantities.

After considering any application made as above, together with such information as may be called for, the Director shall issue a certificate to the pioneer company certifying the date of its production day.

It is to be noted that the period of the tax holiday shall commence from the production day. Dispute between the company and the Director as to the certification of the production day shall be subject to objection and appeals as if the certificate were a notice of assessment given under the provisions of CITA.

14.5 CERTIFICATION OF QUALIFYING CAPITAL EXPENDITURE

Not later than one month after the production day of a pioneer company has been finally determined and certified by the Director or within such extended time as the Revenue Service may allow, a pioneer company shall make an application in writing to the Revenue Service to certify the amount of the qualifying capital expenditure incurred by the company prior to production day.

The proceeds of disposal of any item of capital expenditure disposed of prior to the production day shall be deducted from the total amount of capital expenditure incurred to arrive at the amount to be certified. Also, if any of such disposal has not been made at arm's length, the open market value on the date of the disposal shall be substituted for the disposal proceeds.

After considering the application made for the certification of qualifying capital expenditure as above together with such information as may be requested, the Revenue Service shall issue a certificate to the pioneer company certifying the amount of qualifying capital expenditure incurred by the company prior to production date.

If there is any dispute between the Revenue Service and the company in connection with the certification of the qualifying capital expenditure in this Section, such shall be subject to objection and appeal procedures as if the certificate were a notice of assessment given under the provisions of CITA.

14.6 CANCELLATION OF PIONEER CERTIFICATE

The pioneer certificate issued to any company can be cancelled if:

(a) the production day has been certified as on a date which is more than one year later than the estimate thereof given in the company's application for a pioneer certificate. However, the council will not cancel the certificate for this reason if it is satisfied that the delay is due to causes outside the control of the company or to other good and sufficient cause.

(b) the certificate of qualifying capital expenditure as on the production day is to the effect that the amount of qualifying capital expenditure incurred as on that day is less than the prescribed minimum applicable to the company.

(c) the pioneer company concerned applies for the cancellation of the certificate.

(d) a pioneer company has contravened any other provision of the IDA or has failed to fulfil any estimate or proposal made in its application for a pioneer certificate or any of the conditions contained in its pioneer certificate.

14.7 INCOME TAX RELIEF

A company holding a pioneer certificate shall be on a tax holiday for the period stated on the certificate. The tax relief period is usually for a period of three years in the first instance, commencing on the date of the production day of the company, unless cancelled or restricted in any manner by the council.

If certain requirements are met, the council may, at the end of the three years extend the tax relief period for –

(a) two periods of one year each; or

(b) one period of two years.

A pioneer company wishing to obtain such extension, shall apply in writing within one month of the expiration of the initial three years tax relief period or of any extension thereof. Such application shall contain details of all capital expenditure incurred by the company by the requisite date. The requisite date is the date of expiry of a pioneer certificate.

Taxation implications and accounts:

(a) A trade or business carried on by a pioneer company shall be deemed to have permanently ceased at the end of its tax relief period.

(b) In respect of that trade or business, the pioneer company shall be deemed to have set up and commenced a new trade or business on the day next following the end of its tax relief period.

(c) The pioneer company shall make up accounts of its old trade or business for the following:
  (i) a period not exceeding one year commencing on its production day,
  (ii) successive periods of one year thereafter; and
  (iii) a period not exceeding one year ending at the date when its tax relief period ends.

(d) The closing figures in respect of the pioneer company's assets and liabilities as shown in the last accounts in respect of its tax relief period shall be used as the opening figures for the accounts of the company's new trade or business which is that deemed to commence immediately after the company's tax relief period.

(e) Capital expenditure incurred by the pioneer company in respect of assets acquired during the tax relief period shall for capital allowances purposes be deemed to have been incurred on the day next following the end of its tax relief period.

Losses

Where the Revenue Service is satisfied that a pioneer company has incurred a loss in any accounting period within the tax relief period, it shall issue a certificate to the company accordingly. (IDA Section 10(6)).

In determining whether such a loss has been made, the Revenue Service may in its absolute discretion exclude such sum as may be in excess of an amount appearing to the Revenue Service to be just and reasonable in respect of:

(a) remuneration to directors of the company;

(b) interest, service, agency or other similar charges made by a person who is a shareholder of the company or by a person controlled by such shareholder (IDA Section 13(3)).

A net loss incurred by a pioneer company shall be deemed to have been incurred by the company on the day on which its new trade or business commences, that is, on the day following the expiry of the tax relief period (IDA Section 14(3)).

For each accounting period the Revenue Service shall issue to the pioneer company a statement showing the amount of the income or loss for that period. Net loss means the aggregate of losses incurred during the tax relief period after deduction of profits, if any, made at any time during that period.

Any dispute between the Revenue Service and the Company with regards to the statement of income or loss issued by the Revenue Service shall be subject to objection and appeal in like manner as if such statement were an assessment under CITA.

Taxable profits

Any profit earned by a pioneer company from any operations or activities whatsoever, other than its pioneer enterprises shall be deemed to be derived from Nigeria and shall be liable to tax under CITA.

14.8 EXEMPT PROFITS AND DIVIDENDS THEREFROM

Exempt profits

Any profits shown on the statement issued by the Revenue Service in respect of the income of a pioneer company for each of the accounting periods of its tax relief period shall not form part of the assessable profits or total profits of the pioneer company for any year of assessment and shall be exempt from tax under CITA – (IDA Section 16).

Dividend distribution

Any amount of profits that is exempt from tax as above should be credited by the pioneer company to an account to be kept for the purpose of dividend distribution by the company.

Any dividend that is declared by the company out of such profits shall be exempt from tax in the hands of the shareholders and shall for the purposes of CITA and PITA be deemed to be paid out of profits on which tax is not paid or payable.

Prohibitions (Section 18)

During its tax relief period, a pioneer company shall not –

(a) make any distribution to its shareholders, by way of dividend or bonus, in excess of the amount by which the account maintained for the exempt profits is in credit at the date of such distribution.

(b) grant any loan without first obtaining the consent of the Minister. The consent of the Minister shall only be given if he is satisfied that the pioneer company is obtaining adequate security and a reasonable interest for any such loan.

14.9 OFFENCES AND PENALTIES

The offences specified in IDA are:

(a) Making or presenting any declaration or statement which is false in any material particular; and

(b) Production of any invoice or undertaking which is false in any material particular or has not been given by the person by whom it is purported to have been given or which has been altered or tampered with.

The defence available to any person charged is to be able to prove that he has taken all reasonable steps to ascertain the truth of the statement made or contained in any document so presented or produced or to satisfy himself of the genuineness of the invoice or undertaking.

Penalties

Any person who is guilty of any of the above offences shall be liable on conviction to a fine not exceeding ₦1,000 or to imprisonment for five years or to both such fine and imprisonment.

Where the offence is committed by a body corporate, or firm or other association of individuals:

(a) every director, manager, secretary or other similar officer of the body corporate;
(b) every partner or officer of the firm;
(c) every person concerned in the affairs of the association; or
(d) every person who was purporting to act in any such capacity as aforesaid, shall severally be guilty of that offence and liable to be prosecuted and punished for the offence in like manner as if he had himself committed the offence. The defence available to any of such persons is to be able to prove that the act or omission constituting the offence took place without his knowledge, consent or connivance. The above shall not relieve any person from liability to payment of any sum for which he is or may be liable under any undertaking given by him under any provision of the IDA.

14.10 SECTION 25 (IDA)

The terms defined in Section 25 of IDA and their respective meanings are reproduced below:

accounting period: A period for which accounts have been made up in accordance with the requirement of paragraph (c) of Section 11 of IDA;

Revenue Service: The Federal Revenue Service of Inland Revenue established under CITA;

company: a company (other than a private company) limited by shares and incorporated and registered in Nigeria and resident in Nigeria;

the council: The National Council of Ministers (Federal Executive Council);

the director:	The director appointed pursuant to Section 1(3) of the Industrial Inspectorate Act;
gazette:	The Federal Gazette and includes the Gazette of any state in the Federation;
the Minister:	the Minister for industries;
or business:	The trade or business of a pioneer company deemed to have been set up and commenced on the day following the end of its tax relief period; old trade or
business:	The trade or business of a pioneer company carried on by it during its tax relief period which either ceases within that period or is deemed to cease at the end of that period permissible;
by-product:	Any goods or services so described in any pioneer certificate being goods or services necessarily or ordinarily produced in the course of producing a pioneer product;
pioneer certificate:	A certificate given under IDA certifying, among other things, a company to be a pioneer company;
pioneer company:	A company certified by any pioneer certificate to be a pioneer company;
pioneer enterprise:	In relation to a pioneer company, means the production and sale of its relevant pioneer product or products;
pioneer industry:	Any trade or business of the kind included in any list of pioneer industries published in the Gazette;
pioneer product:	Goods or service of the kind included in any list of pioneer products published in the Gazette;
principal Act:	The Companies Income Tax Act;
production day:	The day on which the trade or business of a pioneer company commences for the purpose of CITA;
qualifying capital expenditure:	Capital expenditure of such a nature as to rank as Qualifying expenditure for capital allowances purposes of the principal Act;
product:	The pioneer product or products and the permissible by-relevant pioneer product or products specified in the pioneer certificate of any company;
tax relief period:	The period specified under subsection (1) of Section 10 of IDA and any extension of that period made under that Section.

14.11 NIGERIA LNG LIMITED

The Nigeria LNG (Fiscal Incentives, Guarantees & Assurances) Act No. 39 of 1990 (amended by Act 113 of 1993) was promulgated to encourage productive disposal of associated gas and development of gas wells. The Decree applies to Nigeria LNG Limited alone. The incentives granted to the company are:

(a) The company is declared a pioneer company and its products pioneer products.
(b) Ten years tax relief period.
(c) All interests payable are allowable deductions for tax purposes without any condition.
(d) Interests on foreign loans are exempt from taxation in Nigeria.
(e) The books and records of the company shall be kept in United States dollars and the accounts therefrom shall be drawn in the same currency.
(f) Dividends are exempt from tax (like dividends payable by any other pioneer company from profits made during the tax holiday).
(g) Import duties exemption on necessary imports.
(h) No capital allowances restriction after its tax relief period.

In 2003, pioneer status was granted to certain companies operating in the telecommunication industry.

14.12 SUMMARY AND CONCLUSIONS

In this chapter, the various provisions of the Industrial Development (Income Tax Relief) Act (IDA) have been covered with regards to pioneer industries and pioneer companies. Pioneer conditions have also been discussed. The tax implications of a company that has been granted a pioneer status and the accounts to be prepared and submitted to the Tax Office for the purpose of claiming the benefits available to the pioneer company have been treated. Finally, the profits and dividends of a pioneer company are tax exempt.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

14.13 REVISION QUESTIONS

14.13.1 MULTIPLE CHOICE QUESTIONS

1. Which one of the following cannot be deemed to be a Pioneer Company? A company engaged in the:
   A. cultivation and processing of food crops, fruits and vegetables.
   B. manufacture of Cocoa products
   C. manufacture of Iron and Steel from Iron Ore
   D. integrated dairy production
   E. manufacture of furniture and fittings.

2. If certain requirements are met, the council may at the end of the first three years (tax relief period) extend the tax relief period for .... or ....
   A. one period of three years or two period of 11/2 years each
   B. two periods of one year each or one period of two years
   C. three periods of one year each or another one period of 3 years
   D. two periods of six months each or one period of 1 year
   E. one period of five years or two periods of 21/2 years each.

3. With respect to a pioneer company engaged in the manufacturing, processing, mining, agricultural or any other pioneer industry, the date on which the company begins to produce a pioneer product in marketable qualities is known as .....

   A. Income Tax Relief Date
   B. Material Date
   C. Incorporation Date
   D. Production Day
   E. Pioneer Day.

4. What is the minimum Capital Expenditure level incurable by an indigenously controlled company on or before production day, for a pioneer certificate to be considered?
   A. ₦1million
   B. ₦250,000
   C. ₦50,000
   D. ₦150,000
   E. ₦500,000

5. Losses brought forward from the pioneer relief period, shall be available for relief from the profits of the new trade for:
   A. the next four years
   B. the first year only
   C. an indefinite period
   D. two years only
   E. a minimum of 50% of the loss brought forward.

14.13.2 SHORT ANSWER QUESTIONS

1. What is the significance of "production day" to a company that has been issued a pioneer certificate?

2. State two of the conditions under which a pioneer certificate can be cancelled.

3. When will capital expenditure incurred by a pioneer company during its pioneer period be deemed to have been acquired for capital allowances purposes?

4. What is the meaning of `tax holiday', as it applies to a pioneer company?

5. What is the relief available to a company that has been granted a pioneer certificate?

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

15

OTHER CORPORATE TAX ISSUES

15.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Understand the concept of double taxation relief.
- Know the double taxation relief available to a company where there is no double taxation agreement.
- Understand the double taxation relief available to a company where there is double taxation agreement. The substance in a typical double taxation agreement between two countries using the agreement between Nigeria and United Kingdom as a model.
- Appreciate the tax implications in mergers, acquisitions and takeover issues.
- Understand the principles of deferred taxation.
- Compute the amount of deferred tax provision required in financial statements of corporate bodies.
- Identify what is responsible for tax distortion under inflationary conditions.
- Identify the provisions of Companies Income Tax Act CAP C21 LFN 2004 applicable to companies engaged in shipping, air transport, business of transmission of messages and insurance businesses.
- Prepare tax computations in respect of the special businesses in accordance with the relevant provisions of CITA.
- Distinguish the options available to the special businesses to enable them minimise their tax liabilities.

15.1 DOUBLE TAXATION RELIEF

15.1.1 Introduction

When a Nigerian company earns foreign income, such will be included in its chargeable profit for the year and subjected to Nigerian tax.
In most of the cases, the amount that would be received in Nigeria would eventually be taxed twice – first in the country where the income originated and secondly in Nigeria where it is received. The tax burden on such income could be unduly high and it may appear as if the company receiving the income is being penalised for earning foreign income. In order to minimise the tax impact on such income, it is only reasonable that some relief from Nigerian taxation is given to the company. Section 33 of CITA deals with circumstances where there are

no specific double taxation agreements while Sections 34 and 35 cover cases where there are agreements.

The tax payable in the foreign country is referred to as Commonwealth Income Tax. This is defined in Section 33(3) of the Act as "...any tax on income or profits of companies charged under a law in force in any country within the Commonwealth or in the Republic of Ireland which provides for relief from tax charged both in that country and Nigeria in a manner corresponding to the relief granted by this Section". "This Section" implies Section 33.

15.1.2 Where there is no double taxation agreement

Section 33(1) deals with the Nigerian Companies.
The relief available to a Nigerian company from tax on its foreign income shall be:

(a) If the Commonwealth rate of tax does not exceed one - half of the Nigerian rate of tax, the Commonwealth rate of tax; and

(b) In any other case, half of the Nigerian rate.

In other words, the rate of relief to be given to a Nigerian company is either the Commonwealth rate or half of the Nigerian rate whichever is lower. Therefore, for Commonwealth rates of say 20% and 50% against the Nigerian rate of 30%, the relief available against tax on foreign incomes received by a Nigerian company shall be the use of 15% and 15% tax rate respectively.

Section 33(2) covers Non-Nigerian Companies.
For a non-Nigerian company, the relief available shall be:
(a) If the Commonwealth rate of tax does not exceed the Nigerian rate of tax, one-half of the Commonwealth rate; and
(b) If the Commonwealth rate of tax exceeds the Nigerian rate, the amount by which the Nigerian rate exceeds one-half of the Commonwealth rate.

For example, the foreign income of a non-Nigerian company received in Nigeria has suffered commonwealth rate at 30% and that of another company at 50%. With the current Nigerian rate at 30% the rate of relief shall be:
(a) For the first company, 15% that is ½ of Commonwealth rate – the Commonwealth rate of 30% does not exceed the Nigerian rate of 30%.

(b) For the second company, 5% that is the difference between the

Nigerian rate and ½ of the Commonwealth rate – the Commonwealth rate of 50% is higher than the Nigerian rate of 30%.

It is not certain how this provision of Section 33(2) will be applied to Non-Nigerian companies as such companies are liable to Nigerian tax only to the extent to which their income is derived from their operations in Nigeria. In other words, they are not liable to Nigerian tax on their foreign income.

Readers should note that the relief discussed above will be granted where there are reciprocal provisions in the tax laws of the country from where the income is being received.

15.1.3 Where there is double taxation agreement

The provision of the law states "where there exists double taxation agreement between one country and Nigeria the amount of relief available will be computed on the basis of the provisions of the agreement and Sections 34 and 35 of the Act".

The points to note are:

(a) The provisions of Section 33 of the Act shall have no effect.

(b) "Foreign tax" means any tax payable in a country which under the agreement is to be allowed as a credit against tax payable in respect of those profits in Nigeria.

(c) The tax payable on the worldwide income will be reduced by the credit admissible under the terms of agreement.

(d) Credit is allowable only for a Nigerian company.

(e) The total credit to be allowed for the foreign tax for any year of assessment, cannot exceed the total tax payable by the company for that year. In effect, no cash refund can be made in Nigeria for foreign tax paid.

(f) A company can elect not to take the benefit of the credit available under the arrangement in respect of the foreign profit earned by it, for the assessment year.

(g) Any claim for an allowance by way of credit shall be made not later than two years after the end of the assessment year.

(h) In the event of any dispute as to the amount allowable, the claim shall be subject to objection and appeal in like manner as an assessment.

15.1.4 Double taxation agreement with United Kingdom

After the termination of all double taxation agreements between foreign countries and Nigeria, one of the earliest agreement that were signed is that with the United Kingdom.

The substance of the agreement is contained in the explanatory note to the schedule of the agreement. The following should be noted:

(a) Income from immovable property may be taxed in the country in which the property is situated (Article 6).

(b) Business profits not arising through a permanent establishment are to be taxed only in the country of the taxpayer's residence. profits attributed to a permanent establishment may be taxed in the country in which the permanent establishment is situated (Article 7).

(c) Profits or gains arising from the operation of ships and aircraft in international traffic are to be taxed only in the country of residence of the operator (Article 8).

(d) Dividends derived by one company which is resident in one country from a company resident in another country may be taxed in that country in which the dividend is derived. However, the rate of tax in the source country is not to exceed 12.5% where the recipient is a company controlling at least 10 per cent of the voting power in the company paying the dividends, and 15 per cent in all other cases (Article 10).

(e) Interest arising in on country and paid to a resident of the other country may be taxed in that other country. The rate of tax in the source country is, in general, not to exceed 12.5 per cent. However, interest arising in one country and paid to the Government or any government agency of the other country is to be exempt in the country of source (Article 11).

(f) Royalties arising in one country and paid to a resident of the other country may be taxed in that other country. However, the rate of tax in the source country is not to exceed 12.5 per cent (Article 12).

(g) Except with the exemption of profits or gains arising from the operation of ships and aircraft in international traffic, each country may tax capital gains in accordance with the provisions of its domestic law (Article 13).

(h) Income derived by a resident of one country in respect of professional services or other independent activities of a similar character, shall be taxable only in that country, unless he has a fixed base regularly available to him in the other country, for the purpose of performing his activities. In this case, so much of the income may be taxed in that other country as is attributable to that fixed base (Article 14).

(i) Directors' fees and other similar payments derived by a resident of a country, in his capacity as a member of the Revenue Service of directors of a company, which is a resident of the other country, may be taxed in that other country (Article 16).

(j) Income derived by artists and athletes may be taxed in the country where the activities are exercised (Article 17).

(k) Where income continues to be taxable in both countries, credit will be given by the country of the taxpayer's residence in respect of tax imposed by the other country (Article 22).

Foreign incomes exemption from Nigerian tax

With effect from 1 January 1988 investment incomes, namely; dividends, interests, royalties and rents, derived by a company from outside Nigeria, is exempted from Nigerian tax, provided that such income is brought into Nigeria through Government approved channels. Government approved channels means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealers under the Second-Tier Foreign Exchange Market Act or any enactment replacing that Act. In such situations there would not have been any double taxation and therefore there would be no need to grant any relief in form of tax credit.

15.2 MERGERS, ACQUISITIONS AND TAKEOVERS

15.2.1 Mergers

The tax implications of amalgamation, absorption and takeovers, depend on the particular type of arrangement effected by the companies and the result of such arrangement. The common possibilities are as follows:

New Company Takes over

Where a new company takes over an existing company, the trade or business of the existing company ceases. Thus, cessation provisions will apply to that company that has been taken over.

The new company commences a new business. Commencement provisions of the Act will apply to the new company.

An existing company absorbs another

Where an existing company acquires or absorbs another company, the operation of the company acquired or absorbed ceases. Therefore, the cessation provisions of the Act will be applied to that company.

In respect of the company that takes over, consideration will be given to the nature of the company's trade or business both before and after the takeover.

If the trade or business carried on by the company is the same before and after the take over, the company cannot be said to have commenced a new trade or business. This will be the case if the trade or business

of the company that is taken over is essentially the same as the trade or business of the company that acquires it. In such circumstance, commencement provisions will not be applied.

However, if the trade or business of the absorbed company is different from that of the company that acquires it, the company acquiring will be deemed to have commenced a new trade or business. In such situation, the commencement provisions of the Act will apply to the new trade or business while the existing business of the company will be assessed on a continuing trade basis.

Mergers and Take-over

The consent of the Revenue Service, including clearance with respect to any Capital Gains Tax that may be due and payable, must be obtained before any merger, take-over, transfer or restructuring of a trade or business carried on by a company, can take place.

15.2.2 Trade or business sold or transferred: Section 25(9)

If a trade or business is sold or transferred to a Nigerian company together with any asset employed therein and the Revenue Service is satisfied that one of the companies has control over the other or that both are controlled by some other person or are members of a recognised group of companies, the Revenue Service may at its discretion direct that:

a) the commencement and cessation provisions are not applied;
b) for capital allowances purposes, the assets sold or transferred shall be deemed to have been sold for an amount equal to the residue of qualifying expenditure thereon on the day following such sale or transfer; and
c) the company acquiring the assets shall not be entitled to any initial allowance thereon and shall be deemed to have received all allowance already granted to the vendor company up to the date of the sale or transfer.

There is no reference to unutilised losses incurred in the old trade. Such losses cannot be transferred to the new business and may not be relieved in any other way. Any company planning a reorganisation that will involve transfer of business from one subsidiary to the other within the group, will need to consider this fact. That is, the unabsorbed losses on the date of the transfer or sale of the business cannot be transferred to the new business. A way out is to leave some business in the old trade that will produce small profits annually which will gradually use up the losses over a number of years, before that part of the trade is transferred to the new trade.

15.2.3 Reconstituted Companies: Section 25(10)

Where in pursuance of Part X of the Companies and Allied Matters Act, (1990), a company – “the reconstituted company” – is incorporated to carry on a trade or business previously carried on by a foreign company, and the assets employed by the foreign company in that trade or business vest in the reconstituted company, then the following provisions shall apply:

a) the commencement and cessation provisions shall not apply to the reconstituted company;
b) the assets vested in the reconstituted company shall be deemed to have been sold to it, on the day of incorporation of that company, for an amount equal to the residue of qualifying expenditure thereon, on the day following the cessation of the foreign company’s trade;
c) the reconstituted company shall not be entitled to any initial allowance on those assets and shall be deemed to have received all capital allowance granted the foreign company on those assets;
d) Unrelieved losses of the foreign company on the date of the reconstitution, shall be deemed to have been incurred by the reconstituted company in its trade or business during the first year of assessment and shall be deductible from its assessable profits. Losses arising from damages caused by any Civil War, cannot be so transferred to the reconstituted company except with the approval of the Federal Executive Council. It is also to be noted, that a claim for the deduction of such losses, must be lodged with the Director of the Industrial Inspectorate Division of the Federal Ministry of Industries, with a copy to the Revenue Service within three years of the incorporation of the reconstituted company; and
e) Deduction of such losses is to be made from the assessable profits, if any, of the reconstituted company, for the first year of assessment and so far as it cannot be so made, then from the amount of the assessable profits of the year of assessment and so on, up to the fourth year after the commencement of such business.

The foregoing will only be applicable, if the Revenue Service is satisfied that the trade or business carried on by the reconstituted company immediately after its incorporation, is not substantially different in nature from that previously carried on in Nigeria by the foreign company.

15.3 DEFERRED TAXATION

The matching concept in accounting demands that sales and income are to be matched with the corresponding costs in preparing either a profit and loss account or an income and expenditure statement. If this is not done, there will be distortions in the profit or loss (excess or deficit of income compared to expenditure) declared for each accounting year. The result that would be obtained comparing one year with another in such situation would also be distorted.

The matching concept principle should also be extended to the charge for taxation in the profit and loss account. Usually, accounting profits as reported in the profit and loss account will be different from taxable profits. The charge for taxation shown in the financial statement may not bear a direct relationship with the amount of income or loss shown on the income statement. The differences are due to the fact that accounting profits would be adjusted to arrive at taxable profits. The adjustments are usually in respect of:

(a) Disallowable expenditure;
(b) Items chargeable to tax but not credited in the Profit and Loss account;
(c) Items credited in the Profit and Loss account but not taxable; and
(d) Expenditure not charged but allowable.

Some of these adjustments would cause certain income or profits to be brought into accounting profits in one period but brought into taxation in another period. Some other adjustments would completely eliminate an accounting profit or expense from tax without such being brought into tax in later accounting periods. These differences can be classified into two, namely: timing differences and permanent differences.

Those differences that would reverse in later accounting periods are called timing differences. Those that would not reverse in future accounting periods are referred to as permanent differences.

Permanent Differences

These are differences between taxable income and accounting income for a period that do not reverse in subsequent periods.

One reason for permanent differences is that certain items are considered to be properly included in one calculation but are required to be excluded from the other. For example, donations, other than those specified in Section 20 and Section 21 of CITA are not allowable deductions in determining taxable income. Similarly, certain items of income which are properly included in income statement are not subject to tax. For example, interest arising on certain Government Securities. Differences such as these are described as permanent differences.

Timing Differences

These are differences between the taxable income and accounting income which arise because the periods in which some items of revenue and expense are included in taxable income differ from the periods in which they are included in accounting income. Such differences originate in one period and reverse in one or subsequent periods.

A good example of timing difference is where the capital allowance rate used in determining taxable income differs significantly from the corresponding depreciation rate used in determining accounting profit. Also, expensing intangible development costs by taking hundred per cent deduction in the year the expenditure is incurred instead of the normal depreciation spread for accounting purpose, is another example. The incorporation in the balance sheet of the revaluation of fixed asset, could create a timing difference. This is because the profit or loss that would result if the asset is realised at its revalued carrying amount, would be taxable, unless the disposal of the revalued asset and of any subsequent replacement asset would not result in a tax liability, after taking account of any expected roll-over relief. Deferred Tax is the tax attributable to timing differences.

Basis of Providing for Deferred Tax

The objective of providing for Deferred Tax is to ensure that the tax expense reported in an income statement of a particular period reflects the tax effects of revenues and expenses included in the pre-tax accounting income of the period. Permanent differences are not taken into consideration as they have no effect on other periods.

Deferred Taxes can be treated on any of these three bases:
(a) Nil provision
(b) Full provision
(c) Partial provision

Nil provision

Tax effect of timing differences are ignored completely. Only the tax payable in respect of the accounting period is charged to income in that period and no provision is made for Deferred Tax. Proponents of this treatment hold the view that since tax liability arises only on taxable income and not on accounting income, there is no need to provide for Deferred Tax.

Full provision

Full provision basis takes into account all the timing differences. Support for this view is based on the principle that the tax effect of all the transactions occurring in each particular period has to be recognised in the financial statement of the period.

Partial provision

Under the partial provision basis, the tax effects of some timing differences are excluded from the computation of Deferred Tax when there is reasonable evidence that those timing differences will not reverse for some considerable number of years. Supporters of the view, argue that Deferred Tax has to be provided only where it is probable that tax will become payable as a result of the reversal of timing differences.

The partial provision basis has one major advantage over the other two bases discussed above. Under this method, the provision for Deferred Tax is based on an assessment of the ultimate tax liability.

Method of Computation

The tax effect of a timing difference (deferred tax) is usually computed as the difference between the tax computed after taking into account the transaction giving rise to the timing difference and the tax computed without including such transaction.
As tax rates change over time, giving rise to the question of what rate to use in computing deferred taxes, the choice of either the deferral or the liability method, becomes fundamental to the method of computation of Deferred Tax.

Deferral Method

Under the Deferral method, Deferred taxes are determined on the basis of the tax rates in effect, when the timing differences originate. No adjustments are made later, to take account of subsequent changes in tax rates. Reversals of the tax effects of timing differences are accounted for using the tax rates current at the time the timing differences arose. For practical purposes, the rate used may be either an average rate to date, or a rate determined through the first-in-first-out (FIFO) approach.

A basic argument against the deferral method is that the balance of Deferred Taxes may not represent the actual amount of additional taxes payable or receivable in the periods that the timing differences reverse.

Liability Method

Under the liability method, the amount of Deferred Tax is computed by using the tax rate expected to be in force during the period in which the timing differences reverse. Usually, the prevailing tax rate is used as the best estimate of future tax rates, unless changes in tax rates are known in advance.

Under this method, the Deferred Taxes provision represents the best estimate of the amount which would be payable or recoverable, if the relevant timing difference reverses. Thus, the difference between income tax expense and income tax payable for the period is directly adjusted on the deferred tax balance.

When accounting for timing differences results in a debit balance, prudence requires that such a debit can be carried forward in the balance sheet only if there is a reasonable expectation of realisation; that is, if sufficient future taxable income will be generated in the period in which the timing differences will reverse.

Tax Losses

Tax losses result in tax savings, provided that there is taxable income against which the losses could be relieved. Consequently, such potential tax savings relating to a tax loss carried forward, may be included in the income statement. Since the tax laws limit the period over which a tax loss may be carried forward as offset against future taxable income, only the related timing differences that will reverse during the limited period are considered in computing deferred taxes and treated either as a debit balance or as a debit to the Deferred Tax account.

Please note that tax savings that result from offsetting a tax loss is included in the net income.

Separate Line Method

It is the separate line method of presentation of deferred tax in financial statements that is encouraged in the Statement of Accounting Standard on Deferred Taxes (SAS No.19). The tax effects in the financial statements are shown separately from the items or transactions to which they relate. The main advantage of this method is that it distinguishes between an item and its tax consequences.

Other Accounting Standards Requirements

Deferred tax balance should be presented in the balance sheet separately from the shareholders interest. In case of a debit balance, it should be shown as an asset.

The disclosure required may be shown either on the face of the income statement or as notes to the financial statement.

The total amounts of any deferred taxes, both current and cumulative, not provided for, should be disclosed by way of a note and analysed into components.

ILLUSTRATION 15-1

An industrial building of a Company that has been in business for several years purchased for ₦2 million during year ended 31/12/99 was revalued at ₦10 million as at 31/12/04, the balance sheet date of the company. The revalued amount is incorporated into the company's account as at 31/12/04.

Calculate the capital gains tax and deferred tax liability. Ignore roll-over relief.

SUGGESTED SOLUTION 15-1

For the purposes of calculating deferred tax, it will be assumed that the building will be disposed of at the revalued amount.

		₦
1.	Balancing charge:	
	Disposal proceeds	10,000,000
	Less Tax written down value on the date of disposal(see workings below)	680,000
	Surplus of proceeds over residue of expenditure	9,320,000
	Balancing charge will be restricted to capital allowances previously granted (2,000,000 – 680,000)	1,320,000
	Income tax effect of the balancing charge @ 30% (that is deferred tax liability)	396,000
2.	Capital gains tax	
	Disposal proceeds were the building to be disposed of at the revalued amount at 31/12/04	10,000,000
	Less acquisition cost	2,000,000
	Capital gains	8,000,000
	Capital gains tax at 10% thereof	800,000

Residue of Expenditure – 31/12/2004

2000 Assessment Year	
Cost Year Ended 31/12/99	2,000,000
Initial allowance 15%	300,000
Balance after initial allowance	1,700,000
Annual allowance 10%	170,000
2000 Residue c/f	1,530,000
2001 Assessment Year	
Annual allowance	170,000
2001 Residue c/f	1,360,000
2002 Assessment Year	
Annual allowance	170,000
2002 Residue c/f	1,190,000
2003 Assessment Year	
Annual allowance	170,000
2003 Residue c/f	1,020,000

2004 Assessment Year

Annual allowance	170,000
2004 Residue c/f	850,000

2005 Assessment Year

Annual allowance	170,000
2005 Residue c/f	680,000

NOTE:

Though, annual allowance is not usually granted on any fixed asset item in the year of disposal, it should be recognised that this item was indeed not disposed of at the balance sheet date and therefore annual allowance thereon would have been claimed in the year 2005 tax computation. This is why it is the residue of expenditure after the 2005 annual allowance claim that is used in arriving at the balancing charge.

ILLUSTRATION 15-2

The depreciation charge for the year in respect of a company's fixed assets was the sum of ₦500,000. The corresponding capital allowances computation produced a figure of ₦750,000. State the deferred tax effect.

SUGGESTED SOLUTION 15-2	₦
Capital allowances	750,000
Less: Depreciation charged in the accounts	500,000
Timing difference	**250,000**

A provision for deferred tax of ₦75,000 (250,000 x 30%) is required in the current year's accounts.

The fact that the Capital allowances figure above is greater than the depreciation figure implies that the tax charged in the year would be less than it should have been were the Capital Allowances and depreciation figures to be the same. Therefore, more tax would be due in later years when the timing difference would reverse.

15.4 TAX DISTORTION UNDER INFLATIONARY CONDITIONS

A lot has been discussed in the accountancy profession with regards to Inflation Accounting.

In view of rising prices, the surplus of sale proceeds over costs when an item is disposed of, is not necessarily profit. Part of such is indeed due to the effect of inflation. This will be more pronounced when capital assets are involved. Since capital assets would be retained for a couple of years before disposal, the cumulative effect of the gains due to inflation would be significant. This is properly recognised in the United Kingdom where the gains due to inflation is first removed by what is termed indexation allowance and it is the net gain (that is after removing the gains due to inflation), that is subjected to capital gains tax.

In a period of rising prices as exists in Nigeria today (2009), part of the profit made by a trading concern will be due to the effect of inflation. To the extent that the profit is due to the effect of inflation, it will usually be used for trading stocks replacement purposes. It is not a profit that can be distributed and such should also (if the tax laws permit) not be subject to tax. If such is not ploughed back into the business and no alternative arrangement is made by the company, the operating capacity of the business will be gradually eroded to the extent that the business will be unable to continue trading.

The true profit of a trading concern, for example, can only be arrived at, after appropriate provision has been made for trading stock replacements. This will be such that, at least, the same volume of operation can be maintained in the following year, as for the current year.

ILLUSTRATION 15-3

Victoria Limited started trading in year 1 with 50,000 units of stock at ₦60 per unit. By the end of the year all the stocks have been sold. Due to inflation, the unit price of the trading stocks by the end of the year has increased by 20% to ₦72 per unit.

Were the company to maintain the same volume in year 2 as in year 1, a total amount of ₦3,600,000 (50,000 units at ₦72 per unit) would be required to replace the stocks that generated the sales figure of ₦5 million. Under the correct principle of Inflation Accounting according to the proponents of inflation accounting, the cost of sales to be charged to the trading profit and loss account in Year 1 should be the replacement cost of the stocks sold.
A second trading profit and loss account under Inflation Accounting could be prepared below showing the operating result of the company.

Taxation Impact

With the accounts prepared under the historical cost convention, income tax of ₦150,000 would be payable whereas with the accounts prepared under the inflation accounting principle, the company has incurred a trading loss

of ₦100,000 and its income tax liability will be NIL.

The distortion is that this company is required to pay a tax of ₦150,000, whereas in view of the inflation spiral, its tax liability should have been NIL.

SUGGESTED SOLUTION 15-3
Victoria Limited

Year 1
Trading, Profit and Loss Account
(a) **Historical Costs**

	₦	₦
Sales (50,000 units)		5,000,000
Less Cost of sales (60% of sales)		3,000,000
Gross Profit		2,000,000
Deduct expenses:		
Rent and rates	300,000	
Travelling	600,000	
Printing, postages and stationery	100,000	
Telephone and courier	200,000	
Others	300,000	
		(1,500,000)
Net profit		500,000
Income Tax at 30% (assuming accounting profit same as tax profit and ignoring commencement rules)		150,000

(b) **Inflation Accounting Costs**

Sales (50,000 units)		5,000,000
Less Cost of sales (72% of sales)		3,600,000
Gross Profit		1,400,000
Deduct expenses:		
Rent and rates	300,000	
Travelling	600,000	
Printing, postages and stationery	100,000	
Telephone and courier	200,000	
Others	300,000	
		(1,500,000)
Net loss		(100,000)
Income Tax at 30% (assuming accounting profit same as tax profit and ignoring commencement rules)		NIL

To maintain the same operating capability of 50,000 units in Year 2 as in

Year 1, would require ₦3,600,000 purchases (50,000 units at ₦72 per unit). For simplicity, it is assumed that the unit prices of the expense items would remain the same. In practice, these would also be affected by inflation and ought to have been reviewed upwards for the effect of inflation.

15.5 SPECIAL BUSINESSES

15.5.1 Introduction

CITA contains special provisions with regards to companies engaged in shipping or air transport business as well as those in insurance business. The provisions which are considered below are additional to the normal rules of allowable and disallowable expenditure in taxation practice.

15.5.2 Shipping or Air Transport Business

Non-Nigerian Companies
CITA Section 12 contains provisions regarding companies, other than Nigerian companies, in shipping or air transport business.
The substance of that Section is as follows:

(a) The profits or losses of such company to be deemed to be derived from Nigeria is the full profits or losses arising from the carriage of passengers, mails, livestock or goods shipped, or loaded into an aircraft, in Nigeria. This does not apply to passengers, mails, livestock or goods which are brought into Nigeria solely for transshipment or for transfer from one aircraft to another or in either direction between an aircraft and a ship. Readers are referred to the part of this study pack on Double Taxation relief for such of these businesses that are exempted from Nigerian tax.

To the sums receivable in respect of passengers, etc. carried in Nigeria as referred to above, there shall be applied the following:

(a) the ratio of profits or losses of an accounting period, before depreciation, to the total sums receivable in respect of the business of the company, and
(b) the ratio of depreciation to the total sums so receivable as certified by the tax authority of any other country (where the Non-Nigerian company is registered) to the satisfaction of the Revenue Service.

The amount arrived at shall be the full profits or losses which shall be liable to Nigerian tax.

Note that this situation will apply where the Revenue Revenue Service

is satisfied that the taxation authority of any other country computes and assesses on a basis not materially different from that prescribed by the Act. The profits of a company which oprates ships or aircrafts shall be certified to the revenue board by the taxation authority:

(a) Where the ratios referred to above cannot, for any reason, be satisfactorily applied, the profits to be deemed to be derived from Nigeria may be computed on a fair percentage on the full sum receivable in respect of the carriage of passenger, etc. shipped or loaded in Nigeria. When this occurs, the company has within six years to claim that its liability be recomputed on the basis of the ratios referred to above; and

(b) If the company fails to agree with the Revenue Service, the Revenue Service shall give notice to the company of refusal to admit the claim and the provisions of CITA with respect to objections and appeals shall apply accordingly with any necessary modifications.

From the 1988 assessment year, sub-section (4) was added to Section 12 to the effect that the tax payable for any year of assessment shall 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 15-4

Maputo Airline, is an air transport company, registered in the United States of America. On its scheduled flights to West Africa, the planes land in Lagos to convey passengers to either Amsterdam or Paris. Ticketing and and other local transactions are carried out in Nigeria through an authorised agent who sells tickets and meets necessary financial obligations on behalf of Maputo airline.

The agent sold ₦6,000,000 worth of tickets on behalf of the company in 2000 and incurred the following local expenses in Nigeria:

	₦
Wages to labourers and security men	40,000
Office expenses	25,000
Electricity & rates	15,500
Trade subscription	4,500
	85,000

In order to obtain Tax Clearance Certificate for the purpose of remitting proceeds from air transport business to the home country, the agent consulted you to prepare the tax payable to the Federal Inland Revenue Service. He informed you that:

(a) 20% of total ticket sales proceeds is allowed annually by Federal Inland Revenue to cover Depreciation Allowance of Assets FIRS.
(b) 30% of total ticket sales proceeds is allowed annually to cover share of Head Office overheads.
(c) Local expenses in Nigeria are allowable in full.

You are required to:
(i) Compute the tax payable in Nigeria. (6 marks)
(ii) State other option(s) for the company in computing tax payable *(6 marks)* *ICAN Past Question adapted*

SUGGESTED SOLUTION 15-4

(i) MAPUTO AIRLINE – NIGERIAN INCOME COMPUTATION

	₦	₦
Sales proceeds		6,000,000
Deduct:		
Allowed Head Office		
expenses 30% of 6,000,000	1,800,000	
Depreciation allowance 20% of 6,000,000	1,200,000	
Local expenses	85,000	
		3,085,000
Chargeable profit		2,915,000
Income tax at 30% thereon		874,500

Notes:

1. The tax rate was 30% for 2000 assessment year.
2. The minimum of 2% of the full sums receivable in this case will give a tax of ₦120,000. Since this is less than the tax computed, the tax payable will still be the tax computed, were the provision of subsection 4, that was added in 2000 to be applied.

(ii) The option available to the company in computing its tax payable is as follows:

From the above, the ratio of the profit of the company before depreciation allowance to its turnover is:

$$\frac{2,915,000 + 1,200,000}{6,000,000}$$, that is, 68.58%

The ratio of its depreciation to turnover is also fixed at 20%. It should be noted from the question that these ratios were fixed by the Federal Revenue Service of Inland Revenue in Nigeria.

The Act provides that these two ratios should be certified by the tax authority (in this particular situation) of the USA, where the company was registered. Therefore, if the company feels that the ratio of profit as fixed above is excessive and or the ratio of the depreciation allowance is inadequate, the company has a period of six years within which to claim that its tax liability be recomputed on the basis of the ratios that will be certified by the USA tax authority.

If the company fails to agree with the revenue service on this matter, the provisions of CITA regarding objections and appeals shall apply with necessary modifications.

ILLUSTRATION 15-5

Superair Limited is a foreign company operating a fleet of passenger and cargo aircrafts between Nigeria, Middle and Far East. The operating results for the year ended 31 July 2001, the first year of operation, are as follows:

			₦
Income from cargo freight Nigeria/Hong Kong			315,400
Income from passengers' freight Nigeria/Bombay			425,000
Income from passengers' freight Bahrain to Nigeria			556,600
Income from cargo loaded into aircraft on other routes			350,000
			1,647,000
Less:	Operating expenses:		
	Salaries and other expenses	860,000	
	Depreciation	160,000	
	Other expenses:		
	General provision	40,000	
			1,060,000
	Operating profit		587,000

The following additional information are provided:

(a) Salaries and other expenses include:

		₦
(i)	Purchase of twin engines	65,000
(ii)	Use of airport facilities	18,000
(iii)	Hotel bills for first class passengers	21,000
(iv)	Accommodation for airline crew	5,000
(v)	Gifts to airport staff for gratification	6,000

(b) Capital allowances were agreed with the relevant authority at 150% of depreciation charged in the accounts.

You are required to compute:

(i) the total profits of Superair Limited for the purpose of the Nigerian Income Tax.

(ii) the liability to Income Tax in respect of the chargeable income and state the relevant year of assessment.

ICAN Past Question adapted

SUGGESTED SOLUTION 15-5

SUPERAIR LIMITED

INCOME TAX COMPUTATION (YOA 2002)

Income from cargo/passengers arising from Nigeria:		₦
Income from cargo freight Nigeria/Hong Kong		315,400
Income from passengers' freight Nigeria/Bombay		425,000
		740,400
Allowable deductions:	₦	
Salaries and other expenses as given	860,000	
Less disallowable expenses included:		
Gifts to airport staff for gratification	(6,000)	
	854,000	
(Proportion applicable to Nigerian operations)		
$\frac{740,400}{1,647,000} \times 854,000 =$	383,911	
Depreciation allowance as agreed with Revenue 150% of 160,000	240,000	
		623,911
Total profits from cargo/passengers arising from Nigeria		116,489
Income tax at 30% thereof		34,947

Nigerian Companies

Nigerian companies engaged in shipping or air transport business will be subjected to tax as any other company incorporated in Nigeria. It is their world income that will be subjected to income tax subject to the provisions of any applicable double taxation agreement and or any exemption in other parts of the Act CITA.

Business of transmission of messages

The above also apply to a company other than a Nigerian company carrying on the business of transmission of messages by cable or by any form of wireless apparatus. The provisions shall apply "mutatis mutandis" to the computation of its profits, deemed to be derived from Nigeria as though the transmission of messages to places outside Nigeria were equivalent to the shipping or loading of passengers, mails, livestock or goods in Nigeria (CITA Section 13).

15.5.3 Insurance Companies (CITA Section 14)

For non-life insurance companies, the profits on which tax may be imposed shall be ascertained thus:

Gross premiums **plus** interest and other income receivable;	xxx
Less Any returned premium and premium paid on reinsurances;	(xx)
Less Reserve for unexpired risks at the end of the period;	(xx)
Add Reserve for unexpired risks at the beginning of the period;	xx
Less Actual losses settled during the period net of settlements by reinsurers;	(xx)
Less Other allowable expenses.	(xx)
Taxable Income	xx

As regards life assurance company, the profits on which tax may be imposed shall be the investment income, less management expenses including commission. Any amount distributed as dividend from the actuarial revaluation of unexpired risks or from any other revaluation shall be deemed to be a part of the total profits of the company.
Not more than three months after an actuarial revaluation of the unexpired risks or any other revaluation has taken place, the company shall provide to the Revenue Service full particulars of the revaluation carried out.

Careful note should be taken of the basis of computation of the assessable profits of non-life insurance business and that of a life insurance business. While in the former, there is reference to premium and investment incomes, reserves for unexpired risks and claims settlements, in the latter, the reference is only to investment income, management expenses and commissions.

ILLUSTRATION 15-6

Folake Insurance Nig. Plc., a company engaged in Non-Life business, has the following details of its transactions for the year ended 30 April 1990:

	₦
Premium Received	1,350,000
Dividend Received (net)	12,750
Profit on sale of fixed assets	5,500
Reinsurance premium	345,000
Subscription as member of the Nigerian Insurance Association	5,000
Contribution to State Education funds	15,000
Unexpired risks – 1/5/89	275,000
- 30/4/90	310,000
Claims	120,000
Amount recovered under reinsurance	75,000
Salary and other administrative expenses	145,000
Capital allowances were:	
Initial allowances	40,000
Annual allowances	78,000
Balancing charge	5,500

You are required to compute the tax payable by the company for 1991 year of assessment. (Assume companies rate of tax as 40%).(10 marks)

ICAN Past Question

SUGGESTED SOLUTION 15-6

Refer to the beginning of this paragraph for the provision of Section 14 of CITA regarding the computation of chargeable profits of a non-life insurance company.

FOLAKE INSURANCE NIG. PLC
TAX COMPUTATION FOR 1991 ASSESSMENT YEAR

	₦	₦
Premiums Received		1,350,000
Dividend Received (Note i)		-
Reinsurance premium		(345,000)
Net premium		1,005,000
Unexpired risks 30/4/90		(310,000)
Unexpired risks 1/5/89		275,000

Claims settled	120,000	
Less recovered under reinsurance	(75,000)	
		(45,000)
Less: Allowable expenditure:		
Salaries & other admin. expenses	145,000	
Subscription to NIA	5,000	
Contribution to State Education Funds	15,000	(165,000)
		760,000
Add balancing charge		5,500
		765,500
Deduct Capital allowances		
Initial	40,000	
Annual	78,000	
		(118,000)
Chargeable profit		647,500
Tax payable at 40% thereof		259,000

Notes:

(i) Dividend income is franked investment income. It is not to be aggregated in arriving at total profits on which income tax will be computed.

(ii) Contribution to State Education Funds is an allowable expenditure in accordance with the provisions of Section 21 CITA.

Non-Nigerian Insurance Companies

The above provisions of CITA Section 14 also apply to Non-Nigerian Insurance companies. With regards to any of such companies having a permanent establishment in Nigeria, the applicable amounts shall be those arising from its Nigerian operations. Agency expenses in Nigeria and a fair proportion of the company's head office expenses are also allowable deductions.

In respect of a life assurance company where the profits accrue in part outside Nigeria, the assessable profits shall be that proportion of the total investment income of the company as the premium receivable in Nigeria bear to the total premiums receivable less the agency expenses in Nigeria and a fair proportion of the head office expenses of the company.

15.6 SUMMARY AND CONCLUSIONS

This chapter discusses the concept of double taxation relief, especially where there is no double taxation agreement between a country and where there is a double taxation agreement in place.

The tax implications of mergers, acquisitions and take-overs, have been discussed. It was noted that the consent of the Inland Revenue Service must be obtained before any merger, take-over, transfer or restructuring of a trade or business carried on by a company, can take place.

Deferred taxation was considered and the need to make adequate provisions for the tax effect of timing differences was emphasised.

