

ADVANCED TAXATION (ATAX)

STUDY TEXT

THE INSTITUTE OF
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Foreword

Foreword

As the global economy continues its rapid evolution, the role of the accounting professionals, anchored in technical excellence, professional competence, and ethical integrity, has never been more critical. Today's business landscape, shaped by globalisation, technological disruption, and sustainability priorities, is not merely changing, it is redefining the finance function and raising the bar for the capabilities expected of the modern professional accountants.

To remain relevant in a rapidly evolving environment, the Institute's syllabus and training curriculum are designed to equip students with the knowledge and competencies required to thrive in the dynamic fields of accounting and finance. These are continuously reviewed and updated to reflect emerging trends and the evolving needs of users of accounting and related services.

The Institute of Chartered Accountants of Nigeria (ICAN) remains firmly committed to ensuring that its syllabus and training curriculum are current, responsive, and aligned with global best practices. To this end, the Institute undertakes a comprehensive review of these frameworks every three years, complemented by annual updates to reflect emerging trends and developments within both the national and global accountancy profession.

Following a rigorous and consultative process, the Syllabus Review, Professional Examinations, and Students' Affairs Committees developed a revised 3-level, 15-subject syllabus. This was duly approved by Council and implemented with effect from the November 2025 examination diet.

However, in the light of the introduction of the Tax Reform Acts, 2025 by the Federal Government, replacing the previous tax regime, as well as other emerging developments within the profession, it has become necessary to further review and update the syllabus to ensure continued relevance and alignment with current realities.

Accordingly, the updated syllabus which affects the following five subjects, Corporate and Business Law, Public Sector Accounting and Finance, Taxation, Strategic Business Reporting and Advanced Taxation, is scheduled to take effect from the November 2026 examination diet.

The publication of the Study Texts has consistently accompanied syllabus reviews and contributed significant improvements to the performance of professional examination candidates. In furtherance of its commitment to enhancing student success rates, the Council has also approved the update of Study Texts across the five subjects. This sixth edition has been comprehensively updated to incorporate significant and emerging

developments, thereby enriching its contents. It also continues to comply with the requirements of the International Panel on Accountancy Education (IPAE).

The Institute engaged renowned writers and reviewers, comprising esteemed scholars and seasoned practitioners with extensive experience in their respective areas of specialisation, to update these Study Texts

The Institute's Study Texts, comprising fifteen (15) subjects, are as follows:

Foundation Level		
1.	Business Environment	A1
2.	Financial Accounting	A2
3.	Management Accounting	A3
4.	Corporate and Business Law (Updated)	A4

Skills Level		
5.	Financial Reporting	B1
6.	Audit, Assurance and Forensics	B2
7.	Taxation (Updated)	B3
8.	Performance Management	B4
9.	Financial Management	B5
10.	Public Sector Accounting and Finance (Updated)	B6

Professional Level		
11.	Strategic Business Reporting (Updated)	C1
12.	Advanced Audit, Assurance and Forensics	C2
13.	Strategic Financial Management	C3
14.	Advanced Taxation (Updated)	C4
15.	Case Study	C5

A rigorous quality control process was implemented, featuring a detailed and comprehensive review of the materials developed by the writers and reviewers by the Study Texts Review Technical Subcommittee.

These Study Texts will be valuable resources, not only for our candidates but also for students of other professional bodies, tertiary institutions, and finance and management practitioners, providing them with valuable resources for their studies and practices.

Chibuzor Noel Anyanechi, (Chief), BSc, MBA, FCA
Chairman, Syllabus Review Committee



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The Institute expresses its heartfelt appreciation to the following Syllabus Review Committee members, writers, reviewers, and editorial board members for their invaluable contributions, expertise, and scholarly dedication that enabled the successful production of these new Study Texts: They are:

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SYLLABUS

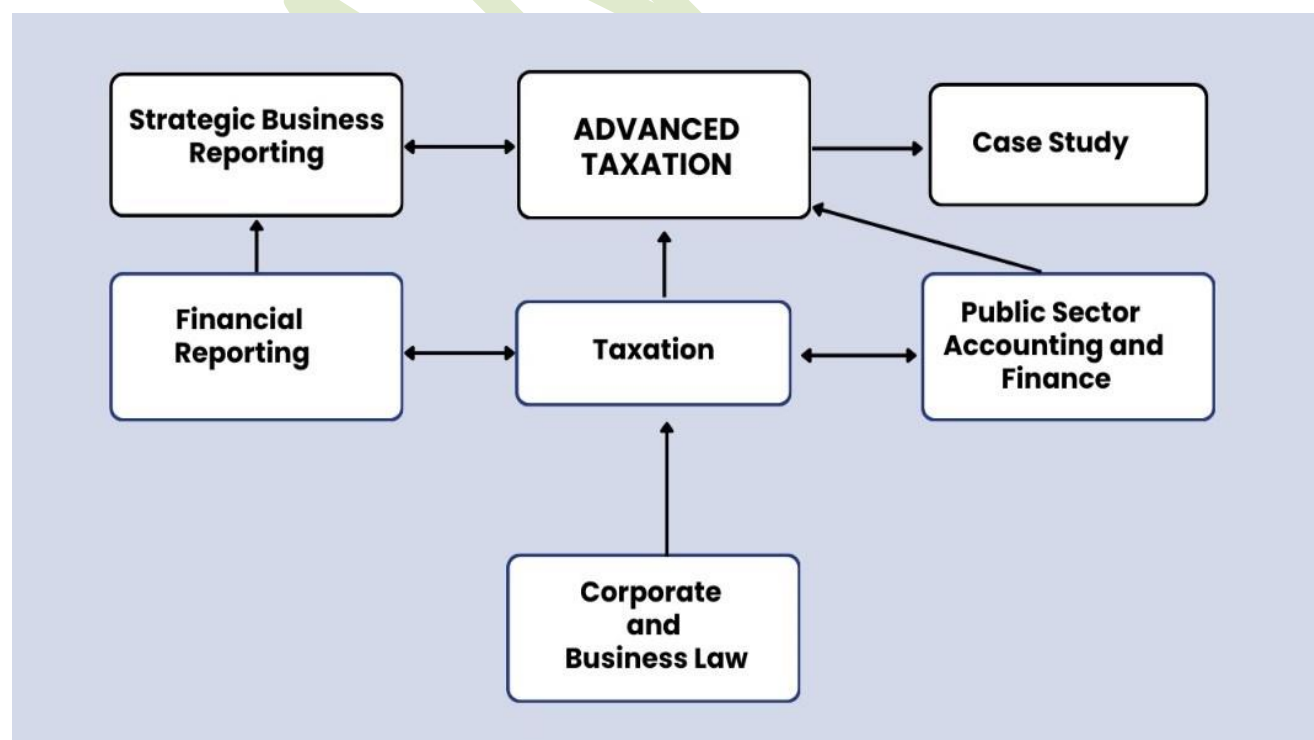
SYLLABUS

Aim

To enable candidates, apply technical knowledge, professional skills, and exercise professional judgement to resolve tax and ethical issues that may arise in given taxation scenarios. They are also expected to advise on tax planning and mitigation strategies for businesses.

Linkage with other related subjects

This diagram depicts the relationship between this subject and other related subjects.



Main competencies

On successful completion of this paper, candidates should be able to:

- Discuss tax policy formulation and apply the principles of the National Tax Policy to contextual scenarios;
- Apply and advise on specific provisions of the tax laws, such as Companies Income Tax Act Cap. C21 LFN 2004 (as amended) and relevant Finance Acts, in computing the tax liabilities of companies;
- Apply knowledge of tax legislations to the computation of income tax liabilities relating to corporate entities in complex situations;
- Compute capital gains tax in accordance with the provisions of Capital Gains Tax Act Cap. C1 LFN 2004 (as amended) and relevant Finance Acts;
- Understand taxation of the digital economy and other contemporary issues in international taxation;
- Evaluate and advise petroleum companies on hydrocarbon tax and companies income tax in accordance with the relevant provisions of the Petroleum Industry Act 2021 and Companies Income Tax Act Cap. C21 LFN 2004 (as amended), and other relevant taxes;
- Evaluate and advise mining companies on taxes payable in accordance with the provisions of Companies Income Tax Act Cap. C21 LFN 2004 (as amended);
- Understand tax dispute resolution mechanisms;
- Advise on tax planning, including alternative tax treatments to defer or minimise tax liabilities;
- Gain knowledge of how to run and manage a tax practice; and
- Recognise and explain ethical and legal issues arising from real life taxation scenarios.

Specification grid

The grid below shows the relative weightings of topics within this subject and should guide the study time spent on each. Over time, the marks available in the assessment will be within the ranges of weightings below, while slight variations may occur in individual assessments to enable suitably rigorous questions to be set.

	Syllabus overview	
	Grid	Weight %
A	Tax administration	5
B	Taxation of companies and investment income	35
C	International taxation	20
D	Current Issues and emerging trends	10
E	Tax management, planning, and ethics	10
F	Taxation of Incomes of extractive industries	20
	TOTAL	100

Detailed contents

A. TAX ADMINISTRATION - 5%

1. Review of tax administration
 - (a) National tax policy
 - (i) Discuss key principles and canons of tax policy formulation.
 - (ii) Advise on the application of the key provisions of the National Tax Policy (NTP), 2017 in Nigeria, covering:
 - Objectives of the NTP;
 - Guiding principles of NTP;
 - Relevance of the tax system to wealth creation and employment as provided for in the NTP;
 - Responsibilities of the stakeholders under the NTP; and
 - Mandates of the three-tiers of government under NTP.
 - (iii) Explain the interaction of fiscal policy, monetary policy and trade policy.
 - (b) Introduction to tax administration
 - (i) Explain the Nigerian tax administration system with focus on:
 - a. Constitutional provisions regarding fiscal federalism;
 - b. Structure and taxing rights of different tiers of government;
 - c. Roles of the three arms of government;

- d. Composition and functions of the various tax organs; and
- e. Challenges of multiplicity of taxes and possible solutions covering:
 - Concept of multiple taxation;
 - Causes of multiplicity of taxes;
 - Impact of multiplicity of taxes on tax compliance and revenue yield; and
 - Possible solutions to the issue of multiple taxation.

(c) Objections and appeals

- (i) Discuss the elements of a valid objection and appeal procedures, covering:
 - Time limit for objections and appeals;
 - Contents of a notice of objection and appeal;
 - Amendment of assessment and refusal to amend;
 - Appeal procedures and processes (Tax Appeal Tribunal, Federal High Court, Federal Court of Appeal and the Supreme Court); and
 - Alternative dispute resolution (ADR) mechanisms.
- (ii) Draft a report to your client on the procedure for the presentation of cases before a Tax Appeal Tribunal.

B. TAXATION OF COMPANIES AND INVESTMENT INCOME - 35%

1. Companies' income tax (CIT)

(a) Legal framework

Explain the legal framework for the imposition of taxes on companies and investment income.