Finally, special businesses - such as shipping, air transport and insurance were considered. The peculiarities with regards to determination of the sources / nature of the Incomes / taxable Profits of each area of business under CITA, were also covered.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

15.7 REVISION QUESTIONS

15.7.1 MULTIPLE CHOICE QUESTIONS

1. Where there is double taxation agreement there is a time limit to make a claim for an allowance by way of credit. The time limit is
   A. two years after the end of the assessment year
   B. one year after the end of the assessment year
   C. three years after the end of the assessment year
   D. six years after the end of the assessment year
   E. six months after the end of the assessment year

2. Differences between taxable income and accounting income for a period, that do not reverse in subsequent periods are known as:
   A. Matching Differences
   B. Deficit Differences
   C. Permanent Differences
   D. Income Differences
   E. Timing Differences

3. The consent and clearance with respect to any Capital Gains Tax that may be due and payable, must be obtained before any merger, take-over, transfer or restructuring of a trade or business carried on by a company, from:
   A. Corporate Affairs Commission
   B. Senate of the Federal Republic of Nigeria
   C. Joint Tax Revenue Service
   D. Federal Inland Revenue Service
   E. State Internal Revenue Service

4. With respect to Double Taxation Agreements, Income from immovable property may be taxed:
   A. twice
   B. in the country in which the property is situated
   C. in the country where the owner resides
   D. in Nigeria, once the income came in through Government approved channels
   E. only if the property is the dwelling house of the owner.

5. The "world income" of a Nigerian Company engaged in shipping or Air transport business, will be subject to:
   A. tax at the rate prevailing in the country of origin
   B. Double the Nigerian tax rate
   C. Income tax based on the provisions of applicable double taxation agreement
   D. Income tax at 50% of Nigerian rate of Tax
   E. Value Added Tax only

15.7.2 SHORT ANSWER QUESTIONS

1. State the taxation implication when a new company takes over an existing company

2. State the double taxation relief available to a Nigerian company in respect of its foreign earnings where there is no double taxation agreement

3. Successful Company Limited takes over the entire business operation of Failure Limited. The unrelieved losses of Failure Ltd. at the date of the takeover totalled N5 million. What is the relief available to Successful Company Limited in respect of Failure Ltd.'s unrelieved losses?

4. Explain the term deferred tax?

5. Discuss briefly timing differences.

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

16

PETROLEUM PROFITS TAX

16.0 LEARNING OBJECTIVES

After studying this chapter, readers should be able to:

- Know how the Petroleum Profits Tax Act (PPTA) is administered and how to deal with the Revenue Service in connection with the tax
- Know and understand the definition of some principal terms or concepts under PPTA.
- Have the knowledge of the concept and computation of posted prices.
- Understand the nature and classification of income and costs in a petroleum operation environment.
- Know how to arrive at the adjusted/ assessable profits of a company engaged in petroleum operations.
- Understand the principle of allowable and non-allowable deductions as applicable to petroleum profits tax.
- Compute capital allowances for petroleum profits tax purposes.
- Understand the Memorandum of Understanding (MOU) as applicable to companies engaged in petroleum operations.
- Know the incentives available to companies engaged in the utilization of associated gas.
- Understand Joint Venture contracts and Production Sharing Contracts as they apply to petroleum companies.
- Prepare petroleum profits tax computations in accordance with the relevant provisions of the Act.

16.1 INTRODUCTION

The Oil industry has achieved great prominence in the Nigerian economic environment since the early seventies. The influence of oil and gas on the Nigerian economy today cannot be overemphasized. The oil and gas industry accounts for over 90% of the country's foreign exchange earnings. It also plays a predominant role in the Gross National Product (GNP) index.

It is in view of the importance that Government attaches to oil exploration and production that the taxation of profits or gains of companies engaging in

such operations are taxable under a separate tax law. The applicable law is the Petroleum Profits Tax Act (PPTA), which was first enacted in 1959 with retrospective effective date of 1 January, 1958. This principal Act and all amendments thereto have been re-enacted as Chapter P13 of the Laws of the Federation of Nigeria (LFN) 2004.

'Petroleum operations' as defined in the Act essentially involves petroleum exploration, development, production and sale of crude oil and gas. There is no distinction in the Act between associated and non-associated gas. All activities of petroleum companies that are to be taxed under PPTA are referred to as Upstream operations. Those that are not covered under the definition of "petroleum operations" are referred to as downstream operations. Examples of downstream operations are petroleum refining, petroleum marketing and gas utilisation projects. Companies engaged in downstream operations are subject to tax under the Companies Income Tax Act Cap C21 LFN 2004.

PPTA provides a framework for the understanding of the Nigerian petroleum tax regime. Recourse must still be made to the various contractual arrangements, Memoranda Of Understanding and side letters that provide information on the incentives made available by Government to the operators in the oil and gas industry. These are additional to the provisions of the PPTA and are usually applied as if they were part of the provisions of the Act.

16.2 DEFINITIONS AS GIVEN IN PPTA

All terms relate to companies engaged in petroleum operations.

Accounting period

(a) This is a period of one year commencing on 1st January and ending on 31st December of the same year; or

(b) Any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil under a programme of continuous production and sales, domestic, export or both, and ending on 31st December of the same year, or

(c) Any period of less than a year being a period commencing on 1st January of any year and ending on the date in the same year, when the company ceases to be engaged in petroleum operations.

Revenue Service

The Federal Inland Revenue Service.

Casinghead petroleum spirit

Any liquid hydrocarbons obtained in Nigeria from natural gas by separation or by any chemical or physical process but before the same has been refined or otherwise treated. Casinghead petroleum spirit is further subdivided into two, namely:

(a) **Chargeable natural gas**

Natural gas actually delivered by a company to the Nigerian National Petroleum Corporation under a Gas Sales contract but does not include natural gas taken by or on behalf of the Government of the Federation.

(b) **Chargeable oil**

Casinghead petroleum spirit and crude oil won or obtained by a company from petroleum operations.

Company

Any body corporate incorporated under any law in force in Nigeria or elsewhere.

Crude oil

Any oil (other than oil extracted by destructive distillation from coal, bituminous shales, or other stratified deposits) won in Nigeria, either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil is refined or otherwise treated.

Disposal or disposed of

In relation to chargeable oil owned by a company, disposal or disposed of connotes respectively:
(a) Delivery, without sale, of chargeable oil to; and
(b) Chargeable oil delivered, without sale to, a refinery or to an adjacent storage tank for refining by the company.

G-Factor

Gas projection cost adjustment factor.

High Court

The High Court in Nigeria within whose jurisdiction is the place:
(a) In relation to any offence under the PPT Act, where such offence is deemed to have occurred;
(b) In relation to any suit for tax or appeal against an assessment of tax, where the tax return has been submitted or where the assessment of the tax was made as the case may be;
(c) In relation to where the Revenue Service directs a company to keep proper books of accounts, in accordance with the relevant provisions of the Act, from where the direction was issued; and

(d) In relation to any claim or other matter which is subject to appeal in like manner as an assessment, where the claim or other matter was refused by the Revenue Service.

Intangible drilling costs

All expenditure for labour, fuel, repairs, maintenance, hauling, and supplies and materials (not being supplies and materials for well cement, casing or other well fixtures) which are for or incidental to drilling, cleaning, deepening or completing wells or the preparation thereof incurred in respect of:

(a) determination of well locations, geological studies and topographical and geophysical surveys preparatory to drilling;
(b) drilling, shooting, testing and cleaning wells;
(c) cleaning, draining and leveling land, road-building and the laying of foundations;
(d) erection of rigs and tankage assembly and installation of pipelines and other plant and equipment required in the preparation of drilling of wells producing petroleum.

Liqueified natural gas

Natural gas in its liquid state at approximately atmospheric pressure.

Minister

Minister charged with responsibility for matters relating to taxes on incomes and profits.

MMcf

One million cubic feet

Natural gas

Gas obtained in Nigeria from bore holes and wells consisting primarily of hydrocarbons.

Nigeria

Includes the submarine areas beneath the territorial waters of Nigeria 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.

Non-productive rents

The amount of any rent for which there is provision for its deduction from the amount of any royalties under an oil prospecting licence or oil mining lease, to the extent that such rent is not so deducted.

Oil Mining Lease

A lease granted to a company under the Minerals Act, for the purpose of winning petroleum, or any assignment of such lease.

Oil Prospecting Licence

A licence granted to a company under the Minerals Act, for the purpose of winning petroleum, or any assignment of such licence.

Person

Includes a company and any unincorporated body of persons.

Petroleum

Any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in Nigeria, but does not include liquified natural gas, coal, bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

Petroleum Operations

The winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company.

Resident in Nigeria

In relation to a company, this means a company, the control and management of the business of which are exercised in Nigeria.

Royalties

a) The amount of any rent for which there is provision for its deduction from the amount of any royalties under an oil prospecting licence or oil mining lease to the extent that such rent is so deducted; and

b) The amount of any royalties payable under any such licence or lease less any such rent deducted from those royalties.

Concession

This includes an oil exploration licence, an oil prospecting licence, an oil mining lease, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

Lease

This includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including "leasehold interest" shall be construed accordingly.

16.3 ADMINISTRATION OF PETROLEUM PROFITS TAX

The administration of the Petroleum Profits Tax Act is under the charge and management of the Federal Inland Revenue Service. The Revenue Service may do all acts as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed to the Federal Minister of Finance through its Revenue Service.

Whenever the FIRS consider it necessary with respect to any tax due, it may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or of any judgment debt due in respect of any tax and shall account for any such property and the proceeds of sale thereof in a manner to be prescribed by the Minister (Section 3(b)).

The Revenue Service may sue and be sued in its official name (Section 3(c)).

Delegation

Subject to such conditions as the Revenue Service may specify, the Revenue Service may by notice in the Federal Gazette direct that any information return or documents required to be supplied, forwarded or given to the Revenue Service may be supplied to such other person whether within or without Nigeria as the Revenue Service may direct.

The Revenue Service may by notice in the Federal Gazette or in writing authorize any person within or without Nigeria to:

(a) perform or exercise, on behalf of the Revenue Service, any power or duty conferred upon the Revenue Service other than the powers or duties specified in the First Schedule.
and

(b) receive any notice or other document to be given, delivered or served upon the Revenue Service under or in consequence of the Act or any subsidiary legislation made thereunder (Section 3(e)).

The powers or duties specified in the First Schedule that cannot be delegated by the Revenue Service are:

(a) Powers and duties of the FIRS should be as stipulated in the FIRS Act, 2007 Section 3(b) With respect to any tax due;
(b) The Revenue Service may acquire, hold and dispose of any property taken as security for or in satisfaction of any tax or of any judgment debt due in respect of any tax and shall account for any such property and the proceeds of sale thereof;
(c) Section 3(d) The Revenue Service may by notice in the Federal Gazette direct that any information, return or documents required to be supplied forwarded or given to the Revenue Service may be supplied to such other person as the Revenue Service may direct;
(d) Section 6(2) The Revenue Service may, from time to time, specify the form of returns, claims statements and notices under the Act;
(e) Section 13 The Revenue Service powers under the artificial transaction provisions;
(f) Section 29 The Revenue Service power to call for further information;
(g) Section 35 The Revenue Service power to make assessments;
(h) Section 46 The Revenue Service power to grant relief for error or mistake;
(i) Section 49 The Revenue Service power to levy penalty for making incorrect accounts;
(j) Section 50 The Revenue Service power to levy a fine in respect of false statements and returns; and
(k) Section 53 The power of the Revenue Service to commence prosecution in respect of an offence.

Control by the Minister

In the exercise of the powers and duties conferred upon it, the Revenue Service shall be subject to the authority, direction, and control of the Federal Minister of Finance. Any written direction, order or instruction given by the Minister after consultation with the Chairman of the Revenue Service shall be carried out by the Revenue Service.

However, the Minister shall not give any such direction etc. in respect of any particular company which would have the effect of requiring the Revenue Service to increase or decrease any assessment made or to be imposed upon or any relief given or to be given to or defer the collection of any tax, penalty or judgement debt due by such company or which would have the effect of

altering the normal course of any proceedings, whether civil or criminal, relating either to the recovery of any tax or penalty or to an offence relating to the tax. Any act, matter or thing done by or with the authority of the Revenue Service in pursuance of the provisions of PPTA shall not be subject to challenge on the ground that such was not or was not proved to be in accordance with any direction, order or instruction given by the Minister.

Signification and Execution of Powers, etc: Section 4

(a) Anything required to be done by the Revenue Service, in relation to the powers or duties specified in the First Schedule to the Act, may be signified under the hand of the Chairman of the Revenue Service, or of an officer of the Federal Inland Revenue Service who has been authorised by the Revenue Service to signify from time to time, anything done or to be done by the Revenue Service in respect of such powers or duties.

(b) Any authorisation given by the Revenue Service under or by virtue of the Act shall be signified under the hand of the Chairman of the Revenue Service unless such authority is notified in the Federal Gazette.

(c) Subject to subsection (1) of this Section, any notice or other document to be given under the Act shall be valid if -

(i) it is signed by the Chairman of the Revenue Service or by any person authorised by him; or

(ii) such notice or document is printed and the official name of the Revenue Service is duly printed or stamped thereon.

(d) Every notice, authorisation or other document purporting to be a notice, authorisation or other document duly given and signified, notified or bearing the official name of the Revenue Service, in accordance with the provisions of this Section, shall be deemed to be so given and signified, notified or otherwise without further proof, until the contrary is shown.

Duty of Confidentiality (Section 5).

Every person having any official duty or being employed in the administration of the Act shall regard and deal with all documents, information, returns, assessment lists and copies of such lists relating to the income, chargeable profits or items thereof of any company, as secret and confidential.

Every person who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists, or copies to any person:

(a) other than a person to whom he is authorised by the Minister to communicate it; or

(b) otherwise than for the purpose of the Act or of any Act or law, relating to a tax upon income, in force in any part of Nigeria; shall be guilty of an offence.

No employee of the Revenue Service shall be required to produce in any court any return, document or assessment, or to divulge or communicate to any court any matter or thing coming under his notice in the performance of his duties under the Act except as may be necessary for the purpose of carrying into effect the provisions of the Act, or in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to tax.

The obligation as to secrecy shall not prevent the disclosure of necessary information to the authorised officers of the Government of such other country as might be necessary for double taxation relief purposes.

The Auditor-General of the Federation or any other officer authorised by him may not be prevented from having access to such records or documents as may be necessary for the performance of his official duties. The Auditor-General or any such official shall be deemed to be a person employed in carrying out the provisions of the Act for the purposes of secrecy.

Service of Notice (Section 7)

Any notice to be served in pursuance of the provisions of the Act can be served either personally or by registered post. Where a notice is sent by registered post, it shall be deemed to have been served on the day succeeding the day on which the addressee of the registered letter containing the notice would have been informed in the ordinary course of events that such registered letter is awaiting him at a post office.

Provided that a notice shall not be deemed to have been served if the addressee proves that no notification, informing him of the fact that the registered letter is awaiting him at a Post Office, was left at the address given on such registered letter.

A notice to be served shall be addressed:

(a) in the case of a company incorporated in Nigeria, to the registered office of the company; and

(b) in the case of a company incorporated outside Nigeria either to the individual authorised to accept service of process under the Companies and Allied Matters Act at the address filed with the Registrar-General, or to the registered office of the company wherever it may be situated.

Where service of any notice has proved impossible, the notice may be served

by being left at the appropriate office or address as determined above, unless such address is a registered post office box number.

16.4 NATURE AND CLASSIFICATION OF INCOME

The oil and gas industry is characterised by certain factors that are peculiar to the industry. One of these is the time lag (could be several years) between the time that an investment is made for exploratory activities and the time that the oil can be produced in commercial quantity and sold to generate income. There is the high risk and uncertainty of the results that will be obtained from exploration activities.The only conclusive evidence of the availability of oil in any location can only be obtained by drilling. The risk is very high of not finding recoverable oil reserves or not finding such in commercial quantity. Statistics have it that on the average, oil will be found in commercial quantity in one out of forty exploratory wells. Other risks that are present in the oil and gas industry are: market risk; sovereign/political risk; partner risk; and taxation risk. All these would impact greatly on the investments and return on investments in the industry.

The very high returns in the industry are to compensate for the very high risks. The industry deals in high volume of production with all the advantages of economies of scale. Financial returns are usually substantial whenever there are large finds. Profitability can also be very high in periods of high oil prices as the situation was in the 3rd quarter of 2008 when oil price reached an all time high of $145 per barrel.

The main sources of income of a petroleum producing company are:

(a) Sale of crude oil: Export and Local (Equity share)
(b) Sale of gas: Export and Local (Equity share)
(c) Income from lifting and sale of NNPC equity crude

Other items of income, for example, interest income, would be earned from activities that are considered to be incidental to petroleum operations. Incidental income will be subject to Petroleum Profits Tax. Some of the income that could be treated as incidental income are:

(a) Ullage fees
(b) Rentals
(c) Management fees
(d) Mineral Property conveyance
(e) Interest on fixed deposits

Balancing charge on disposal of items of qualifying expenditure is also to be treated as incidental income in the computation of Petroleum Profits Tax. (Gains or losses on their disposal, are excluded from the Petroleum Profits Tax computations).
Another point worthy of note in the determination of income in the oil and

gas industry, is that oil produced is deemed sold when produced. As a result of this the sales value of crude oil produced can be taken to income immediately without waiting until the time of actual sales.

16.5 NATURE AND CLASSIFICATION OF COSTS

An important taxation principle is that for a business expense to be an allowable deduction, it must have been incurred in the production of the income that is being subject to the tax. For example: "..........................for the purpose of ascertaining the profit or loss of any company of any period from any source chargeable with tax under the Act, there shall be deducted all expenses for that period by that company wholly, exclusively, necessarily and reasonably incurred in the production of those profits..............................." (Section 20 Companies Income Tax Act CAP C21 LFN 2004).

The relevant part in PPTA is Section 9. The comparable condition stated in this Section for the allowability of expenses for tax purposes is that such must be incurred for the purpose of its petroleum operations. Note that there was no specification that it must be incurred "in the production of the income or profits."

The nature of petroleum operations business necessarily requires that certain expenses have to be incurred for the business that could not be tied directly to the income produced. It is clear that such would have been incurred for the petroleum operations albeit have not produced income/profits. The fact that they have not produced income is recognised in PPTA as insufficient ground to disallow them in PPT computations. The expense headings in this category are :

(a) Outgoings on unproductive leases (Section 10 deductible or if capitalised, capital allowances will be claimed in accordance with the provisions of the Second Schedule);
(b) Non-productive rents – Section 10 deductible;
(c) Tangible costs directly incurred in connection with drilling and appraisal of development well. (Section 10 deductible or capital allowances granted in accordance with the provisions of the Second Schedule);
(d) Exploration and drilling costs, including costs relating to the drilling of the first two appraisal wells in a particular field. (Section 10 deductible or capital allowance granted in accordance with the provisions of the Second Schedule);
(e) All sums by way of duty, customs and excise duties, stamp duties, education tax, (amendment in Decree No. 18 of 1998 included education tax with effect from 1/1/96), tax (other than PPT) or any other rate, fee or other like charges Section 10 deductible;
(f) All sums by way of customs or excise duty or other-like charges levied in respect of machinery, equipment and other goods used in the company's petroleum operations. Section 10 deductible; and

(g) All sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is, the London Inter-Bank Offer Rate. Section 10 deductible.

Classification of Costs

The following are the classifications of costs in the upstream sector of the petroleum producing industry:

(a) mineral rights acquisition costs;
(b) exploration and drilling costs;
(c) development costs;
(d) production costs;
(e) support equipment and facilities costs;
(f) general costs.

Mineral Rights Acquisition Costs

Mineral rights acquisition costs are incurred in acquiring concession rights in a lease area. They include signature bonus (initial consideration paid by the lessee to the lessor), legal fees, local statutory land acquisition fees/levies, reserves value fees, etc. Acquisition costs may relate to proved or unproved properties. Costs incurred to purchase, lease, or otherwise acquire an item (whether proved or unproved) are initially capitalised when incurred. They include the costs of:
Oil Prospecting Licence (OPL); (to search for oil)
Oil Exploration Licence (OEL); (to explore for petroleum)
Oil Mining Lease (OML); (to win, work, carry away and dispose of petroleum)
Bonuses and options to purchase or lease properties;
Minerals, including mineral rights purchased; and
Recording fees, legal and other costs incurred in acquiring properties

Pre-licence costs are those incurred in the period, prior to the acquisition of a legal right to explore for oil and gas in a particular location. Such costs include those incurred on the acquisition of speculative seismic data and expenditure on the subsequent geological and geophysical analysis of the data.

Exploration and Drilling Costs

Exploration and Appraisal costs are incurred in the search for oil and gas deposits after obtaining a licence, but before a decision is taken to develop a reservoir.

Exploration and drilling involve:
(a) Identifying areas that may warrant evaluation; and
(b) Evaluating specific areas that are considered to have petroleum prospects largely through the drilling of exploratory wells.

Exploration costs may be incurred both before obtaining concessions (sometimes, referred to in part as pre-licence costs) and after acquiring concession.

Principal types of exploration costs, which include depreciation and applicable operating costs of support equipment and facilities and other costs of exploration activities, are:

(a) Costs of geological and geophysical studies, rights of access to properties to conduct those studies, and salaries and other expenses of geologists, geophysical crews, and others conducting those studies;
(b) Costs of carrying and retaining undeveloped properties, such as rentals, legal costs for title deeds, stamp duties, and the maintenance of lease records;
(c) Dry hole contributions and bottom hole contributions;
(d) Costs of drilling and equipping exploratory wells; and
(e) Other associated costs such as re-settlement of local communities, compensation for economic crops, surface rights and road building.

Exploration costs include appraisal costs which are incurred, to determine the size and characteristics of a reservoir discovered, in order to assess its commercial potentials. The costs of drilling exploratory wells are usually capitalised as part of the company's uncompleted wells, equipment and facilities pending determination of whether the well has proved reserves. If the well has proved reserves, the capitalised costs of drilling the well become part of the company's wells and related equipment and facilities (though the well may not be completed as a producing well). On the other hand, if the well is dry, the treatment will depend on the accounting method adopted by the company (that is full costs or successful efforts method).

An exploratory well may have found oil and gas reserves, but classification of those reserves as proved reserves cannot be made until drilling is completed.

On completion of drilling, classification of the reserves depend on whether a major capital expenditure can be justified, which in turn, depends on whether additional appraisal wells confirm sufficient quantities of reserves.This situation arises principally with exploratory wells drilled in remote areas for which production would require construction of a network of pipelines and/or production facilities.

In such a case, the cost of drilling the exploratory well is usually carried as an asset provided sufficient quantity of reserve to justify its completion as a producing well exists and the drilling of additional wells has been firmly planned for the near future. Otherwise, the exploratory well is considered impaired and the exploratory well costs written off if the company adopts

successful efforts method of accounting. It is not unusual for oil companies to carry wells in progress for more than two years before a decision is taken to capitalise or expense costs of exploration or appraisal activities.

Development Costs

Development costs are incurred to obtain access to proved reserves and provide facilities for extracting, gathering, treating, and storing the oil and gas. These costs are incurred after a decision has been taken to develop a field or reservoir, and include the following:

(a) drilling, equipping and testing development and production wells;

(b) production platforms, down hole and wellhead equipment, pipelines, production and initial treatment and storage facilities as well as utility and waste disposal systems; and

(c) improved recovery systems and equipment

Development costs are usually capitalised as part of the costs of a company's wells and related equipment and facilities. Thus, all costs incurred to drill and equip development wells and service wells are development costs and are capitalised whether the well is successful or unsuccessful. Costs of drilling those wells and costs of constructing equipment and facilities are usually included in the company's uncompleted wells, equipment and facilities until drilling or construction is completed.

Production Costs

Production costs are the recurrent costs incurred in oil and gas production activities. Production involves lifting the oil and gas to the surface, gathering, treating, field processing and storage. Production costs are usually determined to be all costs incurred from the maintenance of the wells and well heads to the storage facilities when the oil and gas are ready for export or delivery to a refinery.

Production costs are those incurred to operate and maintain a company's wells and related equipment and facilities, including depreciation, depletion and applicable operating costs of support equipment and facilities. Examples of production costs are:

(a) Costs of personnel engaged in the operation of wells and related equipment and facilities;

(b) Repairs and maintenance of production facilities;

(c) Materials, supplies, fuel consumed and services utilised in such operations; and

(d) Royalties.

Support Equipment and Facilities Costs

Costs incurred on support equipment and facilities in oil and gas producing activities, such as vehicles, repair shops, warehouses, supply points, camps, and divisional, district or field offices, aircraft and helicopters, safety and environmental facilities are usually accumulated and reallocated to the classes of costs identified above on some rational basis. For example, use of vehicles may be reallocated on kilometres, use of power house on the basis of wattage reading, and so on.

General Costs

Some costs incurred in a company's oil and gas producing activities do not always result in acquisition of an asset and therefore are usually charged to expense. Examples include geological and geophysical costs, the costs of carrying and retaining undeveloped properties, and the cost of drilling those exploratory wells that do not result in proved reserves.

The costs of a company's wells and related equipment and facilities and the costs of the related proved properties are usually amortised as the related oil and gas reserves are produced from the reserves. Depreciation, depletion, and amortization of capitalised acquisition, exploration, and development costs also become part of the cost of oil and gas produced along with production (lifting) costs identified above.

Oil companies incur substantial costs in providing amenities for the communities where they operate. Such costs which do not have future benefits to the company are usually expensed. Oil companies also incur costs on such matters as corporate affairs, staff training and development.

16.6 ASCERTAINMENT OF ADJUSTED PROFITS AND IMPOSITION OF TAX

Imposition

Section 8 of the PPTA levies tax on the profits of each accounting period of any company engaged in petroleum operations. Particular note should be taken of the fact that the basis period for any assessment year is the same as the accounting period of the company, that is the assessment is on current year basis. For example, assessment for the 1998 assessment year of a company that has been engaged in petroleum operations for several years will be based on the result of the accounting period of the company commencing from 1 January, 1998 and ending on 31 December, 1998. This is a major departure from the preceding year rule that is applicable in the taxation of individuals (under Personal Income Tax Act) and companies not engaged in petroleum operations (taxable under Companies Income Tax Act).

The profits of an accounting period

The profits of a company for an accounting period is computed as the aggregate of the following:

(a) the proceeds of sale of all chargeable oil sold;
(b) the value of chargeable oil disposed of;
(c) the value of all chargeable natural gas; and
(d) all income incidental to and arising from one or more of its petroleum operations.

In respect of (b) above, the value to be used shall be the aggregate of:
(i) value of the chargeable oil as determined for royalty purposes;
(ii) the cost of extraction of that oil deducted in determining its value; and
(iii) any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.

Adjusted Profit

The adjusted profit of an accounting period shall be the profits of that period after the deductions of allowable expenses and any adjustments necessary to exclude the profit or loss attributable to transportation operations which is assessable under Companies Income Tax Act (CITA). The transportation operations referred to here exclude the transportation between the field of production and the place of disposal of oil as referred to in the immediately preceding paragraph.

Where a company engaged in petroleum operations is also involved in the transportation of chargeable oil by ocean going oil-tankers operated by or on behalf of the company from Nigeria to another territory, any profit or loss attributable to such transportation shall be excluded in computing the adjusted profits of the company from its petroleum operations (PPTA Section 12). The profit or loss so excluded shall be taxable under CITA as it is not to be taxed under PPTA. Similar treatment is applicable in respect of the profit or loss accruing to the company which is neither from the petroleum operations source nor incidental thereto. The result accruing to a company that carries out the business of refining of crude oil and all other businesses that are not incidental to petroleum operations is taxable under CITA.

Assessable profit (Section 14)

The assessable profit shall be the adjusted profit of the period after adjusting for Education Tax and the effect of any loss relief available to the company.

Chargeable profits (Section 18)

The chargeable profits shall be the assessable profits, less capital allowances. For this purpose the amount of capital allowances to be deducted is to be restricted to the lower of:

(a) the amount computed; or

(b) a sum equal to eighty-five percent of the assessable profits of the accounting period, less one hundred and seventy percent of the total amount of the deductions allowed as investment tax credit or petroleum investment allowance computed under the second schedule for that period. (Investment Tax Credit if the computation is for a company operating a Production Sharing Contract as provided in the Deep Offshore and Inland Basin Production Sharing Contract Decree 9 of 1999 and petroleum investment allowance in other cases.)

This restriction is in order to ensure that the tax chargeable on the company is not less than fifteen percent of the tax that would have been chargeable had no deduction been made for capital allowances (Subsection 3 of Section 18).

Capital allowances that cannot be utilised due to this restriction are to be carried forward to be aggregated with the capital allowances computed for the following accounting periods and subjected to similar restriction in each of those accounting periods.

From the foregoing, the relationship between the terms profits, adjusted profit, assessable profit and chargeable profit can be stated as follows:

Profits for the period	xx
Deduct: allowable expenditures (Section 10) (after necessary adjustment to eliminate transportation operations expenses included)	(x)
Adjusted profit	xx
Less: loss relief (Section 14).	(x)
Assessable profit	xx
Deduct: Education Tax	(x)
Deduct: capital allowances (as restricted) (Section 15).	(x)
Chargeable profit	xx

Artificial Transactions (Section 13)

(1) Where the Revenue Service is of the opinion that :

(i) any disposition is not in fact given effect to, or

(ii) that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the Revenue Service

may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate.

The effect of the Revenue Service's decision will be to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected, by the transaction. The company concerned shall be assessable accordingly. In this subsection, the expression "disposition" includes any trust, grant, covenant, agreement or arrangement.

(2) The following transactions shall be deemed to be artificial or fictitious, namely:

(i) transactions between persons, one of whom has control over the other .

(ii) or between persons, both of whom are controlled by some other person; which, in the opinion of the Revenue Service, have not been made on the terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with one another at arm's length. (Transactions that are not considered to have been carried out at arm's length shall be deemed to be artificial or fictitious).

(3) A company in respect of which any direction is made under this Section shall have a right of appeal in like manner as though such direction were an assessment.

16.7 ALLOWABLE AND NON-ALLOWABLE DEDUCTIONS

Allowable deductions (Section 10)

All outgoings and expenses wholly, exclusively and necessarily incurred, whether within or outside Nigeria, for the purpose of petroleum operations shall be deductible in computing the adjusted profit for any accounting period. Any outgoing or expense that falls under this definition is an allowable deduction irrespective of whether or not such is specifically listed in Section 10 of the Act.

The following are specifically listed as allowable deductions in Section 10 of the Act:

(a) Rents in respect of land or buildings occupied under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other similar disturbance:

(i) All non-productive rents.

(ii) All royalties in respect of natural gas sold and actually delivered

to the Nigerian National Petroleum Corporation (NNPC), or sold to any other buyer or customer or disposed of in any other commercial manner.

(b) All royalties, the liability for which was incurred by the company during that period in respect of crude oil or of casinghead petroleum spirit won in Nigeria. (Prior to 1995, only royalties in respect of exported crude oil were treated as allowable deductions, while that relating to local sales were tax offsets).

(i) All sums by way of customs or excise duty or other-like charges levied in respect of machinery, equipment and other goods used in the company's petroleum operations.

(c) (i) Interest on money borrowed where the Revenue Service is satisfied that the interest was payable on the capital employed in carrying on petroleum operations.

(ii) All sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is, the London Inter-Bank Offer Rate.

(d) Repairs and or renewals of premises, plant, machinery, implements, utensils, fixtures or articles employed for the purpose of carrying on petroleum operations.

(e) Bad and doubtful debts proved to the satisfaction of the Revenue Service to have become bad or doubtful during the accounting period. The treatment is the same as in normal taxation practice.

(f) (i) Any other expenditure, including tangible costs directly incurred in connection with drilling and appraisal of development well, but excluding an expenditure which is qualifying expenditure for capital allowance purposes and any expense or deduction in respect of a liability which is deductible under any other provision of this Section;

(ii) Exploration and drilling costs including costs relating to the drilling of the first two appraisal wells in a particular field, including expenditure in respect of cement, casing and well fixtures; and

(iii) Where a deduction may be given under this Section in respect of any such expenditure, that expenditure shall not be treated as qualifying drilling expenditure for the purpose of the Second Schedule.

(g) Contribution to approved pension, provident, or other society, scheme or fund.

(h) All sums by way of duty, customs and excise duties, stamp duties, education tax, (amendment in Decree No. 18 of 1998 included education tax with effect from 1/1/96) tax (other than PPT) or any other rate, fee or other like charges.

(i) Such other deductions as may be prescribed by any rule made under the Act.

It should be noted that there are provisions in PPTA similar to those in CITA in respect of waiver or refund of liability or expense. The provisions are applicable to both allowable expenditure and amounts to be deducted from assessable tax in arriving at the chargeable tax.

Where a deduction has been allowed to a company under this Section in respect of any liability of the company and such liability or any part thereof is waived or released, the amount of the deduction or the part thereof corresponding to such part of the liability, shall, for the purposes of subsection (1)(d) of Section 9 of the Act, be treated as income of the company of its accounting period in which such waiver or release was made or given.

Disallowable expenditure (Section 11)

Section 11, subsection 1, of the PPTA states the items that are specifically disallowed from being deducted in arriving at the adjusted profit of an accounting period. These are:

(a) Any disbursements or expenses not wholly and exclusively paid out or expended, or not wholly or exclusively incurred for petroleum operations purposes.
(b) Any capital withdrawn or any sum employed or intended to be employed as capital.
(c) Any capital employed in improvements as distinct from repairs.
(d) Sums recoverable under an insurance or contract of indemnity.
(e) Rent of or cost of repairs to any premises or part of premises not incurred for petroleum operations.
(f) Amounts incurred as income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere.
(g) Depreciation of any kind.
(h) Payment to unapproved provident, savings, widows' and orphans or other society, scheme or fund.
(i) Any custom duty on goods (including articles or any other thing) imported by the company:
    i) for resale or for personal consumption of employees of the company, or
    ii) where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at

prices less or equivalent to the cost to the company of the imported goods.

(j) Expenditure for the purchase of information relating to the existence and extent of petroleum deposits.

Subsection 2 of Section 11 deals with interest on inter-group borrowings. Interest on money borrowed and used for petroleum operations purposes shall not be an allowable deduction when either of the following situations applies:

(a) either the borrowing or lending company has an interest in the other, or

(b) both have interests in another company either directly or through other companies, or

(c) both are subsidiaries of another company. For this purpose:

    (i) A company shall be deemed to be a subsidiary of another company if and so long as an interest in it is held by that other company, either directly or through any other company or companies.

    (ii) An interest means a beneficial interest in issued share capital (by whatever name called); and

    (iii) The Revenue Service shall disregard any such interest which in its opinion is insignificant or remote, or where in their opinion that interest arises from a normal market investment and the companies concerned have no other dealings or connection between each other.

It can be seen here that the rules for the determination of control and or holding/subsidiary relationship are stricter than that applicable under ordinary accountancy practice.

Under Section 10cc, with effect from 1st January 1999 interests on inter-company loans are allowable deductions

Donations

As in the Personal Income Tax Act (PITA) there is no provision in PPTA that is similar to Section 21 of CITA, relating to allowable donations. It is therefore technically correct that any donation made by any company engaged in petroleum operations is not an allowable deduction. However, such expenses can be allowable if the company can prove to the Revenue Service that they are expended wholly, exclusively and necessarily for the company's petroleum operations. Therefore in practice, the Revenue would allow deductions on the same principle as in CITA. However, it is desirable that the Petroleum Profits Tax Act be amended to include specific provisions as to allowable donations in the computation of the profit of an accounting period of a company engaged in petroleum operations.

16.8 TREATMENT OF LOSSES IN PETROLEUM PROFITS TAX COMPUTATIONS

Loss relief (Section 14)

To arrive at the assessable profits, there shall be deducted from the adjusted profits:

(a) the amount of any loss incurred by the company during the previous accounting period; and

(b) for a new company, the amount of any loss incurred during its first accounting period in its trade or business.

Losses that cannot be fully deducted in any one period can be carried forward to the next succeeding accounting periods until fully relieved. The four years time limit for the carry forward of trade loss under CITA and PITA is not applicable to losses incurred in petroleum operations as there is no provision in PPTA in that regard. Furthermore, the company has the right to defer the utilization of any loss relief available to it. This is possible where within five months after the end of the accounting period, the company elects in writing not to deduct the amount of the loss or part thereof from the profits of the accounting period under consideration. The amount so deferred will be deducted from the following year's accounting profits unless the company makes a similar election in that following year.

16.9 CAPITAL ALLOWANCES

Qualifying expenditure

Qualifying expenditure means capital expenditure incurred in an accounting period, which is:

(a) incurred on plant, machinery or fixtures – "qualifying plant expenditure"

(b) incurred on pipelines and storage tanks – "qualifying pipeline and storage expenditure"

(c) incurred on the construction of buildings, structures or works of a permanent nature – "qualifying building expenditure"

(d) "qualifying drilling expenditure" – incurred in

  (i) the acquisition of, or rights in or over, petroleum deposits.

  (ii) searching for or discovering and testing petroleum deposits, or winning access thereto, or

  (iii) the construction of any works or buildings which are likely to be of little or no value when the petroleum operations for which they were constructed ceased to be carried on.

Any sum that can be treated as an allowable expense in accordance with the provision of Section 10 of the Act cannot be treated as qualifying capital expenditure. Qualifying capital expenditure cannot be classified into more than one of the four headings above.

Where qualifying expenditure is incurred by a company before its first accounting period, such shall be deemed to be incurred by it on the first day of its accounting period.

Where the expenditure is incurred in respect of an asset which has been disposed of by the company before the beginning of its first accounting period, then any loss suffered by the company on the disposal of such asset shall be deemed to be qualifying drilling expenditure incurred by the company on that day, and be deemed to have brought into existence an asset owned by the company in use for the purposes of petroleum operations carried on by the company, and any profit realised by the company on such disposal shall be treated as income of the company of its first accounting period for the purposes of subsection (1)(a) of Section 9 of the Act.

Allowances

The allowances are granted at varying rates on the cost of the assets. Before an allowance can be granted, the following conditions must be met:

(i) The capital expenditure must be a qualifying expenditure;

(ii) The qualifying expenditure must be wholly, necessarily and exclusively used for the purposes of petroleum operations carried on by the company; and

(iii) The asset must be owned and used for petroleum operations at the end of the particular accounting period.

An asset is deemed to be in use during a period of temporary disuse.

Fixed assets acquired in an accounting period but put to use in a subsequent accounting period may qualify for capital allowances in the accounting period of purchase.

Petroleum Investment Allowance

It is similar to investment allowance under CITA since it is not taken into account in arriving at the residue of an asset. The rates are as stated under Capital Allowance rates on page 29. It was termed Investment Tax Credit prior to the 1999 amendment. With the 1999 amendment, Investment Tax Credit is retained for companies that operate under the Deep Offshore and Inland Basin Production Sharing Contracts Decree, 1999, while all others are entitled to Petroleum Investment Allowance. Petroleum Investment Allowance is granted in the accounting period in which the expenditure is incurred. It is granted only once for any particular asset.

Paragraph 5(2) of Schedule 2 states:
"For the purposes of the Act, the Petroleum Investment Allowance shall be added to the annual allowance computed under paragraph 6 of this Schedule and shall be subject to the same rules under the Act."

The treatment is now similar to that of investment allowance under CITA. The amount arrived at is to be added to the annual allowance computed under the PPTA and shall be subject to the same rules. It is not to be deducted from qualifying expenditure in arriving at the residue of expenditure.

(Before the 1999 amendment, the amount computed as Investment Tax Credit was a deduction from tax payable and not a charge against income – see the Section on Tax offsets. This term is now applicable only to companies operating under the Production Sharing Contracts cited above).

Annual allowance

This is granted annually on cost until the residue of the item is 1% of the original cost. The intent is that the amount of any qualifying expenditure is amortised over a period of five years in equal amount except the fifth year when 1% of the amount is retained. The rate is therefore 20% of the cost per annum for each of the first four years and 19% for the fifth year. The 1% of the cost of the asset must be retained in the books until the disposal of the item. Unlike in Personal Income Tax and Companies Income Tax computations, annual allowance claimable is not pro-rated in Petroleum Profits Tax computations when the accounting period is less than twelve months.

Any asset in respect of which capital allowances have been granted can only be disposed of on the authority of a Certificate of Disposal issued by the Minister or any person authorised by him.

Balancing Allowances and Balancing Charges

The calculation of balancing allowance or charge follows normal taxation principles. The residue of qualifying expenditure is compared with the disposal proceeds to arrive at the balancing allowance or charge.

However, in Petroleum Profits Tax, balancing charge is to be treated as other income to form part of the profits of the company, while balancing allowances are aggregated with other capital allowances. Balancing allowance or charge shall also be made only if immediately prior to the disposal, the asset was in use for the purposes of petroleum operations for which the expenditure was incurred.

Residue of qualifying expenditure (Paragraph 10 of Second Schedule)

The residue of qualifying expenditure, in respect of any asset, at any date, is the total qualifying expenditure incurred, less the total of annual allowances granted to that date in respect of the asset (paragraph 10 of the Second

Schedule). It should be noted that the amount for Petroleum Investment Allowance is not to be deducted from qualifying expenditure in arriving at the residue.

Relevant Interest

(a) The owner of a building, structure or works, shall be taken to be the owner of the relevant interest in such building, structure or works.

(b) Subject to the provisions of this paragraph, in this Schedule, the expression "the relevant interest" means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the company which incurred such expenditure was entitled when it incurred the expenditure.

(c) Where a company incurs qualifying building expenditure or qualifying drilling expenditure on the construction of a building, structure or works, the company is entitled to two or more interests therein, and one of those interests is an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of the Second Schedule.

Sale of Buildings

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, the company which acquires that interest shall be deemed, except the granting of investment tax credit, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction, whichever is less:

Provided that:

(a) where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sale with the omission of the words "except the granting of investment tax credit" and the original cost of construction shall be taken to be the amount of the purchase price on such sale;

(b) where any such relevant interest is sold more than once before the building, structure or works is used, the provisions of subparagraph (a) shall have effect only in relation to the last of those sales.

Meaning of "disposed of" (Paragraph 11)

Subject to any express provision to the contrary, for the purposes of this Schedule

(a) a building, structure or works of a permanent nature is disposed of if any of the following events occurs:
   (i) the relevant interest is sold, or
   (ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession, or
   (iii) that interest, being a leasehold interest, comes to an end otherwise than on the company entitled thereto acquiring the interest which is reversionary thereon, or
   (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of petroleum operation carried on by the owner thereof;

(b) plant, machinery or fixtures are disposed of, if they are sold, discarded or cease altogether to be used for the purposes of petroleum operations carried on by the owner thereof;

(c) assets in respect of which qualifying drilling expenditure is incurred are disposed of, if they are sold or if they cease to be used for the purposes of the petroleum operations of the company incurring the expenditure either on such company ceasing to carry on all such operations or on such company receiving insurance or compensation monies therefor.

Value of An Asset (Paragraph 12)

(a) The value of an asset at the date of its disposal shall be:
   (i) the net proceeds of the sale thereof or of the relevant interest therein, or,
   (ii) if it was disposed of without being sold, the amount which, in the opinion of the Revenue Service, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.

(b) For the purpose of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interest therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.

(c) So much of subparagraph (1) above as relates to the circumstances for determining the value of an asset by reference to the disposal of such asset other than by way of sale shall have effect:

(i) in relation to any asset or the relevant interest therein disposed of not being by way of bargain made at arm's length, or
(ii) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

Apportionment (Paragraph 13)

(a) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset, and, where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first-mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of, or the price paid for, that asset, as the case may be. For the purposes of this subparagraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purported to be agreed for each of those assets or that they are or purported to be separate purchases or disposal of those assets.

(b) The provisions of subparagraph (1) of this paragraph, shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

Part of An Asset (Paragraph 14)

Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Revenue Service, be just and reasonable.

Extension of meaning of "In Use" (Paragraph 15)

(1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.
(2) For the purposes of paragraphs 5, 6 and 7 of this Schedule:
 (a) an asset in respect of which qualifying expenditure has been incurred by the owner for the purposes of petroleum operations carried on by him shall be deemed to be in use for the purposes of such operations, between the dates hereinafter mentioned,

where the Revenue Service is of the opinion that the first use to which the asset will be put by that owner incurring such expenditure will be for the purposes of such operations;

(b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where any allowances have been given in consequence of this subparagraph (2) of this paragraph and the first use to which such asset is put is not for the purposes of such operations, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

Exclusion of Certain Expenditure (Paragraph 16)

(a) Subject to the express provisions of this Schedule, where any company has incurred expenditure which is allowed to be deducted under any provision (other than a provision of this Schedule) of the Act, such expenditure shall not be or be treated as qualifying expenditure.

(b) Where any company has incurred expenditure upon any ocean going oil-tanker plying between Nigeria and any other territory that expenditure shall not be treated as qualifying expenditure.

Assets Used or Expenditure Incurred Partly for the purpose of Petroleum Operations (Paragraph 17)

(a) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset:
   - (i) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of petroleum operations carried on by him and partly for other purposes;
   - (ii) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of petroleum operations carried on by such owner and partly for other purposes.

(b) Any allowances which would be due or any balancing charges which would be treated as income if both such expenditure were incurred wholly and exclusively for the purposes of such petroleum operations and such asset were used wholly and exclusively for the purposes of such operations shall be computed in accordance with the provisions of this Schedule.

(c) So much of the allowances and charges computed in accordance with the provisions of subparagraph (2) of this paragraph shall be due or

shall be so treated, as the case may be, as in the opinion of the Revenue Service is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

Disposal without change of Ownership (Paragraph 18)

Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of that asset after the date of such disposal:

(a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be left out of account; but

(b) such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal:

Fixed Assets Acquired Under Hire Purchase

Fixed assets acquired under hire purchase agreements will qualify for capital allowances only to the extent of the amount of the instalments paid during the accounting period.

The interest element of the installmental payments is also to be eliminated from the amount to be capitalised: this will be an allowable deduction as interest on money borrowed and used for the purposes of petroleum operations. This is the same treatment applicable to companies assessable to tax under the provisions of the Companies Income Tax Act.

Capital Allowance Rates

1. **Petroleum Investment Allowance**
   Qualifying expenditure in respect of

- On shore operations	5%
- Operations in territorial waters and continental shelf areas up to and including 100 metres of water depth	10%
- Operations in territorial waters and continental shelf areas in water depth between 100 metres and 200 metres	15%
- Operations in territorial waters and continental shelf areas beyond 200 metres of water depth	20%

Investment Tax Credit

- Deep Offshore and Inland Basin Production Sharing Contracts 50%

2. Annual Allowance

1st year	20%
2nd year	20%
3rd year	20%
4th year	20%
5th year	19%

16.10 ASCERTAINMENT OF ASSESSABLE TAX AND CHARGEABLE TAX

Assessable Tax – Rates of Tax

(a) The assessable tax for any accounting period of a company shall be an amount equal to eighty-five percent of the chargeable profits of that period (Section 19(1). (This is applicable to crude export sales alone)

(b) Where a company has not yet commenced to make a sale or bulk disposal of chargeable oil under a programme of continuous production and sales as at 1 April 1977, its assessable tax for any accounting period during which it has not fully amortized all pre-production capitalised expenditure due t it less the 1% amount to be retained in the book, shall be 65.75% of the chargeable profits for that period.

(c) For local crude sales, the rate applicable is 65.75%. Although this is not in PPTA, it is one of the concessions available to the oil companies through the side letters.

(d) For natural gas sales, the tax rate is 40%. This is also not in PPTA. It is granted in a similar manner to the special rate of 65.75% for crude sold locally.

(e) In respect of companies operating the Deep Offshore and Inland Basin Production Sharing Contracts as contained in Decree 9 of 1999, the applicable rate is 50% of chargeable profits.

Chargeable tax (Section 20)

A new Section 20 introduced in the 1999 amendment is as follows:

(a) A crude oil producing company which executed a Production Sharing Contract with the Nigerian National Petroleum Corporation in 1993 shall, throughout the duration of the Production Sharing Contract, be entitled to claim an investment tax credit as an offset against tax in accordance with the provisions of the Production Sharing Contract.

(b) The investment tax credit rate applicable to the contract area shall be fifty per cent flat rate of chargeable profit for the duration of the Production Sharing Contract.

(c) In computing the tax payable, the investment tax credit shall be applicable in full to petroleum operations in the contract area such that the chargeable tax is the amount of the assessable tax less the investment tax credit.

(d) The chargeable tax computed under subsection (3) of this Section shall be split between the Nigerian National Petroleum Corporation and the crude oil producing company in accordance with the proportion of the percentage of profit oil split.

(e) In this Section 'contract area" means the contract area as defined in the Production Sharing Contract;

"Production Sharing Contract" has the meaning assigned to it in the Deep Offshore and Inland Basin Production Sharing Contracts Decree 1999."

It is necessary to note apparent drafting errors in this new Section 20:
In subsection 1, "investment tax credit allowance" should read 'investment tax credit'. In subsection 2, the rate of investment tax credit stated as "fifty per cent flat rate of chargeable profit" should read 50% of qualifying capital expenditure! Investment tax credit cannot be granted as a percentage of chargeable profits, it has to be as a percentage of the relevant additions to qualifying expenditure in the accounting period under consideration.

What can be extracted from the new Section 20 can, therefore, be summarised thus:

(a) It is applicable only to companies operating under the Production Sharing Contracts.

(b) Such companies are entitled to investment tax credit as a tax offset. The chargeable tax is the amount of the assessable tax less the investment tax credit. Investment Tax Credit continues to be a tax offset for those petroleum producing companies operating the Production Sharing Contracts.