(b) Basis period

Determine, in line with the provisions of the relevant Finance Acts, the basis period and explain the rules on:

- (i) Commencement of business;
- (ii) Change of accounting date; and
- (iii) Cessation of business.

(c) Compute and advise on income tax liability of companies based on Companies Income Tax Act Cap C.21 LFN 2004 (as amended) and changes introduced by the relevant Finance Acts, covering:

- (i) Assessable profit and total profit;
- (ii) Minimum tax;
- (iii) Dividend distribution; and
- (iv) Gross Revenue/turnover.

2. Taxation of investment income

(a) Discuss the taxation of the following investment income of Nigerian and non-Nigerian companies, in line with provisions of CITA 2004 (as amended), Withholding Tax Regulations 2024, and other relevant laws:

- (i) Dividend;
- (ii) Interest;
- (iii) Royalty; and
- (iv) Rent.

(b) Discuss the taxation of real estate investment companies.

3. Taxation incentives

- (a) Discuss the tax implications of the following pioneer legislations: Industrial Development (Income Tax Relief) Act, Cap. 17 LFN 2004 (as amended); pioneer status incentive regulations released by Nigerian Investment Promotion Commission (NIPC) in 2014 and 2017; and application guidelines for pioneer status incentive issued by Federal Ministry of Trade and Industries on August 2017, on the:
 - (i) Various pioneer industries and products on the pioneer list;
 - (ii) Procedure for applying and obtaining pioneer status and how pioneer certificate can be amended;
 - (iii) Provisions relating to retrospective operations and the date of production certification;
 - (iv) Conditions relating to qualifying capital expenditure for pioneer industries. Circumstances for the cancellation of pioneer certificates;
 - (v) Tax relief period and the conditions for extension of pioneer period;
 - (vi) Tax incentives available to pioneer industries;
 - (vii) Application of the commencement and cessation provisions to pre- and post-pioneer period, together with the treatment of losses and capital allowances of pioneer period;
 - (viii) Various restrictions applicable to pioneer industries;
 - (ix) Tax incentives for gas utilisation as specified by the CITA, Fiscal Incentives for Downstream Gas Utilisation, 2024 and relevant Finance Acts;
 - (x) Digital economy incentives, startups (Nigerian Start-up Act 2022; and
 - (xi) Tax incentives for small businesses, manufacturing, agricultural and exports business.
- (b) Explain the tax implications of operations in the free trade zones.

4. Capital gains tax (CGT)

- (a) Discuss the concept, scope and administration of capital gains tax.
- (b) Identify allowable and disallowable expenses.
- (c) Explain the exemptions from capital gains tax in line with the provisions of relevant Finance Acts.
- (d) Explain the disposal and acquisition of assets (full and partial).
- (e) Evaluate and apply Chargeable gains and capital gains tax.
- (f) Discuss special situations under CGT, such as artificial or fictitious transactions, location of assets, determination of market value, anti-tax avoidance provision.
- (g) Discuss planning and reliefs in respect to the provisions of the Capital Gains Tax Act 2004 (as amended) and relevant Finance Acts in relation to:
 - (i) Replacement of business assets (rollover relief); and
 - (ii) Delayed remittances
 - (iii) Capital losses carried forward
- (h) Discuss restricted tax exemption on compensation for loss of office.
- (i) Discuss capital gains tax in relation to business combination amongst related parties.
- (j) Identify and explain the offences and penalties.

5. Taxation of leases

- (a) Discuss the following guidelines on the tax implications of leasing in line with the provisions of IFRS 16: and the Federal Inland Revenue Service (circular No. 2010/01) published in April 2010:
 - (i) Concept of leases;
 - (ii) Classes of leases, such as;
 - Finance lease;
 - Operating lease;
 - Sub-leases; and
 - Sale and leaseback;
- (b) Discuss the tax implications of lease arrangements, on both the lessee and the lessor, covering:
 - (i) Companies income tax;
 - (ii) Value added tax; and
 - (iii) Capital gains tax.
- (c) Explain capital allowances under lease arrangements.
- (d) Explain leasing as a separate line of business.
- (e) Explain recognition, measurement, presentation and disclosure of leases by corporate entities.
- (f) Discuss the treatment of COVID-19- related rent concessions (IFRS 16, amended), 2020.
- (g) Discuss the interest rate benchmark reform- Phase 2 relating to changes in the bases for determining contractual cash flows of financial assets, financial liabilities and lease liabilities.
- (h) Explain lessor's forgiveness of lease payments.
- (i) Explain lease term and useful life of leasehold improvements.
- (j) Explain lease liability in a sale and leaseback (IFRS 16, amended), September, 2022.

C. INTERNATIONAL TAXATION - 20%

1. Non-resident taxation

- (a) Explain the various forms of tax presence of a non-resident company doing business in Nigeria.
- (b) Evaluate the tax implications of non-resident companies doing business in Nigeria.

2. Taxation of the digital economy

- (a) Explain the concept of digital economy.
- (b) Evaluate the key challenges of taxing digital goods and services.
- (c) Discuss the existing legal/administrative framework for taxing digital transactions taking into consideration the provisions of the relevant Finance Acts.
- (d) Discuss the provisions of the relevant Finance Acts on digital services and other services in relation to significant economic presence (SEP) of a foreign entity and the SEP order signed by the Minister of

Finance.

- (e) Discuss global trends in digital taxation, such as the OECD's Pillar One and Pillar Two initiatives.