(c) The investment tax credit is 50% of qualifying capital expenditure incurred in the accounting period under consideration.

(d) The rate of 50% is applicable for each accounting period throuhout the duration of each Production Sharing Contract.

(e) The burden of the chargable tax is on Nigerian National Petroleum Corporation and the other party (parties) to the particular Production Sharing Contract shared according to proportion of the percentage of profit oil split.

Tax Offsets

In accordance with former Section 17 PPTA, the following shall be deducted from assessable tax to arrive at the chargeable tax:

(a) Royalties in respect of chargeable oil won and locally disposed of during that period to the extent that those royalties are not deductible

under Section 10(1) of the Act in computing the adjusted profit of the company.

(b) Non-productive rents expenditure.

(c) Investment tax credit on qualifying expenditure.

(d) Custom or excise duty or other like charges levied in respect of items essential for use in the company's petroleum operations.

These were referred to as tax offsets, that is they were to be set off against the assessable tax computed. With the various amendments to the PPTA and the promulgation of the Deep Offshore and Inland Basin Production Sharing Contracts Decree 1999, all the items above except (c) are now Section 10 tax deductible. They are no longer to be treated as tax offsets.

In respect of item (c), Investment tax credit on qualifying expenditure, this is now only applicable to companies operating under the Deep Offshore and Inland Basin Production Sharing Contracts Decree 1999. It is still to be treated as tax offset in the tax computations of such companies for all Production Sharing Contract signed on or before 1 July 1998. (The Finance Miscellaneous Taxation Provision Decree, Decree 30, 1999, limits Investment Tax Credits to Production Sharing Contract (PSC) signed with NNPC before 1993. This apparent conflict with the relevant provision of the PSC Decree has to be ignored!). However, it is no longer applicable in respect of other petroleum companies that are not operating under the Deep Offshore and Inland Basin Production Sharing Contracts Decree 1999. These companies are entitled to Petroleum Investment Allowance which is treated in the same way as an annual allowance is treated in Petroleum Profits Tax Computations.

Additional Chargeable Tax (Section 21)

In Section 9 of the PPTA, the calculation of the profits of an accounting period is expected to be based on the actual proceeds of sale of crude oil export as made by the company. For instance, if the actual market selling price of one barrel of crude oil is $40 and a company exports its own crude at say $10 per barrel, on the basis of the provision of Section 9 of the PPTA, the company's accounting profit for that accounting year would be calculated on the basis of the $10 per barrel export sales proceeds plus the other sales. In such a situation, it is not likely that the accounts of the company would show a profit, super profits being made by its associates overseas to which the crude would have been sold at very low selling prices.

Section 21 was introduced partly for the purpose of discouraging such abuse and to ensure that sales of crude oil made by companies engaged in petroleum operations are made at prices that would align with the market prices.

The provision of Section 21 is to the following effect:

(a) Actual proceeds of sales of crude oil exported are computed, applying the actual selling prices. The resultant figure is used in the computation of the accounting profit and chargeable tax for the accounting period; and

(b) A sort of notional sales proceed of crude oil exported (what the sales proceed could have been) is also computed, applying what is referred to as the posted prices in place of the actual selling prices by the company. The amount arrived at would also be used in the computation of the profits as well as the chargeable tax of the accounting period of the company.

The chargeable tax arrived at by applying the posted prices is comparedwith that arrived at by applying the actual export sales prices and the higher of the two shall be the final chargeable tax of the company for that accounting period. Thus, if the chargeable tax arrived at by applying the posted prices is higher, the comany shall be liable to pay an additional amount of chargeable tax for that period equal to the difference between the two amounts.
The whole of any additional chargeable tax payable by a company by virtue of this provision for any accounting period shall be payable concurrently with the final installment of the chargeable tax payable fr that period.

ILLUSTRATION 16-1

The chargeable tax of Danak Oil Producing Limited, a company engaged in petroleum operations in Nigeria, was computed to be ₦475,500,000, on the basis of the actual sales prices of crude oil exported by the company for the 2008 accounting year. On the basis of the posted prices applicable during the accounting year the chargeable tax was computed to be ₦587,600,000. What is the additional tax payable and when should it be paid?

SUGGESTED SOLUTION 16-1

The additional tax payable is as follows:	₦
Chargeable tax on the basis of the posted prices	587,600,000
Less: Chargeable tax on the basis of actual prices of exported crude	475,500,000
Additional tax payable	112,100,000

The additional tax of ₦112,100,000 is payable together with the final installment of the chargeable tax for the 2008 accounting year within a period of twenty-one days from the date of service of the notice of assessment of tax for the accounting period.

The above shows what should be the treatment in accordance with the provisions of PPTA. However, a short cut approach that is being used in tax computations is to replace the sales prices with the posted prices (if posted

prices are higher, frequently posted prices will be higher) with regards to crude oil exported, in the calculation of fiscal value of chargeable oil sold. This will automatically take care of the additional chargeable tax payable.

16.11 CONCEPTS AND COMPUTATIONS OF POSTED PRICES

Posted price

Posted price in relation to any crude oil exported from Nigeria by a company means the price f.o.b. at the Nigerian port of export for crude oil of the gravity and quality in question which is from time to time established by the company, after agreement with the Government of Nigeria as to the procedure to be followed for the purpose as its posted price for Nigerian crude oil of that gravity and quality (Section 21(5).

Every posted price established as aforesaid must bear a fair and reasonable relationship:

(a) to the established posted prices of Nigerian crude oils of comparable quality and gravity, if any; or

(b) if there are no such established posted prices for such Nigerian crude oils, to the posted prices at main international trading export centres for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and all other relevant factors.

The posted price for each type of crude oil stream is advised by the Organisation of Petroleum Exporting Countries (OPEC). With the information from OPEC, each member country sets the posted price, taking into account the sulphur content, freight differentials and other local factors.

The measurement unit for crude oil for posted prices purposes is "degrees API". API (American Petroleum Institute) is a unit of specific gravity measurement approved by the American Petroleum Institute. Posted prices are quoted in the United States dollars per barrel at a specified API for each crude oil stream. For every degree of API above the Standard API for the crude oil stream, the posted price is increased by US$0.03 per barrel. For every degree API below the Standard, the posted price is decreased by US$0.03 per barrel. Nigeria's crude is of a maximum API of 400.

ILLUSTRATION 16-2

The crude oil exported from Nigeria by Marina Oil Limited in December 2008 was 30^0 API. The posted price advised by the Nigerian National Petroleum Corporation (NNPC) is US$45.50 for the crude stream with a Standard API of 35^0. What is the posted price for the crude oil exported by Marina Oil Limited?

SUGGESTED SOLUTION 16-2

			$
Posted price as advised by NNPC at 35^0 API			45.50
Standard API		35^0	
Gravity of oil exported		(30^0)	
Decrease in API from standard		5^0	
Reduction in posted price	5^0 x $0.03		(0.15)
Posted price for the crude oil exported by the company			45.35

16.12 BUSINESS SOLD OR TRANSFERRED (SECTION 15)

Consider the following situation:

(a) A business is sold by a Nigerian company to another Nigerian company for the purposes of better organisation; or

(b) There is a transfer of the management of a business to Nigeria;

(c) The assets employed in the business in (a) and/or (b) above is also sold;

(d) The Revenue Service is satisfied that one of those companies has control over the other or that both are controlled by some other person or are members of a recognised group of companies, then the following shall be applicable:

(i) If the first sale or bulk disposal of chargeable oil by the selling company has occurred, but has not occurred in case of the acquiring company:

- The first accounting period of the acquiring company shall be a period of twelve months from the date on, or within the calendar month in, which the sale of the business takes place as may be selected by the Nigerian company. This will be at the discretion of the Revenue Service and through a directive to the company to select the period. Such selection is subject to the approval of the Revenue Service.
- Subsequent accounting periods shall also be decided by reference to this first accounting period, that is, in this stuation, the company's accounting period may not necessarily be fro 1 January to 31 December.

(ii) For capital allowance purposes,the asset sold shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure of the asset on the day following the date of sale.

(iii) Initial allowance cannot be claimed on the asset by the acquiring company and the company would be deemed to have received all capital allowances granted to the selling company up to the date of sale.

Nigerian company as used in this Section means any company incorporated under the Companies and Allied Matters Act, 1990 (as updated) or any enactment replaced by that Act.

16.13 RECONSTITUTED COMPANY (SECTION 16)

Where:

(a) A company (the reconstituted company) is incorporated under the Companies and Allied Matters Act 1990 (as updated);

(b) The reconstituted company is to carry on any trade or business of petroleum operations previously carried on in Nigeria by a foreign company;

(c) Assets employed in Nigeria by the foreign company in that trade or business vest in the reconstituted company; and

(d) If the Revenue Service is satisfied that the trade or business carried on by the reconstituted company immediately after incorporation is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company;

Then the following shall be applicable:

(a) If as respects the trade or business previously carried on in Nigeria by the foreign company the first sale of or bulk disposal of chargeable oil by or on behalf of the foreign company has occurred on or before the date on which the reconstituted company is incorporated-

  (i) the first accounting period of the reconstituted company shall be the period of twelve months commencing on the date on which that company is incorporated, or commencing on such date within the calendar month in which the company is incorporated as may be selected by the company with the approval of the Revenue Service, and

  (ii) An accounting period as respects the reconstituted company shall be a period of twelve months commencing on sch date within the calendar month in which the reconstituted company is incorporated as may be selected by the company with the approval of the Revenue Service. The definition of "accounting period" shall be construed accordingly.

(b) The assets so vested in the reconstituted company hall be deemed to have been sold to it, on the day of its incorporation, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign company ceased;

(c) The reconstituted company shall not be entitled to any initial allowances as respects those assets, and shall be deemed to have received all allowances given to the foreign company in respect of those assets.

(d) In addition any unrelieved loss of the foreign company shall be deemed to be a loss incurred by the reconstituted company in its trade or business during its first accounting period and will be eligible for relief accordingly. An application for the relief of such loss must be submitted to the Chief Petroleum Engineer with a copy to the Revenue Service within two years after the incorporation of the reconstituted company.

In this Section, "foreign company" means a company incorporated outside Nigeria before 18 November 1968, and having on that date an established place of business in Nigeria.

Revenue Service's Power to Call for Returns

For the purposes of Sections 15 and 16 of the Act, the Revenue Service may by notice require any person (including a company to which any assets are sold or transferred, or in which any assets have vested in pursuance of Companies and Allied Matters Decree, to complete and deliver to the Revenue Service any returns specified in the notice or any such information as the Revenue Service may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, not being a period of less than twenty-one days from the service thereof. (Section 17).

16.14 ACCOUNTS AND PARTICULARS

Accounts and tax computation (Section 28)

For each accounting period the company shall make up accounts of its profits or losses arising from petroleum operaions in that period as well as the following particulars:

(a) computations of its estimated adjusted profit or loss and of its estimated assessable profits of that period;

(b) capital allowances computation schedules showing –
   - (i) the residues of its assets at the end of that period,
   - (ii) all qualifying petroleum expenditure incurred by it in that period,
   - (iii) the values of any assets disposed of in the period,
   - (iv) the capital allowances due to it for the period.

(c) computation of its estimated chargeable profits of the period;

(d) a statement of other sums, deductible under Section 20 (items deductible from assessable tax to arrive at chargeable tax), the liabilities for which were incurred during that period;

(e) a statement of all amounts repaid, refunded, waived or released during that period in respect of amounts deducted under Section 20 in prior periods;

(f) a computation of its estimated tax for the period.

At the end of the accounting period, the actual tax payable will be computed. The tax computation based on the audited accounts of the company will be submitted to the tax office accompanied with all required documents.

Time limit for submission

A copy of the audited accounts of the company together with copies of all the particulars listed above are to be delivered to the Revenue Service within five months after the expiration of the company's accounting period. Such documents must be signed by a duly authorised officer of the company to the effectthat they are true and complete.
The Revenue Service may grant extension of the time limit if some good reason is shown by the company to the satisfaction of the Revenue Service why the company cannot comply with the deadline.

Returns of Estimated Tax (Section 31)

Within two months of the commencement of each accounting period, the company should submit to the Revenue Service, a return of its estimated tax for theaccounting period.
A revised estimated tax for the period will need to be submitted as well at any time duing the accounting period that the company is aware that the original estimate requires revision.
The estimate wil be replaced with the actual at the end of the company's accounting period after the statutory audit of its financial statements is concluded.

Unit of Currency

Al income tax computations made under Section 28 and Section 31 of the PPTA shall be made in the currency in which the transaction was effected. Accordingly and notwithstanding anything to the contrary in any law, any assessment made under Section 35(1) of the PPTA shall also be made in the currency in which the computation giving rise to the assessment was made. (Section 37A1 and A2).

16.15 ASSESSMENT AND APPEAL PROCEDURES (SECTION 33)

Assessments

(a) The Revenue Service shall proceed to assess every company for the tax for any accounting period of the company as soon as possible after the expiration of the time allowed to such compny for the delivery of the accounts and particulars provided for in Section 28 of the Act.

(b) Where a company has delivered accounts and particulars for any accounting period of the company, the Revenue Service may:

    (i) accept the same and make an assessment accrdingly; or

(ii) refuse to accept the same and proceed as provided in subsection (3) of this Section upon any failure as therein mentioned with attendant consequences.

Best Of Judgment (BOJ) Assessment

Where, for any accounting period of a company, the company has

(a) failed to deliver accounts and particulars provided for in Section 28 of the Act within the time limited by that Section or

(b) failed to comply with any notice given to it under the provisions of Section 29 or 30 of the Act within the time specified in such notice, or within any extended time provided for in Section 32 of the Act; and

(c) the Revenue Service is of the opinion that such company is liable to pay tax.

The Revenue Service may estimate the amount of the tax to be paid by such company for that accounting period and make an assessment accordingly (BOJ assessment).

Such assessment shall not affect ay liability otherwise incurred by such company by reason of its failure or neglect to deliver such accounts and particulars or to comply with such notices; and nothing in this subsection shall affect the right of the Revenue Service to make any additional assessment under the provisions of Section 34 of the Act (Section 33).

Additional Assessments (Section 34)

(a) If the Revenue Service discovers or is of the opinion at any time that, with respect to any company liable to tax,

(i) tax has not been charged and assessed upon the company or

(ii) has been charged and assessed upon the company at a less amount than that which ought to have been charged and assessed for any accounting period of the company,

The Revenue Service may within six years after the expiration of that acounting period and as often as may be necessary,

- assess such company to tax for that accounting perid at such amount or additional amount as in the opinion of the Revenue Service ought to hae been charged and assessed, and
- may make any consequential revision of the tax charged or to be charged for any subsequent accounting period of the company (Section 34 (1)).

(b) Where a revision under subsection(1) of this Sectin results in higher amount of tax to be charged than has been charged or would otherwise be charged, an additional assessment or an assessment for any such subsequent accounting period shall be made accordingly. The provisions of The Act as to notice of assessment, objectin, appeal and

other proceedings under the Act shall apply to any such assessment or additional assessment and to the tax charged thereunder. (Section 34(2))

(c) For the purpose of computing the amount or the additional amount of tax for any accounting period of a company which ought to have been charged, all relevant facts consistent with subsection (3) of Section 40 of the Act shall be taken into account even though not known when any previous assessment or additional assessment on the company for that accounting period was being made or could have been made: Section 34(3)

(d) Notwithstanding the other proisions of this Section, where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under the Act, the Revenue Service may, at any time and as often as may be necessary, assess the company on such amount as may be necessary for the purpose of recovering any loss of tax attributable to the fraud, wilful default or neglect. (Section 34(4)).

Form of Assessment

(a) Assessments of tax shall be made in such form and in such manner as the Revenue Service shall authorise and shall contain:
   (i) the names and addresses of the companies assessed to tax or
   (ii) of the persons in whose names any companies (with the names of such companies) have been assessed to tax,
   (iii) the particular accounting period
   (iv) the amount of the chargeable profits for the period
   (v) the amount of the assessabe tax for the period
   (vi) the amount of the chargeable tax for the period. (Section 35(1))

(b) When any assessment requires to be amended or revised, a form of amended or revised assessment shall be made in a manner similar to that in which the original of that assessment was made under subsection (1) of this Section but showing the amended or revised amount of the chargeable profits, assessable tax and chargeable tax. (Section 35(2))

(c) A copy of each assessment, and of each amended or revised assessment shall be filed in a list which shall constitute the Assessment List for the purpose of the Act (Section 35(3)).

Notice of Assessment

The Revenue Service shall cause to be served personally on or sent by registered post to each person whose name appears on an assessment in the Assessment List, a notice of assessment. The notice of assessment shall state:

(a) The company's accounting period;
(b) The amount of its chargeable profits;
(c) The assessable tax;
(d) The chargeable tax charged and assessed upon the company;
(e) The place at which payment of the tax should be made; and
(f) Informing such company of its rights under subsection (2) of this Section (Section 36(1)).

Objection

If any person in whose name an assessment was made in accordance with the provisions of the Act disputes the assessment, that person may apply to the Revenue Service, by notice of objection

(a) The notice of objection has to be given in writing.
(b) The taxpayer will ask the Revenue Service to review and revise the assessment.
(c) The application shall be made within twenty one days from the date of service of the notice of assessment.
(d) It shall state the amount of chargeable profits of the company for the accounting period in respect of which the assessment is made.
(e) It shall state the amount of the assessale tax.
(f) It shall also state the tax which such person claims should be stated on the notice of assessment (Section 36(2).

The Revenue Service, upon being satisfied that owing to absence from Nigeria, sickness or other reasonable cause, the person in whose name the assessment was made was prevented from making the application within such period of twenty-one days shall, extend the period as may be reasonable in the circumstances (Section 36(3)).

After receipt of notice of objection referred to in subsection (2) of this Section the Revenue Service may within such time and at such place as the Revenue Service shall specify, require the person giving the notice of objection to furnish such particulars as the Revenue Service may deem necessary, and may by notice within such time and at such place as the Revenue Service shall specify, require any person to give evidence orally or in writing respecting any matters necessary for the ascertainment of the tax payable, and the Revenue Service may require such evidence if given orally to be given on oath or if given in writing to be given by affidavit (Section 36(4)).

Amended Assessment

In the event of any person assessed who has objected to an assessment made upon him with respect to the amount of tax liable on assessment, such assessment shall be amended accordingly, and notice of the tax payable shall be served upon such person (Section 36(5)).

Notice of Refusal to Amend

If an applicant for revision under the provisions of subsection (2) of this Section fails to agree with the Revenue Service the amount of the tax, the Revenue Service shall give such applicant notice of refusal to amend the assessment as desired by such applicant, and may revise the assessment to such amount as the Revenue Service may determine and give such applicant notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in the Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this subsection (Section 36(6)).

Errors in Assessment Notices

No assessment, warrant or other proceeding, purporting to be made in accordance with the provisions of the Act shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of the Act or any Act amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding (Section 37(1)).

An assessment shall not be impeached or affected

(a) by reason of a mistake therein as to:
   (i) the name of a company liable or of a person in whose name a company is assessed, or
   (ii) the amount of the tax;

(b) by reason of any variance between the assessment and the notice thereof, if in cases of assessment, the notice thereof be duly served on the company intended to be assessed or on the person in whose name the assessment was to be made on a company, and such notice contains, in substance and effect, the particulars on which the assessment is made (Section 37(2)).

Appeals To Appeal Commissioners

Any person (being a company or a person in whose name a company is assessed) being aggrieved by an assessment made upon him, who has failed to agree with the Revenue Service as referred to in Section 36(6) of the Act, may appeal against the assessment to the appropriate Appeal commissioners upon giving notice in writing to the Revenue Service and to the secretary to such Commissioners within thirty days after the date of service upon him of

notice of the refusal of the Revenue Service to amend the assessment as desired:

Provided that notwithstanding the lapse of such period of thirty days, by not more than a further period of sixty days, such person may appeal against the said assessment if he gives such Commissioners particulars mentioned in paragraphs (a) to (c) inclusive of subsection (2) of this Section and if he shows to their satisfaction that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the Commissioners being so satisfied, such person shall give such notice in writing to the Revenue Service and to such secretary within seven days thereof (Section 38(1)).

A notice of an appeal against an assessment, to be given under subsection (a) of this Section, shall specify the following particulars:

(i) the official number of the assessment and the accounting period for which it was made;

(ii) the amount of the tax charged by the assessment;

(iii) the date upon which the appellant was served with notice of refusal of the Revenue Service to amend the assessment as desired;

(iv) the precise grounds of his appeal against the assessment; and

(v) an address for service of any notices, precepts or other documents to be given, by the secretary to the appropriate Appeal Commissioners, to the appellant:

Provided that at any time the appellant may give notice to such secretary and to the Revenue Service, by delivering the same or by registered post, of a change of such address but any such notice shall not be valid until delivered or received (Section 38(2)).

For the purposes of this Section, the appropriate Appeal Commissioners and their secretary to whom an appellant may give notice of appeal against an assessment under subsection (1) of this Section shall be the Body of Appeal Commissioners, if any, established, under the provisions of Section 53(1) of the Companies Income Tax Act, for the area in which is situated the office of the Federal Inland Revenue Service from which the notice of that assessment was issued (Section 38(3)).

For the purposes of the Act, the provisions of Sections 54 and 55 of the Companies Income tax Act shall apply in like manner as they apply to the provisions of the last mentioned Act (Section 38(4).

The provisions of subsections (5), (7), (8) and (9) of Section 39 of the Act shall apply to an appeal under this Section with any necessary modifications (Section 38(5)).

All appeals shall be heard in camera (Section 38(6)):

(a) The Minister may make rules prescribing the procedure to be followed with respect to precepts and other like documents to be issued on behalf of Appeal Commissioners, for the examination of witnesses and in the conduct of appeals before them (Section 38(7a)).

(b) Pending the making of any rules under this subsection, any rules made or to be made (or any rules replacing any such rules) under Section 55(12) of the Companies Income Tax Act shall apply to any appeal or to any such procedure for the purpose of this Section and Act with any necessary modifications (Section 38(7b)).

Appeals To The Federal High Court

Any person who, having appealed against an assessment made upon him to the appropriate Appeal Commissioners under the provisions of Section 38 of the Act, is aggrieved by the decision of such Commissioners may appeal against the assessment and such decision to the Federal High Court upon giving notice in writing to the Revenue Service within thirty days after the date upon which such decision was given (Section 39(1)).

Notwithstanding the lapse of such period of thirty days but not more than a further period of sixty days, such person may appeal against the said assessment and decision if he shows to the satisfaction of the judge that, owing to absence from Nigeria, sickness or other reasonable cause he was prevented from giving notice of appeal within such period of thirty days, and that there has been no unreasonable delay on his part; and upon the judge being so satisfied such person shall give such notice in writing to the Revenue Service within seven days thereof (Section 39(2)).

Where no appropriate Body of Appeal Commissioners has been appointed with jurisdiction to hear an appeal, against an assessment made upon any person, under the provisions referred to in subsection (3) of Section 38 of the Act, such person being aggrieved by the assessment and having failed to agree with the Revenue Service as referred to in subsection (6) of Section 36, shall appeal against the assessment to the Federal High Court upon giving notice in writing to the Revenue Service within thirty days after the date of service upon him of notice of the refusal of the Revenue Service to amend the assessment as desired and the provisions of subsection (2) of this Section, so far as they are applicable, shall apply (Section 39(3)).

If the Revenue Service is dissatisfied with a decision of the Appeal Commissioners, it may appeal against the decision to the Federal High Court upon giving notice in writing to the other party to the appeal under Section 38 of the Act upon which such decision was given, within thirty days after the date upon which such decision was given and the provisions of this Section, so far as they are applicable, shall apply to any such appeal to the Federal High Court by the Revenue Service (Section 39(4)).

Every company appealing shall appoint an authorised representative who shall attend before the court in person on the day and at the time fixed for the hearing of its appeal, but if it be proved to the satisfaction of the judge that owing to absence from Nigeria, sickness or other reasonable cause any duly appointed representative is prevented from attending in person at the hearing of the company's appeal on the day and at the time fixed for that purpose, the judge may postpone the hearing of the appeal for such reasonable time as he thinks necessary for the attendance of the appellant's representative, or he may permit the appeal to be made by any other agent, clerk or servant of the appellant, on its behalf or by way of written statement (Section 39(5)).
Twenty-one clear days' notice shall, unless rules made hereunder otherwise provide, be given to the Revenue Service of the date fixed for the hearing of the appeal (Section 39(6)).

The onus of proving that the assessment complained of is excessive shall be on the appellant (Section 39(7)).
The judge may confirm, reduce, increase or annul the assessment or make such order thereon as may seem fit to him (Section 39(8)).
Notice of the amount of tax payable under the assessment as determined by the judge shall be served by a duly authorised representative of the Revenue Service either personally on, or by registered post to, the appellant (Section 39(9)).

Notwithstanding anything contained in Section 44 of the Act, if in any particular case, the judge from information given at the hearing of the appeal, is of the opinion that the tax may not be recovered, he may on application being made by or on behalf of the Revenue Service require the appellant to furnish within such time as may be specified security for payment of the tax and if such security is not given within the time specified the tax assessed shall become payable and recoverable forthwith (Section 39(10)).
All appeals shall be heard in camera, unless the judge shall, on the application of the appellant, otherwise direct (Section 39(11)).

The costs of the appeal shall be at the discretion of the judge hearing the appeal and shall be a sum fixed by the judge (Section 39(12)).

(a) The Chief Judge of the Federal High Court may make rules providing for the method of tendering evidence before a judge on appeal, the conduct of such appeals and the procedure to be followed by a judge upon stating a case for the opinion of the Court of Appeal.

(b) Pending the making of any rules under this subsection, the rules applicable in civil appeal cases from Magistrates Court to the High Court shall apply to any appeal or to any such procedure, for the purposes of this Section and Act with any necessary modifications.

(c) Notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the Federal High Court within one month of notification of the amount of the tax payable in pursuance to subsection (9) of this Section (Section 39(13)).

An appeal against the decision of the judge shall lie to the Court of Appeal:

(a) at the instance of the appellant where the decision of the judge is to the effect that the correct assessment of tax is in the sum of ₦1,000 or upwards, and

(b) at the instance of the Revenue Service where the decision of the judge is in respect of a matter in which the Revenue Service claimed that the correct assessment of tax was in the sum of ₦1,000 or upwards (Section 39(14)).

16.16 PERSONS CHARGEABLE

Section 22(1) of the Act makes it an offence for any person (other than a company) to engage in petroleum operations in any form with a view to sharing the profits arising from such operations. It is therefore certain that PPT is payable only by companies.

Where companies are engaged in petroleum operations in partnership or in a joint venture under any scheme or arrangement, the Minister may make rules modifying the provisions of the PPTA for the ascertainment of the tax to be charged and assessed upon each of the companies involved. The effect of any such rules shall not be to impose a greater burden of tax on any company engaged in such partnership or joint venture than the proportion of its share of the benefits therefrom.

Non-resident company (Section 23)

A non-resident company engaged in petroleum operations shall be assessable and chargeable to tax as if it were resident either, directly or in the name of its manager, or in the name of any other person who is resident in Nigeria and employed in the management of the petroleum operations of the company.

The person in whose name a non-resident company is assessable and chargeable to tax shall be answerable –

(a) for all matters required to be done by virtue of the Act for the assessment of the tax as might be required to be done by such non-resident company if it were resident in Nigeria, and

(b) for paying any tax assessed and charged in the name of such person.

Resident company (Section 24)

The manager or any principal officer in Nigeria of every company engaged in petroleum operations shall be answerable for doing all such acts as are required to be done by virtue of the Act for the assessment and charge to tax of such company and for payment of such tax.

Company in receivership or liquidation

A company being wound up or under a receiver may be assessed and charged to tax, in the name of the liquidator or receiver or any agent of the liquidator or receiver, for any accounting period whether before, during or after the date of appointment of the liquidator or receiver. Any such liquidator, receiver or agent shall be answerable for doing all such acts as are required to be done by virtue of the Act, for the assessment and charge to tax of such company and for payment of the tax.

The distribution of the assets of the company to the shareholders or debenture holders thereof should not be made unless adequate provision has been made for the payment in full of any tax which may be found payable by the company.

16.17 COLLECTION AND REPAYMENT OF TAX

Payment dates

The tax for any accounting period shall be payable in twelve equal monthly instalments together with a final instalment. Te first monthly installment is due and payable not later than the third month of the accounting period. The amount payable is one-twelfth of the estimated tax for the year. A "returns of estiated tax" is expected to have been made by the company to the Revenue Service in accordance with the provision of Section 31(1) and should have been filed not later than two months from the commencement of the accounting period. It is the estimated tax on such returns that will be divided into twelve for the purpos of the monthly instalments payable.

Where the accounting period is less than one year, the amount payable shall be proportional to the total number of mnths in the period. Subsequent monthly instalments are due and payable not later than the last day of the month in question. The final instalment is due and payable within twenty-one days after the service of the notice of assessment of tax for the accounting period. The amount of this final instalment is the amount of tax assessed for the accounting priod less the total of the amounts paid by the twelve instalments. The payment dates in respet of each accounting period are summarised below:

Petroleum Profits Tax payment dates

Instalment		Payment dates
1st	Due and payable by	31st March of the accounting period
2nd	Due and payable by	30th April of the accounting period
3rd	Due and payable by	3st May of the accounting period
4th	Due and payable by	30t June of the accounting period
5th	Due and payable by	31t July of the accounting period
6th	Due and payable by	31t August of the accounting period
7th	Due and payable by	0th September of the accounting period
8th	Due and payable by	31st October of the accounting period
9th	Due and payable by	30th November of the accounting period
10th	Due and payable by	31st December of the accounting period
11th	Due and payable b	31st January of the next accounting period
12th	Due and payabe by	28th or 29th February of the next accounting period

Tax subject to objection or appeal

Where any tax is a subject of an objection or appea, that tax shall be held over, pending the result of the objection or appeal. Nevertheless the Revenue Service may enforce payment of that portion of the tax (if any) which is not in dispute.

The tax outstanding under the assessment as determined on such objection or appeal as the case may be is payable as follows:

(a) The amount of the tax held over is payable immediately; and
(b) While any additional sum to the amount held over is payable within one month from the date of service of the notification of the tax payable

Penalty

If any installment of tax due and payable is not paid within the appropriate time limit referred to above, a penalty of 5% of the amount of the installment shall be added and become payable. (Note that the rate is stated as 5% in the Act, it is not stated as "per annum" as the case is with the equivalent penalty applicable in CITA and PITA). A demand note will thereafter be served on the company and payment is to be made (of the tax and the penalty) within one month of the date of the service of the demand note.

Any company who without lawful justification or excuse, the proof of which is on the company, fails to pay the tax within this period of one month shall be guilty of an offence. The Revenue Service may, for any good cause shown, remit the whole or any part of the penalty.

Error or mistake claim

The provisions in Section 46 of PPTA with regard to error or mistake claim are as follows:

(a) If any person who has paid tax for any accounting period alleges that, assessment made upon him or in his name for that period, was excessive by reason of some error or mistake in the accounts, particulars or other written information supplied by him to the Revenue Service for the purpose of the assessment, such person may make an application in writing to the Revenue Service for relief. Such an application can be made at any time not later than six years after the end of the accounting period in respect of which the assessment was made.

(b) On receiving such application the Revene Service shall inquire into the matter and subject to the provisions of this Section shall, by way of repayment of tax, give such relief in respect of the error or mistake as appears to the Revenue Service to be reasonable and just.

(c) No relief shall be given if such accounts, particulars or information was in fact made or given on the basis or in accordance with the practice of the Revenue Service generally prevailing at the time when such accounts, particulars or information was made or given. In other words an error in the basis of assessment through the application of a practice then prevailing is not a ground for relief.

(d) In determining any application under this Section the Revenue Service shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the chargeable profits of the applicant, and for this purpose the Revenue Service may take into consideraion the liability of the applicant and assessments made upon him in respect of other years.

(e) No appeal shall lie from a determination of the Revenue Service under this Section, which determination shall be final and conclusive.

Repayment of tax

The Revenue Service shall give a certificate of the amount of any tax to be repaid under any of the provisions of the PPTA or under any order of a court of competent jurisdiction. Upon the receipt of the certificate, the Accountant General of the Federation shall cause repayment to be made in conformity with the certificate.

Repayment claim must be made in writing within six years next after the end of the accounting period to which it relates. If the Revenue Service disputes any such claim, a notice of refusalto admit the claim shall be given to the claimant and the provisions of the Act with regard to objections and appeals shall apply with any necessary modifications.

16.18 DEDUCTION OF TAX AT SOURCE

Similar to the provision of Section 59C of CITA, Section 51A has been inserted in PPTA by Decree No. 21 of 1991. The Section provides for deduction of withholding tax from payments due to any company, partnership, or person, (whether or not resident in Nigeria) who provides petroleum operations services and related activities to a company carrying on petroleum operations in Nigeria.

The services and activities affected and the applicable rates are:

Nature of service or activity	Rates of withholding tax	
	Companies	Individuals
All aspects of building construction and related activities	5%	5%
All types of contracts other than sale and purchase of goods and property	5%	5%
Consultancy and professional services	10%	5%
Management services	10%	5%
Technical services	10%	5%
Commissions	10%	5%

Other relevant provisions of the subsidiary legislation are:

(a) The deductions are not and should not be regarded as additional cost of contracts or services rendered and should therefore not be built into costs. They are deductions in lieu of tax.

(b) A person who had deducted tax from such payments shall issue a receipt for the amount of tax deducted and a statement showing details prescribed in paragraph 4 below.

(c) Such person shall forward the tax deducted and the accompanying statement to the relevant Tax Authority of the State in which the individual, receiving the payment, is resident.

(d) The person making the remittance of the deduction made shall state the following information in writing:
   - (i) Name and address of the person who suffered the tax deduction;
   - (ii) Nature of activities or services in respect of which payments were made;
   - (iii) Gross amount paid or payable;
   - (iv) Amount of tax deducted;
   - (v) Amount of tax remitted; and
   - (vi) Date of remittance.

(e) For the purpose of final assessment, the individual beneficiary of such income that had suffered deduction of tax at source shall present the original receipt issued in respect of the tax deducted at source, to the relevant Tax Authority for scrutiny whenever a claim for tax credit is made.

(f) Tax deducted from payments made to companies shall be remitted to any of the offices of the Federal Inland Revenue Service.

(g) Deductions at the rates specified above from payments made to a person shall be remitted only to the relevant tax authority of the State in which the person, that is the recipient of the payment, is deemed to be resident.

(h) A body corporate or un-incorporate and any association or institution obliged to deduct tax at source under the Act and by virtue of this Notice, but who fails to do so or having deducted tax, fails to pay over such tax to the relevant tax authority within thirty days from the date the tax was deducted or duty to deduct tax arose, shall be liable on conviction to a fine of ₦5,000 in addition to the amount of tax deducted or not deducted together with interest at the prevailing commercial rate. Such payments may also be disallowed as deduction in ascertaining the income or loss for tax purposes of the body corporate or un-incorporate, association or institution.

16.19 OFFENCES AND PENALTIES

The following are offences and the related penalties as specified in PPTA:

Offences	Penalties
1. Failure to comply with the requirements of a notice served by the Revenue Service	A fine of ₦10,000. Where the offence arose from failure to deliver accounts or particulars or returns a further sum of ₦2,000 for each and every day during which the failure continues. In default of payment is imprisonment for six months
2. Failure to make up accounts of the company's profits or losses and prepare necessary particulars	As for (1) above
3. Failure to attend, without sufficient cause, in answer to a notice or summons served by the Revenue Service or having attended,failure to answer any question lawfully put.	As for (1) above
4. Failure to submit the return of the company's estimated tax within two months of the commencement of an accounting period.Failure to submit a revision of the estimate when necessary is also an offence.	As for (1) above
5. Preparation of incorrect accounts (understating profits or overstating losses) and particulars or schedules required by the Act.	A fine of ₦1,000 and double the amount of the tax which has been undercharged in consequence of such incorrect document or information.

6. Giving any incorrect information in relation to any matter or thing affecting a person's liability to tax.	As for (5) above
7. Knowingly making any false statement or false representation or using any forged document with a view to obtaining a deduction.	A fine of ₦1,000 plus treble the amount of tax involved or to imprisonment for six months, or to both such fine and imprisonment.
8. Aiding, abetting, assisting, counseling, inciting or inducing any other person to:(a) Prepare and submit false accounts and returns or(b) refuse or neglect to pay tax	As for (7) above
9. Any member of the Revenue Service or any assistant employed in connection with the assessment and collection of tax who – (i) demands an amount in excess of the authorised assessment of tax payable (ii) withholds for his own use or otherwise part of the tax collected (iii)renders a false return (verbal or written) of the amount of tax collected by him (iv) defrauds, embezzles or otherwise uses his position to deal wrongfully either with the Revenue Service or any other individual (v) collects or attempts to collect the tax without being authorised shall be guilty of an offence.	A fine of ₦600 or imprisonment for three years or to both such fine and imprisonment.
10. Failure to deduct withholding tax or failure to remit the tax deducted to Federal Inland Revenue Service within 30 days	A fine of 200% of the tax not withheld or not remitted plus interest at the prevailing commercial rate.

The penalty that applies to any other offence under the Act for which the penalty is not specifically stated is as in (1) above, that is, a fine of ₦10,000 plus ₦2,000 per day where the offence has to do with failure to deliver a return. An example of an offence for which a penalty is not specifically stated is the failure to pay tax and penalty within one month of the date of issuing a demand note.

The institution of proceedings for or the imposition of a penalty, fine or term of imprisonment in accordance with the provisions of the Act shall not relieve any person from liability to payment of any tax for which he is or may become liable.

16.20 DOUBLE TAXATION ARRANGEMENT (SECTION 56)

(a) If the Minister by order declares that arrangements specified in the order have been made with the Government of any territory outside Nigeria with a view to affording relief from double taxation in relation to tax imposed under the provisions of the Act and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in any enactment.

(b) The Minister may make rules for carrying out the provisions of any arrangements having effect under this Section.

(c) An order made under the provisions of subsection (1) of this Section may include provisions for relief from tax for accounting periods commencing or terminating before the making of the order and provisions as to income (which expression includes profits) which is not itself liable to double taxation.

(d) Where, before the publication of the Act in the Federal Gazette upon enactment, any order has been made under the provisions of Section 33 of the Income Tax Act and the arrangements specified in that order, with any modifications, are expressed to apply to a tax in a territory outside Nigeria and to income tax in Nigeria and to any other taxes of a substantially similar character either imposed in that territory or Nigeria or imposed by either contracting party to any such arrangements after those arrangements came into force and:

(i) Such order was made before 1 January, 1958, then, for the purposes of the Act, that order shall be deemed to have been made under this Section on that day, and those arrangements shall have effect, in Nigeria, as respects tax for any accounting period; or

(ii) Such order was made on a day after the year 1957, then, for the purposes of theAct, that order shall be deemed to have been made under this Section on that day and the arrangements specified therein shall have effect, in Nigeria, as respects tax for any accounting period beginning on or after the date when those arrangements come into force, and for the unexired portion of any accounting period current at that date; and where any arrangements, to which this subsection applies, contin a provision for exchange of information with the Minister as defined in Section 2 of the Income Tax Act then the order, with respect to those arrangements, as deemed to have been made under this Section, shall be deemed to provide for such exchange with the Chairman of the Revenue Service as respects tax.

(e) The Minister may by order replace or vary any order deemed to have been made under this Section for the purposes of the Act, without otherwise affecting such last mentioned order for the purpose of any other Act.

Relief For Double Taxation (Section 57)

(a) The provisions of this Section shall have effect where, under arrangements having effect under Section 56 of the Act, foreign tax payable in respect of any income in the territory with the Government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Nigeria; and in this Section the expression "foreign tax" means any tax payable in that territory which, under the arrangements, is to be so allowed, and "income "means that part of the profits of any accounting period which is liable to both tax and foreign tax, before the deduction of any tax, foreign ta, credit therefore or relief granted under subsection (6) of this Section.

(b) The amount of the credit admissible to any company under the terms of any such arrangements shall be set off against the tax chargeable upon that company in respect of the income, and where that tax has been paid the amount of the credit may be repaid to that company or carried forward against the tax chargeable upon that company for any subsequent accounting period.

(c) The credit for an accounting period shall not exceed whichever is the lower of the following amounts, that is to say:
   (i) The amount of the foreign tax payable on the income, or
   (ii) The amount of the difference between the tax chargeable under the Act (before allowance of credit under any arrangements having effect under Section 56 of the Act) and the tax which would be so chargeable if the income were excluded in computing profits.

(d) Without prejudice to the provisions of subsection (3) of this Section, the total credit to be allowed to a company for any accounting period for foreign tax under all agreements having effect under Section 56 of the Act, shall no exceed the total tax which would be ultimately borne by that company, for that accounting period, if no such credit had been allowed.

(e) Where the income includes a dividend and underthe arrangements foreign tax not chargeable directly or by deduction in respect of the dividend, is to be taken into account in considering if any, and if so what credit is to be given against tax in respect of the dividend. The

amount of the income shall be increased by the amount of the foreign tax not so chargeable, which falls to be taken into account in computing the amount of the credit.

(f) Where the amount of the foreign tax attributable to the income exceeds the credit therefore computed under subsection (3) of this Section, then the amount of that income to be included in computing profits for any purpose of the Act other than that of subsection (3) of this Section, shall be taken to be the amount of that income, increased by the amount of the credit therefore after deduction of the foreign tax.

(g) Where:

(i) The arrangements provide, in relation to dividends of some classes, but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends, is to be taken into account in considering, if any, and if so, what credit is to be given against tax in respect of the dividends; and

(ii) A dividend is paid which is not of a class in relation to which the arrangements so provide, then, if the dividend is paid to a company which controls, directly or indirectly, not less than half of the voting power in the company paying the dividends, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(h) Any claim for an allowance by way of credit shall be made not later than three years after the end of the accounting period, and in the event of any dispute as to the amount allowable the Revenue Service shall give to the claimant notice of refusal to admit the claim which shall be subject to appeal in like manner as an assessment.

(i) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in Nigeria or elsewhere, nothing in the Act limiting the time for the making of assessments or claims for repayment of tax shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than three years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

(j) Where a company is not resident in Nigeria throughout an accounting period, no credit shall be admitted in respect of any income included in profits of that compan for that period.

16.21 MEMORANDUM OF UNDERSTANDING (MOU)

With effect from 1st January, 1986, the Federal Government of Nigeria entered into an agreement with the oil producing companies (Memorandum of Understanding MOU) granting certain incentives for the following objectives:

(a) enhancing crude oil exports;
(b) encouraging investments in exploration and development activities;
(c) encouraging investments in the area of enhanced oil recovery projects;
(d) encouraging investments in gas utilisation projects;
(e) encouraging increased lifting and sale of NNPC's equity crude;
(f) effectively reducing the tax impact on companies engaging in petroleum operations.

MOU applies to petroleum companies operating joint ventures with NNPC. The purpose of the incentive was to guarantee a $2 per barrel profit margin (after tax and royalty) to the oil company at a notional technical cost of $2 per barrel over the realisable price range of $12.50 - $23 per barrel. Provision was also made in the agreement for certain mechanism to be applied for establishing equitable margin to the oil company for realisable prices less than $12.50/bbl.

Conditions under which the incentives can be granted and penalties for non-compliance:

The oil companies gave the following undertakings:

(a) To lift crude oil which NNPC is unable to lift out of the NNPC equity share of the joint venture production;
(b) To carry out a work programme mutually agreed upon between NNPC and each of the oil companies; and
(c) When an oil company is unable to lift all or part of the notice volume, NNPC levies a penalty of 2% of the average realisable price for each barrel not lifted. Such penalty is not allowable as a deduction in the calculation of PPT. Where an oil company has not substantially complied with the specified work programme, a notice is served on the company. If within three months of the service of notice, the condition is not remedied, the incentives cease to apply and PPT is computed on pre-1986 basis, until the non-compliance has been remedied.

Government promised that relevant amendments will be promulgated to reflect all the terms of the Memorandum of Understanding. PPTA is yet to be amended. Nevertheless, the agreement has been amended two times but the objectives and the focus remain the same. The first revision was in 1991 and the latest version being that revised in year 2000 which became effective from 1 January, 2000.

Prior to the introduction of the incentives, fiscal regime as at 31 December, 1985 provides for computations of royalty on posted price and petroleum profit tax (PPT) on higher of actual proceeds (Section 9) or posted prices (Section 21, formerly Section 17A). The computations are based on the provisions of the Petroleum Profits Tax Act. The total of the Royalty and PPT calculated is described as Government Take (GT).

Highlights of Year 2000 Memorandum of Understanding (MOU)

(a) Guarantees oil companies a profit margin irrespective of actual market prices of crude oil;
(b) A minimum guaranteed margin of $2.50 per barrel (after tax and royalty) to the oil company on its equity crude;
(c) A minimum guaranteed margin of $1.25 per barrel on NNPC crude which the company lifts and sells;
(d) Notional Technical cost is now set at $4.00 per barrel; and
(e) Where actual Capital Investment Cost (T2) as defined is in excess of $2.00 per barrel on average, then the minimum guaranteed notional margin shall be increased to $2.70 per barrel for the company's equity crude lifted and $1.35 per barrel for NNPC equity crude lifted.

Under the new system, Government Take (Royalty and PPT) relating to the joint venture operations between Nigerian National Petroleum Corporation (NNPC) and each oil company for any fiscal accounting year shall be the lower of Government Take according to the 31/12/85 Royalty and PPT regulations, as amended, calculated by substitution of Posted Price for Official Selling Price (OSP) and Revised Government Take (RGT) calculated by substitution of Posted Price with Tax Reference Price (TRP).

First, Government Take will be calculated on the basis of the provisions of the Petroleum Profits Tax Act. Government Take is the Royalty payable by the oil company for the fiscal year plus the Petroleum Profits Tax as computed under the provisions of PPTA that is substituting Posted Price for Official Selling Prices if higher.

Next, RGT (Royalty and PPT) will be calculated applying the various formulae contained in the Memorandum of Understanding substituting Posted Price with Tax Reference Price.
The lower of Government Take and RGT will be the total amount payable to government for that fiscal year.

Government Take will be calculated in Naira each month and compared for the same volume of exports with Government Take for the same month under the terms of the 31/12/85 Royalty and PPT regulations. Identical rates of exchange will be used to convert US Dollar prices to Naira in both Government and Revised Government Take calculations. The amount by which Revised

Government Take is less than Government Take each month will be accumulated and at the end of the fiscal accounting year will be applied as the annual tax credit (MOU credit) to be offset against tax due for the fiscal accounting period.

The following are some of the definitions and formulae in the 2000 MOU that are to be applied in the calculation of RGT.

Production Operating Expenses (T1)

Production operating expenses are:
(a) Direct production expenses
(b) Portion of administrative and general expenses allocated to production
(c) Custom duties and gross rental allocated to production
(d) Extraordinary/prior year expenses/incomes

Capital Investment Costs (T2)

Capital Investment costs include:
(a) Exploration costs
(b) Appraisal drilling costs (first and second wells)
(c) Intangible drilling and development cost
(d) Capital allowances

Guaranteed Notional Margins

The guaranteed notional margins are dependent on the crude oil realisable prices in the following ranges:
Below $13.48/bbl,
Between $13.48 and $15/bbl,
Between $15 and $19/bbl,
Greater than $19/bbl and less than or equal to $30/bbl

Realisable prices below $13.48 bbl,

Guaranteed notional margins for realisable prices less than $13.48/bbl shall be established as follows:
M = (1 – FC/RP) x (RP1a1 + RP2a2 + RP3a3)
Where:
M = Applicable Guaranteed Notional Margin for RP less than $13.48/bbl
RP = Realisable Price
FC = Notional Fiscal Technical Cost of $4.00/bbl
a = Company's Percentage share of field profit

For:

Realisable Price in the Range		Company Share Applicable to Price Range	
		T2 <= 2.00	T2 > 2.00
$0 < RP1 < $5/bbl	a 1=	0.300	0.365
$5 < RP2 < $10/bbl	a2=	0.285	0.28833
$10 < RP3 < $13.48/bbl	a3=	0.10744	0.08286

Realisable prices greater than $19/bbl and less than $30/bbl:

For realisable prices greater than $19/bbl but less than $30/bbl, guaranteed notional margin is calculated as follows:

M = M19 + (RP – 19) x a

Where:

M = Applicable Guaranteed Notional Margin for $19 < RP <= $30

M19 = $2.50/bbl when actual capital investment cost (T2) is $2/bbl or less
= $2.70/bbl when actual capital investment cost (T2) is greater than $2/bbl

RP = Realisable price

a = Company's share of field profit

For:

Realisable Price in the Range		Company Share Applicable to Price Range	
		T2 <= 2.00	T2 > 2.00
$19 < RP < $ 30/bbl	a =	0.1160	0.1315

Realisable Prices in excess of $30

For Realisable Prices in excess of $30 per barrel, the Minister of Petroleum shall advise any change in applicable margins. Such advice shall only be necessary when RP exceeds $30 per barrel for at least 45 days continuously.