3. Tax treaties

- (a) Discuss the following:
 - (i) Unilateral relief;
 - (ii) Double taxation agreements; and
 - (iii) Multilateral treaties.
- (b) Advise on the application of tax rules and reliefs available as follows:
 - (i) Administrative process of obtaining a relief issued by the FIRS;
 - (ii) Reliefs under the commonwealth tax relief;
 - (iii) Impact of double tax treaty;
 - (iv) Resolution of conflicts between double taxation agreements (DTAs) and Nigerian tax laws; and
 - (v) Nigerian double tax agreements (DTAs) in respect of the following:
 - Permanent establishment;
 - Taxation of business profits and incomes from movable and immovable properties;
 - Taxation of investment incomes; and
 - Dispute resolution mechanisms.
- (c) Discuss the role of Vienna convention in application and interpretation of tax treaties.

4. Transfer pricing

- (a) Introduction to transfer pricing
 - (i) Discuss the following:
 - Transfer price/pricing;
 - The legal framework for transfer pricing in Nigeria;
 - The significance of transfer pricing;
 - The various tax convention Models, including:
 - ✓ Organisation for Economic Cooperation and Development (OECD);
 - ✓ United Nations (UN); and
 - ✓ Pacific Association of Tax Administrators (PATA);
 - and
 - Justifications for the application of transfer pricing regulations by multinationals and developing countries.
 - (ii) Discuss the administrative framework and procedures for conducting transfer pricing.
 - (iii) Explain benchmarking databases and technology in the transfer pricing analysis.
- (b) Nigerian transfer pricing regulations
 - (i) Evaluate and apply the provisions of the Income Tax (Transfer Pricing) Regulations, 2018, in respect of:
 - Objectives and scope of transfer pricing regulations;
 - Commencement date;
 - Connected taxable persons;
 - Transfer pricing methods such as traditional transaction methods and transactional profit methods or any other method;

- Advance pricing agreements (APA);
 - Functional analysis in transfer pricing;
 - The basic comparability factors in the process of transfer pricing benchmarking. The basic documentation requirements for transfer pricing benchmarking;
 - Dispute resolution mechanisms; and
 - Offences and penalties as specified by the regulations.
- (ii) Deductibility of payment for intangibles to non-resident companies.
- (iii) Explain types of transfer pricing returns and due dates for filing the returns.
5. Actions against base erosion and profit shifting (BEPS)
- (a) Explain the 13 BEPS action plans of the OECD.
- (b) Advise on the provisions and application of the Income Tax (Country By Country Reporting) Regulations, 2018, issued by the Federal Inland Revenue Service.
6. Regional integration and trade blocs
- (a) Discuss the formation and fiscal policy objectives of the Economic Community of West African States (ECOWAS).

Detailed syllabus

A. TAX ADMINISTRATION

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- Justifications for the application of transfer pricing regulations by multinationals and developing countries.

(ii) Discuss the administrative framework and procedures for conducting transfer pricing.

(iii) Explain benchmarking databases and technology in the transfer pricing analysis.

(b) Nigerian transfer pricing regulations

(i) Evaluate and apply the provisions of the Income Tax (Transfer Pricing) Regulations, 2018, in respect of:

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- Functional analysis in transfer pricing;
- The basic comparability factors in the process of transfer pricing benchmarking. The basic documentation requirements for transfer pricing benchmarking;
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- Offences and penalties as specified by the regulations.

(ii) Deductibility of payment for intangibles to non-resident companies.

(iii) Explain types of transfer pricing returns and due dates for filing the returns.

5. Actions against base erosion and profit shifting (BEPS)
 - (a) Explain the 13 BEPS action plans of the OECD.
 - (b) Advise on the provisions and application of the Income Tax (Country By Country Reporting) Regulations, 2018, issued by the Federal Inland Revenue Service.
6. Regional integration and trade blocs
 - (a) Discuss the formation and fiscal policy objectives of the Economic Community of West African States (ECOWAS).
 - (b) Explain the application of ECOWAS common external tariffs.
 - (c) Explain the objectives, operations and challenges in implementing of the African Continental Free Trade Area Agreement (AfCFTA).
 - (d) Discuss other regional trading blocs in Africa in comparison to the European Union (EU) and North American Free Trade Agreement (NAFTA).
7. International tax policy
 - (a) Discuss the concept and objectives of international tax policy.
 - (b) Explain jurisdiction as it relates to:
 - (i) Tax;
 - (ii) Limits;
 - (iii) Collection and enforcement of cross-border tax due;
 - (iv) Source and residence; and
 - (v) Controlled foreign companies.
 - (c) Evaluate the roles being played by inter-governmental and supranational organisations that shape tax policy.
 - (d) Examine the roles of World Trade Organisation (WTO), General Agreement on Tariffs and Trade (GATT) and their significance to international taxation.
 - (e) Evaluate international cooperation between tax administrators in different tax jurisdictions in respect of exchange of information, covering:
 - (i) Exchange of information on request;
 - (ii) Automatic exchange of information; and
 - (iii) Spontaneous exchange of information.
 - (f) Identify and explain practical aspects of Nigeria's exchange of information framework, its effectiveness and challenges encountered in enforcing cross-border compliance.
 - (g) Discuss the effectiveness of global cooperation and assistance on tax matters.

- (h) Evaluate the use of neutralities in international tax policy.