Tax Reference Price (TRP)

Tax Reference Price shall be calculated as per the following formula:

$$TRP = \frac{RP - (M + 0.15 \times FC)}{0.88}$$

Where:

RP = Realisable Price

M = $2.50/bbl when actual capital investment cost (T2) is $2/bbl or less
= $2.70/bbl when actual capital investment cost (T2) is greater than $2.00/bbl

FC = Notional Fiscal Technical Cost of $4.00/bbl

Revised Royalty (ROY_{TRP})

Under the 2000 MOU, Revised Royalty (ROY_{TRP}) shall be determined by substituting Posted Price in the PPTA with the determined TRP as follows:

ROYTRP = RR x TRP x V

Where:

RR = The applicable royalty rate according to the 31/12/1985 Royalty and PPT regulations, as amended

TRP = Tax Reference Price as determined in clause 2.4.1 of the MOU

V = Company's crude oil and condensate production

Revised PPT ($PPT\text{-}_{TRP}$)

Revised PPT is calculated as follows:

$PPT\text{-}_{TRP}$ = [(TRP x Vs) – ROY_{TRP} – TC] x TR

Where:

TRP = Tax Reference Price as determined in clause 2.4.1 of the MOU

Vs = Company's crude oil and condensate sales volume

$ROY\text{-}_{TRP}$ = Revised Royalty as determined in clause 2.4.2 of the MOU

TC = Deductions under Sections 10, 14 and 18 (excluding Royalty) of the PPTA and its amendments

TR = Applicable Tax Rate

Tax Inversion Penalty

One of the objectives of the MOU is to encourage investment in the petroleum industry and maintain cost efficiency. One way of encouraging cost efficiency is the introduction of the Tax Inversion rate of 35% in the 2000 MOU.

To the extent that T1 as defined in Appendix 1 (paragraph 1) of the MOU is less than $1.70/bbl for any calendar year, then the Tax Inversion Penalty (TIP), as used in the Revised Government Take formula shall be calculated as follows:

TIP = (TR – TIR) x (T1 – LTIT) x V

Where:

LTIT = Lower Tax Inversion Threshold = 1.70/bbl

TR = Applicable Tax Rate

TIR = Tax inversion rate = 35%

T1 = as defined in Appendix 1 (paragraph 1) of the MOU

V = company's crude oil and condensate production

To the extent that T1 is greater than $2.30/bbl for a calendar year for companies producing above an average of 175,000 bbls/day in the same calendar year, or $3.00/bbl for a calendar year for companies producing below

an average of 175,000 bbls/day in the same calendar year, then the Tax Inversion Penalty (TIP) shall be calculated as follows:

TIP = (TR – TIP) x (T1 – UTIT) x V

Where:

UTIT	=	Upper Trigger Point for Tax Inversion for T1= $2.30/bbl for companies producing above an average of 175,000 bbls/day in the same calendar year or $3.00/bbl for companies producing below an average of 175,000 bbls/day in the same calendar year.
TR	=	Applicable Tax Rate
TIR	=	Tax inversion rate = 35%
T1	=	as defined in Appendix 1 (paragraph 1) of the MOU
V	=	Company's crude oil and condensate production.

To the extent that V, as defined below, is adversely impacted by circumstances outside the control of the company, UTIT shall be adjusted to negate such adverse impact the procedure of which is set out in Appendix C to the MOU.

Revised Government Take (RGT)

Revised Government Take is simply the sum of the revised royalty, revised PPT and the Tax inversion penalty. Revised Government Take (RGT) is defined as:

RGT = $ROY_{TRP} + PPT_{TRP} + TIP$

Where:

ROYTRP	=	Revised Royalty as determined in clause 2.4.2 of the MOU
PPTTRP	=	Revised PPT as determined by clause 2.4.3 of the MOU
TIP	=	Tax Inversion Penalty as determined by clause 2.7

Ullage fees

For the purpose of the cost control mechanism, the ullage fees paid to a third party in respect of crude oil transportation, processing and terminalling is made up of 50% operation and 50% capital costs. The capital cost part of such ullage fees shall be excluded from T1 as defined in Appendix 1 (paragraph 1) of the MOU.

16.22 COMPANIES ENGAGED IN UTILIZATION OF ASSOCIATED GAS

Gas Industry Incentives

The following were the major disincentives to gas production in Nigeria prior to 1st January, 1997:

(a) High Corporate tax rate particularly the Petroleum Profits Tax rate as the taxation of gas is under the Petroleum Profits Tax Act.

(b) Limited market.
(c) Limited numbers of appropriate reservoirs conducive for gas reinjection/storage and the economies of doing so.
(d) The huge cost of developing major and inter-connecting network of gas pipelines,
(e) Low technological and industrial base for energy consumption in the country and limited regional and international gas market.
(f) Inadequate fiscal and gas pricing policies to encourage investment.
(g) The difficult terrain of the Niger Delta which hinder the gas gathering process.

With effect from 1 January 1997, a Section 10A has been inserted in the Petroleum Profits Tax Act, with the following provisions:
(a) The following incentives shall apply to a company engaged in the utilization of associated gas, that is:
  (i) investment required to separate crude oil and gas from the reservoir into usable products shall be considered as part of the oil field development;
  (ii) capital expenditure to deliver associated gas in usable form at utilization or designated custody transfer points shall be treated for tax purposes, as part of the capital investment for oil field development;
  (iii) capital allowances, operating expenses and basis of tax assessment shall be subject to the provisions of the Act and the tax incentives under the revised MOU.
  (iv) Gas to be transferred at 0%royalty and 0% Petroleum Profit Tax.
  (v) Plant and machinery for gas utilization are exempted from import duties.

(b) The incentives specified under subsection (1) of this Section shall be subject to the following conditions, that is:
  (i) condensates extracted and re-injected into the crude oil stream shall be treated as oil but those not re-injected shall be treated under existing tax arrangement;
  (ii) the company shall pay the minimum amount charged by the Minister of Petroleum Resources for any gas flared by the company;
  (iii) the company shall, where practicable, keep the expenses incurred in the utilization of associated gas separate from those incurred on crude oil operation and only expenses not able to be separated shall be allowable against the crude oil income of the company under the Act;
  (iv) expenses identified as incurred exclusively in the utilization of associated gas shall be regarded as gas expenses and be allowable against the gas income and profit to be taxed under the Companies Income Tax Act;

(v) only companies which invest in natural gas liquid extraction facilities to supply gas in usable form to downstream projects, including aluminium smelter and methanol, Methyl Tertiary Butyl Ether and other associated gas utilization projects shall benefit from the incentives;

(vi) all capital investments relating to the gas to liquids facilities shall be treated as chargeable capital allowance and recovered against the crude oil income;

(vii) gas transferred from the natural gas liquid facility to the gas-to-liquids facilities shall be at zero per cent tax and zero per cent royalty.

There is apparently no distinction between associated gas and non-associated gas in The Petroleum Profits Tax Act. All incentives in respect of investments in associated gas also apply to investments in non-associated gas.

16.23 JOINT VENTURE AND PRODUCTION SHARING CONTRACTS

Joint Venture

Joint Venture is a contractual arrangement whereby two or more parties undertake an economic activity which is subject to contractually agreed basis of sharing control.

Companies producing crude oil in Nigeria are not allowed to produce the oil solely on their own. Each company is required to enter into a Joint Venture Agreement with the Nigerian National Petroleum Corporation (NNPC) in respect of the company's operation in a particular oil field. A detailed joint venture operating agreement will be entered into by the parties. The agreement will spell out in detail the rights and obligations of each party with respect to the particular venture.

NNPC will usually take up a majority of the venture while the oil producing company will take up the balance. One of the parties to the venture is given the responsibility to operate the venture, that is, the production of crude oil from the concession that is the subject of the venture. This is the operator. The operator is the party that conducts the operations under a joint venture. This may include the drilling of a well and/or the production of oil from a tract or field under an agreed contract. In all or most of the cases, in spite of NNPC majority shareholding, it is the oil producing company that is appointed as field operator of the joint venture.

Each party to the joint venture is expected to fund its equity share in the venture. This is done when the operator makes calls for the needed cash (Cash Calls). Each party also lifts crude oil, from the crude oil produced, in proportion to its equity interest in the joint venture. When NNPC is unable to lift all its

share of the crude produced, the field operator , will under special arrangement with NNPC, lift the balance, sell it and pass the proceeds of sale to NNPC.
Each joint venture agreement will make provision for an Operating Committee to oversee the preparation and approval of budgets and operational plans that would be prepared by the field operator.
Each party accounts for and pays its petroleum profits tax liabilities arising from the venture.

Production Sharing Contracts

In Production Sharing Contracts (PSC), the petroleum producing companies enter into agreement with NNPC for the production of crude oil in particular oil fields respectively. The operating expenses for the petroleum operations would be met by each operator. This is a major shift from the terms in Joint Venture Contracts. In case of joint venture, NNPC will fund the operational expenses of the venture in proportion to its share in the joint venture, but in respect of PSC's, the petroleum producing company will fund 100% of the contract. The provision for the reimbursement of costs to the operator in executing the contract will be contained in the PSC. This is usually achieved through the allocation to the operator of a proportion of the oil produced, from which the company is expected to recover its cost of producing the oil and of executing the contract generally.

Oil recovered in the contract area is split into:

(a) Royalty Oil
(b) Cost Oil
(c) Tax Oil
(d) Profit Oil.

Business activities under PSC are subject to tax under the Petroleum Profits Tax Act and the Deep Offshore and Inland Basin Production Sharing Contracts Decree No 9 of 1999. The Decree requires that the tax computation is done by NNPC or concession holder who will also lift the "Tax Oil", sell same, and pay the Petroleum Profits Tax to the Revenue. This is slightly contradictory to the relevant provision of PPTA. PPTA provides for persons engaged in petroleum operations to prepare tax returns, submit same, and pay the PPT due. The responsibility for the payment of PPT is clearly stated in PPTA. It is less clear in the Deep Offshore and Inland Basin Production Sharing Contract.

The key provisions of the Deep Offshore and Inland Basin Production Sharing Contracts Decree 1999 are:

(a) That the Petroleum Profits applicable to the contract area shall be 50% flat rate of chargeable profits for the duration of the Production Sharing Contracts.
(b) That in respect of any qualifying capital expenditure incurred wholly,

exclusively and necessarily for the purposes of the petroleum operations carried out under the terms of a Production Sharing Contract in the Deep Offshore or Inland Basin, there shall be due to the parties-

(i) in respect of Production Sharing Contracts executed prior to 1 July, 1998, an Investment Tax Credit at a flat rate of 50 per cent of the qualifying expenditure;

(ii) in respect of Production Sharing Contracts executed after 1 July, 1998 there shall be due to such Parties an Investment Tax Allowance at a flat rate of 50 per cent.

(c) In both cases, royalty is payable as follows:

		Rate
(a)	In areas from 201 to 500 metres water depth	12%
(b)	From 501 to 800 metres water depth	8%
(c)	From 801 to 1000 metres water depth	4%
(d)	In areas in excess of 1000 metres water depth	10%
(e)	The royalty payable in respect of Inland Basin shall be	10%

(d) Computation and payment of estimated and final petroleum profits tax shall be made in US dollars on the basis of the US dollar returns filed.

(e) The Corporation or the Holder, as the case may be shall pay royalty, concession rentals and petroleum profits tax on behalf of itself and the Contractor out of the allocated royalty oil and tax oil.

(f) Separate tax receipts in the names of the Corporation or the Holder and the Contractor for the respective amounts of the petroleum profits tax paid on behalf of the Corporation or the Holder and Contractor shall be issued by the Federal Inland Revenue Service in accordance with the terms of the Production Sharing Contract.

(g) The chargeable tax on petroleum operations in the contract area under the Production Sharing Contracts shall be split between the Corporation or the Holder and the Contractor in the same ratio as the split of profit oil as defined in the Production Sharing Contract between them.

16.24 SUMMARY AND CONCLUSIONS

This chapter identifies companies engaged in petroleum operations which are chargeable to tax under the Petroleum Profits Tax Act CAP P13 LFN 2004. It also deals with the provisions of the Deep Offshore and Inland Basin Production Sharing Contract Decree 9 of 1999; the current Memorandum of Understanding (Year 2000 MOU) agreement between the Federal Government and the petroleum companies and applicable side letters.

Companies that are engaged in petroleum exploration, development, production and sale of crude oil and gas are in the upstream operations and

are chargeable to tax under PPTA. Those that are engaged in processing the crude oil and gas and marketing of refined crude oil, etc. are in downstream operations. These are chargeable to tax under the provisions of the Companies Income Tax Act.

The provisions of PPTA and MOU apply to petroleum companies operating under joint venture while in respect of companies operating under Production Sharing Contracts, the provisions of PPTA and Deep Offshore and Inland Basin Production Sharing Contracts Decree apply.

Petroleum profits tax computation will normally take the following pattern:

(a) Ascertain the profits of the accounting period.
This will be the fiscal value of chargeable oil and gas sold plus all income received by the company that are incidental to petroleum operations.

If there is no indication to the contrary any income described as miscellaneous income, interest on bank fixed deposit accounts, etc. should normally be regarded as incidental to petroleum operations. In the computation of the fiscal value of chargeable oil sold, with respect to crude oil exported, the higher of the selling price or the posted price will be used; while in case of crude oil sold locally , it is the actual amount realised from the sale, that will be used.
For companies operating under Production Sharing Contracts, note that Petroleum Profits Tax Computations will be based on the provisions of the particular contract with each of the company.

(b) Deduct all Section 10 allowable expenditures having regard to the allowable and disallowable expenditures rules.

The figure arrived at is the adjusted profit.
From the adjusted profit deduct any unrelieved petroleum operations' loss brought forward from previous period to arrive at the assessable profit.
(Remember that there is no time limitation for the relief of losses as the case is in companies chargeable to tax under CITA).

(c) Capital allowances will be deducted (remember to apply the restriction) from the assessable profit to give the chargeable profit.

(d) Apply the PPT rate (presently 85% or 50% in respect of PSC, or 65.75% for local sales or 40% for sale of natural gas) to the chargeable profit to get the assessable tax.

(e) The tax offsets to be deducted in accordance with the provisions of Section 20 from the assessable tax will then be deducted to arrive at

the chargeable tax. This will now only apply to companies operating under PSC.

For companies operating under Joint Venture, compute the amount of MOU credit due. This will be deducted from the chargeable tax to arrive at the tax payable.

It is usually the chargeable tax that would be paid to the Revenue Service after deducting the total of the amounts paid to date through the monthly instalments determined on the basis of the estimated tax for the accounting period.
Withholding tax, if any, suffered by the company is also to be deducted from the chargeable tax to arrive at the tax that will be payable. Remember, withholding tax is an advance payment on account of the tax that will be due for payment by each company.

The presentation of a PPT computation would appear thus:

XYZ PETROLEUM LIMITED
2008 PETROLEUM PROFITS TAX COMPUTATION

	N'million
Fiscal value of chargeable oil	xxx
Add: Other income incidental to petroleum operations	xxx
Profit of the accounting period	xxx
Less: Allowable deductions	(xxx)
Adjusted profit of the accounting period	xxx
Deduct: Unrelieved loss brought forward	(xxx)
Assessable profit	xxx
Less: capital allowances (Restricted to lower of actual allowances and 85% of assessable profit less 170% of petroleum investment allowance)	(xxx)
Chargeable profit	xxx
Assessable tax at 85% of chargeable profit; or 65.75% in respect of crude sold locally; or 40% for natural gas sold; or 50% for PSC operators.	(xxx)

Less: Section 20 deductions:	
Investment tax credit (applicable to PSC operators)	(xx)
Chargeable tax	xx
Deduct: MOU Credits (Joint Venture Operators only)	(xx)
PPT Payable	xx

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

16.25 REVISION QUESTIONS

16.25.1 MULTIPLE CHOICE QUESTIONS

1. The administration of Petroleum Profits Tax Act is under the charge and management of the

   (A) State Revenue Service of Inland Revenue
   (B) Federal Revenue Service of Inland Revenue Service
   (C) State Revenue Service of Inland Revenue Service
   (D) Federal Inland Revenue Service
   (E) Federal Revenue Service of Internal Revenue.

2. A company engaged in petroleum operations has the right to defer the utilisation of any loss relief available to it, if an election in writing to that effect is submitted to the Revenue Service by the company within:

   (A) 5 months after the end of the accounting period
   (B) 6 months after the end of the accounting period
   (C) 12 months after the end of the accounting period
   (D) 3 months after the end of the accounting period
   (E) 4 months after the end of the accounting period.

3. Companies engaged in petroleum operations are assessed on the

   (A) Preceding year basis
   (B) Change of accounting year basis
   (C) Penultimate year basis
   (D) Pre-penultimate year basis
   (E) Accounting period basis.

4. The following are allowable deductions under Section 10 Petroleum Profits Tax Act with the exception of:

   (A) Rents in respect of land or buildings occupied under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance.
   (B) All non-productive rents.
   (C) Expenditure for the purchase of information relating to the existence and extent of petroleum deposits.

(D) Interest on money borrowed where the Revenue Service is satisfied that the interest was payable on capital employed in carrying on petroleum operations.

(E) Contribution to approved pension, provident, or other society, scheme or fund.

5. The assessable profit of a company assessable to tax under Petroleum Profits Tax Act is:

(A) The adjusted profit of the period

(B) The adjusted proft of the period after deducting Education Tax and adjusting for the effect of any loss relief available to the company

(C) The adjusted profit of the period before adjusting for the effect of any loss relief available to the company.

(D) The chargeable profits before loss relief

(E) the profit for the period after relief for capital allowances.

16.25.2 SHORT ANSWER QUESTIONS

1. Assessable Profits less Capital Allowances, under the Petroleum Profits Tax Act CAP P13 LFN 2004, is known as ....

2. Two items of expense classified as "Tax Offsets" under the Petroleum Profits Tax Act CAP P13 LFN 2004, are .... and ....

3. A lease granted to a company under the Minerals Act, for the purpose of winning petroleum or any assignment of such lease, is called ....

4. The Free On Revenue Service (FOB) price at the Nigerian Port of export, for crude oil, of the gravity and quality established from time to time, between the Federal Government of Nigeria and a company engaged in petroleum operations, is known as the ....

5. Under the PPTA, the profit of the period after deductions of allowable expenses and any adjustments necessary to exclude the profits or loss attributable to transportation perations, which is assessable under CITA, is called................

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

17

STAMP DUTIES

17.0 LEARNING OBJECTIVES

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

- The nature of Stamp Duties;
- Administration of Stamp Duties Act; and
- Other Issues relating to Stamp Duties.

17.1 INTRODUCTION

Stamp Duties are duties basically on instruments (defined to include every written document). The duties are either Specific (Fixed) or Ad Valorem. It is important to stamp instruments, otherwise, such instruments will not, except in criminal proceedings, be given / admitted in evidence, or be available for any purpose whatsoever, in a claim for title or rights. Stamp Duties are governed by Stamp Duties Act Cap S8, LFN 2004, which provides for the levying of stamp duties on certain documents and matters specified in the Act with effective date of 1 April, 1993.

17.2 FORMS OF STAMP DUTIES

SPECIFIC / FIXED

These are duties that do not vary with the value of the consideration on the document, that is subject to the Stamp. In other words, the same Duty is payable irrespective of the value on the instrument.

Instruments that attract Fixed Duties include:
(a) Deeds of Assignment
(b) Mortgages
(c) Insurance Policy (Non-Life)
(d) Debenture Trust Deeds
(e) Proxy Forms
(f) Bank Notes
(g) Cheque Leaves

AD VALOREM

Ad valorem means "as per value". These are duties that vary with the value of the consideration on the document that is subject to the stamp. Instruments

that attract Ad Valorem Duties include:-
(a) Bills of Exchange
(b) Property Valuation Reports
(c) Memorandum & Articles of Association of Companies
(d) Promisory Notes
(e) Lease documents
(f) Conveyance of Sale
(g) Marketable Securities
(h) Policy of Life Insurance

17.3 THE ADMINISTRATION OF STAMP DUTY

Stamp duty is managed by the Commissioners for Stamp Duties. The Commissioner for Stamp Duties determines the appropriate Duty by adjudication.
As the administrative head of the Stamp Duties Matters as in the Act, the Commissioner has the following responsibilities:

(a) Custodian of the stamping instruments e.g dies, adhesive stamps, postage stamps, etc;
(b) Adjudicate / assess the instruments;
(c) Embossing / stamping the instruments with the appropriate die or stamp; and
(d) Impose penalties where applicable.

An appeal lies from the decision of the Commissioners of Stamp Duties to the High Court, with rights of appeals as for ordinary tax cases.

17.4 STAMPING AND COLLECTION OF DUTIES ON CORPORATE INSTRUMENTS

Stamping rates vary from instrument to instrument and the duties are collectable by both the Federal Inland Revenue Service and the States Internal Revenue Services.

The Federal Government through Federal Inland Revenue Service 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 individual, group or body of individuals. The State Governments through State Internal Revenue Services 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.

17.5 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 day of 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.

17.6 STAMPING OF INSTRUMENTS AFTER EXECUTION

Any unstamped or insufficiently stamped instrument may be stamped with an impressed stamp at any time within forty (40) days from the first execution thereof, upon payment of the duty or unpaid duty only, but after that time, the said instrument may only be stamped upon payment of the unpaid duty and a penalty of twenty naira (N20), and also by way of further penalty, where the unpaid duty exceeds twenty naira, or interest on such duty, at the rate of ten naira 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.

17.7 METHOD OF STAMPING

Stamps are either impressed (with Dies) or adhesive stamps (using gum or glue). Except where express directive is issued to the contrary, all Stamp Duties must be denoted by impressed / embossed stamp (ordinarily red in colour).

17.8 IMPROPER STAMPING

Where an instrument is not properly stamped, it is nevertheless effective. However, the Stamp Duties Act provides some sanctions for improper stamping or no stamping at all:
(a) Such Instrument is not admissible whether directly or as a collateral, neither is it sufficient as a secondary evidence admissible in any court proceedings;
(b) Cross examination over an unstamped / improperly stamped document is not allowed in any court proceedings; and
(c) An Instrument which is not duly stamped in accordance with existing Law at the time of first execution, shall not, except in criminal proceedings, be given in evidence or be available for any purpose whatsoever.

17.9 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.

17.10 GENERAL PROVISION ON INSTRUMENTS

The duties to be charged upon the several instruments specified in the Schedule to the Act are the several duties 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.

17.11 USEFUL DEFINITIONS

Some useful definitions relating to stamp duties are:

"Accountant – General" means the Accountant-General of the Federation;
"Commissioner" means a Commissioner of Stamp Duties appointed as hereinafter provided;

"Company" includes all legal entity, 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, mean 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, 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 every sort of material upon which words or figures can be expressed;

"Money" includes all sums expressed in naira or in any foreign currency;

"Stamp" means as well 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.

17.12 EXEMPTIONS FROM STAMP DUTIES

The following are exempted from Stamp Duties:

(a) Treaties / Agreements - entered into between the Federal Government and any other Foreign Governments or Foreign private corporations/ International Organisations;

(b) Liquidation Sales / Transactions - Any property sold by a liquidator;

(c) Company Reconstructions and Amalgamations - Instruments on reconstructions and amalgamations such as Conveyance, Transfer or Sale of Property, Assigning of Debts whether secured or not;

(d) Receipts issued for the payment of any government taxes, duties or levies; and

(e) Instruments providing for penal rent or increased rent in the nature of a penal rent.

17.13 SUMMARY AND CONCLUSIONS

Stamp Duties under the Stamp Duties Act CAP S8 LFN 2004 is the focus of this Chapter. It is concerned with the administration, stamping, collection,

mode of calculation and various instruments on which Duties are payable to either Federal Inland Revenue service or States Internal Revenue Services.

The chapter also mentions the forms of stamp duties, such as Specific / Fixed and Ad Valorem together with items exempted from Stamp Duties.

(Refer to comprehensive questions and suggested solutions in Appendix II, page 403)

17.14 REVISION QUESTIONS

17.14.1 MULTIPLE CHOICE QUESTIONS

1. In relation to Stamp Duties Act, money includes

   (A) all sums expressed in naira only
   (B) all sums expressed in any foreign currency only
   (C) all sums expressed in naira or in any foreign currency
   (D) Nigeria legal tender.

2. "Executed" and "Execution" with reference to instruments not under seal mean

   (A) signed
   (B) signed and signature
   (C) signature
   (D) implement.

3. Stamp duty is managed by the:

   (A) Minister of Commerce
   (B) Commissioner of Commerce
   (C) Minister of Finance
   (D) Commissioner of Stamp Duties.

4. An appeal lies from the following to the High Court

   (A) the Commissioner of Stamp Duties
   (B) the Magistrate Court
   (C) Customary Court of Appeal
   (D) Minister of Finance.

5. The collecting authority in respect of instruments executed between a company and an individual is

   (A) the Federal Government through FIRS
   (B) the State Government through SIRS
   (C) the Local Government
   (D) the State and Federal Governments.

17.14.2 SHORT ANSWER QUESTIONS

1. The Stamp Duties Act is now codified in_______

2. "Write", "writing" and "written" includes_________

3. The collecting Authority in respect of instruments executed between two individuals is ____________

4. Deeds of Assignment and BAnk notes are specific forms of Stamp Duties - True or False?

5. Treaties / Agreements entered into between Federal Government of Nigeria and Britain as well as Instruments on reconstructions and amalgamation are not exempted from Stamp Duties - True or False?

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

18

COMPUTER-ASSISTED TAX PLANNING AND MANAGEMENT

18.0 LEARNING OBJECTIVE

After styding this chapter, readers should be able to:

- Appreciate application of electronics spreadsheet in tax planning and modelling.
- Demonstrate proficiency in using computers for tax planning purposes.

18.1 INTRODUCTION

Tax planning and tax management are increasingly becoming a complex activity as businesses grow and organisations expand both in scope of operations and physical size. Given the amount of data that need to be analysed in order to assess and compute tax liabilities, it has become imperative that both tax institutions and companies do deploy computer programs in order to automate tax planning and administration duties.

In the light of the above, this chapter will explore areas of tax planning and management requiring the application of computers especially the use of spreadsheet to generate tax models.

18.2 SPREADSHEET APPLICATION

(a) Electronic Spreadsheet – An introduction

A **spreadsheet** is a computer simulation program that simulates a paper worksheet. It displays multiple cells that together make up a grid consisting of rows and columns, each cell containing either alphanumeric or numeric values. A spreadsheet cell may alternatively contain a formula that defines how the contents of that cell is to be calculated from the contents of any other cell (or combination of cells) each time any cell is updated. Spreadsheets are frequently used for financial information modeling because of their ability to re-calculate the entire sheet automatically after a change to a single cell is made.

The related term spreadmart describes the situation that occurs when one or more business analysts develop a system of linked spreadsheets

to perform a business analysis, then grow it to a size and degree of complexity that makes it nearly impossible to maintain. Re-implementing the analysis using a datamart architecture often improves both the reliability of the analysis and its maintainability.

Visicalc is usually considered the first electronic spreadsheet (although this has been challenged), and it helped turn the Apple II computer into a success and greatly assisted in their widespread application. Lotus 1-2-3 was the leading spreadsheet when DOS was the dominant operating system. Excel is now considered to have the largest market share on the Windows and Macintosh platforms.

(b) **Entering Data**

Cells consist of three packages: labels, values and formulas. Labels (alpha characters) are the text headings, or titles, that describe what the numbers represent. Values are the numbers that you perform calculations on. Formulas perform the calculations by manipulating values to produce a result.

(i) To enter data into a cell, place the cursor on the required cell.
(ii) Type your entry (you will be in edit mode).
(iii) Press [Enter] or click Enter on the Formula bar.

(c) **Enter Data in a Range of Cells**

If you do a lot of data entry and do not like navigating to the beginning of the next column or row each time you enter another record of information, there is an easier way.

	A	B	C	D	E
1	**Products**	*January*	*February*	*March*	***Total***
2	**Pentium 400**				$0
3	**Pentium 350**				-
4	**Pentium 300**				-
5	**Monitors**				-
6	**Printers**				-
7	**Total**	$0	$0	$0	$0

(i) First, select the range of cells for which you will be entering data.

(ii) When you begin typing, your entry will be entered into the active cell.

(iii) To move from cell to cell within the selected range, use the following keys to remain within the selected range.

- [Tab] to move to the right
- Shift][Tab] to move left
- [Enter] to go down a column
- [Shift][Enter] to move up.

When you come to the end of a long row or column and need to move back to the beginning of the next, just press [Tab] or [Enter]. When you reach the end of the range, press [Tab] or [Enter] and you'll return to the beginning of the selection. Labels

Labels

Labels can be any text that contains at least one alpha character. It can be combined with numbers, but as long as at least one letter is included, Excel will consider this entry a label since no calculations can be performed on alpha characters.

At times, you may want to use numbers as a text label. An example may be you are compiling data from the past several years and need to label your columns with the year (e.g.'2008). If you are using AutoSum to sum the column, this entry is automatically considered a value and will be summed as part of the column. To avoid this, change the cell format to a text label instead of a value.

The easy way to do this, is to type an apostrophe before the numbers (e.g. '2008). This will force the format to be text. Do not worry; the apostrophe will be hidden from view in the spreadsheet, although it is visible in the Formula Bar.

Values

Excel considers an entry to be a value if it consists of only numbers, no alphanumeric characters, unless formatted otherwise as mentioned above.

Formulas

A formula is an equation that performs operations on values. Formulas can perform mathematical operations, such as addition and multiplication, or they can compare worksheet values or join text. Formulas can refer to other cells on the same worksheet, cells on other sheets in the same workbook, or cells on sheets in other workbooks. You must use the proper syntax for Excel to calculate the correct results. Misplaced punctuation and incorrect spelling will result in an incorrect calculation or error message.

A formula in Microsoft Excel always begins with an equal sign (=). The equal sign tells Excel that the succeeding characters constitute a formula. Following the equal sign are the elements to be calculated (the "operands"), which are separated by mathematical operators. Each operand can be a value that does not change (a constant value), a cell or range reference, a label, a name, or a worksheet function. Excel calculates the formula from left to right, according to a specific order for each operator in the formula. You can change the order of operations by using parentheses.

Excel over the years has become a popular brand of electronic spreadsheet for business and home use. This may have been due to the aggressive marketing style of Microsoft, as each office suite of program incorporate the excel program and other related office programs.

18.3 AREAS OF TAX PLANNING USING ELECTRONIC SPREADSHEET

18.3.1 Personal Income Tax Model

The objective of this section is to act as our guide in the hands-on exercise on the model used in the computation of personal income Tax (PAYE). However, we shall refresh our understanding of the following functions in the Microsoft Excel which shall be used in the computation.

18.3.2 Understanding Excel Function

Before using excel spreadsheet in tax computations, one has to understand some basic principles and concepts of the software discussed below:

(a) Referencing:
- (i) Relative
- (ii) Partial (Column or Row)
- (iii) Absolute

(b) Creating of view

(c) Use of IF function

(d) Excel comparison operator

(e) Naming Function

18.3.4 Defining Names for Columns

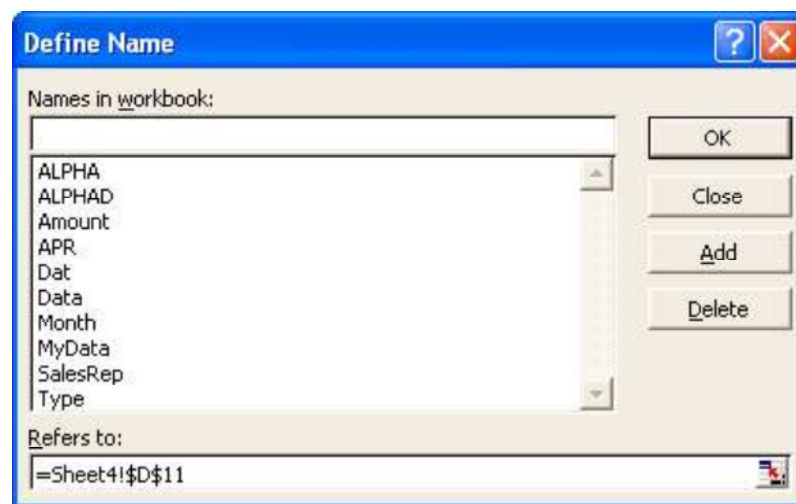
You can create names for columns that can be used for natural language formulas.

The steps to create a named range are:

(a) Select the range of cells you want to name, including the row or column labels.

(b) Select Define option from the Name submenu on the Insert menu

The Define Name dialog box is displayed with the name of column in the Names in workbook option (refer below).



(c) Click on the Add button to add the name.

(d) The range of cells to which the name refers to is displayed in the Refers to field.

(e) You can select another range of cells by clicking on the collapse button in the refers to field. The collapse button provides a larger view of the worksheet so that you are able to view the complete worksheet while selecting a range of cells.

(f) Click on the OK button.

18.3.5 Hide and Unhide

Let us find out how to hide columns and rows in an Excel worksheet. The steps to hide columns or rows in Excel are:

(i) Select the columns/rows that have to hide.

(ii) Right click and select the Hide option from the Shortcut menu.

All the selected columns and rows are hidden.

The steps to unhide columns or rows in an Excel worksheet are:

(i) Select the columns/rows adjacent to the hidden columns/rows.
(ii) Right click and select the Unhide option from the Shortcut menu.

The hidden columns/rows are displayed.

18.3.6 Need For Views

If you have hidden a number of rows or columns, unhiding all those columns or rows each time is a time-consuming activity. You can create views to solve this problem. Views will give you faster access to any specific set of rows or columns and their print settings. It is also possible to have a different set of print settings. Let us find out more about views.

18.3.7 Create Views

Views are a set of display and print settings that you can name and apply in a workbook. You can create more than one view of the same workbook. Creating a view will help the user to view only those rows and columns that are relevant to him.

A user created a view called Footwear Daily Report that contains all the rows and columns of the worksheet. Later, he creates a view called, Footwear Weekly Report that contains only the S.no, Items, Unit Price, Week 1 Total, Week 2 Total and Week 3 Total columns. This will allow the user to switch between the daily and weekly reports.

Let us see how to create these views.

The steps to create a view are:

(a) Click on Custom Views option, on the View menu.

The Custom Views dialog box is displayed (refer to Figure 18.3)

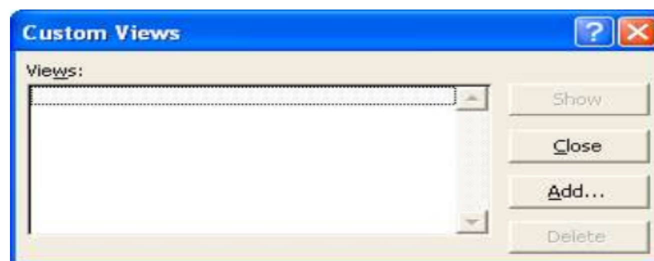


Fig. 18.3 Custom Views Dialog Box

(b) Click on the Add button to create a view.

The Add View dialog box is displayed (refer to figure 18.4).

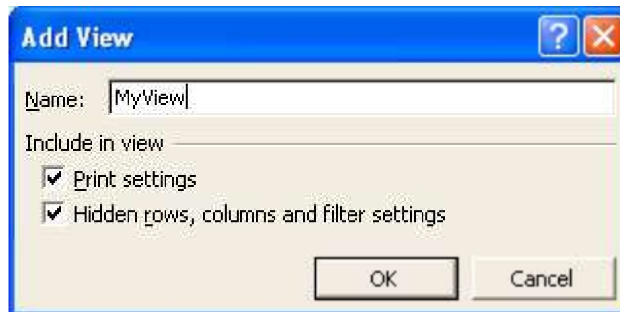


Fig. 18.4 Add View Dialog Box

(i) Type the name of the View in the Name field.

The "include in view" area, contains two options:

- Print settings – Allows you to save the currently selected print settings of the worksheet.
- Hidden rows, columns and filter settings – Allows you to save these options of the worksheet. By default, both these options are selected.

(ii) Click on the OK button.

The steps to create a view that contains only specific rows and columns are:
- Hide the specific columns/rows.
- Create a view with these settings.

Let us see how you can see a particular view. The steps to see a particular view are:

(a) Click on the Custom Views option on the View menu.

The Custom Views dialog box is displayed (refer to figure 18.5)

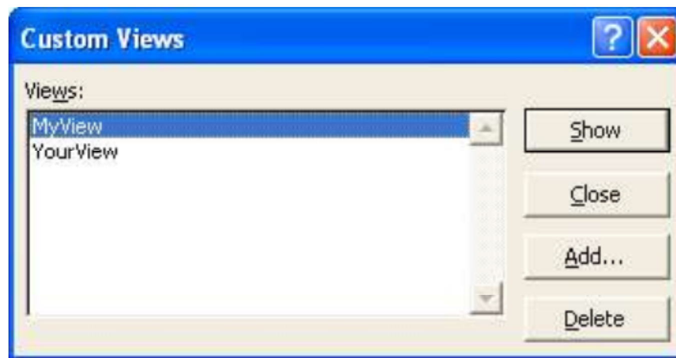


Fig. 18.5 Custom Views Dialog Box

(i) Select a view from the list of views in the Views option.

(ii) Click on the Show button.

18.4 DATA REFERENCING

(i) CELL REFERENCING

A reference is the address of a cell or a range of cells in a worksheet. For example, A1 is the reference to the cell in row 1 and column A. By using cell referencing, you can refer to the data of various cells, in a formula. You can refer to a complete column in a worksheet by referring to it by using the reference to the column. For example, to refer to the column B type B:B. you can also refer to cells in other worksheets. If you refer to cells in other workbooks, the referencing is called external referencing.

Depending on the task you want to perform, Excel offers three types of cell referencing techniques:

- Relative Referencing
- Absolute Referencing
- 3-D Referencing

Let us find out more about each one of them in detail.

(ii) Relative Referencing

Relative referencing is a reference to the cells in a formula based on the position of the cell that contains the formula. By default, Excel uses relative referencing.

(iii) **Absolute Referencing**

By using absolute referencing, you can refer to a particular cell in a formula regardless to the position of the cell that contains the formula. If you want to refer to a cell by using absolute referencing, precede the name of the column and row with a dollar ($) sign. For example, H5 means an absolute reference to cell H5.

You can also use mixed references by placing the $ sign before the column name or the row number. For example, $H5 means that the column has to be absolute and the row is relative and H$5 means the row is absolute and the columns is relative.

(iv) **3-D Referencing**

You can use 3-D referencing to refer to the same address of a cell or range of cells in multiple worksheets in a workbook. A 3-D reference includes the cell or range reference preceded by a range of worksheet names.

(v) **Advanced Functions**

(a) **IF**
The IF function is used for testing values and formulas. It takes certain values that are called arguments (refer to fig. 18.6).

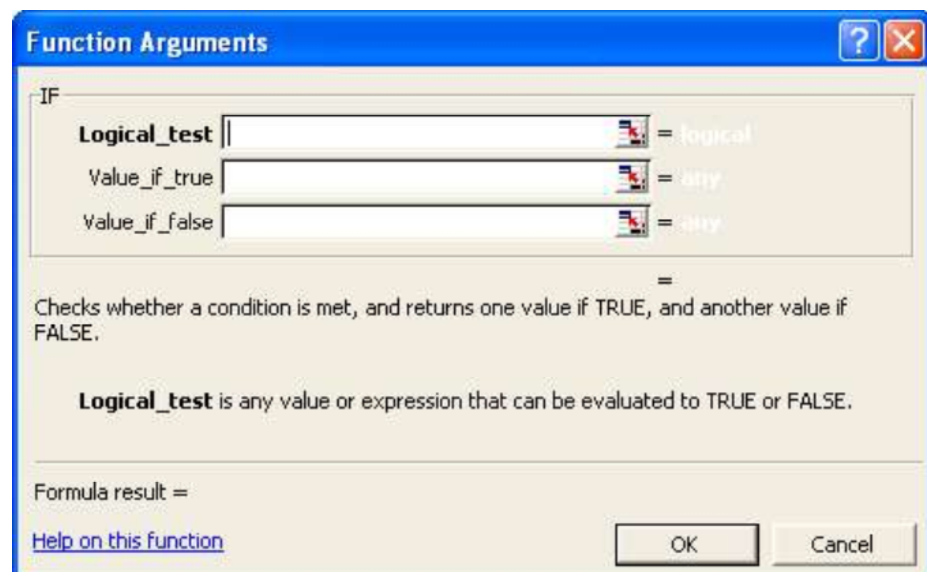


Fig. 18.6 Weekly Sales Report Worksheet - IF Function

These are:

- Logical test – Is an expression that evaluates to either TRUE OR FALSE
- Value if true –Is the value that is returned if logical test evaluates to TRUE. It can also be another formula
- Value if false –Is the value that is returned if logical test evaluates to FALSE. It can be another formula.

18.5 TAX MODEL COMPUTATION

(a) **Step by step a PAYE**

(i) Obtain or create the salary file having all the necessary column e.g Basic pay, partially taxable income, fully taxable income and errors total earned income;
(ii) Identify all the partially taxable income and their limit;
(iii) Determine the total taxable income;
(iv) Determine the total personal relief, Note this is broken down into two:
- General Relief;
- Additional for Disable;

(v) Determine your taxable Income;
(vi) Compute the tax liability;
(vii) Compute minimum tax;
(viii) Compute tax payable i.e including Min. tax; and
(ix) You may create a view to see specific group of details e.g gross pay and tax liability etc.

Workings

(a) Computation of taxable allowance:
- Ascertain what is the maximum allowed
- Use the IF Logic function to compare amount earned and maximum allowed to find the tax payables

(b) Computation of Reliefs
- General – Taxable Income x 20% + ₦5,000 + ₦10,000 + ₦4,000
- Disable Relief – The lower of ₦3,000 & 20% of Taxable Income using IF function.

(c) Tax Liability
Use the IF function to compare taxable income with the tax rate schedule taxable income with the tax rate schedule e.g

- 1st 30,000 @ 5%
- IF (Taxable Income > 30,000, 30,000 x 5%, taxable income x 5%
- Next 30,000 @ 10%
- IF (Taxable Income > 60,000, 30,000 x 10%
- (Taxable Income – 1st 30,000) x 10%

(d) Computation of Tax Payable

Use the IF function to determine if taxable income is less than zero (0). Compute 0.5% of Total Taxable Income, or else our tax liability. See the excel table on page 384 for a demonstration of the above steps.

TABLE 1
TAX LIABILITY COMPUTATION

Taxable Income	1st 30000 @ 5%	Next 30000 @ 10%	Next 30000 @ 20%	Next 30000 160000 @ 25%	Bal. Above	Tax Liability	Tax Payble (including Min. Tax)
170,310.40	1,500.00	3,000.00	7,500.00	10,000.00	42,577.60	64,577.60	64,577.60
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
273,663.36	1,500.00	3,000.00	7,500.00	10,000.00	68,415.84	90,415.84	90,415.84
151,056.00	1,500.00	3,000.00	7,500.00	8,211.20	-	20,211.20	20,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
13,000.00-	65.00-	4,300.00	- 10,950.00	-24,600.00	-	39,915.00	50.00
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20
426,800.00	1,500.00	3,000.00	7,500.00	10,000.00	106,700.00	128,700.00	128,700.00
111,056.00	1,500.00	3,000.00	7,500.00	211.20	-	12,211.20	12,211.20

TABLE 2

CAPITAL ALLOWANCES TABLE GENERATED FROM AN EXCEL MODEL
CAPITAL ALLOWANCE RATES

CLASSIFICATION	INVESTMENT	INITIAL	ANNUAL
Building			
Industrial Building	-	0.15	0.10
Non-Industrial Building	-	0.15	0.10
Plant & Machinery			
Agriculture Production	0.10	0.95	-
Other Plant Machinery	-	0.50	0.25
Plant & Machinery(bought for replacement)	0.15	0.95	-
Gas Utilisation (Down Stream)	0.15	0.90	0.09
Furniture Fitting	-	0.25	0.20
Motor Vehicles			
Public Transportation	-	0.95	-
Others	-	0.50	0.25
Plantation Equipment	-	0.95	-
Housing Estate	-	0.50	0.25
Ranching & Plantation	0.10	0.30	0.50
Research & Development	-	0.95	-

CAPITAL ALLOWANCE COMPUTATION

Description	Cost	Additions	Disposals	Sales Proceed	Balance	Investment Allowance	Initial Allowance	Annual Allowance	Disposal	Total Cap. Allce For The Year	Tax Written Down Value
Building	10,000.00				10,000.00	-	1,500.00	850.00		2,350.00	7,650.00
Plant & Mach.					-						
Agriculture Production	10,000.00				10,000.00	1,000.00	9,500.00	-		9,500.00	500.00
Other Plant Machinery	10,000.00				10,000.00	-	5,000.00	1,250.00		6,250.00	3,750.00
Plant & Machinery(bought for replacement)	10,000.00				10,000.00	1,500.00	9,500.00	-		9,500.00	500.00
Gas Utilisation (Down Stream)	10,000.00				10,000.00	1,500.00	9,000.00	90.00		9,090.00	910.00
Furniture Fitting	10,000.00				10,000.00	-	2,500.00	1,500.00		4,000.00	6,000.00
Motor Vehicles											
Public Transportation	10,000.00				10,000.00	-	9,500.00	-		9,500.00	500.00
Others	10,000.00				10,000.00	-	5,000.00	1,250.00		6,250.00	3,750.00
Plantation Equipment	10,000.00				10,000.00	-	9,500.00	-		9,500.00	500.00
Housing Estate	10,000.00				10,000.00	-	5,000.00	1,250.00		6,250.00	3,750.00
Ranching & Plantation	10,000.00				10,000.00	1,000.00	3,000.00	3,500.00		6,500.00	3,500.00
Research & Development	10,000.00				10,000.00	-	9,500.00	-		9,500.00	500.00
	120,000.00				120,000.00	5,000.00	78,500.00	9,690.00		-88,190.00	

18.6 BENEFITS OF APPLYING COMPUTER IN TAX ADMINISTRATION

Giving the peculiar nature of tax administration, especially in developing economies where data accuracy may be a hindrance to effective tax administration, the following benefit accrue from the effective application of computer models in tax administration:

(a) Speed and improved efficiency on the part of tax administrators.

(b) Accuracy of tax computation since all forms manual computations will be eliminated;

(c) Reliability of data used since the bulk of the information used in tax computation are generated using computers;

(d) Consistency in the information generated and provided for public consumption; and

(e) Improved productivity.

Challenges

The above benefits cannot be derived without some drawbacks which include:

(a) IT literacy and skills which is lacking among revenue officials;

(b) Cost of acquiring computes might be high; and

(c) Resistance to change, as most tax officials who have been used to manual computations may resist the transition especially those who are inefficient.

18.7 SUMMARY AND CONCLUSIONS

This chapter deals with the application of computer programs especially electronic spreadsheet in tax planning and management.

Readers are encouraged to explore other resources that will enable them learn more and apply computer simulation models in their tax planning functions. We also need to mention here that there are some off-the-shelf tax planning software which are at the disposal of readers to explore.

(Refer to Comprehensive questions and suggested solutions in Appendix II, page 403)

18.8 REVISION QUESTIONS

18.8.1 MULTIPLE CHOICE QUESTIONS

1. A formula in Excel begins with one of the following:
   A. +
   B. "
   C. ?
   D. &
   E. =

2. Which one of the following is not true of VIEW?
   A. It gves faster access to any specific set of rows and columns.
   B. Not more than one view can be created on workbook.
   C. Views are a set of display settings that one can name and apply.
   D. The name given to the view can be applied in a workbook.
   E. A view can be created to solve the problems of hiding and unhiding a number of rows and columns.

3. One of the following is not true for data entry in Excel.
   A. Formulas perform calculations
   B. Labels are text headings
   C. Cell can contain only values
   D. To enter data into a cell, place the cell selector on the requested cell
   E. Data can be entered in a range.

4. An electronic spreadsheet can perform all the following tasks except
   A. Planning worksheet objectives
   B. Displaying information visually
   C. Calculating data accurately
   D. Recalculating updated information
   E. Allowing values to include formulas

5. Which of the following AutoSum function will display the smallest number in a selected range of cells.
   A. Max
   B. Average
   C. Sum
   D. Min
   E. =min

18.8.2 SHORT ANSWER QUESTIONS

1. Numerical information not used in calculation can be contained in a LABEL. TRUE / FALSE?
2. An absolute reference always cites a ---------- when the formula is copied.
3. When interacting with spreadsheet, AA3 is ------------reference.
4. Which formula can be used to add A1 + B1 + C1?
5. The arithmetic operator, "not equal to". Symbol is written as ---------

(Refer to Suggested Solutions to Revision Questions in Appendix I, page 391)

APPENDICES

APPENDIX I

SUGGESTED SOLUTIONS TO REVISION QUESTIONS

CHAPTER 1

MULTIPLE CHOICE QUESTIONS

1. E
2. E
3. E
4. B
5. A

SHORT ANSWER QUESTIONS

1. Lagos
2. Provisional Tax
3. Individuals, Registered Business (excluding Incorporated Companies)
4. Pre-operational Levy
5. (i) Penalty of ₦2,500 in the first month of failure and ₦500 monthly as long as failure persists.
   (ii) Denial of instalmental payment
   (iii) Payment of provisional tax for the year, with accrued penalties and interest at commercial rate.
   (iv) Best of judgement (BOJ) assessment may be raised
   (v) Forfeiture of 1% bonus.