D. CURRENT ISSUES AND EMERGING TRENDS

- 10%

1. Current tax issues

- (a) Discuss the following:
- (i) Tax inspectors without borders;
 - (ii) Cooperative compliance (with particular reference to FIRS policies promoting taxpayer engagement and cooperative compliance principles);
 - (iii) Simultaneous tax examination;
 - (iv) The common reporting standards;
 - (v) Foreign account tax compliance; and
 - (vi) Mutual agreement procedures (MAP).
- (b) Disruptive technologies affecting tax administration
- (I) Explain the use of artificial intelligence (AI) in data analysis and fraud detection by tax authorities and other government agencies.
 - (II) Discuss the e-filing systems and mobile tax apps, such as the FIRS e-tax, which simplifies compliance for taxpayers.

2. Emerging trends

- (a) Taxation and sustainable development goals (SDGs)
- (i) Discuss the following:
- Core goals of sustainable development;
 - Role of taxation in achievement of SDGs;
 - Tax challenges in Africa and its impact on SDGs;
 - United Nations Development Programme 2021 on tax for SDGs, covering:
 - ✓ Objectives of the programme; and
 - ✓ Outcomes of programme.
- (b) Explain the various disruptive technologies affecting tax administration.

E. TAX MANAGEMENT AND PLANNING

- 10%

1. Mergers and acquisitions

- (a) Discuss the concepts of mergers and acquisitions.
- (b) Explain the regulatory landscape of mergers and acquisitions in Nigeria.

- (c) Discuss the reporting requirements and statutory filings with the Corporate Affairs Commission (CAC) and the Securities and Exchange Commission (SEC).
 - (d) Advise on the bases periods for assessment relating to mergers and acquisitions.
 - (e) Discuss tax considerations for mergers and acquisitions.
 - (f) Advise entities involved in business re-organisations and restructuring, taking into consideration the specified tax concessions and conditions to be met before qualifying for such concessions.
 - (g) Discuss practical successful merger and acquisitions deals in Nigeria, Africa and other climes.
2. Tax practice management
- (a) Explain the legal requirements for a professional accountant in tax practice.
 - (b) Describe the process involved in client and engagement acceptance.
 - (c) Advise on the risks and benefits of running a professional tax practice.
 - (d) Discuss the risks mitigation strategies in tax practice.
 - (e) Discuss submission of objection letter via electronic and physical means.
 - (f) Discuss the role of technology in running a contemporary tax practice.
 - (g) Discuss the challenges encountered with using available digital technology solutions for tax compliance.
3. Tax planning, avoidance and evasion
- (a) Advise management on tax planning activities and strategies.
 - (b) Differentiate between tax avoidance and evasion.
 - (c) Evaluate the tax implications of the following:
 - (i) Thin capitalisation;
 - (ii) Tax havens;
 - (iii) Treaty shopping; and
 - (iv) Non-tax factors.
4. Tax audit and tax investigation
- (a) Explain the difference between tax audit and tax investigation.
 - (b) Identify and discuss the different types of tax audit.
 - (c) Discuss the powers of tax authority to request for an audit.
 - (d) Advise management on tax audit procedures, covering:
 - (i) Pre-audit;
 - (ii) Field audit; and
 - (iii) Post-audit.

- (e) Explain tax investigation (causes and procedures).
- (f) Explain the benefits of tax health check to tax audit and investigation.
- (g) Discuss documentation in tax audit and investigation.
- (h) Discuss the power of tax authority under the law to enforce collection of unpaid tax liabilities.
- (i) Advise on ethical issues in tax administration and practice (confidentiality, conflict of interest, disclosure of information in tax practice, etc).
- (j) Advise on interpretation of tax laws using decided cases.
- (k) Discuss the role of the tax practitioner on communication with clients, tax authorities and other stakeholders.

5. Ethics and professionalism in tax management

- (a) Apply the five fundamental principles and guidance in International Ethics Standards Board for Accountants (IESBA) codes to resolve ethical dilemmas that may arise.
- (b) Discuss the various legal actions that may arise as a result of breach of the provisions of laws arising from tax assignment.
- (c) Design and evaluate appropriate ethical safeguards to mitigate threats that could arise when professionals deal with employers, clients, government agencies and other stakeholders.
- (d) Explain the practical process to follow in addressing a tax violation under the Non-compliance with Laws and Regulations (NOCLAR) framework as a:
 - (i) Professional accountant in tax practice; and
 - (ii) Tax professional in business
- (e) Explain ethical issues in data privacy, client confidentiality and data handling, in line with the provisions of Nigerian Data Protection Act, 2023.

6. Tax accounting and reporting

- (a) Discuss the treatment of income tax in financial statements.
- (b) Discuss the computation and accounting for deferred taxes.
- (c) Advise on potential risks of wrong or misleading tax disclosures in the financial statements.

F. TAXATION OF INCOMES OF EXTRACTIVE INDUSTRIES

- 20%

1. Oil and gas taxation

- (a) Discuss the general overview of the oil and gas industry in Nigeria in accordance with the Petroleum Industry Act (PIA), 2021.
- (b) Discuss the objects, functions and powers of the regulators in the oil and gas industry, such as:

- (i) Nigerian Upstream Petroleum Regulatory Commission (The Commission);
 - (ii) Nigerian Midstream and Downstream Petroleum Regulatory Authority (The Authority); and
 - (iii) Nigerian National Petroleum Company Limited.
- (c) Explain the under listed classes of licences which are granted by the Commission:
 - (i) Petroleum exploration licence;
 - (ii) Petroleum prospecting licence; and
 - (iii) Petroleum mining licence;
- (d) Advise on the fiscal/operating arrangement/regimes in the upstream sector, taking into consideration the relevant provisions of the Petroleum Industry Act 2021:
 - (i) Joint Venture (JV);
 - (ii) Production sharing contract (PSC);
 - (iii) Risk service contracts;
 - (iv) Oil and gas free trade zones; and
 - (v) Marginal field operators.
- (e) Advise on what constitutes accounting period for tax purposes.
- (f) Discuss the fiscal provisions of the Petroleum Industry Act 2021 relating to conversion, transition and compliance matters;
- (g) Discuss the tax implications of a company with converted and non-converted licences/leases.
- (h) Ascertain the sources of income accruing to petroleum companies.
- (i) Advise on allowable and disallowable expenses and other deductions taking into consideration the provisions of the Petroleum Industry Act 2021;
- (j) Assess royalties based on production and price, using applicable rates;
- (k) Discuss the treatment of losses in the computation of hydrocarbon tax and companies income tax.
- (l) Discuss how unabsorbed losses and unrecouped capital allowances of transited companies will be treated in the computations of hydrocarbon tax and companies income tax.
- (m) Identify income chargeable to hydrocarbon tax.
- (n) Discuss the exemptions from hydrocarbon tax.
- (o) Identify and describe qualifying capital expenditure for capital allowance purposes and compute capital allowances claimable by petroleum companies.
- (p) Compute the production allowance per crude oil produced and explain its treatment in the determination of hydrocarbon tax and companies income tax.

- (q) Assess and advise on:
 - (i) Cost price ratio limit of 65% of gross revenue at the measurement points for hydrocarbon tax deduction purposes;
 - (ii) Hydrocarbon tax;
 - (iii) Companies income tax; and
 - (iv) Tertiary education tax.
- (r) Discuss tax payable based on the incentives available to companies under production sharing agreements with the Federal Government of Nigeria.
- (s) Discuss the following in line with the Oil and Gas Companies (Tax Incentives, Exemptions, Remissions, etc) Order, 2024:
 - (i) Tax credits for non-associated gas greenfield developments in onshore and shallow water locations;
 - (ii) Mid-stream capital and gas utilisation investment allowance; and
 - (iii) Incentives to deep water oil and gas projects.
- (t) Compute gas utilisation investment allowance.
- (u) Compute gas tax credits and gas tax allowance.
- (v) Discuss the funding of the Frontier Exploration Fund which shall be maintained for the exploration of unassigned frontier acreages in Nigeria.
- (w) Describe the tax regime applicable to sole risk and marginal field operators.
- (x) Explain the purposes for a decommissioning and abandonment fund to be set up by licence holders in midstream operations.
- (y) Explain the establishment, funding, and utilisation of the host community fund.
- (z) Advise on the offences and penalties applicable to petroleum companies.
- (aa) Discuss the requirements for registration and filing of returns for petroleum companies.
- (bb) Explain the dispute resolution mechanisms provided in the Petroleum Industry Act 2021.

2. Mining taxation

- (a) Discuss the administrative structure of the mining industry, with reference to the split of the Ministry of Mines and Steel Development to form the Ministry of Solid Minerals Development and Ministry of Steel Development
- (b) Advise on the scope and administration of the Nigerian Minerals and Mining Act, 2007 (as amended) and section 36 of the Companies Income Tax Act, in respect of:
 - (i) Mining incentives;
 - (ii) Minerals titles;
 - (iii) Possession and purchase of minerals;

- (iv) Environmental considerations and rights of host communities;
 - (v) Allowable and disallowable expenses;
 - (vi) Rates of capital allowances;
 - (vii) Computation of capital allowances;
 - (viii) Total profits;
 - (ix) Treatment of losses;
 - (x) Assessment of tax liabilities; and
 - (xi) Offences and penalties.
 - (c) Discuss the Nigerian Mineral Resources Decision Support System.
 - (d) Advise on the scope and administration of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007.
3. Environmental, social and governance (ESG) compliance in the extractive industry
- (a) Discuss the benefits and challenges for companies adopting sustainable practices.
 - (b) Discuss ESG compliance in the extractive industry.

Guide to examination assessment

ICAN reserves the right to examine any topic in the syllabus at any examination diet.

New laws, regulations and relevant tax circulars may be examined after six months from the dates of issue.

NATIONAL TAX POLICY

Contents

- 1.0 Learning objective
- 1.1 Learning outcomes
- 1.2 Canons of taxation
- 1.3 Key provisions and the applications of the 2017 National Tax Policy in Nigeria
- 1.4 The interaction of fiscal policy, monetary policy, and trade policy
- 1.5 Chapter review
- 1.6 Worked examples

1 National Tax Policy

1.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the fundamentals of the Nigeria tax policy of 2017.

1.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) know the objectives of the National tax policy;
- (b) understand the policy guidelines under the National tax policy;
- (c) know the principles and canons of tax policy;
- (d) know the responsibilities of the stakeholders under the National tax policy;
- (e) understand the interaction of fiscal, monetary and trade policies;
- (f) know the mandate of tiers of government under the National tax policy; and
- (g) know the Implementation measures under the National tax policy.

1.2 Canons of taxation

1.2.1 Meaning of canons of taxation

Canons of taxation are the foundational principles of a sound tax system. They are the guiding rules and principles that make the tax collection system effective and functional.

Canons of taxation can also be referred to as the characteristics or qualities, which a good tax system should possess. They relate to the administrative part of a tax. It should be noted that modern governments apply these canons while imposing and collecting taxes.