CHAPTER 2

MULTIPLE CHOICE QUESTIONS

1. B
2. A
3. C
4. D
5. E

SHORT ANSWER QUESTIONS

1. Interim Audits Reports
2. Tax Officials
3. Desk Audit, Field Audit
4. Keep proper Books of Accounts
5. Post Audit Meeting

CHAPTER 3

MULTIPLE CHOICE QUESTIONS

1. B
2. B
3. E
4. A
5. D

SHORT ANSWER QUESTIONS

1. Body of Appeal Commissioners
2. Giving notice of Appeal to the Body of Appeal Commissioners
3. The Secretary to the Appeal Commissioners, in writing
4. Solicitor or Chartered Accountant or Adviser.
5. 2 months, 14th December.

CHAPTER 4

MULTIPLE CHOICE QUESTIONS

1. B
2. B
3. C
4. B
5. A
6. C
7. B
8. A
9. C
10. D

SHORT ANSWER QUESTIONS

1. Tax planning is the conscious effort, to take advantage of the provisions of the various tax laws with a view to minimising total tax liability.

2. The two possible forms of anti-avoidance legislation are:
   (i) Specific legislation to block known tax avoidance devices
   (ii) General anti-avoidance legislation with regards to all transactions entered into by the taxpayer(s) that could be proved to have been entered into solely for tax avoidance purposes.

3. Advantages of specific anti-avoidance provisions
   (i) It makes the law imposing tax on a particular transaction clear and certain in its application
   (ii) If ineffective or inadequate, the legislature can readily amend it

4. Disadvantages of specific anti-avoidance provisions:
   (i) Makes tax legislation more complex. The modern standard is that tax legislation should be simple
   (ii) Taxpayer would seek further loopholes and exploit such for further tax avoidance

5. The taxpayer will have a defence if he can show that:
   (a) the transactions were carried out either for bonafide commercial reasons or in the ordinary course of business
   (b) none of the transactions had as their main object or one of their main objects the obtaining of a tax advantage.

6. Best Of Judgement

7. Raise objection

8. 30th April of the following year

9. Tax Evasion

10. Tax Identification Number (TIN)

CHAPTER 5

MULTIPLE CHOICE QUESTIONS

1. C

2. B

3. C

4. D

5. B

6. D

7. D

SHORT ANSWER QUESTIONS

1. Personal Income Tax Act CAP P8 LFN 2004

2. Income Tax Management Act 1961 (ITMA)

3. Concurrent Legislative

4. No; 0.5% of ₦30,000 = ₦150.00

5. Earned Income: Salaries, Trading Profit, Benefits in Kind, Commission.
   Unearned Income: Rent, Dividend, Directors fees, Interest.

6. Brought into

7. "An association of two or more persons agreeing to carry on business in common with a view to make profit"

8. (i) Capital Contribution
   (ii) Rate of Interest on Capital
   (iii) Partners Salary
   (iv) Profit sharing ratio
   (v) Partners Drawing Limits.

9. (i) Partner's Salary
   (ii) Partner's Cost charged to the Accounts
   (iii) Passages Cost charged to the Accounts
   (iv) Partner's share of profit.

10. False

11. True

12. N15,700.00

13. Timmy N10,050
    Badmus N10,150

TUTORIAL

12. **TIMMY & BADMUS**
COMPUTATION OF PARTNERSHIP ADJUSTED PROFIT
FOR THE YEAR ENDED 30TH SEPTEMBER, 2008

	₦'000	₦'000
Net Profit for the year		15,280
Add Back:		
Depreciation	1,400	
Donation	220	1,620
Adjusted Profit		16,900
Less: Capital Allowances		1,200
Partners Divisible Income		**15,700**
Due to: Jimmy $^1/_2$		**7,850**
Badmus $^1/_2$		**7,850**

13. **COMPUTATION OF TAXABLE INCOME**

	TIMMY	BADMUS
	₦'000	₦'000
Share of Profit	7,850	7,850
Rent	-	900
Interest on Capital	1,000	-
Salaries	1,200	1,400
	10,050	10,150

CHAPTER 6

MULTIPLE CHOICE QUESTIONS

1. E
2. B
3. D
4. A
5. C

SHORT ANSWER QUESTIONS

1. Trustee; Beneficiaries
2. Estate
3. Annuitant
4. Trustee
5. Administrative Expenses, Trustee Remuneration, Fixed Annuity and Other Expenses.

CHAPTER 7

MULTIPLE CHOICE QUESTIONS

1. B
2. C
3. B
4. C
5. A

SHORT ANSWER QUESTIONS

1. Source
2. 10%
3. 5%
4. True
5. True

CHAPTER 8

SHORT ANSWER QUESTIONS

1. B
2. D
3. C
4. A
5. B

MULTIPLE CHOICE QUESTIONS

1. Value Added Tax Act, CAP VI, LFN 2004
2. 5%
3. The 30th day of the month following that in which the purchase or supply of Vatable goods or services were made.
4. (i) The name and address of the Vatable Person
   (ii) The total amount of goods and services chargeable to tax in respect of each month
   (iii) An Input VAT
   (iv) Net amount of VAT Payable
   (v) Copy of assessment notice
5. Three (3) years.

CHAPTER 9

MULTIPLE CHOICE QUESTIONS

1. D
2. B
3. D

4. E

5. D

SHORT ANSWER QUESTIONS

1. Capital allowances

2. Initial allowances; annual allowances

3. Annual

4. The preceding year; preceding years up till the 5th

5. Agro-allied; manufacturing.

CHAPTER 10

MULTIPLE CHOICE QUESTIONS

1. B

2. C

3. B

4. C

5. B

SHORT ANSWER QUESTIONS

1. Not deductible

2. If the proceeds of disposal are less than market value, the Revenue will disregard the proceeds and use market value instead.

3. Actual

4. Disposal occurs when ownership changes or when the owner divests himself of his rights over or interest in the property. The receipt of a capital sum from the assets is also deemed to be a disposal.

5. Not deductible.

CHAPTER 11

MULTIPLE CHOICE QUESTIONS

1. C
2. A
3. E

4. D
5. D

SHORT ANSWER QUESTIONS

1. Privatisation
2. Commercialisation
3. Exempt from Tax
4. Management Contract variant
5. - free government from unproductive financial subventions
   - eliminate excessive bureaucratic control
   - align with world economic trend in this regard
   - eliminate management in competence / ineptitude
   - eliminate corruption
   - redress problems of obsolete or inappropriate technology
   - attract foreign direct investment.

CHAPTER 12

MULTIPLE CHOICE QUESTIONS

1. A
2. B
3. C

SHORT ANSWER QUESTIONS

1. (i) The loss to be allowed, must have been incurred in the preceeding year of Assessment (i.e. no current year loss relief).

   (ii) In no circumstance shall the aggregate deductions from assessable profits or income in respect of any loss exceed the amount of such loss.

   (iii) A deduction in respect of any loss for any particular year of assessment shall not exceed the amount, if any, of the assessable profits included in the total profits for that year of assessment, from the trade or business in which the loss was incurred.

   (iv) As far as possible, a loss shall be relieved from the assessable profits of the first year of assessment after that in which the loss was incurred and if it cannot be fully relieved the balance shall be relieved from the assessable profits for the next four years. If the Company is engaged in Agricultural trade or business, such losses can be carried forward without time limits.

2. According to Section 40A of CITA 1990, every company shall file self-assessment returns within six months of its accounting year-end. Under the system, the

taxpayers are required to make a return of their income plus a self-assessment of what their tax liability should be and forward these together with evidence of payment of all or part of the tax liability to a designated bank, specified by the relevant tax authority, within six months of the accounting year end.

For a company, the tax returns must include:

- The signed audited financial statements of the company
- Signed and completed Self Assessment form
- The Capital allowances, Education tax and Income tax computations
- The pay-in-slip as evidence of remittance of the tax through any of the designated banks.

3. The following are the benefits of self-assessment:

- Exemption from payment of provisional tax
- Concession may be granted on application, for the Tax Liability to be paid in instalments.
- A bonus of 1% of the tax liability as rebate for filing on self-assessment basis.
- The long time lag between the submission of returns and the service of the notices of assessment is eliminated.

4. A valid notice of objection must:

(i) be made in writing to the relevant tax authority
(ii) be made within 30 days from the date of service of notice of assessment
(iii state the precise grounds of objection

5. (i) Neglect: This means negligence or failure to give any notice, make any returns or produce or furnish any document or other information required by the relevant tax laws.

(ii) Willful default: This will arise where there is a deliberate omission of a source of the taxpayer's income from his returns. It could also arise where there is a deliberate understatement of an income. The onus of proving that a taxpayer has committed willful default lies with Revenue.

(iii) Fraud: Fraud can be proved only where it is shown that a false representation has been made knowingly or without belief in its truth.

6. (i) Expenditure is to be wholly, reasonably, exclusively and necessarily incurred
(ii) Expenditure is to be incurred for the purpose of the business

7. There is no relief for any loss incurred in the last year of trade and for any unrelieved loss accumulated up to the date of cessation.

CHAPTER 13

MULTIPLE CHOICE QUESTIONS

1. D

2. B

3. C

4. C

5. D

SHORT ANSWER QUESTIONS

1. The principal officer or manager in Nigeria of every company shall be answerable for doing all such acts, matters and things as a required to be done by virtue of the Act for the assessment of the company and payment of the tax.

2. If the person declared as agent fails to comply with such request, the tax shall be recoverable from him.

3. A person appointed by the Board as agent has a right of objection and appeal for any notice served upon him in this respect as if such notice were an assessment.

4. A fine of ₦200,000 and double the amount of tax which has been undercharged in consequence of such incorrect return or information, or would have been so undercharged if the return or information has been accepted as correct.

5. A fine of ₦200,000 or to imprisonment not exceeding three years or to both such fine and imprisonment.

CHAPTER 14

MULTIPLE CHOICE QUESTIONS

1. E

2. B

3. B

4. C

5. B

SHORT ANSWER QUESTIONS

1. The period of the tax holiday shall commence from the production day.

2. The pioneer certificate issued to a company can be cancelled if:
   (i) the pioneer company concerned applies for the cancellation of the certificate
   (ii) the pioneer company has applicable contravened any of the provisions of the IDA CAP 172, LFN 1990
3. All capital expenditure incurred by a Pioneer Company during the pioneer period are deemed to have been incurred for capital allowances purposes on the first day after the expiration of the pioneer period.

4. Tax holiday is the period of time, when a company is exempted from payment of tax. It usually serves as an incentive to the company to invest in that area of business.

5. A company holding a pioneer certificate shall be on a tax holiday for the period stated on the certificate.

CHAPTER 15

MULTIPLE CHOICE QUESTIONS

1. A
2. C
3. D
4. B
5. C

SHORT ANSWERS QUESTIONS

1. Where a new company takes over an existing company, the trade or business of the existing company ceases. Thus cessation provisions will apply to that company that has been taken over.
   The new company commences a new trade or business. Commencement provisions of the Act will apply to the new company.

2. The relief available to a company from Nigerian tax on its foreign income shall be:
   (a) if the Commonwealth rate of tax does not exceed one-half of the Nigerian rate, the relief is at the Commonwealth rate.
   (b) in any other case – half of the Nigerian rate

3. No relief is available

4. Deferred tax is the tax attributable to timing differences

5. These are differences between the taxable income and accounting income. Such differences originate in one period and reverse in one or more subsequent periods.

CHAPTER 16

MULTIPLE CHOICE QUESTIONS

1. D
2. A
3. E
4. C
5. B

SHORT ANSWER QUESTIONS

1. Chargeable Profit
2. Any two of:-

- Non - Productive rents
- Royalties on Domestic sales
- Custom Duties on essentials
- Investment tax credit

3. Oil Mining Lease
4. Posted Price
5. Adjusted Profit

CHAPTER 17

MULTIPLE CHOICE QUESTIONS

1. C
2. B
3. D
4. A
5. A

SHORT ANSWER QUESTIONS

1. Stamp Duties Act, CAP S8 LFN 2004
2. Every mode in which words or figures can be expressed upon materials.
3. B
4. True
5. False

CHAPTER 18

MULTIPLE CHOICE QUESTIONS

1. E
2. B
3. C
4. A
5. D

SHORT ANSWER QUESTIONS

1. True
2. Cell
3. Absolute cell
4. sum(A1:C1)
5. <>

APPENDIX II

COMPREHENSIVE QUESTIONS AND SUGGESTED SOLUTIONS

Question 1

The accounts of Goldwell Oil Limited, a petroleum exploration company, for the year ended 31st December 2000 revealed that:

(a)	Crude oil exported	1,400,000 barrels
(b)	Crude oil locally disposed of at ₦35 per barrel	750,000 barrels
(c)	Exploration costs	₦16,000,000
(d)	Incidental income from petroleum operations	₦1,250,000
(e)	Management and administration expenses	₦14,000,000
(f)	Depreciation ₦750,000	
(g)	Provision for bad debt (specific bad debts allowed therein ₦1,250,000) ₦2,450,000	
(h)	Non-productive rents ₦1,156,000	

(i) Schedule of qualifying capital expenditure

Type	*Date of Acquisition*	*Location*	*Amount* ₦
Plant and machinery	July 1998	Territorial waters Of 80 metres water depth	6,000,000
Fixtures & Fittings	July 1998	- do -	2,000,000
Pipeline & Storage Tanks	February 2000	Continental shelf of 180 metres water depth	4,000,000
Buildings	February 1999	Onshore	4,000,000

Required:
Compute the tax liability of the company for the year, assuming that the International Market Price of crude oil during the year was $12 per barrel at the exchange rate of $1 = ₦99. (20 marks) *ICAN PE II November 2002 (Question 2)*

SUGGESTED SOLUTION to Question 1

GOLDWELL OIL LTD
Computation of Petroleum Profits Tax for Year 2000

	₦	₦
Crude oil exported (1,400,000 barrels) at 12 x ₦99 per barrel		1,663,200,000
Crude oil locally disposed of (750,000 barrels) at ₦35 per barrel		26,250,000
		1,689,450,000
Add: Incidental Income from operation		1,250,000
		1,690,700,000

Deduct:		
Exploration Cost	16,000,000	
Management & Administration Expenses	14,000,000	
Specific Bad Debt allowed	1,250,000	
Non-productive rent	1,156,000	
		32,406,000
		*1,658,294,000
Education Tax 2/102 x 1,658,294,000		32,515,569
Adjusted Profit		1,625,778,431
Less: Loss brought forward		NIL
Assessable Profit		1,625,778,431
Less: Annual allowance for the Year	3,200,000	
Petroleum Investment allowance	600,000	
	3,800,000	
Restriction to lower of: 85% of Assessable Profit less 170% of Petroleum Investment allowance		
{85% of ₦1,625,778,431}= less	1,381,911,666	
{170% of Petroleum Investment Allowance: of ₦600,000} =	(1,020,000)	
	1,380,891,666	
Capital allowances claim		3,800,000
Chargeable Profit		1,621,978,431
Assessable tax at 85% thereof		1,378,681,666
Less: Tax offsets		(-)
Chargeable Tax		1,378,681,666
Education Tax (2% of Assessable Profit of ₦1,625,778,431)		32,515,569

* = The presentation showing a sub-total here is to facilitate the computation of Education tax which will be 2/102 of the assessable profit before charging the tax to give the effective tax at 2% of assessable profit after charging the tax.

GOLDWELL OIL LTD.
Computation of Petroleum Investment Allowance

		₦
Pipeline and Storage Tank (acquired in Feb. 2000)		4,000,000
Rate applicable (continental shelf of between 100 metres to 200 metres depth) =	15%	
Petroleum investment allowance		600,000

Computation of Annual Allowance

Assets	*Amounts*	*Rate*	*Annual Allowance*
			₦
Plant & Machinery	6,000,000	20%	1,200,000
Fixtures & Fittings	2,000,000	20%	400,000
Pipeline & Storage Tank	4,000,000	20%	800,000
Buildings	4,000,000	20%	800,000
			3,200,000

Notes:

(i) Education tax is an allowable deduction. The correct amount would be arrived at applying 2/102 of the figure just before the deduction of the tax. This is what will produce the equivalent of the 2% of the Assessable profit after the deduction of the tax which is the correct amount of the Education tax due.

(ii) In accordance with the 1999 amendments to Petroleum Profits Tax Act, Non-productive rent is Section 10 deductible and no longer a tax offset.

(iii) After the 1999 amendment, Petroleum Investment Allowance is not a tax offset. Petroleum Investment Allowance is available to petroleum companies not operating under Production Sharing Contracts (PSC). It is those companies that operate under PSC that are entitled to Investment Tax Credit which is a tax offset.

(iv) Different tax rates apply to export crude sales and local crude sales respectively. The applicable rates are:

Export Crude Sales	85%
Local Crude Sales	65.75%

These are the rates that would be applied in practice.

The 85% rate applied above is for simplification and is considered acceptable under examination condition although the student will append a note similar to this to let the examiner know that the student is aware of the rate of local crude sales.

Alternative Presentation (See note iv above)

GOLDWELL OIL LIMITED
PETROLEUM PROFITS TAX COMPUTATION

	Total	Export 98.45%	Local 1.55%	Incidental Income
	₦'000	₦'000	₦'000	₦'000
Crude Oil Sales	1,689,450	1,663,200	26,250	
Add Incidental Income	1,250			1,250
	1,690,700	**1,663,200**	**26,250**	**1,250**
Deductions:				
Exploration Cost	16,000	15,752	248	-
Manag. & Admin Expenses	14,000	13,783	217	-
Specific Bad Debts	1,250	1,231	19	-
Non-productive rent	1,156	1,138	18	-
	32,406	**31,904**	**502**	**-**

Subtotal	1,658,294	1,631,296	25,748	1,250
Education Tax @ 2/102	32,516	31,986	504	-
Adjusted profit	1,625,778	1,599,310	25,244	1,250
Loss b/f	-	-	-	-
Assessable profit	1,625,778	1,599,310	25,244	1,250
Less Capital allowance	3,800	3,741	59	-
Chargeable Profit	1,621,978	1,595,688	25,185	1,250
		85%	65.75%	85%
Assessable Tax	1,373,834	1,356,212	16,559	1,063
Tax Offset	-	-	-	-
Chargeable Tax	*1,373,834*	*1,356,233*	*16,559*	*1,063*
Education Tax	*32,516*			

Question 2

(a) Define the following in relation to Petroleum Profits Tax Act.

i) The Board (2 Marks)

ii) Chargeable natural gas (2 Marks)

iii) Casing head petroleum spirit (2 Marks)

iv) G-Factor (2 Marks)

(b) SSV Nigeria Ltd engaged a firm of Tax Consultants – KMK and Associates – to compute its Petroleum Profits Tax payable for the year ended 31st December 1998. The Petroleum Profits Tax was computed at ₦680,000,000 after the following deductions had been made:

	₦
Royalties on domestic sales	100,000,000
Customs duties on plant and machinery	160,000,000
Capital allowances b/f	40,000,000
Capital allowances for current year	90,000,000
Agreed loss b/f	100,000,000

The following additional information is also relevant:

i) Memorandum of understanding (M.O.U.) credit ₦46,000,000

ii) Royalties on export sales ₦200,000,000

iii) Other incomes amounted to ₦26,000,000 including ₦4,000,000 for transportation of crude oil and ₦2,000,000 for disposal of fixed assets.

iv) Tangible drilling expenses ₦120,000,000 capitalised and Intangible expenses amounted to ₦100,000,000.

v) Non-productive rent – ₦10,000,000.

vi) Additional assets for off-shore operations ₦30,000,000.

You are required to compute the Petroleum Profits for the accounting period ended 31st December, 1998. *(12 Marks)*

(c) Describe briefly, what you understand by the term "Memorandum of Understanding" as it applies in Petroleum Profits Tax Computation. (4 Marks)
(Total 24 Marks) *ICAN PE II May 2001*

SUGGESTED SOLUTION to Question 2

(a) (i) Board
Means the Federal Board of Inland Revenue

(ii) Chargeable Natural Gas
In relation to a company engaged in petroleum operations means Natural Gas actually delivered by such company to the Nigerian National Petroleum Corporation under a Gas Sales Contract but does not include Natural Gas taken by or on behalf of the Government of the Federation of Nigeria.

(iii) Casing Head Petroleum Spirit
Means any liquid hydrocarbons extracted in Nigeria from Natural Gas by a process of separation or by any other chemical or physical process but before the same has been refined or treated in any other way.

(iv) G-Factor
Means gas production cost adjustment factor

(b)

SSV NIGERIA LIMITED
1998 PETROLEUM PROFITS COMPUTATION

	₦	₦
Chargeable tax as given		680,000,000
This represents 85% of Chargeable Profit		
Previous chargeable profit		
= 680,000,000 / 85%		800,000,000
Add Items already deducted:		
Royalties on Domestic Sales	100,000,000	
Custom Duties on Plant and Machinery	160,000,000	
Capital Allowance b/f	40,000,000	
Capital Allowance for Current Year	90,000,000	
Agreed Loss b/f	100,000,000	
		490,000,000
		1,290,000,000
Add Other Income		20,000,000
Petroleum Profits for the Accounting Period		1,310,000,000

In view of insufficient information in the question as to the volume of export and local crude sales respectively, it has been assumed that the tax rate of 85% for export crude sales was used in the tax computation. The rate of 65.75% applicable to local crude sales has therefore been ignored.

(c) Memorandum of Understanding (MOU) in relation to Petroleum Profits Tax Computation is a form of tax credit allowed to petroleum producing companies, which effectively reduces their Petroleum Profits Tax liability.
MOU is to encourage oil-producing companies to invest more in the petroleum industry. It is calculated by the use of an offset price as well as a series of formulae.

Question 3

SSV Petroleum Company Ltd. has the following particulars to present for the year ended 31st December, 2003.

	₦'000
Sale of Crude Oil – Export	556,600
Sale of Natural Gas	30,250
Other Incidental Income	3,025
The expenses incurred during the period are as follows:	
Production	145,200
Administration	193,600
Intangible Drilling Cost	30,250
Non-productive rentals	12,100
Royalties on export	3,025
Royalties on local Sales	1,210
Custom duties on plant and machinery	18,150
Provision for restoration of wells	90,750

The following additional information is provided

(1) Memorandum of understanding (MOU) Credit ₦12,100,000

(2) Petroleum Investment Allowance has been agreed at ₦9,075,000

(3) Depreciation included in production expenses amounted to ₦24,200,000

(4) Capital allowances agreed with the Federal Board of Inland Revenue is ₦36,300,000

(a) You are required to compute the chargeable tax for the relevant accounting period. *(15 marks)*

(b) Describe briefly, what you understand by the term "Memorandum of Understanding" as it applies in petroleum profits tax computations. *(5 marks)* **(Total 20 Marks)**

ICAN PE II May 1999 Tax Management & Fiscal Policy Q. 1

SUGGESTED SOLUTION to Question 3

SSV PETROLEUM COMPANY LIMITED
PETROLEUM PROFITS TAX COMPUTATION – 2003

	₦'000	₦'000
Profit of the accounting period:		
Export sale of Crude Oil		556,600
Sale of Natural Gas		30,250
Other incidental income		3,025
		589,875
Less Section 10 allowable expenditure:		
Production	145,200	
Less depreciation	24,200	
	121,000	
Administration	193,600	
Intangible Drilling Cost	30,250	
Non-productive Rentals	12,100	
Royalties on Export	3,025	
Royalties on local sales	1,210	
Custom duties on plant	18,150	
		(379,335)

		210,540
Education tax 2/102 x ₦210,540		(4,128)
Assessable profit		206,412
Less Capital allowances:		
As agreed with FBIR	36,300	
Petroleum Investment Allowance	9,075	
	45,375	
Maximum = 85% of ₦206,412	175,450	
Less 170% of 9,075	(15,428)	
	160,022	
Capital allowances claim		(45,375)
Chargeable profit		161,037
Assessable tax at 85% thereon		136,881
Less Section 20 Tax offsets:		-
Chargeable tax		136,881
Less MOU Credit		12,100
PPT Payable		124,781
Education Tax 2% of ₦206,412		4,128

In practice, the applicable rates are:

Export Crude Sales	85%
Gas Sales	40%.

The 85% rate applied above is for simplification and is considered acceptable under examination condition although the student will append a note similar to this to let the examiner know that the student is aware of the tax rate for gas sales.

(b) Memorandum of Understanding (MOU) as it applies to petroleum profits tax computation refers to a tax credit allowed to petroleum producing companies which reduces their Petroleum profits tax liability. MOU is to encourage the oil producing companies to invest more in petroleum operations industry. The credit is arrived at by using some formulae in the MOU to calculate a Revised Government Take (RGT). This is compared with what is Government Take (GT). Petroleum profits tax computation based strictly on the PPTA Cap 354 1990 LFN, will be higher than PPT calculated making use of the MOU formulae. The difference is described as MOU Credit.

The purpose of the incentive (under the 2000 MOU) is to guarantee a $2.50 per barrel profit margin (after tax and royalty) to the oil company at a notional technical cost of $4.00 per barrel over the realisable price range of up to $30 per barrel.

Question 4

The following incomes and expenses were extracted from the books of accounts of EaseDredge Petroleum Nig. Ltd. for the accounting year ended 31st December, 2001. The company maintains two ocean-going oil tankers for transportation of chargeable oil.

Income		**₦'000**	**₦'000**
(a)	Proceeds of all chargeable oil sold to affiliated foreign Company (2,500,000 barrels of Bonny light at $14 per barrel for posted price)	25,000	
(b)	Value of chargeable oil disposed of to local refineries in Nigeria in accordance with FGN agreement with the company	12,500	
(c)	Freights & Carriage charges received from other oil companies for transporting their crude oils to Europe	19,000	
(d)	Value of chargeable natural gas and other incidental income Expenses	16,000	
Expenditure			
(e)	employees Salaries and Wages		6,000
(f)	Staff Accommodation (rent)		1,500
(g)	Annual Compensations paid to local indigenes for surface rights disturbance during petroleum operation		750
(h)	Royalties incurred in respect of crude oil exported		4,200
(i)	Royalties incurred in respect of crude disposed of locally		1,750
(j)	Royalties incurred in respect of natural gas disposed of to local refineries		2,110
(k)	Payment of interest on loan from foreign affiliated company		3,125
(l)	Specific bad debts written off		850
(m)	Depreciation on assets		4,510
(n)	Exploration and drilling costs in respects of cement and casing of:		
	1st Appraisal well (oilfield A)	1,500,000	
	2nd Appraisal well (oilfield A)	25,000	
	3rd Appraisal well (oilfield A)	925,000	2,450,000
(o)	Contribution to approved pension scheme for workers		650
(p)	Custom duties paid on essential imported equipment		2,150
(q)	General Expenses		6,500

The schedule of qualifying capital expenditure for the purpose of petroleum investment allowance and annual allowance are as follows

Locations	*Amount*	*Purchase* Year
On-shore operations	2.5 million	1999
Territorial waters up to 100 metres depth	1.75 million	2001
Territorial waters up to 100 – 200 metres depth	1.50 million	2001
Territorial waters beyond 200 metres depth	2.75 million	2000

You are required to compute the tax liability of the company for 2001 petroleum operations assuming that one-quarter of the company's General expenses and charges of depreciation of assets relate to the business of transportation of crude oil for other oil companies to Europe. **(23 Marks)**

ICAN PE III Nov 1996 Tax & Tax Management Q. 5 (adapted)

SUGGESTED SOLUTION to Question 4

EaseDredge Petroleum Nig. Ltd.
2001 Petroleum Profits Tax Computation

		₦'000	₦'000
Fiscal value of chargeable oil:			
Exports to affiliated foreign company			
at posted price 2,500,000 x 14			35,000
Local Sales			12,500
Incidental income			16,000
			63,500
Less			
Employee's Salaries and Wages		6,000	
Staff Accommodation/Rent		1,500	
Compensation paid local indigenes		750	
Royalties on crude oil exported		4,200	
Royalties on local crude oil sales		1,750	
Royalties on natural gas		2,110	
Specific bad debts written off		850	
Intangible drilling costs allowable			
(1st & 2nd appraisal wells)		1,525	
Contribution to approved pension fund		650	
Customs duty on essential items		2,150	
General expenses (3/4 x ₦6,500)		4,875	26,360
			37,140
Education tax 2/102 x ₦37,140			728
Assessable profit			36,412
Deduct: Capital allowances			
Computed	- Petroleum investment allowance	446	
	- Annual allowance	1,885	
		2,331	
Maximum is:			
(85% x ₦36,412,000)		30,950	
Less 170% of PIA of ₦446		(758)	
		30,192	
Capital allowance claim			2,331
Chargeable profit			34,081
Assessable tax at 85% thereof			28,968.86
Less Section 20 Deductions:			-
Chargeable Tax			28,968.86

Computation of Petroleum Investment Allowance and Annual Allowance for Qualifying Expenditure

Location	Amt	Year of Purchase	Rate	Petr. Inv. Allow Amt	Rate	Annual Allow Amt
				₦'000		₦'000
On-shore operations	2.5m	1999	5%		20%	500
Territorial waters up to 100 metres depth	1.75m	2001	10%	175	20%	350
Territorial waters between 100 – 200 m depth	1.5m	2001	15%	225	20%	300
Territorial waters beyond 200m depth	2.75m	2000	20%		20%	550
				400		1,700
Capitalised Drilling cost	.925m	2001	5%	46	20%	185
				446		1,885

Petroleum Investment allowance is available only in the year of purchase.

Notes:

1. Posted price given in the question is $14 per barrel. It is surprising that no information as to the exchange rate to be applied was given in the question. In view of the fact that no exchange rate was given, it has been assumed that the amount given as the posted price is in Naira (that it was stated to be in $ due to typographical error) since this would produce a figure reasonably higher (₦35m) than the figure of ₦25m charged to the affiliated company for the export sales. If a rate of, say, ₦80 to the dollar were to be used, it would produce a very high value of export sales compared with the ₦25million recorded in the books.

2. Different tax rates apply to export crude sales and local crude sales respectively. The applicable rates are:

Export Crude Sales	85%
Local Crude Sales	65.75%

   These are the rates that would be applied in practice. The 85% rate applied above is for simplification and is considered acceptable under examination condition although the student will append a note similar to this to let the examiner know that the student is aware of the tax rate for crude oil sold locally.

Question 5

White Cleaners Ltd. is involved in dry cleaning business. The company acquired a building for the business within Shonibare Estate, Maryland in the year 2001 at a cost of ₦25,000,000. It also acquired dry cleaning equipment and a generating set at the costs of ₦5,000,000 and ₦3,500,000 respectively.

The wrong location of the company coupled with the poor performance of equipment some of which were refurbished but wrongly believed to be new resulted in low patronage. The company resolved to make a new start in the year 2003 by selling off everything to use the proceeds to augment the acquisition of new ones.

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

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

You are required to compute:

a) The Capital Gains (6 Marks)
b) The roll-over relief available (if any) (4 Marks)
c) Capital Gains Tax payable (2 Marks)
d) The costs on which capital allowances will be granted to the company based on the newly acquired assets. (3 Marks) **(Total 15 Marks)**

ICAN PEII May 2004 Question 2

SUGGESTED SOLUTION to Question 5

(a) **COMPUTATION OF CAPITAL GAINS – White Cleaners Ltd.**

	₦	₦
BUILDING		
Proceeds from disposal	30,000,000	
Cost of acquisition	(25,000,000)	
Capital Gains	5,000,000	5,000,000
EQUIPMENT		
Proceeds from disposal	3,500,000	
Cost of acquisition	(5,000,000)	
Capital loss	(1,500,000)	
GENERATING SET		
Proceeds from disposal	4,300,000	
Cost of Acquisition	(3,500,000)	
Capital Gain	800,000	
		800,000
TOTAL CAPITAL GAINS		5,800,000

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

(b) **COMPUTATION OF `ROLL OVER RELIEF'**

		₦	₦
(i)	Building		
	Proceeds form disposal	30,000,000	
	Cost of acquisition	(25,000,000)	
	Capital Gains		5,000,000
	Rollover relief:		
	Amount reinvested in the new building		30,000,000
	Rollover relief (See Note i)		(5,000,000)
	Balance liable to tax		NIL
	Capital Gains Tax payable @ 10%		NIL

(ii)	Equipment		
	Proceeds from disposal	3,500,000	
	Cost of Equipment	(5,000,000)	
	Capital loss	(1,500,000)	
	Rollover relief		NIL
	Capital Gains Tax @ 10%		NIL

NOTES: ROLL OVER RELIEFS

Roll over relief is applicable where the capital gains have been fully/partially reinvested in replacement of assets for the purpose of the company's business.

(i) New building was acquired at ₦65,000,000, hence the ₦30million proceed of disposal of the old asset and hence the capital gains had been fully reinvested in the replacement assets – rollover relief is available.

(ii) On the equipment there was no rollover relief because of capital loss incurred.

(iii) On the generating set, there was no rollover relief because the new asset was purchased at a lower cost than the one replaced, therefore no part of the capital gain was reinvested.

(c) **CAPITAL GAINS TAX PAYABLE**

This is applicable only on Generating Set	₦	₦
Proceeds from disposal	4,300,000	
Cost of old Generating Set	3,500,000	
		800,000
Rollover relief		
Amount reinvested in the new set	3,000,000	
Cost of old Generating set	3,500,000	
	NIL	NIL
Balance liable to CGT		800,000
Capital Gains Tax @ 10%		80,000

(d) The costs at which allowances are based for the newly acquired assets are:

1.	Building	
	Cost of new building	65,000,000
	Rollover relief	(5,000,000)
	Cost for Capital allowance purposes	60,000,000
2.	Generator	
	Cost of new generating set	3,000,000
	Rollover relief	-
	Cost for Capital allowance purposes	3,000,000
3.	Equipment	
	Cost of new equipment	7,500,000
	Rollover relief	-
	Cost for Capital allowance purposes	7,500,000

Notes on claiming roll-over reliefs

(i) The asset disposed of must have generated Capital Gain

(ii) The new asset must cost more than the sales proceeds of the disposed asset and

(iii) The amount reinvested in the new asset must exceed the cost of the old asset, in other words, you can't have a loss on disposal of an old, relevant asset and hope to claim Roll-over Relief on the class of asset.

(iv) Cost for capital allowance purposes is acquisition cost less Roll-over Relief (if any).

Question 6

Erron Nigeria Limited is a company engaged in the manufacturing of nails. Due to fall in demand for its products, it decided to move its factory from Abeokuta to Lagos State. Concerted efforts were made to acquire land for the new factory in Ojodu Village and the warehouse in Abeokuta which cost ₦900,000 six years earlier was sold for ₦2,100,000 in March 1998, the amount formed part of the cost of construction of the new factory at Ojodu Village which was completed in November 1998 at a cost of ₦2,800,000.
In 1999, the Abeokuta factory costing ₦1,850,000 was sold for ₦2,950,000. ₦2,300,000 out of the sales proceeds was spent on the construction of the second factory in Ojodu Village whilst the balance of ₦650,000 was put in a fixed deposit account to generate interest.

You are required to compute:

1) The Capital Gains made on the project

2) The Capital Gains Tax Payable

In addition, suggest how the company can reduce the Capital Gains Tax payable.

(20 Marks) *ICAN PEII May 2001 Question 1*

SUGGESTED SOLUTION to Question 6

ERRON NIGERIA LIMITED
CAPITAL GAINS TAX COMPUTATION 1999

	₦	₦	₦
Disposal of Abeokuta Warehouse:			
Proceeds			2,100,000
Cost of Warehouse			900,000
Chargeable Gain			1,200,000
Disposal of Abeokuta Factory:			
Proceeds		2,950,000	
Cost		1,850,000	
Chargeable Gain		1,100,000	
In view of the reinvestment of ₦2,300,000 in the new factory, the company is entitled to a roll-over relief			
Proportion of the gain reinvested			
Cost of Ojodu factory	2,300,000		
Cost of Abeokuta factory	(1,850,000)		
Proportion of the gain to be relieved		(450,000)	650,000
Total Chargeable Gains			1,850,000
Capital Gains Tax Payable 10% of ₦1,850,000			185,000

(ii) In order to reduce the capital gains tax, the proceeds of disposal of the Abeokuta warehouse should be applied in the construction of the Ojodu warehouse and the full proceeds of ₦2,950,000 should be applied to Ojodu factories so that the company can benefit from a rollover relief.

Question 7

Ugo Limited has been in trading business for many years making up accounts to 31st December each year.
The following assessable profit/(Loss) have been agreed.

Year to 31/12/93	₦1,200,000
Year to 31/12/94	(₦840,000)
Year to 31/12/95	₦1,420,000
Year to 31/12/96	₦984,000

The company acquired the following assets:

Year End	Assets	Quantity	₦
31/12/93	Furniture & Fittings	10	180,000
	Vehicles	5	400,000
31/12/94	Plants	20	800,000
31/12/95	Furniture & Fittings	8	160,000
	Vehicles	2	640,000
31/12/96	Equipment	10	220,000
	Plants	1	180,000

You are required to compute the total income of Ugo Limited for all the relevant years of assessment. **(20 marks)** ***ICAN PE III May 1998 Question 1***

SUGGESTED SOLUTION to Question 7

UGO LIMITED
CALCULATION OF TOTAL PROFITS

1994 Year of Assessment			₦
Assessable profit			1,200,000
Less: Capital Allowances –	Initial		(127,000)
	Annual		(75,300)
Total Profit			997,700
1995 Year of Assessment			
Assessable Profit/(Loss) c/f			(840,000)
Capital Allowance	Investment	80,000	
	Initial	160,000	
	Annual	139,300	
Unrelieved Capital allowance c/f		(379,300)	
Total Profit		NIL	

1996 Year of Assessment		₦	₦
Assessable Profit			1,420,000
Less: Loss Relief – Loss b/f			(840,000)
			580,000
Capital Allowances	b/f	379,300	
	Initial	360,000	
	Annual	426,800	
		1,166,100	
Maximum is 66 2/3% of ₦1,420,000 (₦946,667)			
C.A. that can be relieved		(580,000)	(580,000)
Unrelieved Capital allowace c/f		586,100	
Total Profit			NIL

1997 Year of Assessment			
Assessable Profit			984,000
Less:			
Capital Allowances	b/f	586,100	
	Investment	40,000	
	Initial	200,000	
	Annual	476,750	
		1,302,850	
Restricted to 66 2/3% of ₦984,000			
Capital allowance that can be relieved		(656,000)	(656,000)
Unrelieved C.A. c/f		646,850	
Total Profit			328,000

CAPITAL ALLOWANCES COMPUTATION

	Furniture & Fittings	*Vehicles*	*Plant & Equipment*	*Total*
	₦	₦	₦	₦
1993 to 1995 Rates:				
Initial Allowance	15%	25%	20%	
Annual Allowance	10%	20%	10%	
Investment allowance			10%	
1994 YOA	180,000	400,000		580,000
Initial Allowance	(27,000)	(100,000)	-	(127,000)
Annual Allowance	(15,300)	(60,000)	-	(75,300)
WDV c/d	137,700	240,000	-	377,700
1995 YOA				
WDV b/f	137,700	240,000	-	377,700
Additio	-	-	800,000	800,000
Investment allowance			80,000	80,000
Initial Allowance	-	-	(160,000)	(160,000)
Annual Allowance	(15,300)	(60,000)	(64,000)	(139,300)
WDV c/f	122,400	180,000	576,000	878,400
Rates from 1996				
Initial Allowance	25%	50%	50%	
Annual Allowance	20%	25%	25%	

1996 YOA				
WDV b/f	122,400	180,000	576,000	878,400
Additions	160,000	640,000	-	800,000
Initial Allowance	(40,000)	(320,000)	-	(360,000)
A.A. on 1994 acq.	(40,800)	(90,000)	-	(130,800)
A.A. on 1995 acq.	-	-	(192,000)	(192,000)
A.A. on 1996 acq.	(24,000)	(80,000)	-	(104,000)
WDV c/f	**177,600**	**330,000**	**384,000**	**891,600**

Summary of annual allowances:

On 1994 acquisitions	130,800
On 1995 acquisitions	192,000
On 1996 acquisitions	104,000
	426,800

1997 YOA				
WDV b/f	177,600	330,000	384,000	891,600
Additions	-	-	400,000	400,000
Investment allowance			40,000	40,000
Initial Allowance	-	-	(200,000)	(200,000)
A.A. on 1994 acq.	(40,800)	(89,950)	-	(130,750)
A.A. on 1995 acq.	-	-	(192,000)	(192,000)
A.A. on 1996 acq.	(24,000)	(80,000)	-	(104,000)
A.A. on 1997 acq.	-	-	(50,000)	(50,000)
WDV c/f	**112,800**	**160,050**	**342,000**	**614,850**

Summary of annual allowances:

On 1994 acquisitions	130,750
On 1995 acquisitions	192,000
On 1996 acquisitions	104,000
On 1997 acquisitions	50,000
	476,750

Upon the change of Capital allowance rates in 1996, the annual allowances of the old qualifying expenditure will be recomputed on the basis of the new annual allowances rates:

	F & F	*Vehicles*	*Equipment*
Residue end of 1995 YOA	122,400	180,000	576,000
No. of years left with new rates	3	2	3
Annual Allowance from 1996	40,800	90,000	192,000

Notes

1. From 1993 assessment year, investment allowance of 10% is available on qualifying plant and machinery expenditure.

2. Investment allowance is not to be deducted in arriving at the WDV of the asset.

Question 8

New Idea Processing Co. Ltd. was established in 1988 and commenced its cocoa processing business on 1st July in the same year.
The adjusted profits of the company are stated below:

		₦	
Period to	30/9/89	600,000	Loss
Year ended	30/9/90	1,500,000	Profit
Year ended	30/9/91	2,750,000	Profit

Capital allowances for the relevant years of assessment were computed and agreed with the Federal Inland Revenue Service as follows:

	₦
1988 Year of Assessment	750,000
1989 Year of Assessment	600,000
1990 Year of Assessment	700,000
1991 Year of Assessment	550,000
1992 Year of Assessment	480,000

You are required to determine the tax liability of the company for all the relevant years. Please note that the company was denied pioneer status. ***(20 marks)***

ICAN PE III Nov/Dec. 1993

SUGGESTED SOLUTION to Question 8

NEW IDEA PROCESSING CO. LTD.
INCOME TAX COMPUTATION

Date of commencement of business – 1st July, 1988
Commencement provisions:

Assess Year	*Without election Basis Period*	*With election Basis Period*
1988	1/7/88 to 31/12/88	1/7/88 to 31/12/88
1989	1/7/88 to 30/6/89	1/1/89 to 31/12/89
1990	1/7/88 to 30/6/89	1/1/90 to 31/12/90
1991	Year ended 30/9/90	Year ended 30/9/90
1992	Year ended 30/9/91	Year ended 30/9/91

Without Election

1988 6/15 x 600,000 loss c/f		(240,000)
Therefore 1988 Assessment		NIL
Capital allowance unutilised c/f	₦750,000	
1989 12/15 x 600,000 loss		(480,000)
Therefore 1989 Assessment		NIL
Loss b/f	240,000	
For 1989 assessment year	480,000	
	720,000	
Loss c/f cannot exceed the amount of the actual loss incured. Therefore loss c/f		₦600,000

Capital allowances:			
	For year	600,000	
	Brought forward	750,000	
	Carried forward	1,350,000	
1990	12/15 x 600,000 loss		(480,000)
Therefore 1990 assessment			NIL
Capital allowances			
	For year	700,000	
	Brought forward	1,350,000	
Carried forward		2,050,000	
Loss c/f can still not exceed the actual loss incurred. Therefore loss c/f			₦600,000
1991	Adjusted profit for the year ended 309/90		1,500,000
	Less loss relief – loss b/f		600,000
			900,000
	Less Capital allowances:		
	For year	550,000	
	Brought forward	2,050,000	
		2,600,000	
	Amount that can be relieved	(900,000)	(900,000)
	C.A. unrelieved c/f	1,700,000	
	1991 Assessment		NIL
1992	Adjusted profit for the year edned 30/9/91		2,750,000
	Less Capital allowances:		
	For year	480,000	
	Brought forward	1,700,000	(2,180,000)
	Chargeable profit		570,000
	Income tax at 40% thereof		228,000

With election to have 2 and 3 years of assessment based on actual, the assessments for 1989 and 1990 assessment years would be:

1989 – 1/1/89 to 31/12/89
9/15 x (600,000) + 3/12 x 1,500,000 profit
= (360,000) + 375,000 profit ₦15,000 profit

1990 – 1/1/90 to 31/12/90
9/12 x 1,500,000 + 3/12 x 2,750,000
= 1,125,000 + 687,500 ₦1,812,500 profit

Notes:

1. Taking the two years together will give total assessable profits of ₦1,827,500 with election as against NIL assessable profit without election. Since it is not to the taxpayer's advantage to elect, the election will not be made.
2. Cocoa processing will fall into the business of manufacturing. Hence no restriction of capital allowances that can be claimed.

Question 9

Quick Business is a trading company dealing with the importation and distribution of milk. It commenced business on 1st July 2003. Accounts are made up to 30th September every year. The following fixed assets were acquired by the company:

Date	*Item*	₦
30/4/03	Motor Vehicle for Public Transportation by majority shareholder	1,500,000
5/6/03	Building	1,500,000
1/7/03	Distribution vans	2,500,000
5/7/03	Office Equipment	500,000
31/7/03	Office Equipment	1,000,000
1/10/03	Motor Vehicle No. 1	750,000
31/12/03	Office Equipment	250,000
15/1/04	Computer Equipment	2,000,000
30/6/04	Motor Vehicle No. 2	1,250,000
31/10/04	Building extension	2,200,000

You are required to:
Compute the capital allowances for all relevant years on the basis that no election is made to have the 2nd and 3rd years of assessment based on the actual results for those years.

SUGGESTED SOLUTION to Question 9

QUICK BUSINESS LIMITED
CAPITAL ALLOWANCE COMPUTATIONS

The company commenced business on 1 July 2003.

Accounts would be made up as follows
1/7/2003 to 30/9/2003 3 months
1/10/2003 to 30/9/2004 12 months
1/10/2004 to 30/9/2005 12 months

Basis Period: No election for the 2 and 3 assessment years to be based on actual.

2003 Assessment Year	1 Year Actual	1/7/2003 to 31/12/2003
2004 Assessment Year	2 Year 1 12 months	1/7/03 to 30/6/04
2005 Assessment Year	3 Year P/Y basis	1/10/2003 to 30/9/2004
2006 Assessment Year	4 Year P/Y	1/10/04 to 39/9/05

QUICK BUSINESS LIMITED
CAPITAL ALLOWANCE COMPUTATIONS

Basis Period for Capital Allowances Purposes:

Assessment Year	*Assessment Basis Period*	*Capital allowances Basis Period*
2003	1/7/2003 to 31/12/2003	1/7/2003 to 31/12/2003
2004	1/7/2003 to 30/6/2004	1/1/2004 to 30/6/2004
2005	1/10/2003 to 30/9/2004	1/7/2004 to 30/9/2004
2006	1/10/2004 to 30/9/2005	1/10/2004 to 30/9/2005

	Non-Industrial Building	*Plant & Machinery*	*Motor Vehicles Others*	*Total Allowances*
Allowances Rates:				
Initial	15%	50%	50%	
Annual	10%	25%	25%	
Investment	-	10%	-	
	₦'000	₦'000	₦'000	₦'000
2003 Assessment Year				
Acquisitions				
5/6/03	1,500	-		
1/7/03			2,500	
5/7/03		500		
31/7/03		1,000		
1/10/03			750	
31/12/03		250		
Total acqusitions (A)	1,500	1,750	3,250	
Inv. Allowance	-	175	-	175
Initial Allowance (B)	225	875	1,625	2,725
Balance after IA (A – B) = C	1,275	875	1,625	
A.A. Full Year	128	219	406	
6 months in Basis Period AA claim = ½ (D)	64	110	203	377
Residue c/f (C – D)	1,211	765	1,422	
2004 Assessment Year				
Residue b/f (A)	1,211	765	1,422	
Additions				
15/1/04	-	2,000	-	
30/6/04	-	-	1,250	
Total additions	-	2,000	1,250	
Investment All.	200	200	-	200

Initial Allowance.	-	1,000	625	1,625
Bal. after I.A. (B)	-	1,000	625	
A.A. on 2004 additions	-	250	156	
AA on 2003 additions	128	219	406	
Total AA Claim (C)	128	469	562	1,159
Residue c/f (A + B – C)	1,083	1,296	1,485	
2005 Assessment Year				
Residue b/f (A)	1,083	1,296	1,485	
Additions	-	-	-	
AA on 2004 additions	-	250	156	
AA on 2003 additions	128	219	406	
Total AA Claim (B)	128	469	562	1,159
Residue c/f (A – B)	955	827	923	
2006 Assessment Year				
Residue b/f (A)	955	827	923	
Additions	2,200	-	-	
Initial allowance	330	-	-	
Bal. after IA (B)	1,870	-	-	
AA on 2006 addition	187	-	-	
AA on 2004 addition	-	250	156	
AA on 2003 addition	128	219	406	
Total AA claim (C)	315	469	562	1,346
Residue c/f (A + B – C)	2,510	358	361	

Notes:

1. All acquisitions before the date of commencement are deemed to have been acquired on the first date of commencement of the company's business.
2. The item purchased on 30/4/2003 was not for the purpose of the trade of distribution of milk. Capital allowance cannot be granted for such.

Question 10

Manufacturing Company Plc has been in business for several years. Financial statements are made up to 30th June every year. The following acquisitions and disposals of fixed assets were effected in the year ended 30th June 2004.