1.2.2 Types of canons of taxation

These are as follows:

(a) Canon of equality

Canon of equality states that the burden of taxation must be distributed equally or equitably among the taxpayers. However, this sort of equality robs of justice because not all taxpayers have the same ability to pay taxes. Rich people are capable of paying more taxes than poor people. Thus, justice demands that a person having greater ability to pay must pay large taxes.

If everyone is asked to pay taxes according to his ability, then sacrifices of all taxpayers become equal. This is the essence of canon of equality (of sacrifice). To establish equality in sacrifice, taxes are to be imposed in accordance with the

principle of ability to pay. In view of this, canon of equality and canon of ability are the two sides of the same coin.

Equality as a canon of taxation also requires that those in equal circumstances should pay an equal amount of tax. The equity criterion may be “horizontal” meaning that those with the same income should pay an equal amount of tax or “vertical” which require that those with different income should pay different amount of tax.

(b) Canon of certainty

The tax which an individual has to pay should be certain and not arbitrary. According to Adam Smith, the time of payment, the manner of payment, the amount to be paid, that is, tax liability, ought all to be clear and plain to the taxpayer and to everyone. Thus, canon of certainty embraces a lot of things. It must be certain to the taxpayer as well as to the tax-levying authority.

Not only taxpayers should know when, where, and how much tax is to be paid, the certainty of liability must be known beforehand. Similarly, there must also be certainty of revenue that the government intends to collect over the given time. Certainty requires that a taxpayer should be in a position to know with some measure of certainty what is expected from him. This presumes that taxation is not arbitrary, which may cause some resentment.

(c) Canon of economy

This canon implies that the cost of collecting a tax should be as minimum as possible. Any tax that involves high administrative cost and unusual delay in assessment and high cost of collection should be avoided altogether. A good tax system should be economical to the government in the sense that the cost of tax collection should be minimal in proportion to the revenue generated from it.

(d) Canon of convenience

Taxes should be levied and collected in such a manner that it provides the greatest convenience not only to the taxpayer but also to the government. Thus, it should be painless and trouble-free as far as practicable.

(e) Canon of productivity

According to a well-known classical economist in the field of public finance, Charles F. Bastable, taxes must be productive or cost-effective. This implies that the revenue yield from any tax must be a sizable one. Further, this canon states that only taxes that do not hamper productive effort of the community should be imposed. A tax is said to be a productive one only when it acts as an incentive to production.

(f) **Canon of elasticity**

Modern economists attach great importance to the canon of elasticity. This canon implies that a tax should be flexible or elastic in yield. It should be levied in such a way that the rate of taxes can be changed according to exigencies of the situation. Whenever the government needs money, it must be able to extract as much income as possible without generating any harmful consequences through raising tax rates. Income tax satisfies this canon.

(g) **Canon of simplicity**

Every tax must be simple and intelligible to the people so that the taxpayer is able to calculate it without taking the help of tax consultants. A complex as well as a complicated tax is bound to yield undesirable side-effects. It may encourage taxpayers to evade taxes if the tax system is found to be complicated.

A complicated tax system is expensive in the sense that even the most honest educated taxpayers will have to seek advice from tax consultants. Ultimately, such a tax system has the potential of breeding corruption in society.

(h) **Canon of diversity**

Taxation must be dynamic. This means that a country's tax structure ought to be dynamic and diverse in nature rather than being narrow and rigid. Diversification in a tax structure will demand involvement of many of the sectors of the population and must evolve over time as new economic activities are created.

An adjustable tax system would allow any tax found obsolete to be scrapped and replaced with a meaningful and collectible tax.

A dynamic or a diversified tax structure will result in the allocation of burden of taxes among the vast population resulting in a low degree of incidence of a tax in the aggregate.

The above canons of taxation are essential requirements of a good tax policy. Unfortunately, such an ideal tax system is rarely observed in the real world, but a tax authority must go on maintaining relentlessly the above canons of taxation so that a near-ideal tax structure can be built-up.

1.2.3 Characteristics or canons of taxation

A good tax system must fulfil the following characteristics:

- (a) the distribution of tax burden should be equitable such that every person is made to pay his 'fair share'. This is known as the 'fairness' criterion which focuses on two principles: Horizontal equity - equals should pay equal taxes; and vertical

equity - unequal should pay unequal taxes. That is, rich people should pay more taxes;

- (b) equity must not hamper productive efficiency such that burdens should be provided to correct inefficiencies. This 'efficiency' criterion says that it should raise revenue with the least costs to the taxpayers so that tax system can allocate resources without distortion;
- (c) the two other criteria are: flexibility and transparency;
- (d) a good tax system demands changes in tax rates whenever circumstances change in the system. Furthermore, it must be transparent in the sense that taxpayers should know what they are paying for the services they are getting; and
- (e) a good tax system is expected to facilitate the use of fiscal policy to achieve the goals of stability and economic growth. For the attainment of these goals, there must be built-in- flexibility in the tax structure.

From the above discussion, it follows that taxation serves to:

- (i) raise revenue for the government for the provision of social amenities;
- (ii) redistribute income and wealth from the rich to the poor people by using taxes majorly collected from the rich to pay for social services majorly patronised by the poor;
- (iii) protect domestic industries from foreign competition by imposing heavy import duties on imported goods that have local substitutes; and
- (iv) promote social welfare.

1.3 Key provisions and applications of the National Tax Policy, 2017, in Nigeria

National tax policy is an administrative decision that is directly related to tax issues within Nigeria. Nigeria National Tax Policy is codified in a document called "The National Tax Policy, 2017". This is a tax policy that provides fundamental guidelines for the orderly development of the Nigeria tax system.