	₦
Industrial Buildings	5,000,000
Plant and Machinery	1,750,000
Motor Vehicles	3,500,000

The following disposals were made during the same period:

Motor Vehicle – acquired for ₦1,500,000 in year ended 30/6/2002 sold for ₦2million

The residues of qualifying expenditure as at 1st July 2003 are:	₦
Industrial Building (5yrs more)	10,000,000
Plant and Machinery (2yrs more)	2,000,000
Motor Vehicles (2yrs more)	3,000,000

Show the relevant capital allowances computation.

SUGGESTED SOLUTION to Question 10

MANUFACTURING COMPANY PLC
2005 CAPITAL ALLOWANCES COMPUTATION

	Industrial Building ₦'000	*Plant and Machinery* ₦'000	*Motor Vehicles* ₦'000	*Total Allow* ₦'000
Residue b/f	10,000	2,000	3,000	
Disposal at WDV	-	-	375	
Net Residue (A)	10,000	2,000	2,625	
Additions:	5,000	1,750	3,500	
Investment Allow.		175		175
Initial Allow.	750	875	1,750	3,375
Balance after Initial Allow (B)	4,250	875	1,750	
AA on 2005 additions	425	219	438	
AA on residue	2,000	1,000	1,313	
Total annual allowances (C)	2,425	1,219	1,751	5,395
Residue c/f (A + B – C)	11,825	1,656	2,624	

WDV of disposal
2003 Assessment year
Motor Vehicle Cost

Year end 30/6/2002	1,500,000
Less Initial Allowance	750,000
Balance after Initial Allowance	750,000
Annual Allowance	187,500
2003 Residue C/f	562,500
2004 assessment year	
Annual Allowance	187,500
Tax written down value of disposal	375,000

Note that disposal was in 2005 assessment year. Vehicle was not in use on the last day of the basis period for the assessment year. Thus annual allowance cannot be claimed for the vehicle in 2005 assessment year.

Summary of Capital Allowances	₦
Investment allowance	175,000
Initial allowance	3,375,000
Annual allowance	5,395,000
Balancing charge	1,125,000

Balancing Charge on Vehicle Disposed	
Sales Proceeds	2,000,000
Less Tax written down value at time of disposal	375,000
Surplus	**1,625,000**
Balancing charge has to be	
Restricted to Capital allowance previously granted:	
Cost	1,500,000
WDV	375,000
Therefore, Capital allowance previously granted	1,125,000
Balancing Charge	1,125,000

Question 11

Jayne Nigeria Limited was incorporated on March 31, 1994 to manufacture a Pioneer product. It was granted a pioneer certificate with a production day certified to be June 1, 1994. You are given the following information

	₦
Net profit for the year ended May 31, 1998	1,540,000
Depreciation charged for year ended May 31, 1998	132,145

Capital expenditure incurred up to and including year ended May 31, 1997 certified by the tax office are as follows:

Motor vehicles	1,250,000
Plant & machinery	1,425,000
Industrial buildings	1,890,000
Non-industrial buildings	920,000
Accumulated profit at May 31, 1997	725,000

It is not the intention of the directors to apply for an extension of the pioneer period. You are required to compute the tax liabilities for relevant assessment years. **(20 marks)**
ICAN PE II November 2002

SUGGESTED SOLUTION to Question 11

JAYNE NIGERIA LIMITED
INCOME TAX COMPTUATIONS FOR 1997, 1998 AND 1999 ASSESSMENT YEARS

	₦	₦
Net Profit for the year ended May 31, 1998		1,540,000
Add: Depreciation		132,145
Adjusted Profit for the year		1,672,145

1997 ASSESSMENT YEAR

Actual for the 7 months ($^7/_{12}$ x ₦1,672,145)		975,418
Deduct: Capital allowances		
Investment allowance	142,500	
Initial Allowance	1,759,000	
Annual Allowance	334,382	(2,235,882)
Un-recouped capital allowance c/f		(1,260,464)
Total Profits		nil
Tax liability at 30%		nil
Education Tax at (2% of ₦975,418)		₦19,508

1998 ASSESSMENT YEAR	₦	₦
First 12 months of operation ($^{12}/_{12}$ x ₦1,672,145)		1,672,145
Deduct: Capital Allowances		
B/f from 1997 assessment year	1,260,464	
For the year	573,225	(1,833,689)
Unrecouped Capital Allowances		(161,544)
Total Profits		nil
Income Tax Liability at 30%		nil
Education Tax (at 2% of ₦1,672,145)		₦33,443

1999 Assessment year

Preceding Year basis ($^{12}/_{12}$ X ₦1,672,145)		1,672,145
Deduct: Capital Allowances		
B/F from 1998 assessment year	161,544	
For the year	573,225	
		734,769
Total Profits		937,376
Income tax liability (at 30% of ₦937,376)		₦281,213
Education Tax (at 2% of ₦1,672,145)		₦33,443

JAYNE NIGERIA LIMITED
CAPITAL ALLOWANCE COMPUTATIONS

	Motor Vehicle	Plant & Machinery	Industrial Building	Non-Industrial Building	Total
Allowances Rates:					
Investment			10%		
Initial	50%	50%	15%	15%	
Annual	25%	25%	10%	10%	

	₦	₦	₦	₦	₦
1997 Assessment Year					
(7 Months)					
Cost	1,250,000	1,425,000	1,890,000	920,000	5,485,000
Investment allowance		142,500			142,500
Initial Allowance	(625,000)	(712,500)	(283,500)	(138,000)	(1,759,000)
Balance after In all (A)	625,000	712,500	1,606,500	782,000	3,726,000
Annual all Full Year	156,250	178,125	160,650	78,200	
A. A. claim for 7/12 (B)	(91,146)	(103,906)	(93,713)	(45,617)	(334,382)
WDV c/f to 1998 (A-B)	533,854	608,594	1,512,787	736,383	3,391,618
1998 Assessment year					
Deduct					
Annual Allowance	(156,250)	(178,125)	(160,650)	(78,200)	(573,225)
WDV c/f to 1999	377,604	430,469	1,352,137	658,183	2,818,393
1999 Assessment year					
Deduct					
Annual Allowance	(156,250)	(178,125)	(160,650)	(78,200)	(573,225)
WDV c/f to 2000	221,354	252,344	1,191,487	579,983	2,245,168

Note: Investment allowance at 10% is due on qualifying expenditure on plant and machinery.

Question 12

AD International Limited runs pharmacy practice in Nigeria and Ghana. The company's operating results for the year ended 31st December 2002 were as follows:

	₦
Income from Nigeria	50,000,000
Income from Ghana	22,000,000
Total Income	72,000,000
Less: Overheads	(40,000,000)
NET PROFIT	32,000,000

a) Included in the Overheads were:

			₦
i)	Depreciation – Nigeria business	-	4,500,000
ii)	Depreciation – Ghana business	-	750,000
iii)	Donations to clubs in Nigeria	-	250,000
iv)	Foreign tax suffered	-	4,200,000

b) Profit attributable to Ghana business - 5,150,000

c) Capital allowances agreed with tax officials for Nigeria and Ghana businesses were ₦3,540,000 and ₦1,450,000, respectively.

d) Assume the company is a wholly Nigerian company.

Required:
Compute the tax liabilities on the total income, stating clearly the double taxation relief applicable to the company. **(15 Marks)** ***ICAN PE II May 2004 (Question 1)***

SUGGESTED SOLUTION to Question 12

AD INTERNATIONAL IMITED
2003 INCOME TAX COMPUTATIONS
BASIS PERIOD: 01/01/02 – 31/12/02

	₦	₦
Net Profit Per Accounts		32,000,000
Add:		
Depreciation – Nigeria	4,500,000	
Depreciation – Ghana	750,000	
Donations to clubs – Nigeria	250,000	
Foreign Tax Suffered	4,200,000	
		9,700,000
Assessable Profit		41,700,000
Deduct:		
Capital Allowance – Nigeria	3,540,000	
Capital Allowance – Ghana	1,450,000	
(Maximum of $66^2/_3$% of ₦41,700,000)		(4,990,000)
TOTAL PROFIT		36,710,000
Tax at 30%		11,013,000
Less: Double Taxation Relief (15% of ₦8,650,000)		(1,297,500)
Final Tax Liability		9,715,500
Education Tax - 2% of Assessable Profit of ₦41,700,000		834,000

COMPUTATION OF TOTAL PROFIT FOR GHANA BUSINESS

	₦	₦
Net profit per Ghana Accounts		5,150,000
Add:		
Depreciation	750,000	
Foreign Tax	4,200,000	
		4,950,000
Assessable Profit		10,100,000
Less: Capital Allowances		(1,450,000)
TOTAL PROFIT		8,650,000

Commonwealth Rate of Tax = $\frac{₦4,200,000}{₦8,650,000}$ x 100% = 48.55%

Nigeria income tax rate 30%

Note:
Since the Commonwealth rate of tax exceeds one half of Nigerian rate, half of Nigerian rate is applicable for double taxation relief.

Question 13

The 2008 records of the Trustees of BLACKY Children Settlement created in favour of DANA, BRIGHT and WHITE are as follows:

	₦
Rental Income (Gross)	400,000
Trading Income	155,000
Dividend (Gross)	80,000
Sundry Income	45,000

Additional information provided include:

(i) Each Beneficiary is entitled to $^1/_5$ share of the net distributable income.
(ii) Interest on debt repayment by the Settlement is ₦7,000
(iii) Fixed annuity to a Beneficiary is ₦60,000 (Gross).
(iv) Trustees remuneration per 'Trust Deed'.
- Fixed ₦40,000 each
- 2% of Total Computed Income

(v) Under the terms of the Trust Deed; the Trustees made the following discretionary payments to Dana, Bright and White: ₦60,000, ₦50,000 and ₦30,000 respectively.
(vi) Capital allowance agreed was ₦35,000.
(vii) Administrative and other expenses amounted to ₦80,000
(viii) The children have no other income.

You are required to compute:

(a) Income tax payable by the Trustees on the Trust Income.
(b) The amount due to each beneficiary for the 2008 Assessment year.

SUGGESTED SOLUTION to Question 13

BLACKY CHILDREN SETTLEMENT
COMPUTATION OF INCOME TAX PAYABLE BY
THE TRUSTEES ON THE TRUST INCOME

2008 YEAR OF ASSESSMENT

	₦	₦
Rental Income (Gross)		400,000
Trading Income	155,000	
Less: Capital allowance (W.I)	35,000	
Dividend (Gross)		120,000
Sundry Income		80,000
		45,000
		645,000
Deduct: Charges		
Interest on debt repayment	7,000	
Fixed annuity	60,000	
Administrative and Other expenses	80,000	
Trustees' remuneration		
- Fixed	40,000	
- 2% of Computed Income (W. II)	8,980	(195,980)
Computed Income		449,020
Deduct:		

Discretionary payments		
- Dana	60,000	
- Bright	50,000	
- White	30,000	(140,000)
Net		309,020
Apportioned to beneficiaries as follows:-		
Dana - $^1/_5$ of ₦309,020	61,804	
Bright - $^1/_5$ of ₦309,020	61,804	
White - $^1/_5$ of ₦309,020	61,804	185,412
Remainder of computed income apportioned to Trustees for assessment ($^2/_5$).		123,608

INCOME TAX PAYABLE BY THE TRUSTEES

	₦
First ₦30,000 @ 5%	1,500
Next ₦30,000 @ 10%	3,000
Next ₦50,000 @ 15%	7,500
Next ₦13,608 @ 20%	2,722
Tax Borne	14,722
Less: W/Tax on dividend (N80,000 x 10%)	(8,000)
Tax Due Payable by Trustees	6,722

ii. **COMPUTATION OF AMOUNT DUE TO EACH BENEFICIARY**

	DANA	BRIGHT	WHITE
Discretionary payment given	60,000	50,000	30,000
Apportioned Income per (i) above	61,804	61,804	61,804
	121,804	111,804	91,804

ASSUMPTIONS / WORKINGS

iii. Capital allowance relates to Trading income.

iv. Calculation of 2% Trustees Remuneration on Total Computed Income

	₦	₦
Trust Income		645,000
Less:		
Interest on debt repayment	7,000	
Fixed annuity (Gross)	60,000	
Administrative and Other expenses	80,000	
Trustees remuneration - Fixed	40,000	(187,000)
Computed Income before deduction of 2% remuneration		458,000
2% of total computed income 458,000 x ($^2/_{102}$)		8,980

Question 14

TORONTO Limited was incorporated in January 2006 and result of the company for the first 3 years of the commencement of business were as follows:

	₦
Period to 30/09/2006	2,047,807
12 months to 30/09/2007	15,804,258
12 months to 30/09/2008	44,265,223

The Company acquired assets as follows:

Date of Acquisition	Description	Acquisition ₦
1/2/2006	Industrial Building	6,000,360
1/4/2006	Plant A	2,495,000
4/7/2007	Furniture & Equipment	1,200,000
7/7/2008	Plant B	5,000,000

The Industrial Building was sold on 4/8/2007 for ₦9,000,000. A new Industrial Building was purchased on 1/12/2007 for ₦10,250,000. The Company made a claim for Roll Over relief and this was approved by the tax Authority.

Required:

a) Compute Assessable Income for relevant years of Assessment together with Capital allowance assuming the Taxpayer did not exercise the right of election under Section 25(3)(d) of the Act.

b) Explain principle to be followed, should Toronto had exercise its right of election at commencement of business.

<u>NB:</u>
Rates of Capital Allowances are given as follows:

Assets	Initial	Annual
Industrial Building	15%	10%
Plant	50%	25%
Furniture & Equipment	25%	20%

(16 Marks)

SUGGESTED SOLUTION to Question 14

TORONTO LIMITED
COMPUTATION OF ASSESSABLE INCOME

2008 YEAR OF ASSESSMENT

Assessment Year		Basis Period	₦	Amount ₦
2006	1/4/06 - 31/12/06;	1/4/06 - 30/9/06	2,047,807	
		1/10/06 - 31/12/06 ($^{3}/_{12}$ x ₦15,804,258)	3,951,065	5,998,872
	Deduct:			
	Capital Allowances			2,763,983
	Assessable Income			3,234,889

2007	1/4/06 - 31/12/07;	1/4/06 - 30/9/06	2,047,807	
		1/10/06 - 31/3/07 ($^{6}/_{12}$ x ₦15,804,258)	7,902,129	9,949,936
	Deduct:			
	Capital Allowances			821,906
	Assessable Income			**9,128,030**
2008	1/10/06 - 30/9/07			15,804,258
	Deduct:			
	Capital Allowances			1,085,625
	Assessable Income			**14,718,633**
2009	1/10/07 - 30/9/08			44,265,223
	Add:			
	Balancing Charge			1,792,554
				46,057,777
	Deduct:			
	Capital Allowances			3,723,125
	Assessable Income			**42,334,652**

NOTE:

The Company can elect, by giving notice to the Board, within 2 years after the end of 1998 to reverse the assessment for 2007 and 2008, unto actual basis, if that will minimise its tax liabilities.

Workings

i **COMPUTATION OF CAPITAL ALLOWANCES**

	Industrial Building	Plants	Furniture	Total Allowances
Rates:				
I. A.	15%	50%	25%	
A. A.	10%	25%	20%	
	₦	₦	₦	₦
Assessment Year 2006				
Acquisitions				
1/2/2006	6,000,360	-	-	
1/4/2006	-	2,495,000	-	
	6,000,360	2,495,000	-	
Allowances				
I.A	(900,054)	(1,247,500)	-	2,147,554
A.A (9 months)Wii	(382,523)	(233,906)	-	616,429
TWDV c/f	4,717,783	1,013,594	-	2,763,983

		INDUSTRIAL BUILDING	PLANT	FURNITURE	TOTAL ALLOWANCE
		₦	₦	₦	₦
Assessment year 2007					
A.A		(510,031)	(311,875)	-	821,906
TWDV c/f		4,207,752	701,719		
Assessment year 2008					
Acquisition					
4/7/07	10,250,000			1,200,000	
1/12/07	9,000,000	1,250,000	-	-	
		5,457,752	701,719	1,200,000	
Less:					
TWDV on Disposal		(4,207,752)	-	-	
		1,250,000	701,719	1,200,000	
Allowances					
I. A.		(187,500)	-	(300,000)	487,500
A.A.		(106,250)	(311,875)	(180,000)	598,125
TWDV c/f		956,250	389,844	720,000	
					1,085,625
Assessment year 2009					
Acquisition					
7/7/08		-	5,000,000	-	
		956,250	5,389,844	720,000	
Allowa nces					
I. A.		-	(2,500,000)	-	2,500,000
A.A. (W ii)		(106,250)	(936,875)	(180,000)	1,223,125
TWDV c/f		850,000	1,952,969	540,000	
					3,723,125

COMPUTATION OF ANNUAL ALLOWANCES

ASSESSMENT YEAR 2006

a. Industrial Building

10% of (₦6,000,360 - ₦900,0545) x $^9/_{12}$

= ₦510,031 x $^9/_{12}$

= ₦382,523

b. Plant

25% of (₦2,495,000 - ₦1,247,500) x $^9/_{12}$

= ₦311,875 x $^9/_{12}$

= ₦233,906

Assessment Year 2009

Annual allowance on Plant A (Wi)	₦311,875
Annual allowance on Plant B	
25% of (₦5,000,000 - 2,500,000)	625,000
	936,875

COMPUTATION OF BALANCING ADJUSTMENT

	₦
Sales Proceeds	9,000,000
Less TWDV (Wi)	(4,207,752)
Balancing charge	4,790,248

Restriction

Balancing charge is restricted to
Total Capital Allowance claimed to date = ₦1,792,608

TORONTO LTD'S OPTION OF ELECTION FOR THE SECOND AND THIRD YEAR OF ASSESSMENT
To determine whether or not Toronto Ltd should exercise its option to elect under Section 25(3)(d). Do the following:

i. Compute the assessment on actual basis (i.e actual profit from 1st January to 31st December of each assessment year for 2007 and 2008 year of assessment and obtain the total for the two years;

ii. Compare the total assessable profits so computed in (i) above with the total assessed for those two years (2007 and 2008) assuming there was no election;

iii. Election is advantageous to the taxpayer if the actual basis produces lesser total assessable profit than normal basis. In computing assessable profits for the first three years of a new trade or business, taxpayer's right of election is not automatically effected unless the company expressly applied for it in accordance with the provisions of the Act.

iv. Election has to be made in writing within two years after the second year of Assessment;

v. Revocation of election must be within 12 months of the 3rd year.

Question 15

Late Mr. Akintola who had 4 children left his business with Trustees.

The following information was made available by the trustees in respect of his estate.

i. Profits of the business as adjusted for tax purposes are as follows:

	₦
Year ended 31 December, 2002	10,500,000
Year ended 31 December, 2003	12,200,000
Year ended 31 December, 2004	15,450,000

ii. Capital allowances for the business, for tax years are stated below:

	₦
2002	2,500,000
2003	3,000,000
2004	4,000,000
2005	4,500,000

Further details:

i. The 4 children, Ngozi, Akin, Abu and Kofi are entitled to $^{1}/_{5}$ of the net distributable income each.
ii. Interest on debt repayment by the trustee is ₦100,000.
iii. Fixed annuity to beneficiary is ₦120,000
iv. Trustee fixed remuneration is ₦110,000
v. Administration and other expenses ₦80,000
vi. Under the terms of the trust deed, the trustee made discretionary payment to the children as follows:

	₦
Ngozi	45,000
Akin	50,000
Abu	48,000
Kofi	42,000

Required:
Compute the income tax payable by the trustee on the income for 2005 year of Assessment. (14 Marks)

ICAN PE1 May 2006 Question 2

SUGGESTED SOLUTION to Question 15

ESTATE OF MR. AKINTOLA
COMPUTATION OF INCOME TAX PAYABLE
FOR 2005 YEAR OF ASSESSMENT

	₦	₦
Adjusted profit		15,450,000
Less: Capital Allowances		(4,500,000)
		10,950,000
Less: Expenses		
Interest on debt repayment	100,000	
Fixed Annuity	120,000	
Trustee Fixed remuneration	110,000	
Administration and other expenses	80,000	
		(410,000)
Computed Income		10,540,000
Less: Discretionary payments:		
- Ngozi	45,000	
- Akin	50,000	
- Abu	48,000	
- Kofi	42,000	
		(185,000)
Income available for distribution		10,355,000

		₦	₦
Less:	Distribution to beneficiaries		
	• Ngozi ($^1/_5$ of ₦10,355,000)	2,071,000	
	• Ngozi ($^1/_5$ of ₦10,355,000)	2,071,000	
	• Ngozi ($^1/_5$ of ₦10,355,000)	2,071,000	
	• Ngozi ($^1/_5$ of ₦10,355,000)	2,071,000	(8,284,000)
Income chargeable to tax in the hands of trustees			2,071,000

Tax Payable by Trustees

	₦	%	₦
1st	30,000	5	1,500
Next	30,000	10	3,000
Next	50,000	15	7,500
Next	50,000	20	10,000
Next	1,911,000	25	477,750
	2,071,000		
Tax payable			499,750

Question 16

Ugbebo Company Limited is engaged in petroleum operations. The following information is extracted from the books of accounts of the company for the year ended 31st December, 2008.

(a)	Crude Oil exported	700,000 barrels
(b)	Domestic crude oil sales	250,000 barrels
		₦
(c)(i)	Posted price for crude oil exported	25.25
(ii)	Posted price for domestic crude oil	5.10
(d)	Miscellaneous income	400,000.00
(e)	Income from transportation of oil to Mali	250,000.00
(f)	Income from oil refinery business	500,000.00
(g)	Administrative expenses	4,425,000.00
(h)	Royalty on oil exported	2,500,000.00
(i)	Royalty on local sale	530,000.00
(j)	Value of chargeable oil sold as per audited Financial Statement	30,000,000.00
(k)	Customs duties on plant and machinery essential to the company in its operations	75,000.00
(l)	Capitalized expenditures for:	
	2002	15,350,000.00
	2003	12,000,000.00
	2004	16,000,000.00
	2005	14,500,000.00
	2006	22,000,000.00
	2007	6,500,000.00
	2008	14,700,000.00

(m) Intangible drilling costs of N2,500,000 and N4,700,000 for 2007 and 2008 respectivelyhad been capitalised and these are included in the 2007 and 2008 capitalised expenditures above.

(n) The additions to qualified expenditures for 2007 and 2008 are classified as follows:

		₦
(i)	on shore operation - 2007	4,000,000.00
	- 2008	4,700,000.00
(ii)	off shore (up to including 100 meters water depth) in respect of 1998	2,500,000.00

(o) Losses from previous years are classified as follows:

Loss from 2007 refinery business	1,000,000.00
Loss from 2007 petroleum business	1,500,000.00

(p) The administrative expenses above include the following:

(i)	Depreciation	500,000.00
(ii)	Stamp Duty on increase in share capital	250,000.00
(iii)	Donation to ICAN Building Fund	50,000.00
(iv)	Loss on Exchange Transactions	3,000.00
(v)	Fines for contravention of traffic rule by company's driver	3,000.00

For the 2008 year of assessment, you are required to compute:

(a) Net fiscal value of chargeable oil (if any)
(b) Total Income
(c) Chargeable Tax
(d) Additional Tax (if any)

(25 Msrks)

SUGGESTED SOLUTION to Question 16

Ugheho Company Limited

(a) Net fiscal value of chargeable oil (Barrels of oil exported X posted price of export) + (barrels of domestic crude oil sales X posted price of domestic sale)

= (700,000 X ₦25.25) + (250,000 X ₦5.10)
= 17,675,000 + ₦1,275,000
= ₦18,950,000

Net fiscal value of chargeable oil = ₦18,950,000

(b) ToTal Income = ₦30,400,000

(c) Petroleum Profits Tax for 2008 Year of Assessment

	₦	₦
Value of chargeable oil		30,000,000
Miscellaneous Income		400,000
		30,400,000
Less Production and Admin. Expenses:		
Custom duties	75,000	
Admin. Expenses (Note 1)	3,672,000	
Petroleum Investment Allowance	485,000	
Royalty on oil exported	2,500,000	
Royalty on local sales	530,000	
Intangible drilling costs	4,700,000	
Education tax	361,529	11,962,000
		18,076,471
Adjusted Profit		
Less: loss from 2007 Petroleum Business B/Fwd (Note 2)		1,500,000
Assessable Profit		16,576,471
Less: Capital Allowances		13,140,000
Chargeable Profit		**3,436,471**
Assessable Tax is 85% x ₦3,436,471		**2,921,000**
Chargeable Tax Payable		2,921,000
Education Tax Payable		361,529

(d) There can be no additional Tax because the Net fiscal value of chargeable oil (₦18,950,000) is less than the value of chargeable oil as per audited accounts ₦30,000,000).

Notes:

1. In determining the correct Administrative Expenses to be charged in the Tax computation, the following items have been disallowed in accordance with the PPT Act.

		₦
(i)	Stamp Duty on increase in share capital	250,000
(ii)	Fines for contravention of traffic offence by the company's driver	3,000
(iii)	Depreciation	500,000

	₦	₦
Administrative Expenses		4,425,000
Less: - Stamp Duty	250,000	
- Fines	3,000	
- Depreciation	500,000	753,000
		3,672,000

2. Loss from 2007 refinery business ₦1,000,000 is not deductible from the adjusted profit as it relates to an activity not taxable under PPT Act.

3. S. 15(1) Restriction Calculation

85% of Assessable profit	-	170% of Petroleum Investment Allowance
85% x ₦16,576,471	-	170% x ₦485,000
= ₦14,090,000	-	₦824,500
= ₦13,265,500		

Capital Allowance of 13,140,000 is lower.

4. S. 17 deductibles

		₦	₦
i.	Royalty of local sales		530,000
ii.	Custome duties on plant and Machinery Essential to the company's operation		75,000
iii.	Petroleum Investment Allowance on shore:		
	Operation (5% x ₦4,700,000)	235,000	
	Offshaore operation (up to and including 100m water depth (10% x ₦2,500,000)	250,000	485,000
			1,090,000

Computation of Capital Allowances

Year of Assessment	Age	Rate	Qualifying Expenditure	Amount of Capital Allowance
			₦	₦
2002	7th Year	-	15,350,000	-
2003	6th Year	-	12,000,000	-
2004	5th Year	19%	16,000,000	3,040,000
2005	4th Year	20%	14,500,000	2,900,000
2006	3rd Year	20%	22,000,000	4,400,000
2007	2nd Year	20%	4,000,000	800,000
2008	1st Year	20%	10,000,000	2,000,000
				13,140,000

Since Capital Allowances of ₦13,140,000 is less than the restricted calculation of ₦13,265,500 Actual Capital Allowances calculated would be used in the computation of chargeable profit.

5. Education Tax is calculated thus $\frac{2}{102}$ x ₦(30,400,000 - 11,962,000)

= ₦361,529

Question 17

With respect to Tax Planning, you are required to comment on each of the following:

(i) Bonus Issue and Dividend

(ii) Employer using staff remuneration

(iii) An investment of ₦3,200,000 in fixed deposit at a rate of 20% p. a against the same amount in a Treasury bill at a rate of $18^1/_2$% p.a.

(iv) Life Assurance Policy

(v) A company involved in manufacturing andexportation of Agricultural Plants.

(vi) Roll over relief

(vii) Use of leased assets.

SUGGESTED SOLUTION to Question 17

Tax planning can be described as a conscious effort on the part of a potential Taxpayer, to organise his or her financial transactions (Income and Expenditure) in such a way as to legitimately minimize his or her Tax liability at every point in time.

(i) **Bonus Issue and Dividend**

An investor in a Company shall prefer Scrip or Bonus issue to Dividend payment because the latter will attract 10% Withholding Tax deduction on the Dividend receivable. Gains made on disposal of stocks and shares currently (since 1998) do not suffer Capital Gains Tax.

(ii) **Employer using Staff Remuneration for Planning**

This occurs when an employer in a bid to minimise the tax liability of the employees reduces the basic salaries and any other monetised benefits in favour of Benefits in Kind. It should however be noted that such Benefits in Kind like Employers assets put to the employees use, will attract 5% of the acquisition cost, if known, or 5% of the market value of the assets at the time of acquisition. Also a Company may decide to pay a lump sum to an employee, and choose to regard such amount as Compensation for Loss of Office which attracts no tax at all.

(iii) The investment of ₦3,200,000 in a Fixed Deposit account and Treasury Bill

	FIXED DEPOSIT	**TREASURY BILL**
Principal	₦3,200,000	₦3,200,000
Interest Rate	X 0.2	X 0.185
Interest	640,000	592,000
Less: Withholding Tax at 10%	64,000	NIL
Net Income	₦576,000	₦592,000

Income savings resulting from taking the option of Treasury bill is:

₦592,000 - ₦576,000 = ₦16,000

The investor has therefore saved ₦16,000 in income, by avoiding the Withholding Tax due under the Fixed Deposit option and opting for the Treasury Bill Investment.

(iv) **Life Assurance Allowance**
An Employee can minimise his tax liability by taking a Life Assurance Policy, as actual premium payment in the preceding year is allowed for tax purposes provided there is evidence that the policy is in his name, or in respect of a contract for a deferred annuity on his own life or the life of his spouse and vidence of payment of the premium in form of policy certificate. Also gains on disposal of interest under a life policy are exempted from Capital Gains Tax.

(v) A Company involved in manufacturing and exporting agricultural equipment instead of trading in such equipment, would enjoy the following tax incentives:

- Capital allowances are not restricted for agro-allied business or Agricultural Equipment Manufacturing Companies. Losses incurred can be carried forward indefinitely.

- If the Company in question obtained a loan for the purpose of the export business, the interest income by the bank is exempted from tax depending on moratorium and repayment period. The interest expenses are treated as allowable charges against income. Dividends received from companies in this business are exempted from tax.

- The Company can be granted Pioneer Status, if exports accounts for at least 50% of the annual turnover.

- Companies with turnover of less than ₦1million will be taxed at 20% in the first five years.

(vi) **Roll - over Relief**
A company may use the proceeds of sale of one asset to buy another asset of the same category and use for the same purpose as the one sold in order to escape paying Capital Gains Tax that would have accrued on the disposal of the initial asset. Roll over relief is also granted where compensation received for loss or destruction of an asset is re-invested in replacement within three years.

(vii) **Use of Leased Assets**
This is used as a means of financing purchases of fixed assets and for tax planning. There are two types, namely finance and operating lease. The advantages accruing to a company from applying either type of financing include:

Under Finance Lease
- The lessee is entitled to claim Capital Allowances.
- In a sale and lease back arrangement, the lessee also claims Capital Allowances.
- Instalmental payments of principal plus interest made by the lessee company are allowable expenses.

Under Operating Lease
- The lessor will claim Capital Allowance.
- Balancing charge / allowance are claimable in the events of disposal.

Question 18

Eye Service Limited was incorporated as a limited liabilit company on 25th February, 2009. The major object clause of the company as stated in its Memorandum of Association was "to carry out Eye Services generally". It has an Authorized Share Capital of N1,000,000 Ordinary Shares of N1.00, fully alloted to the three subscribers, who are also the founding Directors as stated in the incorporation documents presented to you.

You have just been appointed as the first Tax Consultants to the Company, whose registered and business address is located at 22c, Crossroads lane, Idumota, Lagos. The Company commenced operations at exactly 2 pm on Monday 4th May, 2009.

Required:
Please draft suitable letters to the appropriate tax office for Income Tax and VAT Registration purposes and attach relevant documents

SUGGESTED SOLUTION to Question 18

EYESERVICE LIMITED
(NO. RC. 105449C)
22C, Crossroads Lane
Idumota - Lagos.

Our Ref: FIRS/IT/09/01

6th May, 2009.

The Tax Controller
Federal Inland Revenue Services
Idumota Integrated Tax Office
4, Idumota Road
Lagos.

Dear Sir,

COMPANIES INCOME TAX ACT, 2004
TAX REGISTRATION – EYESERVICE LIMITED

We hereby apply for Registration as a Corporate Taxpayer. In conformity with your requirements, we also provide herewith the following information, in respect of our above-named Company, for the purpose of the Tax Registration.

1. The Company was incorporated on 25th February, 2009 - No Rc 105449C.
2. The registered and business address of the Company is 22C, Crossroads Lane, Idumota, Lagos.
3. The Company is in the business of providing Eye Services,
4. The Company commenced business on 4th May, 2009.
5. The Financial Statements will be made up to 31st December, each year.
6. The appointed Banker is Long-Time Bank Ltd., 40, Idumota Road, Lagos.
7. The Company commenced a new business with no predecessors.
8. The Shareholders Particulars are:

Names	No of Shares Held
1. Mr. Dindi Moloko	700,000
2. Chief (Mrs) Tina Moloko	150,000
3. Mrs. Sundie Moloko	150,000
	1,000,000

9. The Directors and their addresses are:

   a. Mr. Dindi Moloko
   15, Moloko Way, Dolphin Estate, Ikoyi, Lagos.

   b. Chief (Mrs) Tina Moloko
   15, Moloko Way, Dolphin Estate, Ikoyi, Lagos.

   c. Mrs. Sundie Moloko
   15, Moloko Way, Dolphin Estate, Ikoyi, Lagos.

10. The Directors have no other Directorship.

11. The appointed Auditors/Tax Consultant is:

    Messrs **XYZ & Company**
    3, Full-time Road
    Ikeja, Lagos.

The Certified True Copies (CTC) of the Certificate of Incorporation, Memorandum and Articles of Association, Directors and Shares Allotment forms are attached herewith. The originals of these documents will be presented to you for sighting.

The Letter of Introduction of the newly appointed Auditors / Tax Consultants is attached herewith.

Thanks for your co-operation.

Yours faithfully,

DINDI MOLOKO
DIRECTOR

Cc: **XYZ & Co.**
(Chartered Accountants)
3, Full-time Road
Ikeja, Lagos.

EYESERVICE LIMITED
(NO. RC. 105449C)
22C, Crossroads Lane
Idumota - Lagos.

Our Ref: FIRS/IT/09/02

6th May, 2009.

The Tax Controller
Federal Inland Revenue Services
Idumota Integrated Tax Office
4, Idumota Road
Lagos.

Dear Sir,

LETTER OF INTRODUCTION
APPOINTMENT OF XYZ & CO AS AUDITORS AND TAX CONSULTANT

We hereby introduce the above firm of Chartered Accountants as our External Auditors and Tax Consultants. The Firm has been mandated to handle our Company's Tax and related matters with you.

Thanks for your anticipated co-operation.

Yours faithfully,

DINDI MOLOKO
DIRECTOR

Cc: XYZ & Co.
(Chartered Accountants)
3, Full-time Road
Ikeja, Lagos.

EYESERVICE LIMITED
(NO. RC. 105449C)
22C, Crossroads Lane
Idumota - Lagos.

Our Ref: FIRS/VAT/09/1

6th May, 2009.

The Tax Controller
Federal Inland Revenue Services
Idumota Integrated Tax Office
4, Idumota Road
Lagos.

Dear Sir,

APPLICATION FOR VAT REGISTRATION
EYESERVICE LIMITED

The above named Company, which is engaged in Eye Services, hereby applies to be registered as a VAT Agent.

The business office is situated at 22C, Crossroads Lane, Idumota, Lagos.

Please find attached a copy of the Company's Certificate of Incorporation.

Thank you.

Yours faithfully,

DINDI MOLOKO
DIRECTOR

Cc: XYZ & Co.
(Chartered Accountants)
3, Full-time Road
Ikeja, Lagos.

EYESERVICE LIMITED
(NO. RC. 105449C)
22C, Crossroads Lane
Idumota - Lagos.

Our Ref: AUDIT/TAX/09/03

5th May, 2009.

The Managing Partner
XYZ & Co.
3, Full-time Road
Ikeja
Lagos.

Dear Sir,

LETTER OF APPOINTMENT AS AUDITORS /TAX CONSULTANTS

We are pleased to appoint you as External Auditors/ Tax Consultants to **EYESERVICE LIMITED**. Your principal contacts will be our Finance Controller and the undersigned.

Whilst congratulating you on this well deserved appointment, we look forward to a mutually beneficial business relationship with your firm.

Thanks for your anticipated co-operation.

Yours faithfully,

DINDI MOLOKO
DIRECTOR

Cc: The Tax Controller
Federal Inland Revenue Service
4, Idumota Road, Lagos.

APPENDIX III

CASE STUDY AND SUGGESTED SOLUTIONS

CASE STUDY 1

TAX PLANNING

A Taxpayer has been running his business under the name Chisco Enterprises for several years. A limited liability company (Outsourcing Enterprises Ltd) in the same trade was desirous of expanding its own market share. It therefore decided to make an attractive offer to the Proprietor of Chisco Enterprises. The Proprietor is keen to accept the offer because of its attractiveness.

The sale is scheduled to take place at a mutually agreed date. The following details relating to Chisco Enterprises are made available.

	₦
Adjusted profit for year ended September 30, 2001	80,000
Adjusted profit for year ended September 30, 2001	240,000
Adjusted profit for year ended September 30, 2003	360,000

The estimated profits for the year to September 30, 2004 and, that for the period to January 31, 2005 have been given as follows:

	₦
Year ended September 30, 2004	430,000
3 Months to December 31, 2004	60,000
1 Month to January 31, 2005	10,000

You are required to:
Advise the Proprietor of Chisco Enterprises on whether to dispose of the business on December 31, 2004 or on January 31, 2005. Support your answer with relevant computations. *(ICAN PE III - MAY 2006)* *(14 Marks)*

SUGGESTED SOLUTION to Case Study 1

19th May 2006

The Proprietor
Chisco Enterprises
Jibowu
Lagos.

Dear Sir,

RE : ADVICE ON APPROPRIATE DATE OF CESSATION

The above subject matter refers.

We would like to advise as follows:

On cessation of business, the tax authority has the right to assess the business either on actual year basis or on preceding year basis for the penultimate year. In practice, the tax authority will choose the higher of the two. For the final year, the assessable profit is the profit from 1st of January to the actual date of cessation.

From the above, it can be seen that when profit is accruing at a reducing rate towards the date of cessation, it is more tax efficient to delay cessation as long as possible and vice versa.

From the computations attached, the profit was reducing towards the date of cessation. We therefore advise that the cessation be delayed to 31st of January 2005.

Thank you and best regards.

Yours faithfully,
PAL Associates Limited

Fash Oni
Managing Consultant

Workings

i) Computations assuming December 31, 2004 as date of Cessation

		₦
2003 the higher of :		
	(a) 1/1/2003 - 31/12/2003	
	($^9/_{12}$ x ₦360,000 + $^3/_{12}$ x ₦430,000)	= 377,500
	(b) 1/10/2001 - 30/9/2002	= 240,000
2004	1/1/2004 - 31/12/2004	
	($^9/_{12}$ x ₦430,000 + ₦60,000)	= 382,500

ii) Computations assuming January 31, 2005 as date of Cessation

			₦
2003	1/10/2001 - 30/9/2002	=	240,000
2004 the higher of :			
	(a) 1/1/2004 - 31/12/2004		
	($^9/_{12}$ x ₦430,000 + ₦60,000)	=	382,500
	(b) 1/10/2002 - 30/9/2003	=	360,000
2005	1/1/2005 - 31/12/2005	=	10,000

Summary of Assessable Profits

Tax year	**31/12/2004**	**31/1/2005**
	₦	₦
2003	377,500	240,000
2004	382,500	382,500
2005	NIL	10,000
Total	**760,000**	**632,500**

CASE STUDY 2

PROCESS COST AND TAX IMPLICATION OF INCREASE IN SHARES AND ACQUISITION IN INSURANCE INDUSTRY

Recently, the Federal Government through the Finance Minister announced increases in the capital base of all categories of insurance companies. Opinion is however divided on the appropriateness or otherwise of this policy directive. You have been appointed as a consultant by Ultimate Risk Limited, a Nigerian Insurance Company to guide it through the entire process of raising the necessary additional capital through the Nigerian Stock Exchange. Your mandate also covers advice on the tax implications of the issues listed below:

(a) The cost of increasing the authorised share capital with the Corporate Affairs Commission, Abuja. *(2 Marks)*

(b) The cost of obtaining approval from regulatory authorities like, the Nigerian Stock Exchange, Securities Exchange Commission and National Insurance Commission (NAICOM). *(2 Marks)*

(c) Acquisition of another insurance company. Concern yourself only with the tax implications from the side of the acquired company. *(11 Marks)*

(Total 15 Marks)

SUGGESTED SOLUTION to Case Study 2

The Board of Directors
Ultimate Risk Limited
Lagos.

Date:

Gentlemen,

RE : THE TAX IMPLICATIONS OF MEETING THE NEW CAPITAL BASE FOR INSURANCE COMPANIES

We wish to thank you for our recent appointment as Consultant on the above, by your Board.

We have familiarized ourselves with the terms of our appointment in reporting as follows:

a) There is need to increase the authorised share capital from its present level to that stipulated by the recent policy directive. The relevant fees to be paid to the Corporate Affairs Commission, Abuja are of a capital nature. This therefore serves as a guide in treating the amount as a disallowable expense for tax purposes. This is the position of the tax law.

b) The cost of obtaining approval from the relevant authorities like Securities Exchange Commission (SEC), Nigerian Stock Exchange (NSE) and National Insurance Commission (NAICOM) are also capital in nature. They will thus be treated as disallowable for tax purposes.

c) In the case of an acquisition of another company, it is to be expected that the acquired company will cease to exist. This is the first tax implication for the acquired company.

The issues before acquisition of the company.

- Find out the tax status of the company to be acquired. Have all returns been filed? Have all the taxes been paid?
- Check outstanding tax queries and determine the tax implications of any of them.
- Confirm that tax audit has been carried out on the acquired company.
- Obtain copy of the Company's Tax Clearance Certificate.
- Ascertain all outstanding issues on VAT and resolve same.
- Ensure that Capital Gains Tax on any asset disposal are paid to the relevant tax authority.
- Check Withholding Tax files for outstanding issues and resolve same.
- Confirm payment of adequate Stamp Duties to be sure there will not be any outstanding payments due to misstatement of Stamp Duties paid during previous increases.
- Cessation rules will not apply to the acquired company as it i s deemed to be continuing in business.
- No initial allowance will be granted on the assets.

- The assets will be deemed to have been transferred to the acquiring company at Tax Written Down Values and therefore to be written off over the unexpired life of the assets.

We hope this report will be carefully considered by the Board in due course. Should you require further clarifications, please do not hesitate to contact us.

Thank you.

Yours faithfully,

A - Z Consultant

NOTE,

This is a question on the process, cost and tax implications of increase in (i) Capital base by Corporate insurance organisations and (ii) Acquisitions within the industry.

Candidates need to keep themselves abreast of current developments in various sectors of the economy as they impact on taxation and fiscal policy issues, by widening their coverage of relevant tests and literature.

CASE STUDY 3

CONTENTS OF NOTICE OF APPEAL AND TAX EFFECTS ON MERGERS

Tijani Olomowewe died of colon cancer recently. Until his death, he was the Executive Chairman of three Companies - two Sole Enterprises and one Limited Liability Company. Wewe Blocks is a block making cencern. Wewe farms is into farming and poultry business. Wewe Pharm Limited, a limited liability company is into importation and sale of medical drugs.

The block making industry as well as the farming/poultry business were located in his village of Abule Ifo, while the pharmaceutical company was located in Lagos.

Chief Olomowewe shuttled between Abule Ifo and Lagos to personally supervise activities of the three Companies. Chief Olomowewe could not trust anybody as he believed that everybody was out to steal his money.

There was business misfortune of recent. Drugs worth N43m imported by the company were confiscated and burnt by National Agency for Food, Drugs Administration and Control. The reasons given were that the drugs carried expired dates and were found to be fake as well.

Chief Olomowewe contested the primaries election into the House of Assembly and lost woefully. He could not recover a penny from the N13.5m spent on the election.

The poultry section of the agric business was not also spared of the business reverses. The drug administered on the day old chicks were found to be fake and three thousand birds were lost in the process.

The Management of Wewe Pharm Limited received a letter from the Integrated Office of the Federal Inland Revenue Service, Lagos, rejecting the tax returns filed.

Ms Shade Olomowewe is the First Daughter of Chief Olomowewe. She holds a B.Sc degree in Microbiology and a diploma in Financial Management from the Obafemi Awolowo University, Ife. She is planning to travel out of the country for further studies.

She sat alone in her father's sitting room, lost in thought. One, she knew that the recent business misfortune of her father might have been responsible for his sudden death . At the family meeting held immediately after the death of Chief Olomowewe, it was unanimously agreed that Shade should take over as Chairman of the business concerns.

In preparation for her new role, Shade attended a seminar at Centre for Management Development Lagos. An extract of a papar presented to Shade is as follows:

"From the commercial standpoint, mergers and acquisitions are rescue devices employed very often to avert failures, to build sustainable competitive position and to assure growth of business organisations through more efficient utilization of existing assets...again tax considerations have occasionally provided the motive for mergers and takeovers."

Ms Shade Olomowewe bubbling with fresh ideas as a result of the seminar she attended called an emergency meeting of Management of the Company to intimate them of her vision and dream for the Company. She lectured the meeting on the need to radically re-design the whole operations through discarding old structures and procedures and inventing new ways of accomplishing tasks and processes. The following decisions were taken at the meeting:

i. To appoint Sola Owoyele & Co., a firm of Tax Practitioners to take up the tax appeal with the Federal Inland Revenue Service;

ii. To appoint Biadoo and Company to advise the company on the restructuring and re-engineering of every aspect of the business, management board, business processes, e.t.c.

iii. To sell the building owned by Wewe Pharm Limited in order to raise funds; and

iv. To consider the proposal for acquisition of an Airline.

The building which was initially built at a cost of ₦100m in 2003 was sold for ₦85m only. The cost of rectifying certain defects in the building and valuation fee was ₦2m.

Shade had received a call from a friend Nathaniel, a 31 year old Camerounian born lawyer, who had founded Sky Airlines, which was currently facing financial difficulties. Nathaniel was seeking additional financing to get the Airline airborne again. This was the proposal referred to Biadoo and Company for professional advice.

Biadoo and Company in their report highlighted the dangers in entering the Airline business. These include lack of previous experience, capital intensive, and the highly seasonal nature of revenue. The case of a similar Airline that had been pushed into bankruptcy by high debts, currency fluctuations and competition from other established foreign airlines, was analysed in the report. Biadoo and Company recommended the proposal only on the condition of being able to raise appropriate finance and experienced personnel.

Despite all these reservations and obstacles, Ms Shade Olomowewe went headlong into the business and got Wewede Airlines registered in Lagos with a paid-up capital of N750m and acquired Sky Airlines. Wewede Airline's low fares began to attract customers.

The Profit and Loss Account of Wewede Airlines, a company incorporated in Lagos, confirmed the good vision and management acumen of Ms Shade Olomowewe. She had become a role model

for the youth both in Nigeria and Cameroun on how to successfully run a business. The financial results in respect of the year ended 31st December, 2008 were as follows:

	₦	₦
Income from passengers freight-out of Nigeria		600,000,000
Income from passengers freight-into Nigeria		2,000,000,000
Income from passengers freight on other routes		7,200,000,000
		9,800,000,000
Deduct:		
Administration Expenses	3,240,000,000	
Marketing Expenses	360,000,000	
Financial Expenses	680,000,000	
Depreciation	1,176,000,000	5,456,000,000
Net Profit		4,344,000,000

The other operation expenses of N191.5m were disallowed.

A problem arose again on Wewe Pharm Limited when the Tax Authority rejected its Tax Returns for 2009 Assessment. The Federal Inland Revenue Service had dissallowed the ₦13.5m spent on political campaign and demanded for additional Tax payment of ₦1,050,000.

Required:

(a) With the rejection of the tax returns filed by Wewe Pharm Limited, enumerate the procedure to be followed in appealing against the stand of FIRS.
(10 Marks)

(b) What are the tax implications of effecting merger through liquidation and selling or transferring one Corporate business entity to another corporate body for cash or any other consideration under the Provisions of CAMA and CITA.
(5 Marks)

(Total 15 Marks)

SUGGESTED SOLUTION to Case Study 3

(a) **CONTENTS OF NOTICE OF APPEAL**

Any company which is aggrieved by an assessment made upon it and has failed to agree with the Board, may appeal against the assessment to the Appeal Commissioners upon giving notice in writing to the Board within 30 days after the date of service upon such company of notice of the refusal of the Board to amend the assessment as desired.

The notice of appeal should state the following:

i. The official number of the assessment and the year;
ii. The amount of tax charged by such assessment;
iii. The amount of total profits upon which tax is charged;
iv. The date upon which the appellant was served with notice of refusal by the Board to amend the assessment;
v. The precise grounds of appeal; and
vi. An address of service of any notices and documents.

(b) **THE TAX IMPLICATIONS OF MERGER AND ACQUISITION ARE:**

i. Income taxes may have to be paid by the shareholders of the Transfer of company;

ii. Additional taxes may result from the application of cessation provisions;

iii. The tax liabilities of the liquidating (Transferor) company is the first charge even before any creditor can be paid;

iv. Capital gains tax may be due on chargeable gains accruing to the transfer of company;

v. Registration fees and stamp duties may be paid to legalise the scheme and these may be disallowed for tax purpose.

CASE STUDY 4 - ASSESSMENT AND COLLECTION OF TAX

The success achieved by Federal Inland Revenue Service (FIRS) in meeting the targets set for its Integrated Tax offices nationwide was seen as a challenge by its State counterpart, i.e. State Internal Revenue Services (SIRS). As a result, the Chairman of New State Internal Revenue Service, in a bid to increase the revenue drive from the self-employed category, announced various incentives to staff who are able to meet the targets set.

You have been employed as a Tax Consultant to advise the Chairman of New State Internal Revenue Service to guide the SIRS management in undertaking the following:

(a) Identifying constraints facing the tax authorities in the assessment and collection of taxes from the self-employed taxpayers *($7^1/_2$ Marks)*

(b) Evolving strategies for expanding the Nigerian tax net to improve tax collection from the self employed category of taxpayers. *($7^1/_2$ Marks)*

(Total 15 Marks)

SUGGESTED SOLUTION to Case Study 4

May 25, 2007.

The Chairman
New State Internal Revenue Service
Lagos
Nigeria.

Dear Sir,

RE : ASSESSMENT AND COLLECTION OF TAXES FROM SELF-EMPLOYED TAXPAYERS

We refer to our recent appointment as Consultant to New State Internal Revenue Service for the purpose of advising on the above subject matter and would like to comment as follows:

Self-employed taxpayers are unincorporated individuals or body of individuals engaged in their own businesses either as Sole Traders or in Partnerships. Such persons include individual contractors, traders, professionals, consultants, market women, artisans and all other entities that are not liable to tax under the Companies Income Tax Act, but under the Personal Income Tax Act. This means such persons are taxable on Income accruing to them personally.

All self-employed taxpayers are required to file self-assessment tax returns with their respective relevant State tax authorities every year within 90 days of the commencement of a new tax year. Such tax return is expected to disclose transactions relating to the individuals income for the year.

(a) Constraints being faced by tax authorities in assessing and collecting taxes from self-employed taxpayers include:

(i) **Lack of Taxpayers' Data / Information**
There is no detailed information on or database for the self-employed in Nigeria, thus bringing them into the tax net is difficult.

(ii) **Inefficient Utilization of Tax Revenue**
There is a general apathy to voluntary compliance with the provisions of the tax laws because of the level of decay in basic infrastructure which has always called to question the need for continued payment of tax in Nigeria.

(iii) **Tax Evasion and Avoidance**
It is easier for self-employed persons to evade tax than employees whose incomes are taxed at source. Also self-employed persons have evolved several tax avoidance strategies which require anti-avoidance provisions.

(iv) **Lack of Experienced and Suitable Qualified Personnel**
Most tax officers lack the requisite experience and knowledge of the tax laws required to appropriately assess the self-employed to tax.

(v) **Inadequate Penalties / Absence of Enforcement**
In Nigeria, the penalties for non-compliance with relevant tax provisions are too lenient to compel the self-employed to pay tax. There is also a general lack of enforcement of existing penalties.

(vi) **Inadequate Records**
Most self-employed persons do not maintain records of their Income and Expenditure. Some also mix their business activities with their private affairs, thus making it difficult to determine the income taxable.

(vii) **Lack of Public Enlightenment**
Most taxpayers do not know what tax to pay, when to pay, who to pay to, where to pay and what reliefs and allowances they are entitled to. A good tax system should be certain and easy to administer. The public should be educated on their responsibility with respect to tax at all times.

(viii) **Level of Corruption**
Some tax officials collude with would-be taxpayers to defraud the government of taxes.

(ix) **Level of Poverty**
Several self-employed persons are struggling to survive due to the unconducive operating environment. The society has been impoverished by the elite so much that paying tax will further impoverish the low income earners.

(x) The over-dependence on Oil Revenue for a very long time has led to the neglect of all other non-oil revenue sources.

(b) Strategies for expanding the Nigerian Tax net to improve tax collection drive covering the self-employed.

Having enumerated the constraints facing the tax authorities in assessing and collection of taxes from the self-employed taxpayers, the following strategies can be adopted to enhance compliance by self-employed taxpayers.

(i) **Public Enlightenment and Education**
The Revenue should embark on aggressive publicity and education of taxpayers on the various taxes payable by all self-employed individuals.

(ii) **Enforcement of Withholding Tax Provision**
By further encouraging companies to implement the withholding tax provision, more self-employed persons who render various services to companies can be brought into the 'tax net'.

(iii) **Requirement for Presentation of Tax Clearance Certificate (TCC)**
By providing and insisting that TCC be produced for any form of transaction with government, more self-employed persons will be compelled to pay their taxes.

(iv) **Stiffer Penalties for Non-Compliance**
If the consequences of failure to comply with the provisions of the tax laws are made stiffer, more taxpayers will willingly comply with the tax laws.

(v) **Encouragement of Cooperative Unions**
By encouraging artisans in particular, to form associations through which government can reach the members, improvement in tax revenue generation from that category of self-employed persons will be achieved.

(vi) **Effective Utilization of Tax Revenue**
Improvement in the level of basic infrastructural facilities will encourage voluntary compliance with provisions of the tax laws as they will show that the tax Revenue is being utilized effectively.

(vii) **Promulgation of Anti-Avoidance Provision**
Making provisions to block the several loop holes in the tax laws will enhance further compliance with the tax laws and increase tax revenue.

(viii) **Use of Information Technology**
The use of appropriate information technology that will make it difficult to evade tax will enhance tax revenue from self-employed taxpayers.

(ix) **Investigation and Intelligence Unit**
The investigation and intelligence units of the Revenue Authorities should be vibrant and effective. It is the responsibility of these units to trace self-employed persons in the society who have not been paying their taxes. This can be done by going through the Land Registry and Vehicle Licencing Offices. Information can also be obtained from Banks by requiring Banks to file returns of all their new customers with the Revenue Authorities.

(x) **Engagement of Experienced and Qualified Personnel**
Employing qualified personnel and paying competitive remuneration will further enhance didication to duty and ultimately increase tax revenue.

(xi) **Regular Amendment to the Tax Laws**
The tax laws should be regularly updated and the provisions should be such that are reasonable and easy to comply with. Most of the provisions of the Nigerian tax laws are out-dated and make it difficult to comply with. Some of those provisions encourage tax evasion.

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

Thank you.

SHOYEL & CO.
Tax Consultants

NB:

A tax consultant commissioned to "advise" a client should present the required advice in a letter format, properly addressed.

CASE STUDY 5 - PETROLEUM PROFIT TAX AND OFFENCES

Mr. Bennard, a British citizen, has just been admitted an Associate Member of The Chartered Institute of Management Accountants. He is seeking Employment in an Oil Company in Nigeria and had just failed a written job interview conducted by Bibi Consult recently. Mr. Bennard had passionately appealed to you to help him out, and presented the following data (for Major Oil Limited) which was examined during the interview. He wants to familiarise himself with Petroleum Profits Tax, in readiness for another interview, coming up next week.

Major Oil Limited is operating a joint venture with the NNPC (70% NNPC and 30% Major Oil). The following information relating to Major Oil Ltd's participation for the accounting year ended 31 December, 2008 have been provided:

MAJOR OIL LIMITED

	₦
Proceeds of crude oil exported	132,250,000
Forcados Blend	193,440,000
Bonny Light	119,025,000
	444,715,000

	₦
Intangible drilling cost	75,000,000
Production operating expenses	200,000,000
Donation to Political Party	56,250,000
Depreciation	40,250,000
National costs of NNPC crude	22,180,000
Royalty 76,250,000	
Education Tax as computed	40,000,000

Required:

(a) Compute the Petroleum Profits Tax. *(9 Marks)*

(b) State the penalties for the underlisted offences under the PPTA 2004.

(i) Failure to deliver accounts (Sec. 24)

(ii) Failure to keep proper books of accounts (Sec. 26)

(iii) Failure to submit returns of estimated tax. *(6 Marks)*

(Total 15 Marks)

(Refer to Comprehensive questions and solutions in Appendix 2, page 403)

SUGGESTED SOLUTION to Case Study 5

Date:

Mr. Bennard
c/o British Embassy
Lagos.

Dear Mr. Bennard,

RE : PETROLEUM PROFIT TAX COMPUTATION (PPTA) CAP P13 LFN 2004

Your request on the above refers.

Please find below the suggested solution to questions wrongly attempted by you at the Interview held last month.

(a)

TIT BIT OIL LIMITED
PETROLEUM PROFIT TAX COMPUTATION

		₦	₦
Proceeds of Crude Oil exported			444,715,000
Less: Royalty			(76,250,000)
			368,465,000
Deduct: Technical Costs:			
National cost of NNPC crude	22,180,000		
Intangible Drilling Costs	75,000,000		
Production Operating Expenses	200,000,000		
Education Tax	40,000,000		
			(337,180,000)
Chargeable Profit			31,285,000

Petroleum Profits Tax ₦31,285,000 x 85% = ₦26,592,250

(b) (i) Fine of ₦10,000.00 plus a further sum of ₦2,000.00 for each day the offence continues. Default in payment attracts 6 months imprisonment.

(ii) Fine of ₦10,000.00 plus a further sum of ₦2,000.00 for each day the offence continues. Default in payment attracts 6 months imprisonment.

(iii) Fine of ₦10,000.00 plus a further sum of ₦2,000.00 for each day the offence continues. Default in payment attracts 6 months imprisonment.

NB:

The question tests candidates' computational skills as well as their knowledge of the penalties attaching to some identified offences under the Petroleum Profits Tax Act CAP P13 LFN 2004.

Thank you.

CASE STUDY 6 - TAX PLANNING

In June 2004, the Central Bank Governor introduced a major reform agenda in the banking industry. As part of the policy measure, banks in Nigeria were to increase their shareholders' funds to N25 billion by 31 December, 2005. Since then, individual banks have taken some steps to meet this deadline. Some banks have signed Memorandum of Understanding (MOU) as a major plan in their consummating the proposed mergers and acquisitions. Some banks have gone to the capital market to raise additional funds by way of Private Placement and Initial Public Offers (IPO).

There is a proposed merger between five banks, some of which are quoted on the Nigeria Stock Exchange and others are unquoted. Due diligence has been embarked upon as part of the merging process. The Managing Director of the proposed new bank has been named. The take-off date of the new bank has been slated for 31 May, 2005.

In April 2005, you were appointed as a Consultant with a brief to do the following:

(a) Advise on the tax implications or tax issues involved before and after the merger.
(b) Advise on any possible options open to them in the area of tax planning.
(c) Advise on any possible tax incentives available to them.

In handling your assignment, you are to limit yourself to:

(a) tax issues.
(b) tax implications on the merging banks and the new bank.
(c) tax problems / practices (avoid discussion of issues on personnel, accounting etc).

(ICAN PE III – May, 2005) *(Total Mark: 18)*

(Refer to Comprehensive Suggested Solutions in Appendix 1, from page 403)

SUGGESTED SOLUTION to Case Study 6

RE: MERGER OF FIVE BANKS EXAMINATION OF TAX ISSUES INVOLVED

We refer to your brief on the above subject matter and like to respond as follows:

1. Preambles

A merger being a form of business combination whereby two or more companies come together to become one enlarged surviving company. There are various tax implications on the individual banks coming together as newly enlarged company.

The tax implications on merging companies depend on whether the merging banks are related and in the same group or whether they are not related or do not have common control as provided in Section 25 (9) of CITA 290 CAP 60 LFN 2004.

2. Tax Issues before merger

It is important that comprehensive checks are carried out on the individual merging companies in the following areas:

(i) **Corporate Tax**

- Ascertain whether the companies have filed tax returns to date and that all taxes have been fully paid;
- Check outstanding tax queries to determine the tax implications of any of the pending issues;
- Confirm that tax audit has been carried out on the companies and that taxes resulting therefrom have been paid; and
- Obtain copies of the companies' tax clearance certificates.

(ii) **Value Added Tax**

- Review the Value Added Tax compliance level of the banks to ensure that there are no outstanding liabilities; and
- Review the audited financial statements and compute the VAT liability on the Vatable non-interest incomes, to compare with VAT paid over the period.

(iii) **Capital Gains Tax**

- Ensure that capital gains tax on any asset disposed are duly paid to the relevants tax authority.

(iv) **Withholding Taxes (WHT)**

- Check the WHT files of the banks to ensure that withholding tax provisions have been complied with and that all tax queries and WHT audit / verification exercise have been resolved.

(v) **Stamp Duties**

- Where there is increase in the share capita of any of the Banks,confirm payment of adequate stamp duty; and
- Also ensure that stamp duties are paid on all sale agreements and other deserving documents.

3. Tax Issues after Merger

Where there is a merger of two or more banks, the tax implications will depend on whether the merging banks are related or not.

(a) Where the merging banks are related with one bank having overriding control, according to Section 25 (9) of CITA, the following shall apply:

(i) The commencement and cessation rules shall not apply, as all the banks will be deemed to be continuing in business and assessed to tax on proceeding year basis;

(ii) The assets of the merging banks will be deemed to have been transfered to the new bank at Tax written down values and therefore to be written off over the unexpired life of the assets;

(iii) No Initial allowance will be granted on the assets; and

(iv) One of the companies will be required to guarantee payment of any tax liability due and payable.

(b) Where the merger is of non-related banks, the following may be applied by the tax authority:

   (i) All the banks will be deemed to have ceased business and cessation rules will apply;

   (ii) The new bank will be deemed to have commenced business and commencement rules will apply;

   (iii) Initial and annual allowances will be granted on the purchase costof the assets; and

   (iv) The buildings taken over (if any) by the new bank will be valued at their purchase cost or original cost whichever is lower. No initial allowance will be granted.

4. Possible Tax Planning Options

(i) Merger consideration pay-off by shares are not liable to capital gains tax, as provided in Section 32A of the CGTA of 1990 CAP 42 LFN 2004. Therefore, where consideration is to be offered, it should be in shares.

(ii) Whether the merger is between related or unrelated companies, where he assets of the banks are taken over at market values, capital allowance will be claimed on the transfered value, as against the tax written down values, with the consent of the Federal Inland Revenue Service (FIRS).

(iii) Where the new bank is deemed to have commenced a new business, the taxpayer's option under Section 24 (3d) of CITA should be applied, where it is favourable to the company.

(iv) Where the new company is deemed to be continuing in business, any unrelieved loss of the individual banks can be carried forward by the new banks.

(v) Where there is reinvestment of proceeds of sale of an asset, roll over relief can be claimed.

5. Possible Tax Incentives on Merger

(i) Careful application of the commencement rule may result in tax savings;

(ii) The combined assets of the merging banks will result in higher capital allowances claimable; and

(iii) Unrelieved losses of the individual banks can be carried forward to be relieved from the income of the new bank if the tax authority grants the concession.

Please note that the consent of the Federal Inland Revenue Service must be obtained before finalising any merger arrangement, as specifically provided for in CITA 1990.

Should you require any further explanation or clarifications on the issue, please do not hesitate to contact the undersigned. Meanwhile, we have enclosed an invoice covering our modest fee.

Thank you and best regards.

Yours faithfully,

Sign

XYZ Tax Consultants

APPENDIX IV

DECIDED TAX CASES

COMMISSIONER OF INCOME TAX...................RESPONDENT
V
NIGERIAN PROPERTIES CO. LTD. .... APPELLANT

SUPREME COURT, LAGOS
(BUTLER LLOYD, J.)
AUGUST 16, 1940

Companies Income Tax — Purchase of Mining Right for a Term of Years — Whether the Sum Used to Purchase Mining Right was Deductible from Chargeable Income of the Company on Annual Basis — Whether Mining Right was a Fixed or Circulating Capital.

The appellant, a company incorporated in Nigeria, bought (with share capital issued for the purpose) certain mining rights for the sum of 516,695 pounds. The mining right had sixty-three years to run, and the appellant decided to make a yearly allocation from the receipts of royalties of the mining right for the amortisation of the expenditure on their purchase.
The appellant claimed that these allocations should be allowed as deductions under Section 11 of the Income Tax Ordinance, 1940 in ascertaining its chargeable income. The respondent disallowed one of such deductions and included it in the chargeable income on which an assessment was made. It was contended by the respondent that the deduction should not be made from royalties under the Ordinance.

HELD
The annual allocations from the receipt of the mining right for the amortisation of the expenditure of its purchase were allowable under Section 11 of the Ordinance. The mining right in question should be regarded as floating or circulating and not fixed capital.

CASE REFERRED TO:
1. Golden Horse Shoe (New), Ltd. v Thurgood (1934) 1 K.B. 548

OFFSHORE INTERNATIONAL S.A. .... PLAINTIFF
V
FEDERAL BOARD OF INLAND REVENUE .... DEFENDANT

FEDERAL REVENUE COURT, LAGOS
(J. OMO-EBOH, J.)
JUNE 7, 1976

Companies Income Tax — Liability of Foreign Company to Nigerian Tax — Contract Agreement to Drill Oil Well in Nigeria — Whether Foreign Company was carrying on Trade or Business in Nigeria — Whether Taxpayer could seek a Declaratory Judgement of Non-liability to tax where Tax Assessment had already been raised.

The Plaintiff was a company incorporated in Panama and its principal office was in Houston, Texas, USA. It had no place of business in Nigeria but it had a wholly owned subsidiary company in Nigeria called International Drilling Company (Nigeria) Limited ("IDC").

The plaintiff entered into various contractual agreements with some Nigerian Oil Companies, namely; Shell-BP, Mobil Oil, Japan Petroleum Company, etc. to carry out certain oil well drilling

and completion operations in Nigeria. Under the agreement, substantial payments were made to the plaintiff between 1972 and 1975. The payments were made in United States and in US dollars. The plaintiff, however, subcontracted the parts of the contracts that were carried out within Nigeria to its subsidiary company, IDC.

The defendant was of the opinion that the plaintiff was liable to income tax in respect of the payments received on the contracts, and consequently wrote a letter to the plaintiff to demand for completion of the tax forms and the statements of accounts for the relevant years. The plaintiff neither completed the forms nor sent the accounts. After the expiration of the period of sending the statements of accounts, the defendant assessed the plaintiff to tax for the total sum of ₦162,912, under the Companies Income Tax Act, 1961.

Dissatisfied with the action, the plaintiff instituted this proceeding against the defendant to seek a declaratory judgment that it was not liable to tax under the Companies Income Tax Act, 1961 and that it was not under any obligation to furnish its statements of accounts or complete the tax forms as demanded by the defendant.

The plaintiff further sought an injunction to restrain the defendant from taking steps to enforce compliance with its demands. The plaintiff contended as follows:

(1) That it was not a Nigerian company and that it had no place of business in Nigeria.

(2) That the parts of the contracts performed by the plaintiff were executed outside Nigeria and the parts that were executed in Nigeria were subcontracted to IDC. That the plaintiff hired out oil rigs and other equipment to IDC for the purpose of the contracts, and that the maintenance and repair of the equipment were the responsibility of IDC;

(3) That by the contact agreement, the plaintiff was paid in United States and in dollars; and

(4) That the plaintiff was not doing business in Nigeria and was, therefore, not liable to tax in Nigeria.

The contentions of the defendant were as follows:

(1) That the plaintiff was liable to tax in Nigeria having obtained contracts in Nigeria;

(2) That the defendant rightly assessed the plaintiff to tax, and as the plaintiff had refused to object to the assessments, the assessments had become final and conclusive;

(3) That the plaintiff was not competent to seek a declaratory judgement of non-liability to tax after an assessment had been made and that the only remedy available to the plaintiff was to appeal against the assessment;

(4) That IDC was an agent of the plaintiff and that although IDC might be liable to pay tax, the plaintiff was equally liable under Section 17 of the Companies Income Tax Act, 1961;

(5) That there was no distinction between Nigerian and foreign companies on the question of liability to Nigerian taxes; and

(6) That it was the plaintiff which derived all the profits of the contracts obtained in Nigeria and not IDC.

HELD:

(1) That the plaintiff was entitled to a declaratory judgment of non-liability to tax if it could show that it was a foreign company and that it had got no profits accruing in or derived from Nigeria in respect of trade or business;

(2) That there was no section in the Companies Income Tax Act, 1961 which conferred exemption or immunity from payment of tax to a company because it was not incorporated in or resident within Nigeria or because it had no office or place of business in Nigeria; and

(3) By evidence tendered by the plaintiff, it was clear that the plaintiff entered into contracts to drill oil wells in Nigeria for various Nigerian oil companies. The plaintiff was, therefore, engaged in trade or business in Nigeria and was liable to tax in Nigeria. The fact that the plaintiff chose to perform part of its own side of the contracts by subcontracting to its own subsidiary could not remove its liability to tax in Nigeria.

CASES REFERRED TO

1. M.C. Aboud V Regional Tax Board (1966) NMLR 100; (1996) All NLR 45
2. Alhaji A. Agbaje and Others V Chiefs S. Agboluaje and Others (1970) 1 All NLR 21
3. Ikebife Igbineweka and Others V Peter Egbuna and Another (1964) 1 W.L.R. 219
4. Grainge and Sons V Gough 3 Tax cases 462
5. Nielsen, Anderson and Collings 13 Tax Cases 91
6. Tern V Scalan 13 Tax Cases 91
7. Belfour V Mace 13 Tax Cases 539
8. Salomon V Salomon (1897) A.C. 22
9. Smith, Stone and Knight V Birmingham Corporation (1939) 4 All ER, 116
10. F.G. Films Ltd. (1953) 1 WLR483
11. Bank Voor Handel En Scheepvaart NV V Slatford (1953) Q.B. 248
12. Diab Nasir V Federal Board of Inland Revenue (1964) 1 All NLR 408
13. Federal Commissioner of Taxation V Clarke 40 Commonwealth L.R. 246

E.A. AJAYI .... APPELLANT
V
FEDERAL BOARD OF INLAND REVENUE .... RESPONDENT

HIGH COURT, LAGOS (TAYLOR, J.)
JANUARY 18, 1971

Personal Income Tax –– Conditions for Adjournment of Cases before the Body of Appeal Commissioners — Whether record of proceedings of the Appeal Commissioners should be sent to the Court of Appeal.

The appellant appealed against the decision of the Body of Appeal Commissioners which dismissed his appeal on the ground that he was neither present nor represented at the hearing. The Body of Appeal Commissioners had earlier granted an adjournment of the hearing on conditions that the appellant paid 500 pounds deposit, and that no further adjournment would be granted if the appellant failed to appear on the date of adjournment. The case was then dismissed by the Appeal Commissioners.
On appeal to the high court, the respondent failed to give the record of Proceedings from the Appeal Commissioners contending that the Income Tax Appeals (Lagos) Rules 1957 did not make provision for sending record of proceedings in income tax matters to the court.

HELD

1. Under Section 40(c) of the Personal Income Tax Act, 1961 the Appeal Commissioners were empowered to make orders for payment of deposit before granting an adjournment, but the Act did not empower the Appeal Commissioners to make any additional condition to that of making a deposit;
2. No appeal could be properly heard without a certified true copy of the proceedings before the lower court being made available to the court of appeal; and
3. Appeal upheld. Fresh hearing ordered.

LEGISLATION CONSIDERED

1. Personal Income Tax (Lagos) Act, 1961 Section 40
2. Companies Income Tax Act, 1961 Sections 56, 57(9)

JUDGMENT
(By J.I.C. Taylor, C.J.)

The present appellant appeals from the decision of the Body of Appeal Commissioners.

MOBIL OIL NIG. LTD .... APPELLANT
V
FEDERAL BOARD OF INLAND REVENUE .... RESPONDENT
SUPREME COURT OF NIGERIA, LAGOS
(FATAYI-WILLIAMS, MADARIKAN, BELLO, J.J. SC.)
MARCH 31, 1977
(CASE 2)

Companies Income Tax — Additional Tax Based on Turnover — Whether Tax Authority had Power to Assess on Turnover after an Initial Assessment based on Accounts Submitted — Meaning of the word, 'Discover' — Whether it was necessary to discover new facts before assessments which had become final and conclusive could be reopened — Whether Revenue Court had power to substitute one Rate of Assessment for another Rate

The appellant was originally assessed to tax for 1968/69 and 1969/70 years of assessment under Section 49 of the Companies Income Tax Act, 1961 based on the accounts submitted to the respondent. The appellant paid the assessed taxes.

The respondent subsequently raised additional assessments on the appellant under Section 30A of the Act based on 10 per cent of the turnover of the accounts submitted. The additional assessments were raised because the respondent was of the opinion that the rates of profits declared in the accounts were less than expected from the business carried on by the appellant. The appellant appealed to the Body of Appeal Commissioners, which dismissed the appeal and upheld the additional assessments. On further appeal to the Federal Revenue Court, the rate of the assessment was reduced from 10 per cent to 8 per cent as the court was of the opinion that the respondent took extraneous matters into consideration in raising the additional assessments.

The appellants further appealed to the Supreme Court and contended, inter alia, as follows:

(1) That having assessed the appellant under Section 49 of the Act, the assessments as computed had become final and conclusive by virtue of Section 60, of the Act;

(2) That the respondent had no jurisdiction to raise additional assessments unless there was evidence of discovery of new fact to reopen the assessments by virtue of Section 50

of the Act; and as no new fact was discovered the finality and conclusiveness of the assessments were absolute;

(3) That Section 30A of the Act could be invoked where the assessable profits of the company could not be ascertained or where the profits of the accounts were less than expected from the business carried on by the company; but as the profits shown by the accounts of the appellants were not less than expected to arise from the business considering the prevailing circumstances, the turnover assessment under Section 30A of the Act should not apply; and

(4) That the Federal Revenue Court had no power to substitute one rate of assessment for another; instead the proper order to make was to reject the assessments as computed having found that the respondent took extraneous matters into consideration in making the assessments.

The respondent replied, among other things as follows:

(1) That the Act conferred a discretion on the respondent to assess on the basis of assessable profit under Section 49 or on the basis of turnover under Section 30A where the taxpayer made profits which were lower than expected from its business; and

(2) That there was no provision in the Act which required the discovery of a new fact before an additional assessment could be validly raised under Section 50, and that subject to the limitation imposed by Section 60 of the Act, the respondent had power to make additional assessments whether there was a new fact or not.

HELD
(Fatayi-Williams Dissenting)

(1) The word, 'discover' simply means 'find out', and that either 'new facts' or 'new issues' could be discovered to necessitate reopening an assessment under Section 50 of the Act;

(2) The discovery by the respondent that the appellant made assessable profits which were lower than expected to arise from its business was a discovery of "new issue" within the meaning of the Act, and the discovery justified making additional assessments under Section 50;

(3) The finality and conclusiveness of an assessment under Section 60 of the Act were restricted to the amount of total profits as agreed to, or determined on objection, revision or appeal. The Act did not prevent the respondent from making an assessment or additional assessment on discovery of new facts or new issues; and

(4) The Federal Revenue Court had power under Sections 27 and 28 of the Federal Revenue Court Decree, 1973 to vary the judgment or order of the Body of Appeal Commissioners.

GODSON OKOLI .... APPELLANT
V
COMMISSIONER OF INTERNAL REVENUE,
EASTERN REGION .... RESPONDENT
HIGH COURT, ENUGU (PALMER AG. J.)
OCTOBER 2, 1958

SUPREME COURT OF NIGERIA, LAGOS (ADEMOLA, C.J.)
OCTOBER 31, 1960

Personal Income Tax — Whether an Appeal was made out of Time — Income Received on Behalf of a Company — Effect of Failure of Taxpayer to produce sufficient evidence of Income of Company.

The appellant received 2,855 pounds commission from UAC Nigeria limited as a servant of a company known as "The Produce and General Service Company". He did not produce sufficient evidence of the other income of the said Company and neither did he produce the bank account of the Company. The commission was, therefore, deemed to be part of the personal income of the appellant.

The appellant was personally assessed to tax on the commission received from UAC Nig. Ltd. on an assessment notice dated 15, March, 1958, but it was released to the appellant on the 23 June, 1958. There was an alteration of the date to 23 June on the assessment notice but the circumstances of the alteration was not made clear to the Court.

The respondent contended that as the proper date of the assessment notice was 15 March, the appeal was time barred. The appellant contended that as the assessment notice was released to him on the 23 June, and no fixed date of payment appeared on the notice, it was not time barred.

HELD:

1. The appeal was not time barred as it was released 3 months after it was written to the appellant, and no fixed date of payment appeared on the notice;
2. Since the appellant did not give sufficient evidence of income of the company on behalf of which he received the income, he had not discharged the onus of proof of his income; and
3. Appeal dismissed.

JUDGMENT
(By Palmer, Ag. J.)

The first point for consideration is whether the appeal is time barred. The notice of assessment was dated 15 March, 1958 and the date for payment was 21 March. The date of the notice (15 March) has been altered to 23 June, 1958 and there is a conflict of evidence as to the circumstances in which this was done. It may well be that the appellant misunderstood what the Assessment Officer (Mr. St. Leger) told him. As the notice was apparently released on 23 June and no fixed date for payment appears on the notice, I do not think I can hold that the appellant had clear notice of the date by which he was to pay. That being so, I cannot say that his notice of appeal was out of time.

The substantial point at issue is this. Admittedly the appellant received 2,854 pounds commission from UAC. His care is that he received this simply as the servant of a firm known as "The Produce and General Service Company" to whom the money was paid. The appellant produced a certificate showing the registration of a business name in 1959. He produced a book showing the names of

the partners — it does not even show the name of the firm. Pay sheets are produced for employees at Nsukka, they do not show the name of the firm and the tips of the sheets are cut off. An Accountant produced audited accounts to show that the profits at Nsukka are credited to the firm. He says they were compiled from the Company's book, but the books are not produced. The company apparently has at present a bank account, but no accounts for the gain in question are produced. It is admitted that appellant is in charge at Nsukka. That he operates in the name of C.M. Obioha, and that he is in fact paid by UAC. It is easy enough to say that the profits received by appellant were received on behalf of a firm and paid over to the firm, but in fact there is not an atom of evidence to corroborate what he says. It ought to be easy enough, if the firm is genuine, to produce bank accounts or even the firm's book of accounts, but nothing at all is produced. Clearly the appellant has not discharged the onus of proof. Out of 2,854 pounds, the odd 854 pounds was allowed for expenses and there is nothing to show that this was unreasonable. The appeal is therefore dismissed.
Costs of 10 pounds 10 shillings to respondent.

SUPREME COURT OF NIGERIA (ADEMOLA, C.J.)
OCTOBER 31, 1960

(On appeal to the Supreme Court of Nigeria, Ademola C.J. stated as follows):
Upon reading the record of appeal herein, and after hearing Mr. Obi Okoye of Counsel for the appellant and without calling on Mr. B.O. Okadigbo (Crown Counsel) of counsel for the respondent. IT IS ORDERED that this appeal be dismissed with costs to the respondent assessed at 15 guineas.

A .... APPELLANT
V
COMMISSIONER OF INTERNAL REVENUE .... RESPONDENT
HIGH COURT OF EASTERN NIGERIA (HUGHES, J.)
JULY 13, 1957

Personal Income Tax — Validity of Assessment — Whether Failure to Call for Return of Income from Taxpayer was a breach of Finance Law, 1956

The appellant was assessed on an income of 1,500 pounds, but since the Commissioner of Internal Revenue did not issue notice requesting for return of income (referred to in Section 31 of the Finance Law of Eastern Nigeria, 1956) the appellant did not furnish the assessing authority with the statement of his income.

The appellant contended that the failure to issue notice calling for return of income under Section 31 of the Law was a breach of the Finance Law and that the assessment should be cancelled under rule 18(2) of the Finance Law (Appeal) Rules 1956.

HELD:

1. Section 31 of the Finance Law of Eastern Nigeria, 1956 did not impose any duty on the Commissioner of Internal Revenue to issue a notice of return of Income to the taxpayer. The commissioner had discretion in the matter; and

2. Although it was in the interest of the Commissioner of Internal Revenue and the taxpayer to call for return of income, failure to do so on the part of the Commissioner was not an infringement of any provision of the law, and an assessment could not be cancelled simply by reason of such failure.

CASE REFERRED TO:
1. Sam Anyogu V. Commissioner of Internal Revenue (Appeal No. E/62/195)

LEGISLATION CONSIDERED:
1. Finance Law of Eastern Nigeria, 1956 Sections 19 and 31

2. Income Tax Regulations, 1956 Regulation 3

JUDGMENT
(By Hughes, J.)

This is an appeal under Section 19 of the Finance Law, 1956 (No. 1 of 1956) herein referred to as "the law".

The evidence of the appellant is that he received an Income Tax Assessment Notice calling on him to pay tax in the sum of 283 pounds 10 shillings on an income assessed at 1,500 pounds. He did not at any time receive the notice referred to in Section 31 of the Law, and, it is submitted by the appellant, failure on the part of the Commissioner (which expression is used herein to include a Local Government Council person or group of persons appointed by the Commissioner) to send such a notice, is a breach of the requirement of the Law and therefore what purports to be an assessment should be cancelled under rule 18(2) of the Finance Law (Appeal) Rules, 1956.

The first matter for consideration is whether Section 31 of the Law does in fact require the Commissioner to send to a person who is liable to pay tax, the notice referred to in that Section. There is no difficulty in interpreting Section 31 of the Law as it is without ambiguity; the material part of the Section, for purposes of the submission of the appellant, reads:

"31 (i) Every person liable to pay tax for any year of assessment, when required to do so by notice in writing by the Commissioner or any person appointed by him in that behalf shall, within the period limited by such notice, prepare and deliver to the Commissioner or to such person a true and correct statement in writing containing..."

It is clear that the Section imposes no duty whatever on the Commissioner to send the notice; he has a discretion in the matter and if he elects to send the notice then the duty is on the person to whom it is sent to furnish the particulars called for. If support were needed for the view that the sending of the notice referred to in Section 31 of the Law is a matter of discretion, it is to be found in Regulation 3 of the Income Tax Regulations, 1956, to which the appellant has referred; that regulation reads in part:

"3. In order to facilitate the estimation and computation of income and the assessment of tax a local Government Council may serve on any person... a Householder's Form, a Return of Income Form and a Marriage Particulars Form."

The appellant has referred to the case of Sam Anyogu v. The Commissioner of Internal Revenue (Appeal No. E/62A/1956) in which judgment was given on the 25th of March, 1957. The relevant facts of that case are that the Tax Assessment Authority proceeded to make an assessment before receipt of the return of income demanded by the Authority and before expiry of the time for making the return. In that case, the assessment was cancelled and a reassessment ordered. I quote the following passage from that judgment:

"In their deliberations, they (the Tax Authority) cannot ignore the declaration of the taxpayer if they have asked for it. They may consider that declaration to be false or ludicrous, but they must consider it, and in the great majority of cases they should not brush it aside without enquiry from the person making the declaration. It is my opinion, and I should welcome the opinion of a

higher authority however adverse, that this Court cannot sustain an assessment made without waiting for the taxpayer's return if such a return has been called for and the time of making the return has not expired."

It is clear that the overriding consideration was the fact that the Authority had called for a return and thereby indicated that it was considered necessary for the purposes of making an assessment to have particulars from the taxpayer concerned. In the instant case no return was called for and therefore the decision in Sam Anyogu v. The Commissioner of Internal Revenue (supra) cannot be regarded as affording guidance in this case.

The Commissioner, in not sending to the appellant in this case the notice referred to in Section 31 of the Law has not only deprived the appellant of the opportunity of furnishing information, on which, if accepted, the assessment would have been based, but the Commissioner has also denied himself information which, whether accepted or not, might have been of assistance in arriving at an assessment. Absence of such information has probably caused the Commissioner to make what, in this case, must have been little more than rough approximation of the income of the appellant for having regard to the fact that the income of the appellant is derived from the practice of the law, it cannot be that details of the appellant's earnings are within the knowledge of the Commissioner. Where, as in this case, the income of the taxpayer is peculiarly within the knowledge of the taxpayer, and the Commissioner does not call for information from the taxpayer, it is most probable that the Court will, on appeal, have to consider the information which should in the first place have been made available to the Commissioner; much the same thing as this has been said by the learned Chief Justice in the case of Sam Anyogu v. The Commissioner of Internal Revenue (supra).

The position in this case, as I see it, is that though the Commissioner should in his own interest as well as that of the taxpayer, have called for a return from the taxpayer, he has nevertheless not infringed or failed to comply with any requirement of the Law or of the Rules or Regulations made thereunder and therefore this assessment cannot be cancelled by reason of the fact that the taxpayer was not called upon to make a return of income.
The other ground of appeal does not arise for consideration as the appellant has said that the particulars stated with reference thereto in the grounds of appeal relate to a year other than the one to which the assessment refers.
There is no evidence before the Court that the assessment is excessive and accordingly the appeal must be dismissed.
Appeal dismissed.

MARK CHIGBO .... APPELLANT
V
COMMISSIONER OF BOARD OF INTERNAL REVENUE .... RESPONDENT
HIGH COURT OF EASTERN NIGERIA, ENUGU (REYNOLDS, J.)
NOVEMBER 11, 1957

Personal Income Tax — Assessment on Best of Judgment in Absence of Information — Onus of Proof of Excessive Assessment

The appellant derived his income from 3 lorries used for commercial purposes and from petty produce trade. He however failed to give correct information to the tax authority on his income from these sources.
The respondent assessed the appellant on its best of judgment for 1955/56 assessment year after the failure of the appellant to give the record of accounts of his income. The appellant appealed against the assessment contending that the assessment was excessive.

HELD:
As the appellant did not give sufficient evidence of his income, the onus of proving excessive assessment had not been discharged.

LEGISLATION CONSIDERED:
Finance Law of Eastern Nigeria,
1956 (No. 1 of 1956)

JUDGMENT:
(By Reynolds, J)

This is an appeal under Section 19 of the Finance Law 1956 (No. 1 of 1956). The appellant gave evidence that he derived his income from working 3 lorries Nos. ON 1306, E 1733 and E 2301 and from petty produce trade in the year 1955 — 56.

He said that lorry No. ON 1306 broke down in March 1955 and was sold on 27 June, 1955 for 70 pounds and between these dates earned no income. With regard to lorry E 1733 he said it was used for transporting palm kernels from Nuskka-Onitsha on an average of twice a week at 11 pounds 2 shillings 3 pence per trip. The lorry took passengers on the return trip averaging about 10 shillings per trip. During the year 1955/56 this lorry made 45 trips earning 522 pounds 11 shillings 3 pence. Appellant stated that lorry E 2301 was bought on 23/2/56 and began running in March up to 31 March 1956 and it made about 8 trips from Nsukka to Onitsha carrying palm kernels and earned 88 pounds 18 shillings. Appellant agreed that on his produce trade the assessment of 10 pounds made was incorrect. He said therefore that his assessable income for the year 1955/56 was 621 pounds 9 shillings 3 pence.

The respondent called Mr. Akpanweze, Secretary to the Eze District Council which is the taxing authority in the appellant's area. He said that he had sent out an income tax return form to appellant in respect of his income for 1955/56 and that his had been completed and returned (Ex. A). In the particulars of his total earnings from all sources for the year ended 31/3/56 opposite paragraph (b) Profits from all trades, businesses, profession and vocations he wrote "Accidents took profits, hardly got 36 pounds" and he returned his total earnings as 46 pounds.

The Committee (that is the taxing authority) was not satisfied with this return and appellant was invited for an interview and questioned about his earnings from his lorries. With regard to lorry ON 1306 the appellant had stated that the lorry had run up to 27/6/56 and then sold. He did not say that the lorry had not been working. In respect of lorry E 1733 appellant has said that it had not been working for 1 month during the period in question. He did not tell the Committee that it made only 2 trips weekly to Onitsha. He would not tell the Committee anything except that he was running the lorry at a loss. With regard to lorry E2301, he did not tell the Committee how many trips it made to Onitsha weekly. As the appellant would not give the information upon which it could assess the earnings of the lorries, the Committee had to use the arbitrary method set out in the instructions from the Ministry of Finance.

The earnings of ON1306 were calculated on the basis of working 77 days running 80 miles daily and earning 4 pence per mile namely 100 pounds.
The earnings of E1733 were computed on 312 working days running 160 miles per day and earning 10 pence per mile — 2,083 pounds. From this was deducted 1,020 pounds and 160 pounds for major repairs leaving a balance of 903 pounds.

The earnings of lorry E2301 as for 32 working days travelling 160 miles daily and earning 10 pence per mile, namely 213 pounds; from this was deducted a proportionate part of the cost of the lorry, 108 pounds leaving a balance of 105 pounds.

This witness said that the passenger fare from Nsukka to Onitsha in January 1956 was 4 shillings and is still the same today. The appellant had been asked by the Committee to give a written statement of his earnings but has refused to do so.

After careful consideration of the demeanour of the appellant and his evidence, I have come to the conclusion that he is not a truthful or reliable witness. On the other hand, I consider the witness for the respondent to be accurate and truthful.

Even if the evidence of the appellant were accepted at its face value it would not be possible, in my opinion, to make a proper assessment on it. In my opinion, due to the evasions and prevarications of the appellant, the Committee was left with no option than to assess the appellant in the way they did, and in the circumstances I consider the assessment to be a proper one. As I am unable to accept the evidence of the appellant it follows that he has not discharged the onus upon him of showing that the assessment was excessive and the appeal is therefore dismissed and the assessment is confirmed.

JOHN IHEKWOABA .... APPELLANT
V
THE COMMISSIONER OF INTERNAL REVENUE .... RESPONDENT

SUPREME COURT OF NIGERIA, LAGOS (DE LESTANG, AG. F.C.J, COUSSEY, AG. F. J; HEDGES AG. F. J.) MARCH 31, 1958

Personal Income Tax — Assessment on turnover in absence of information — Onus of proof of Excessive Assessment

The appellant was a member of the Eastern House of Assembly of Nigeria and his income in this regard was small and ascertainable. He also had other business income as a produce dealer on which there was no information. The appellant was assessed to tax on the estimate of the turnover of the business.
The appellant appealed to the High Court and then to the Supreme Court but failed to prove that the assessment was excessive.

HELD:
The onus of proving that an assessment was excessive is on the taxpayer, and the appellant has failed to discharge the onus.

LEGISLATION CONSIDERED:
Finance Law of The Eastern Region, 1956 Sections 17 and 18

JUDGMENT:
(By Hedges, Ag. F.J.)

This is an appeal against the decision of the High Court of the Eastern Region dated 24th April, 1957.
The appeal, which presents no difficulty, is on an income tax matter. The appellant's income had been assessed by the appropriate authority at Port Harcourt and being dissatisfied he appealed to the High Court. Whilst the appeal was pending, the Commissioner, somewhat prematurely, reduced the amount of the assessment, but naturally the appellant does not complain about that. The appellant did very little to assist the taxing authority. During the relevant period, apart from his income as a member of the Eastern House of Assembly which was comparatively small, he had a substantial turnover of business as a produce dealer. In the absence of detailed information the Commissioner made an assessment which clearly bore some direct relation to the turnover of business. This he was entitled to do, and indeed he could not do otherwise.

If Section 18 of the Finance Law (No. 1 of 1956) of the Eastern Region be read in conjunction with subsection (3) of Section 17 of the same Law, it is clear that the onus of proving that an assessment is excessive is on the appellant.

The only ground of appeal argued seriously (or indeed at all) before this Court concerned a particular passage in the judgment of the learned Judge in the Court below. I do not quote the passage because, although I think it was most unfortunately phrased, this ground of appeal is, in my opinion, without substance. It is clear from the record that the appellant, upon whom the onus of proving the assessment excessive lies, failed completely to discharge the onus, except as regards assessment in relation to a house at Diobu with which the present appeal is not concerned. In the result I think this appeal is without merit and I would dismiss it with costs assessed at 35 pounds.

ABOUD .... APPELLANT
V
REGIONAL TAX BOARD .... RESPONDENT
SUPREME COURT OF NIGERIA, LAGOS
(BRETT, COKER, IDIGBE, JJ, S.C.)
FEBRUARY 11, 1966

Personal Income Tax — Artificial or Fictitious Transaction — Effect of Failure to Appeal against Assessment within Time Limit — Whether Court could declare assessment null and void after the assessment had become final and conclusive

The appellant was assessed to pay income tax in respect of certain property. The property in question was transferred by the appellant to his wife, and he brought an action seeking a declaration that he was not liable to pay income tax in respect of the property and that the assessment was null and void.

The respondent treated the transfer as an artificial or fictitious transaction under Section 15 of the Income Tax Law (cap. 48) of Western Nigeria, and assessed the appellant to tax on an income which included rent from the property. The High Court of Western Nigeria which heard the case considered the claim on its merit and dismissed the action without considering whether it could properly entertain the declaration sought by the appellant.

The Supreme Court of Nigeria raised the matter in its own motion as a preliminary issue having regard to Section 55 of the Income Tax Law (cap. 48) which provided for a time limit for appeals against assessment, the appellant not having exercised his statutory right of appeal.

The appellant contended that even if he could no longer maintain an appeal against the assessment, the court could give a declaratory judgment and an authoritative interpretation of Section 15 of the Income Tax Law of Western Nigeria (cap. 48).

HELD

1. Where no appeal had been lodged against an assessment within the statutory time permitted by the law, the assessment should be final and conclusive for all purposes of the Law as regards the amount of the chargeable income.
2. The court would not give a declaratory judgment where no useful purpose would be served.

LEGISLATION CONSIDERED

Income Tax Law (Laws of Western Nigeria) (cap. 48) Sections 15, 38 and 55

THE FEDERAL BOARD OF INLAND REVENUE .... PLAINTIFF
V
AZIGBO BROTHERS LIMITED .... DEFENDANT

HIGH COURT OF NORTHERN NIGERIA (SMITH, S.P.J.)
NOVEMBER 8, 1962

Companies Income Tax — Assessment in Default of Return of Income — Refusal to Object or Appeal against Assessment — Whether Assessment was made to the Best of Judgment of the Tax Authority — Whether Assessment on Best of Judgment could exclude Capital Allowances

The Plaintiff was claiming from the defendant the arrears of income tax for 1960/61 and 1961/62 years of assessment. The assessments were based on the best of judgment of Plaintiff after the failure of the defendant to submit the return of income and the accounts as demanded by the plaintiff. No capital allowances were granted to the defendant on the assessments. Also the defendant neither objected to nor appealed against the assessments until they became final and conclusive.

The defendant contended that the assessments were arbitrary and were not made to the best of judgment of the plaintiff having regard to the fact that no capital allowances were granted to it on the capital expenditure incurred and carried forward in the previous years' accounts.
The plaintiff contended that the capital allowances were not granted to the defendant because they were not claimed in writing as required by the law.

HELD
1. The assessments were made to the best of judgment of the plaintiff as there was no information on the actual earnings of the defendant at the time of making the assessments.
2. Assessment based on best of judgment could exclude capital allowance if the taxpayer failed to claim it in writing as required by the law, or by way of objection or appeal.

CASE REFERRED TO
Chairman of the Board of Inland Revenue V Joseph Rezcallah and Sons Ltd. (1962) I ALL NLR 1, (1961) NR NLR 32

LEGISLATION CONSIDERED
1. Companies Income Tax Act, 1961, Sections 49(3) and 53(1)
2. Income Tax Ordinance, 1958 (Cap. 85) Sections 55(3), 59(2) and 67(1)

S. E. OLA .... APPELLANT
V
FEDERAL BOARD OF INLAND REVENUE .... RESPONDENT
FEDERAL REVENUE COURT, LAGOS
(OMO-EBOH, J.)
MARCH 1, 1974

Personal Income Tax — Failure of Taxpayer to disclose all sources of income — Whether assessments which had become final and conclusive could be reopened — Whether assessment notices which did not give particulars of the assessments were valid in law — Whether Appeal Commissioners erred in Confirming an assessment which did not give any Capital Allowances — Whether Judgment written one year after summary dismissal of the case was regular.

The appellant was an employee and an agent of United Africa Company (Nig.) Limited (UAC) and he was paid both salary and commission for his services. Income rates were deducted on the salary and commission annually under the Pay As You Earn Scheme.

The respondent discovered at a point in time that the appellant owned two houses in Lagos and some lorries used in transport business, both of which fetched additional income which were not disclosed by the appellant to the respondent. Consequent upon the discovery, the appellant was invited for an interview by the respondent and he was advised to submit audited accounts on his various sources of income to cover the period 1962 to 1968.

The appellant submitted the accounts for 1966/67 and 1967/68 years of assessment only, and claimed capital allowances for the two years. Assessment notices were raised by the respondent on the basis of these accounts and the appellant paid the taxes accordingly.

Subsequently the accounts were rejected by the respondent, and six additional best of judgment assessments were raised against the appellant to cover the period 1962 to 1968 which amounted to 5,854 pounds. No capital allowances were granted to the appellant on the new assessments, and five of the six assessments did not give the particulars on which the assessments were based.

The appellant appealed against the additional assessments before the Body of Appeal Commissioners and the Appeal Commissioners summarily dismissed the appeal and confirmed the assessments although the judgment was written after one year of the dismissal, and two of the Commissioners who heard the case did not sign the judgment.

At the hearing of the appeal before this court, the appellant contended that the additional assessments were improper and should be discharged for the following reasons:

1. That an assessment once made by the tax authority and not objected to or appealed against by the taxpayer should become final and conclusive under the law and that such assessment could not be reopened on the same facts. That the respondent was therefore wrong in law in making the additional assessments, having first assessed the appellant on the accounts submitted;

2. That five of the six assessments were bad in law as they did not contain, in substance and effect, the particulars on which the assessments were made in accordance with Section 35 of the Personal Income Tax (Lagos) Act, 1961; and

3. That the Body of Appeal Commissioners erred in confirming the assessments when no capital allowances were granted in any of the six assessments as provided for by Section 20 of the Personal Income Tax (Lagos) Act, 1961 and as duly claimed by the appellant in the accounts submitted.

The respondent replied to the submissions as follows:

1. That the appellant never submitted any account in respect of earlier years apart from the declaration of his Salaries and Commission, and that it was after the respondent discovered that the appellant had other sources of income that the respondent raised additional assessments;

2. That the appellant had committed fraud or wilful default by not rendering correct or full return of his income, and that when the statements of accounts were prepared by the appellant, they were found to be untrue and unhelpful and for these reasons the accounts were rejected by the respondent;

3. That the additional assessments were necessitated by new discoveries of appellant's sources of income hitherto undisclosed by him and that such additional assessments were allowed under Section 31(1) of the Personal Income Tax (Lagos) Act, 1961;

4. That the appellant had no sufficient evidence before the Appeal Commissioners to enable them grant him capital allowances; and

5. That it was not the usual practice of the respondent to give the particulars on which the assessments were based.

HELD

1. The additional assessments were necessitated by the discovery of sources of income which were never previously disclosed by the appellant and were based upon new facts which he never denied, and the respondent had power to raise such assessments under Section 31(1) of the Personal Income Tax (Lagos) Act, 1961. It was therefore not correct to say that the additional assessments were based on the same facts as those on which the previous assessments were made;

2. The provision of the law with respect to the particulars on which the assessments were based, was mandatory under Section 35 of Personal Income Tax (Lagos) Act, 1961 and such 'particulars' should be stated in the notice of assessment. The particulars were not only necessary but essential to enable an assessee to know the sources and/or the basis for the assessment of his chargeable income and to enable him see that he was not charged to tax twice on the same income for the same period. Such provision of law could not be varied or modified by the usual practice of the respondent;

3. Having regard to the discoveries made by the respondent, while one could hold that the previous assessments based on salary and commission were under-assessments, the later assessments were patent over-assessments bordering upon the unreasonable and oppressive type. The respondent or its agents had no right or power under the law to inflict any assessment which was punitive or oppressive;

4. The appellant as the owner of transport business was entitled in law to capital allowances as provided under Section 17 of the Income Tax Management Act, 1961. The Body of Appeal Commissioners was therefore wrong in not considering the issue of capital allowances claimed by the appellant as contained in the statement of accounts before it;

5. The essence of justice demanded that the Body of Appeal Commissioners, as quasijudicial body, should not rush itself or allow itself to be rushed when dealing with matters that came before it. It was equally important that the Body should not deal summarily by way of dismissal with matters that came before it except in such ones in which there were no merits whatsoever or which contained nothing to recommend them for careful consideration; and

6. Considering the facts and circumstances of the case, the additional assessments were arbitrary, excessive and vindictive and they were accordingly discharged.

FEDERAL BOARD OF INLAND REVENUE .... APPELLANT
V
THE NIGERIAN GENERAL INSURANCE COMPANY LIMITED .... RESPONDENT
SUPREME COURT OF NIGERIA, LAGOS
(COKER, UDOMA, FATAYI-WILLIAMS, JJ.S.C.)
DECEMBER 19, 1969

Companies Income Tax — Validity of Assessment — Basis for regarding assessment as final and conclusive — Whether the court could reopen Quantum of Assessment after the Assessments had Become Final and Conclusive

The appellant was claiming from the respondent a sum of 3,740 pounds being the arrears of income tax and penalties for 1963/64 and 1964/65 assessment years. The appellant duly served notices on the respondent requesting for the declaration of its income for the two years in question. The respondent did not reply. Assessment notices and penalties were then raised and sent to the respondent in respect of the two years. The respondent neither objected nor appealed against the assessments until the commencement of the action at the High Court.

The respondent contended before the High Court that the notices of return of income and assessments should have been sent to its tax consultant whose address was known to the appellant. It was further contended that some of the sources of income relied upon by the appellant to tax it were non-existent for the years of assessment concerned. The appellant on its own part contended that in the circumstance of the case, the assessments were final and conclusive as to the merit and quantum in so far as the respondent neither objected nor appealed against the assessments within the time limit permitted by the law. The trial judge held that the court could reopen the quantum of the assessments and ordered fresh assessments to be made on the respondent.

On appeal to the Supreme Court, the appellant further contended that the notices were properly and duly served on the respondent and that in the circumstances, the court could not have considered itself competent to reopen the issue of quantum of the assessments.

HELD

1. Where the assessment notices were properly served and not appealed against within the time permitted by the Act, the assessments as computed would become final and conclusive. At that stage the court should no longer reopen the issue of quantum of the assessment; and
2. Judgment of the lower court was therefore set aside. The case was sent back to the court for fresh hearing.

WESTERN SOUDAN EXPORTERS .... APPELLANT
V
FEDERAL BOARD OF INLAND REVENUE .... RESPONDENT
HIGH COURT OF LAGOS STATE, LAGOS
(J.I.C. TAYLOR, C.J.)
JANUARY 8 1973

Companies Income Tax — Bad Debts Written Off — Whether Advance Deposits which the Taxpayer knew could not be recovered were allowable as deductible expenses — Finality of Assessment – – Whether it was Necessary to Discover New Facts before Assessments which had become Final and Conclusive could be Reopened.

The appellant was a trader in groundnuts, hides and skin, who often made advance deposits to middlemen to purchase these products. At the end of each year, some of the money advanced would prove irrecoverable and the appellant would make fresh deposits to the middlemen. The appellant was of the opinion that the deposits which proved irrecoverable should be written off against the profits as bad debts. The appellant prepared its accounts for some years on this basis, and wrote off the unrecovered portion of the deposits against the profits. The accounts were earlier agreed to by the respondent.

At a later date however, the respondent reopened the issue and disallowed the bad debts written off. The respondent also raised assessments and additional assessment based on the amount disallowed. The respondent contended as follows:

(1) That the appellant could not continue to write off the unrecovered deposits or treat them as bad debts without positive action to enforce recovery as stipulated by Section 27 of the Companies Income Tax Act, 1961;

(2) That the deposits were not incurred wholly, exclusively and necessarily in the production of the profits of the appellant; and

(3) That the deposits were in fact capital expenditure, and could not be written off as bad debts; and

(4) That an assessment once agreed, should be final and conclusive against the taxpayer but not against the tax authority.

The appellant contended as follows:

(1) That the deposits were made by way of trade custom and that they were wholly, exclusively and necessarily incurred to produce the profits;

(2) That it had made efforts to recover and indeed recovered some of the debts, and that the unrecovered portions were bad debts that should be allowed under Section 27 of the Act; and

(3) That an assessment once agreed could not be reopened or revised unless there was evidence of discovery of new facts to justify the revision.

HELD

(1) The advancement of money to middlemen in the business of groundnuts, hides and skin was a custom of the trade. It acted as incentive to bring in more produce and although it might have its abuses in the hands of unscrupulous middlemen, it was an accepted usage of the trade. The money was wholly, exclusively and necessarily incurred in the production of the profits;

(2) The word 'discover' simply means 'find out,' and what had to be found out was whether any profit chargeable to tax had been omitted from the first assessment;

(3) The advance deposits were not capital expenditure but revenue expenditure and they were allowable under Section 27 of the Act; and

(4) The finality and conclusiveness of an assessment should not work against the taxpayer alone as Section 59 of the Act also brought the tax authority within the ambit of finality.

FEDERAL BOARD OF INLAND REVENUE .... PLAINTIFF
V
WEST AFRICAN PICTURES CO. LTD .... DEFENDANT
FEDERAL REVENUE COURT, LAGOS
(ADEDIRAN, J.)
MARCH 19, 1974

Companies Income Tax — Whether Notice of Return of Income Served on the Auditors of the Company instead of the Company itself was Validly Served — Failure to Send Accounts to the Tax Office — Failure to Object to Assessment Notices.

The plaintiff was claiming from the defendant a sum of ₦12,911.17 being the arrears of income tax and penalties for five years of assessment, 1960/61, 1966/67, 1967/68, 1968/69 and 1969/70. The assessment notices, which were based on best of judgment of the plaintiff, were raised after the failure of the defendant to send its returns of income in compliance with earlier requests made for them by the plaintiff.

The defendant, instead of filling the return of income forms, gave promise to send the forms and the accounts at a later date. The defendant failed to send the forms and the accounts except in respect of 1960/61 which was sent late.

The defendant contended that the notices requesting for returns of income were not received by it since they were addressed to its Auditors instead of the company itself and that for that reason the notices were not valid. The defendant further contended that it made no profits in the years under consideration, and therefore was not liable to tax under Section 17 of the Act.
The plaintiff on its own part contended that even though the notices were addressed to the auditors of the defendant instead of the defendant itself, the defendant acted on them and promised to send the accounts later and for that reason the notices were validly served.

HELD

1. It was idle on the part of the defendant to argue that the notices were invalid because they were not sent to its registered address since the notices were received by it and it acted on them. It would be a different matter if the notices were not received at all by the defendant; and
2. Even if the defendant made no profit for the years under consideration, the law made it clear that a company served with notice to file return of profit was bound to comply with the request. Section 17(3) of the Act further specified that the request should be complied with whether or not a company was liable to pay tax.

ARBICO LIMITED .... APPELLANT
V
FEDERAL BOARD OF INLAND REVENUE .... RESPONDENT
SUPREME COURT OF NIGERIA, LAGOS
(COKER, LEWIS AND MADARIKAN JJ. SC.)
OCTOBER 25, 1968

Companies Income Tax — Sale of Property — Isolated Transaction — Whether Isolated Transaction Constitutes Realization of Capital or a Trading Activity — Meaning of the word, 'Trade' in Companies Income Tax Act, 1961

The appellant was a building contractor and the objects of its memorandum included the power to deal in property. The appellant acquired four building plots and built residential accommodation on one of them. The building was sold to the Federal Government of Nigeria at a profit which was appropriated to the appellant's working capital. The sale was the first sale of property by the appellant.

The respondent assessed the appellant to tax on the profit made on the property contending that the profit was in respect of trade or business of the appellant. The respondent further contended that since the appellant's memorandum of association included the power to deal in property, there was a presumption that the sale was in furtherance of its trading objectives.

The appellant contended that the transaction was not a trade but a realization of capital and that the sale, being an isolated transaction was not trading within the meaning of the Act. The appellant also contended that the word 'Trade' had been given extended definition beyond its ordinary meaning in the Companies Income Tax Act, 1961.

HELD

1. The sale was a transaction by way of trade notwithstanding that it was an isolated transaction

2. Isolated transactions could constitute trade if the intention of the company was to deal in that line of business within its memorandum of association

3. The word 'trade' could be defined extensively to include isolated transactions

4. Appeal dismissed

CASES REFERRED TO

1. A. E. Investment Trust Ltd. V Income Tax Commissioner. (1956), 2 E.A.T.C. 99

2. Davies V Shell Company of China Ltd. (1950) 32, T.C. 133, on appeal (1951) 32 T.C. 145

3. Edward (Inspector of Taxes) V Bairstow (1956) A.C. 14; (155) 3 All E.R. 48

SHELL-BP PETROLEUM DEVELOPMENT COMPANY .... APPELLANT
V
FEDERAL BOARD OF INLAND REVENUE .... RESPONDENT
FEDERAL REVENUE COURT, LAGOS (BELGORE, J)
NOVEMBER 5, 1976

Petroleum Profit Tax — Meaning of "Petroleum Operations" — Whether Expenses Connected with Sale of Petroleum included in the Meaning of Petroleum Operations — Effect of Punctuation in Statutes

The appellant, an Oil Company incorporated in Nigeria, was carrying on the business of mineral oil extraction, and delivery for sale to overseas customers or to PortHarcourt oil refinery in Nigeria. The appellant incurred expenses in the nature of deadfreight and demurrage which were accepted as normal business expenses in the business of selling chargeable oil.

In assessing the appellant to tax, the respondent was of the view that the expenses incurred on deadfreight and demurrage were not deductible from the chargeable income in arriving at the adjusted profits of the appellant. The respondent contended that sale of petroleum and the expenses connected therewith were not included in the definition of petroleum operations under Section 2 of the Petroleum Profit Tax Act, 1959, by which the expenses would have been deductible under Section 10 of the Act.

The appellant contended that on proper construction, sale of petroleum should be included in the meaning of petroleum operation.

HELD

The only operation excluded in "Petroleum Operation" under Section 2 of the Petroleum Profit Tax Act, 1959 was refining at the refinery. Consequently, sale of petroleum was included in the definition. The expenses connected therewith were therefore deductible in the computation of the profit of the appellant.

Whether appellant bound by affidavit in other proceedings
In 1975, a taxpayer received more than £900,000 from abroad, but did not declare this in his returns. In 1976 a Hong Kong company began legal action against him, and in interlocutory proceedings in the action he swore an affidavit that the amounts were his share of profits from speculative trading in commodities. The Revenue became aware of the affidavit and raised estimated assessments under Schedule D, Case I. The taxpayer appealed, and contended that the affidavit was inadmissible as evidence until the action against him had been decided, since it contradicted an affidavit by the company which was suing him. The Commissioners rejected this contention and determined the appeals. The Ch D upheld their decision, rejecting the taxpayer's contention that the case should be remitted to consider further matters not raised at the original hearing. The Commissioners determination of the appeals had been in accordance with TMA, s 50(6). Wicker v Fraser, Ch D 1982, 55 TC 641; [1982] STC 505

SHELL PETROLEUM DEVELOPMENT COMPANY *
V.
FEDERAL BOARD OF INLAND REVENUE
(SUPREME COURT)

APPEAL NO: S.C. 78/1994

M.L. UWAIS, C.J.N.,
S.M.A. BELGORE, J.S.C.,
M.E. OGUNDARE J.S.C.,
E.O. OGBUWEU, J.S.C.,
U. MOHAMMED, J.S.C.

ABSTRACT

- The definition of "petroleum operations" and the meaning of the phrase "wholly and exclusively" under the Petroleum Profits Tax Act, 1959, as amended, how construed.
- Deductible expenses under Section 10(1) of the Petroleum Profits Tax Act – whether expenses meet the requirements of being "wholly, exclusively and necessarily incurred for the petroleum operations" (the W.E.N. test).
- A consideration of the legal effects of extra statutory agreements between the Federal Government of Nigeria and companies engaged in petroleum operations varying the mode of payment of petroleum profits tax under the Petroleum Profits Tax Act, 1959, as amended, whether illegal or contrary to public policy.
- Application of the principle of accord and satisfaction to the Law of Taxation

FACTS

The Appellant was a company registered in Nigeria to engage in the business of petroleum operations. The company was therefore liable to pay petroleum profits tax pursuant to Section 8 of the Petroleum Profits Tax Act, 1959, as amended.

** As reported in Yerokun O. et al, 1997: 1. N. R. L. R. Part 1, Nigerian Revenue Projects Pubications*

The Act contained provisions on how to ascertain the chargeable petroleum profits tax payable during an accounting period and the mode of payment. Notwithstanding, the Federal Government of Nigeria imposed additional contractual and statutory obligations on the Appellant, some of which were at variance with the provisions of the Act.

The Appellant submitted its petroleum profits tax returns for the accounting period of 1 January 1973 to 31 December 1973 to the Respondent. The returns contained the revised tax assessment which in the view of the Appellant was payable by it. The Respondent disallowed the following items from the returns, which were incurred by the Appellant, on the ground that such expenses were not deductible for the purpose of computing chargeable tax under the provisions of the Act:

1.	Exchange losses on payment of Petroleum Profits tax	₦3,335,091
2.	Central Bank Commission for payment of Petroleum profits tax	₦2,915,429
3.	Scholarship expenses	₦ 257,550
4.	Gift and donations	₦ 61,222

The Appellant objected to the exclusion of these items in the computation made by the Respondents for the tax payable on its adjusted profits to the Federal Board of Appeal Commissioners. At the hearing, the appeal in respect of the 4 item on "Gift and donations" was abandoned by the Appellant. In its ruling the Federal Board of Appeal Commissioners dismissed the Appellant's appeal and confirmed the revised assessment made by the Respondent.

The Appellant appealed further to the Federal High Court against the ruling of the Federal Board of Appeal Commissioners. The Federal High Court allowed the appeal in respect of exchange losses and Central Bank of Nigeria charges, but dismissed the appeal against the scholarship expenses.

Both the Appellant and Respondent were dissatisfied with the decision of the Federal High Court and appealed to the Court of Appeal. The Appellant, against the confirmation of the assessment on scholarship expenses and the Respondent against the annulment of the assessment on exchange losses and Central Bank of Nigeria charges.

In its judgement the Court of Appeal dismissed the appeal by the Appellant and allowed the appeal by the Respondent and thus set aside the decision of the High Court in respect of exchange losses and Central Bank of Nigeria charges.
The Appellant finally appealed to the Supreme Court.

ARGUMENT
The facts of the argument on the 3 items will be separated and treated in seriatim.

EXCHANGE LOSSES
It was common ground between the parties that the tax payable by the Appellant was assessable in Naira under the provisions of the Petroleum Profits Tax Act, 1959 as amended. Notwithstanding the provisions of the Act, there were a number of formal agreements entered into by the Federal Government of Nigeria and the Appellant which altered the manner and the place where the tax assessed was to be paid. For instance, on the 15 March, 1968 the Exchange Controller of the Federal Ministry of Finance wrote a letter (Exhibit 4) to companies engaged in petroleum operations, (including the Appellant) directing them to pay, with effect from 1 January, 1968, all payments due to the Federal Government of Nigeria in respect of royalties, petroleum profits tax and rents to the account of the Central Bank of Nigeria with the Bank of England. As the amounts due were normally expressed in Nigerian pound (now Naira), the Appellant was further directed to ensure that enough Sterling were made available to make Nigerian pound equivalent of the amount due from the Appellant.

The above directive resulted in the Appellant converting the United States dollars into Naira and then converting Naira into Pound Sterling in order to be able to meet its obligation to the Federal Government of Nigeria. The conversion from United States dollars to Naira became necessary because the former was and still is the currency in which the sale of petroleum is made. It was because of the conversions which the Appellant had to undertake that it claimed that it incurred losses. Hence its demand that the losses should be deductible for tax purposes.

The questions which arose before the Federal Board of Appeal Commissioners were whether or not:

(i) The determination of the deductions due to the Appellant should be limited to the Petroleum Profits Tax Act, 1959 or whether it should be extended to the formal agreements and the letter (Exhibit 4).

(ii) Whether the exchange losses were expenses "wholly, exclusively and necessarily" incurred for the petroleum operations of the Appellant which according to Section 10(1)

of the Petroleum Profits Tax Act, 1959 should be deducted from the aggregate profits to arrive at its adjusted profits for the 1973 accounting period.

The Federal Board of Appeal Commissioners held in its ruling that the issues dealt exclusively with the interpretation of Sections 2, 8, 9, 10 and 11 of the Petroleum Profits Tax Act, 1959 and that the agreements together with Exhibit 4 could not apply to vary the provisions of the Act. The Board of Appeal Commissioners reasoned that the agreements were not part of the Petroleum Profits Tax Act, 1959 and since the agreements were not properly enacted into law they cannot override the law and that any of its provisions which is in conflict with the law will be ultra vires.

Being dissatisfied, the Appellant appealed to the Federal High Court against the decision of the Federal Board of Appeal Commissioners. It was a common ground between the parties that the tax payable was assessable in Naira and that by the provision of the Petroleum Profits Tax Act, such tax if not paid constituted a debt owed by the Appellant which was payable to the Respondent. The Appellant argued that the agreement was meant to abrogate the provisions of the Petroleum Profits Tax Act, whereby petroleum profits tax was to be paid to the Respondent in Naira in Nigeria and to substitute by way of accord and satisfaction, an agreement whereby the Appellants were obliged to pay their profits tax obligation in Pounds Sterling into the account of The Central Bank of Nigeria with the Bank of England.

The Federal High Court accepted the Appellant's argument and held that the Appellant's obligations to pay its Petroleum Profits Tax in Naira in Nigeria had been dissolved and discharged. Regarding the issue whether the amounts paid were expenses "wholly, exclusively and necessarily" incurred for the Appellant's petroleum operations, the Appellant argued that if it (like other oil companies) had not been required by the agreements to pay in Sterling instead of Naira it would not have incurred any losses. The Federal High Court accepted the Appellant's argument and upheld that the expenses were incurred wholly, exclusively and necessarily for the purpose of petroleum operations of the Appellant.

The Respondent being dissatisfied with the decision, appealed against it to the Court of Appeal. The Court of Appeal construed the meaning of "petroleum operations" as defined in Section 2 and also the scope of Sections 10 and 11(1)(f) of the Petroleum Profits Tax Act and held that (i) exchange losses could not by any stretch of imagination pass "the W.E.N. test" under Section 10(1). (ii) That Section 11(1)(f) specifically disallowed the deduction of any amount incurred in respect of any income tax, profits tax or other similar tax, whether charged within Nigeria or elsewhere. (iii) That since the agreements between the Appellant and the Federal Government of Nigeria did not provide for the deduction of expenses incurred, one of the parties cannot unilaterally do so.

Accordingly, the appeal on exchange losses was allowed and the Federal High Court's decision was set aside.
The Appellant was aggrieved by the Court of Appeal's decision and appealed to the Supreme Court and argued that the definition of "petroleum operations" in Section 2 of the Petroleum Profits Tax Act, 1959 included all operations that were incidental to petroleum operations. Therefore, the Appellant submitted that all its activities which were not strictly petroleum operations but which were activities occurring or liable to occur in connection with those operations should be deemed to be "petroleum operations".

The Appellant argued further that the agreement between it and the Federal Government, was an agreement entered into by it in connection with its petroleum operations. Therefore, it contended that losses incurred by it in discharging the contractual obligations under the agreement in question were incurred for the purposes of petroleum operations. Regarding Section 11(1)(f) of the Petroleum Profits Tax Act, 1959, the Appellant admitted that the Section clearly intended to disallow deductions of amounts paid in respect of income tax, profits tax and other similar taxes. The Appellant, however, contended that the payments made by it in Pounds

Sterling were based upon the amount of debt payable in Naira owed by it to the Federal Government of Nigeria pursuant to the provision of Section 41(1) of the Act. The Appellant, therefore, submitted that it was a misconception both in law and fact for the Court of Appeal to regard such payment as tax. The Appellant, therefore, urged the Supreme Court to hold that Section 11(1)(f) of the Petroleum Profits Tax Act did not prevent the deduction of exchange losses.

The Respondent, in reply, submitted that the "W.E.N. test" in Section 10(1) of the Petroleum Profits Tax Act, was applicable to the exchange losses as found by the Court of Appeal. The Respondent argued that the exchange losses were incurred after profits had been earned and after the completion of the petroleum operations of the Appellant. Nor were they incurred in the course or as a result of or within or during the business activities of the Appellant. Hence, the Respondent submitted that exchange losses were not expenses incurred on operations that were incidental to petroleum operations of the Appellant.

Referring to the agreements between the Appellant and the Federal Government of Nigeria, the Respondent submitted that the payment of tax was a mandatory statutory and Constitutional obligation of all companies and that the agreement merely modified the procedure for making the payment of the petroleum profits tax. Hence, the Respondent urged the Supreme Court to interpret the agreement in a manner that renders them secondary to the statutory obligation of the Appellant under the Act.

The Respondent referred to the Petroleum Profits Tax (Amendment) Act, 1973 and argued that the Act incorporated the agreement between the Appellant and the Federal Government of Nigeria. It was further argued that the provisions of the 1973 Act did not provide that there should be deduction from the adjusted profits of the Appellant in respect of exchange losses and that Section 11(1)(f) of the Petroleum Profits Tax 1959 clearly disallowed the claim for deductions by the Appellant in respect of exchange losses. Finally, the Respondent submitted that the principle of accord and satisfaction was not formulated with any tax law in mind and therefore, it cannot supercede any statutory provisions governing taxation.

CENTRAL BANK OF NIGERIA CHARGES

The Permanent Secretary, Federal Ministry of Finance wrote a letter dated 15th of March, 1968 to the Appellant. The letter directed the Appellant to pay a commission of 0.5 percent with effect from 1st January, 1968 in respect of Pound Sterling lodgments into the account of the Central Bank of Nigeria with the Bank of England. The Appellant complied with this directive and sought to deduct the bank charges from its profits in arriving at its adjusted profits under Section 10 of the Petroleum Profits Tax Act, 1959. The argument in respect of Central Bank Charges was similar to the argument on exchange losses save that it called into question the status of the Central Bank of Nigeria.

The Appellant claimed that the charges were deductible under Section 10(1) or Section 10(1)(g) of the Petroleum Profits Tax Act. The Federal Board of Appeal Commissioner did not agree. Section 10(1)(g) of the Petroleum Profits Tax Act allowed the deduction of:
"all sums the liability for which was incurred by the company during that period to the Federal Government of Nigeria, or to any State or Local Government by way of any rate, impost, fee or other charges."

The question for determination in this respect was whether the Central Bank of Nigeria charges incurred by the Appellant were:

(a) Outgoings and expenses wholly, exclusively and necessarily incurred for the purpose of its petroleum operations or whether they were expenses incurred in respect of tax on its profits
or

(b) Sums the liability for which were incurred to the Federal Government by the Appellant by way of any rate, impost, fee or other like charges.

The Appellant argued that by their nature, the Central Bank of Nigeria charges were not charges made by the Bank for services rendered to it; rather it was a sum fixed by the Federal Government without any real connection with or reference to any services. Reference was made to the provisions of Section 10(1)(g) of the Petroleum Profits Tax Act, 1959, as amended and it was submitted that the Section allowed for the deduction of the Central Bank of Nigeria charges.

In reply, the Respondent urged that the phrase "all operations incidental thereto" in Section 2 of the Petroleum Profits Tax Act, 1959 as amended which defined "petroleum operations" must not be read in isolation from the rest of the definition but that it must be read in conjunction with the various activities specified earlier in the definition in accordance with the construction rule of ejusdem generis. Therefore, applying the rule to the phrase, the Respondent submitted that the phrase would mean "things or operations incidental to drilling, mining, extracting or other like operations" as stipulated in Section 2 of the Petroleum Profits Tax Act.

Also, the Respondent submitted that the Central Bank of Nigeria charges were incurred by the Appellant in the process of paying tax on the Appellant's profits and thus fulfilling its tax obligation hence, the expenses were not deductible by virtue of Section 11(1)(f) of the Petroleum Profits Tax Act, 1959, as amended. It was argued that Section (10)(1) allowed deductions for expenses incurred from 'petroleum operations' and one cannot readily see how bank charges incurred in the process of paying tax for profits made can be said to arise from 'petroleum operations' as defined in Section 2 of the Petroleum Profits Tax Act, 1959. The Respondent, therefore, submitted that the expenditure for the Central Bank of Nigeria charges were incurred after the conclusion of petroleum operations by the Appellant.
Furthermore, the Respondent argued that the commission paid to the Central Bank of Nigeria by the Appellant was not deductible expenses under Section 10(1)(g) of the Petroleum Profits Tax Act, 1959; because the commission was not incurred to the Federal or State Government or a Local Authority but to the Central Bank of Nigeria which was not one of the three authorities mentioned in the Section.

SCHOLARSHIP EXPENSES

The Appellant in furtherance of its statutory obligations under Regulations 26 and 27 of the Petroleum (Drilling and Production) Regulations, 1969 (now Cap 350 of the Laws of the Federation, 1990) drew out a scholarship scheme which was approved by the Minister of Petroleum and in pursuance of it awarded scholarships in 1973 to the tune of ₦257,550.00. The Appellant claimed that the amount was deductible under Section 10 of the Petroleum Profits Tax Act, for the purpose of computing its adjusted profits from petroleum operations. The claim was denied by the Respondent. The denial was contested before the Federal Board of Appeal Commissioners which also disallowed it. The Federal High Court as well as the Court of Appeal upheld the decision of the Federal Board of Appeal Commissioners. The Appellant finally appealed to the Supreme Court.

The scholarship scheme was made up of two categories, the first being for the generality of the Nigerian undergraduates which concerns this appeal while the second category was exclusively for its employees. The object was to employ as many as possible of the beneficiaries of the awards that obtained 1st class or 2nd class lower in their training while scholars who failed to obtain the required grade were not employed.

The main issue for determination in this regard was whether the scholarship expenses were outgoings and expenses incurred "wholly and exclusively for the purpose of the Appellant's petroleum operations".

The Appellant gave evidence and argued that the Federal Government of Nigeria will not permit it to continue to operate if it failed to award scholarship for its non-employees. In reply, the Respondent argued that the category of scholarship for the Appellant's non-employees does not satisfy the requirement of Section 10(1) of the Petroleum Profits Tax Act since it cannot be shown to satisfy the test of being wholly, exclusively, and necessarily incurred for the petroleum operations of the Appellant.

HELD (Unanimously allowing the appeal) –

On Taxable Person

1. By Section 8 of the Petroleum Profits Tax Act, 1959, as amended, any company engaged in petroleum operations is liable to pay petroleum profits tax;

On the Definition of "Petroleum Operations"

2. The definition of the phrase "all operations incidental thereto" in Section 2 of the Petroleum Profits Tax Act cannot be circumscribed to "drilling, mining, extracting and other like operations." To do so is to do violence to the true meaning of the definition of "petroleum operations";

3. The ejusdem generis rule must not be pushed too far. It is to be applied with caution. It is wrong to treat it as if it is automatically applicable since it is a mere presumption in the absence of other indications of the intention of the Legislature. The modern tendency of the law is to attenuate the application of the rule. There must be a distinct genus or category before the rule can be invoked; and

4. A close examination of the definition of the words "petroleum operations" in Section 2 of the Act would show that the specific words therein are not limited to "drilling, mining, extracting or other like operations" but include in addition the phrase "or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations"

On the meaning of "wholly, exclusively and necessarily"

5. According to ordinary dictionary meaning, the words "wholly" and "exclusively" have virtually the same meaning. They can be said to mean "solely" or "entirely". The dictionary meaning of the word "necessarily" is the same as that of the words "inevitably" and "unquestionably". Therefore the requirement that expenses must be incurred "wholly, exclusively and necessarily" is satisfied if the expenses are "solely" and "inevitably" incurred for petroleum operations;

6. If expenses were incurred for the purpose of paying petroleum profits tax, they would not have been deductible since such outgoings cannot be said to be incurred for the purpose of petroleum operations as defined by Section 2 of the Act. Nor can they be said to have been incurred wholly, exclusively and necessarily for the purpose of petroleum operations. They would have fallen under the head of expenditure incurred after the petroleum operations had been carried out and would not, therefore, qualify as deductible expenditure under the provisions of Section 10 of the Act;

7. The foregoing would have been the correct position in law had it been that this case was contested purely on the provisions of the Petroleum Profits Tax Act, 1959, as amended, because the principle of construction of statute is that if the words of the statute are plain, precise and unambiguous they should be given their ordinary and natural meaning; and

8. The Appellant was under additional obligations by virtue of (i) the agreement between the Appellant and the Federal Government of Nigeria (ii) the directive on payment of the Central Bank of Nigeria charges (iii) Regulations 26 and 27 of the Petroleum (Drilling

and Production) Regulations, 1969. Failure to discharge these obligations would have undoubtedly rendered the Appellant liable to sanction at the instance of and by the Federal Government of Nigeria.

On the Status of Extra Statutory Agreements

9. The agreements are not illegal contracts because their terms varied the obligations of the Appellant and the Respondent under the Petroleum Profits Tax Act, 1959, nor are they against public policy. Since the agreements are not illegal, it follows that the principles of contract can rightly apply to them. Hence, the issue of accord and satisfaction becomes pertinent to this case.

On the Application of the Principle of Accord and Satisfaction

10. By the provisions of Section 41(1) of the Petroleum Profits Tax Act, 1959, the Respondent may sue for and recover tax in a court of competent jurisdiction. Since the tax is to be deemed "as a debt due to the Government of the Federation", it follows that the obligation to pay petroleum profits tax is the same as the obligation to pay debt; and

11. Accord and satisfaction is the purchase of a release from an obligation whether arising under contract or tort by means of any valuable consideration not being the actual performance of the obligation itself. The accord is the agreement by which the obligation is discharged. The satisfaction is the consideration which makes the agreement operative.

In Respect of Exchange Losses

12. In the present case it is incidental for the Appellant to pay debt for the purpose of its petroleum operations as defined by Section 2 of the Petroleum Profits Tax Act, 1959. However, Section 11 subsection 1(f) of the Act disallows any deductions on such debt;

13. The Appellant could not have incurred the exchange losses but for agreements between the Appellant and the Federal Government and the directive (Exhibit 4). If the payment of the tax were to have been made in local currency no such losses would have arisen; and

14. Similarly, if the Federal Government of Nigeria had been paid the tax in Naira and it was to purchase Pound Sterling equivalent to the amount so paid it would have incurred the exchange losses. Hence, there was no reason why the Respondent should not allow deductions in respect of exchange losses suffered by the Appellant.

On the Application of the Doctrine of Equity

15. By reason of the agreements and not the provisions of the Petroleum Profits Tax Act, 1959, as amended, the doctrine of equity will apply to compensate Appellant for the exchange losses incurred.

In Respect of Central Bank of Nigeria Charges

16. In computing the adjusted profits of the Appellant, bank charges cannot be deducted under the provisions of Section 10(1)(g) of the Act. This is because Central Bank of Nigeria is not the Federal Government nor Government of any State or a Local Government Authority.

17. Once there is a statutory or contractual obligation, and in this case it is the former, for a company engaged in petroleum operations to perform, such obligations is "wholly", "exclusively" and "necessarily" incurred for the purpose of the petroleum operations of the company.

18. The payment of bank charges to the Central Bank of Nigeria which had not rendered any service to the Appellant simply because the Federal Government had so directed was

inevitable and was, therefore, incurred in the course of the Appellant's business which was petroleum operations.

19. The bank charges qualify for deduction under the general provisions of Section 10(1) of the Petroleum Profits Tax Act, 1959 as amended.

In Respect of Scholarship Expenses

20. In determining whether expenses on award of scholarship by the Appellant should be deducted in computing its adjusted profits for 1973, the circumstances of the expenses must meet the requirements of Section 10(1) of the Petroleum Profits Tax Act. In other words, they must be expenses "wholly, exclusively and necessarily incurred" for the purpose of the petroleum operations of the Appellant.
21. The creation of a scholarship scheme is a statutory obligation to be observed by the Appellant. It is one of the things it had to perform as incidental to the carrying out of its business. It has no choice but to comply. Hence, the creation of the scholarship scheme and the award of scholarships to Nigerian citizens were incidental to the petroleum operations of the Appellant.

TEN OF THE CASES REFERRED TO

1. Ogbuanyinya v. Okudo (No. 2) (1990) 4 N.W.L.R. (pt. 146) p. 551
2. Carlen (Nig.) Ltd. v. UNIJOS (1994) l.n.w.l.r. (pt. 323) p. 631
3. Strong & Company of Romsey Limited v. Woodfield (Survey of Taxes), (1906) A.C. 448, 5 T.C. p. 215
4. Salami Afolabi & Ors. v. Governor of Oyo State & Ors. (1985) 2. N.W.L.R. (pt. 9) p. 734
5. Gulf Oil Company Ltd. v. F.B.I.R., Suit No. FHC/L/3A/83 (unreported) judgement delivered on 30th January, 1985
6. Potato Estates Ltd. v. Boland (B.M. Inspector of Taxes) (1948) 30. T.C. p. 267
7. Usher's Wiltshire Brewery Ltd. v. Bruce (Surveyors of Taxes) (1914) 6 T.C. p. 399
8. Bentleys, Stokes and Lowless v. Beeson (H.M. Inspector of Taxes) (1952) 33. T.C. p. 491
9. Lawal v. G.B. Ollivant (1972) 3. S.C. p. 124
10. Aya v. Henshaw (1972) 5. S.C. p. 87

REPRESENTATION

Chief F.R.A. Williams, S.A.N., with Dr. F.A. Ajayi, S.A.N. and F.R.A. Williams Jnr. For the Applicant
U.A. Inyang, Asst. Chief Legal Officer, Federal, with A.V. Nwangene, Senior Legal Officer, for the Respondent.

APPENDIX V

GLOSSARY OF TERMS

Adjusted Profit (under PPT)

The adjusted profit of an accounting period in respect of a company engaged in petroleum operations shall be the profits of that period after the deductions of allowable expenditures and any adjustments necessary to exclude the profit or loss attributable to transportation operations which is assessable under Companies Income Tax Act (CITA).

Agricultural trade or business

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, beniseed, vegetables, pineapples, bananas and plantains, animal husbandry, that is to say, poultry, piggery, cattle-rearing, fish farming, and deep sea fish-trawling".

Aggregate Demand

Aggregate demand is the relationship between the real quantity of newly produced goods and services purchased in the economy and the general price level.

Aggregate Supply

Aggregate supply is the relationship between the quantity of real national output that businesses are willing to produce and the general price level.

API

API is a unit of specific gravity measurement approved by the American Petroleum Institute. The American Petroleum Institute was established in 1920.

Associated Gas

Gas produced in the course of crude oil production is described as associated gas. Such gas is flared by most of the oil producing companies in Nigeria today.

Assessable profit (under PPT)

The assessable profit in respect of a company engaged in petroleum operations shall be the adjusted profit of the period after deduction of Education Tax, and after adjusting for the effect of any loss relief available to the company.

Balanced Budget

The nation's budget is said to be balanced when the expected revenue is expected to be the same as the expected expenditure for the fiscal year.

Barrel

A measure representing 35 imperial gallons or 42 U.S. gallons.

Board

The Federal Inland Revenue Service Board.

Capital Allowance

This is the tax relief that is granted to a trade or business on capital expenditure purchased and used in the production of the income instead of the depreciation of fixed assets charged in the financial statements.

Casing-head Gas

Natural gas that is produced in association with oil; the term usually applies to gas when it is first separated from crude oil.

Chargeable profits

The chargeable profits of a company engaged in petroleum operations shall be the assessable profits less capital allowances. For this purpose the amount of capital allowances to be deducted is to be restricted to the lower of –

(a) the amount computed or

(b) a sum equal to eighty-five percent of the assessable profits of the accounting period less one hundred and seventy percent of the total amount of the deductions allowed as investment tax credit or petroleum investment allowance computed under the second schedule for that period. (Investment Tax Credit if the computation is for a company operating a Profit Sharing Contract as provided in the Deep Offshore and Inland Basin Production Sharing Contract Decree 9 of 1999. Petroleum Investment Allowance in other cases.)

Commercialisation

Commercialisation involves the adoption of commercial, competitive and profit objectives in the management of public enterprises. It involves the jettisoning of socialist and monopolistic objectives that characterised the operation of public enterprises in the past.

Commonwealth tax

For double taxation relief purposes, the tax payable in the foreign country is referred to as Commonwealth Income tax. This is defined as any tax on income or profits of companies charged under a law in force in any country within the Commonwealth

or in the Republic of Ireland which provides for relief from tax charged both in that country and Nigeria .

Company

Any body corporate incorporated under any law in force in Nigeria or elsewhere.

Concession

Includes an oil exploration licence, an oil prospecting licence, an oil mining lease, any right, title or interest in or to petroleum oil in the ground and any option of acquiring any such right, title or interest;

Connected persons

In tax practice, certain people are treated as being so closely involved with each other that they have to be viewed as the same person or that transactions between them need to be treated differently from transactions 'at arm's length'. These people are referred to as 'connected persons'. Transactions between such people are treated as artificial or fictitious for the purpose of determining the tax liability arising therefrom.

Crude oil

Any oil (other than oil extracted by destructive distillation from coal, bituminous shales, or other stratified deposits) won in Nigeria either in its natural state or after the extraction of water, sand or other foreign substance therefrom but before any such oil is refined or otherwise treated.

Desk Audit

As soon as a tax return is received in the Inland Revenue's office, such would be subjected to examination by the Inspector. This examination is carried out in the tax office. It is carried out on routine basis indicating that most if not all the returns submitted to the tax office are subject to this audit.

Development Costs

Development costs are incurred to obtain access to proved reserves and to provide facilities for extracting, gathering, treating, and storing the oil and gas.

Direct Taxes

These are charged on a taxpayer's income, profits or other gains. They are paid by the taxpayer directly to the tax authority.

Downstream Operations

All activities of companies that are not caught under the definition of "petroleum operations" are referred to as downstream operations. Examples of downstream operations are petroleum refining, petroleum marketing and gas utilisation projects.

Companies engaged in downstream operations are subject to tax under the Companies Income Tax Act Cap C21 LFN 2004.

Dry Hole

A hole that was drilled but from which oil or natural gas was not found in commercial quantity.

Exploration and Drilling Costs

Exploration and Appraisal costs are costs incurred in the search for oil and gas deposits after obtaining a licence but before a decision is taken to develop a reservoir.

Field Audit

A field audit is more elaborate and comprehensive than a desk audit. It is usually carried out outside the Inland Revenue's office in the taxpayer's business premises. The objective is to ensure that taxpayers pay correct tax.

Final and Conclusive Assessment

An assessment which has become final and conclusive cannot be reopened without the discovery of new facts. An assessment becomes final and conclusive under the following conditions:

i. where no valid objection is made within the statutory time limit of 30 days from the date of the service of the notice of assessment;

ii. where an appeal against the decision of the Board is not made to the Body of Appeal Commissioners within 30 days from the date of the Notice of Refusal to Amend;

iii. where an appeal is not made to the Federal High Court within 30 days from the date of the decision of the Body of Appeal Commissioners.

Foreign Company

A foreign company (non-Nigerian company) is defined as any company or corporation established by or under any law in force in any territory or country outside Nigeria, that is a company that is not incorporated under the Companies and Allied Matters Act 1990.

Foreign tax

Foreign tax means any tax payable in a country which under a double taxation agreement is to be allowed as a credit against tax payable in respect of those profits in Nigeria.

Income Tax Acts

"Income Tax Acts" represent the Personal Income Tax Decree 1993; the Companies Income Tax Act or the Petroleum Profits Tax Act together with all applicable amendments to date.

Indirect Taxes

Indirect taxes are taxes on spending. The tax is charged when a taxpayer buys an item and is paid to the supplier as part of the purchase price of the item. The supplier passes the tax to the tax authorities.

Intangible drilling costs

All expenditure for labour, fuel, repairs, maintenance, hauling, and supplies and materials (not being supplies and materials for well cement, casing or other well fixtures) which are for or incidental to drilling, cleaning, deepening or completing wells or the preparation thereof incurred in respect of –

(a) determination of well locations, geological studies and topographical and geographical surveys preparatory to drilling.
(b) drilling, shooting, testing and cleaning wells
(c) cleaning, draining and leveling land, road-building and the laying of foundations,

erection of rigs and tankage assembly and installation of pipelines and other plant and equipment required in the preparation of drilling of wells producing petroleum

Joint Venture

Joint Venture is a contractual arrangement whereby two or more parties undertake an economic activity which is subject to contractually agreed basis of sharing of control.

Lease

Includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and all cognate expressions including "leasehold interest" shall be construed accordingly.

Liquefied natural gas

Natural gas in its liquid state at approximately atmospheric pressure.

Market Value

Market value in relation to any assets for capital gains tax purposes means the prices which those assets might reasonably be expected to fetch on a sale in the open market.

Material Date

(a) in relation to a pioneer company engaged in a pioneer industry consisting of the provision of services, the date on which the company is ready to provide such services on a commercial scale; and

(b) in case of manufacturing, processing, mining, agricultural or any other pioneer industry, the date on which the company begins to produce a pioneer product in marketable quantities.

Mineral Rights Acquisition Costs

Mineral rights acquisition costs are the costs of acquiring concession rights in a lease area. They include the costs of:
Oil Prospecting Licence (OPL); (to search for oil)
Oil Exploration Licence (OEL); (to explore for petroleum)
Oil Mining Lease (OML); (to win, work, carry away and dispose of petroleum)
Bonuses and options to purchase or lease properties;
Minerals, when land, including mineral rights is purchased; and
Recording fees, legal costs and other costs incurred in acquiring properties

MMcf

One million cubic feet.

Natural gas

Gas obtained in Nigeria from bore holes and wells and consisting primarily of hydrocarbons.

Nigeria

Includes the submarine areas beneath the territorial waters of Nigeria 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.

Nigerian Company

A Nigerian company is defined as one incorporated under the Companies and Allied Matters Act 1990, or any enactment replaced by that Act.

Non-associated Gas

Non-associated gas is that which can be produced independently of crude oil production. Nigeria is reported to have large quantity of Non-associated gas reserve. Such gas reserves may or may not include any amount of crude oil.

Non-productive rents

The amount of any rent as to which there is provision for its deduction from the amount of any royalties under an oil prospecting licence or oil mining lease, to the extent that such rent is not so deducted.

Oil Mining Lease

A lease granted to a company under the Minerals Act, for the purpose of winning petroleum, or any assignment of such lease.

Oil Prospecting Licence (OPL)

A licence granted to a company under the Minerals Act, for the purpose of winning petroleum, or any assignment of such licence.

Posted price

Posted price in relation to any crude oil exported from Nigeria by a company means the price f.o.b. at the Nigerian port of export for crude oil of the gravity and quality in question which is from time to time established by the company, after agreement with the Government of Nigeria as to the procedure to be followed for the purpose as its posted price for Nigerian crude oil of that gravity and quality (Section 21(5)).

Petroleum

Any mineral oil or relative hydro-carbon and natural gas existing in its natural condition in Nigeria, but does not include liquified natural gas, coal, bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

Petroleum operations

Petroleum operations essentially involve petroleum exploration, development, production and sale of crude oil and gas.

Pioneer Conditions

Where the National Council of Ministers (the council) is satisfied that –

(a) any industry is not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development in Nigeria of any industry; or

(b) it is expedient in the public interest to encourage the development or establishment of any industry in Nigeria by declaring the industry to be a pioneer industry and any product of the industry to be a pioneer product,
the council may declare such industries as pioneer industries and their products as pioneer products.

Pioneer Status

A company that has been issued a pioneer certificate has pioneer status. Such company shall be on a tax holiday for the period stated on the certificate. The profits earned by the pioneer company during its tax holiday are tax exempt. So also is the dividend declared out of such profits.

Production Costs

Production costs are the recurrent costs incurred in oil and gas production activities. Production involves lifting the oil and gas to the surface, gathering, treating, field processing and storage. Production costs are usually determined to be all costs incurred from the maintenance of the wells and well heads to the storage facilities when the oil and gas are ready for export or delivery to a refinery.

Production Day

Production day of a pioneer company is the date certified for a pioneer company on which the period of the tax holiday of the company shall commence.

Production Sharing Contracts

In Production Sharing Contracts (PSC), the petroleum producing companies enter into agreement with NNPC for the production of crude oil in particular oil fields respectively. The operating expenses for the petroleum operations would be met by the operator who would later be reimbursed as provided for in the respective contracts.

Privatisation

Privatisation can be defined as the sale, transfer or removal of ownership and control from public to private entities in respect of state enterprises.

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 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

Companies chargeable under CITA

The residue of qualifying expenditure, in respect of an asset, at any date, is the total qualifying expenditure incurred less the total of initial and annual allowances granted to that date in respect of the asset.

Royalties

a) The amount of any rent as to which there is provision for its deduction from the amount of any royalties under an oil prospecting licence or oil mining lease to the extent that such rent is so deducted; and
b) The amount of any royalties payable under any such licence or lease less any such rent deducted from those royalties.

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 the law.

Tax Evasion

Tax evasion is an act whereby the taxpayer can achieve the minimisation of tax through illegal means. Tax evasion involves outright fraud and deceit, for example through deliberate omission of a source of the taxpayer's income from his return or deliberate understatement of any income.

Upstream Operations

All activities in respect of crude oil and gas production that fit into the definition of petroleum operations that are to be taxed under the Petroleum Profits Tax Act are referred to as Upstream operation.

APPENDIX VI

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APPENDIX VII

STUDY AND EXAMINATION TECHNIQUE

This appendix contains notes on:

a. Using the questions and answers provided in the manual

b. Effective study

c. Examination technique

7.1 Questions and answers

Introduction

1. Two types of question are provided in this manual
   a. Questions set at the ends of chapters *with answers* provided in Appendix 1
   b. Questions *with answers* set in Appendix 2

Questions with answers

2. 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.
3. 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.
4. When answers are *comprehensive* you could not be expected to write them in the time allowed. *Do not* worry if you feel you could not 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.
5. 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.
6. 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

7. Have a look 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.
8. 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 7and 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.

7.2 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 do not kid yourself you can absorb material by *just one* general read through it, you cannot!
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 *key* point 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 utilized 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.

7.3 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 *there* 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. 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. 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

6. Read the *instructions* at the top of the paper
7. 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

8. 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 critcised by examiners.
9. 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 represents *marks* already earned.
10. 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.
11. 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.
12. Assumptions are sometimes required (for example because of the lack of standardization 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!

Layout of answer

13. Tabulate where appropriate, using block capitals for your main headings and underline subheadingS. Underline *words* or phrases which require emphasiS. *Use a ruler.*
14. 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!
15. 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

16. A descriptive heading or title must be given to each diagram (using the one in the question if indicated).
17. Do not squeeze a diagram into a corner – *spread it out.*
18. Do not clutter your diagram up with too much detail – this defeats the object, which should be clarity.
20. Give a *key* to the symbols and the different lines you've used, and again – use a ruler.

End of examination procedure

20. Have a quick look at each answer, checking for grammatical errors and badly formed letterS.
21. Ensure each answer sheet has your *number* on it and *do not* leave any lying on the table.

Conclusion

22. 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.
23. Remember – you do not have to score *100%* to pass.
24. A final point; once you're in the examination room *stay there* and make use of every minute at your disposal.
25. Practice your technique when answering the questions set in the manual.

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