For the purpose of the National Tax Policy, "tax" is any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not. The policy is now applicable to all the tiers of government in Nigeria. It establishes fundamental principles to guide an orderly development of the Nigeria tax system and reinforces the need for tax laws and administrative practices to promote economic development.

1.3.1 Objectives of the National tax policy

The Policy is expected to achieve the following specific objectives, among others:

- (a) guide the operation and review of the tax system;
- (b) provide the basis for future tax legislation and administration;
- (c) serve as a point of reference for all stakeholders on taxation;
- (d) provide benchmark on which stakeholders shall be held accountable; and
- (e) provide clarity on the roles and responsibilities of stakeholders in the tax system.

1.3.2 Guiding principles of Nigeria tax system

According to the new National tax policy, all existing and future taxes are expected to align with the following fundamental features:

- (a) **equity and fairness:** Nigeria tax system should be fair and equitable devoid of discrimination. Taxpayers should be required to pay according to their ability;
- (b) **simplicity, certainty and clarity:** Tax laws and administrative processes should be simple, clear and easy to understand;
- (c) **convenience:** The time and manner for the fulfilment of tax obligations shall consider the convenience of taxpayers and avoid undue difficulties;
- (d) **low compliance cost:** The financial and economic costs of compliance to the taxpayer should be kept to the barest minimum;
- (e) **low cost of administration:** Tax administration in Nigeria should be efficient and cost-effective in line with international best practices;
- (f) **flexibility:** Taxation should be flexible and dynamic to respond to changing circumstances in the economy in a manner that does not retard economic activities; and
- (g) **sustainability:** The tax system should promote sustainable revenue, economic growth and development. There should be a synergy between tax policies and other economic policies of government.

1.3.3 Relevance of the tax system to wealth creation and employment as provided for in the national tax policy

The tax system should be designed to promote social, political and economic development.

Accordingly,

- (a) Tax policies and laws shall not be retroactive;
- (b) Tax policies and laws should ensure equal investment opportunities and support for businesses whether local or foreign;
- (c) Tax policies and laws on investments should be long term focused and tenured to enable investors to plan with reasonable certainty;

- (d) Any incentive to be granted should be broad, sector-based, tenured and transparent. Implementation should be properly monitored, evaluated, periodically reported and kept under review;
- (e) Revenue forgone from tax incentives or concessions should be quantified against expected benefits and reported annually. Where the benefits cannot be quantified, qualitative factors must be considered; and
- (f) Tax policies on investments should not promote monopoly such as entry barriers or otherwise prevent competition.

The National tax policy (NTP) establishes fundamental principles to guide an orderly development of the Nigeria tax system and reinforces the need for tax laws and administrative practices to promote economic development. When fully implemented, the policy will address key challenges confronting the Nigeria tax system including:

- (a) low tax to gross domestic product (GDP) ratio;
- (b) fragmented database of taxpayers and weak structure for exchange of information;
- (c) multiplicity of taxes and revenue agencies;
- (d) poor accountability for tax revenue;
- (e) use of aggressive and unorthodox methods for tax collection;
- (f) failure by tax authorities to honour refund obligations to taxpayers; and
- (g) the non-regular review of tax legislation, which has led to obsolete laws, that do not reflect current economic realities.

Some of the key recommendations that have been included to address the challenges are as follows:

- (a) ensuring that there is only one revenue agency per level of government;
- (b) establishment of a tax court as an independent body to adjudicate tax matters;
- (c) lower tax rate and value added tax (VAT) compliance threshold for small and medium enterprises (SMEs);
- (d) establishment of an office of tax simplification for continuous improvement to tax legislations and administration and develop key performance indices for Nigeria to attain a top 50 position on the global index of ease of paying taxes and consistently improve on the ranking;
- (e) administrative framework for amnesty and whistle blowing as part of the strategies for curbing evasion and widening the tax net; and
- (f) Independent National Electoral Commission (INEC) to mandate political parties to articulate, prepare, provide and make public their tax agenda before and during election campaigns.

1.3.4 Responsibilities of the stakeholders under the National tax policy

(a) The government

All levels and arms of government, ministries, extra-ministerial departments and agencies where applicable shall:

- (i) implement and regularly review tax policies and laws;
- (ii) provide information on all revenue collected on a quarterly basis;
- (iii) ensure adequate funding, administrative and operational autonomy of tax authorities; and
- (iv) ensure a reasonable transition period of between three and six months before implementation of a new tax.

(b) The taxpayer

A taxpayer is a person, group of people or an entity that pays or is liable to tax. The taxpayer is the most critical stakeholder and primary focus of the tax system. The taxpayer shall consider tax responsibilities as a civic obligation and constant duty that must be discharged as and when due. The taxpayer shall be entitled to:

- (i) relevant information for the discharge of tax obligations;
- (ii) receive prompt, courteous and professional assistance in dealing with tax authorities;
- (iii) raise objections to decisions and assessments and receive response within a reasonable time;
- (iv) a fair and impartial appeal; and
- (v) self-representation or by any agent of choice, provided an agent acting for financial reward shall be an accredited tax practitioner.

(c) Revenue agencies

Any agencies responsible for the collection and administration of revenue shall:

- (i) treat the taxpayer as a customer;
- (ii) ensure efficient implementation of tax policies, laws and international treaties;
- (iii) facilitate inter-agency co-operation and exchange of information;
- (iv) undertake timely audits and investigations;
- (v) undertake tax awareness and taxpayers' education; and
- (vi) establish a robust process to prevent, detect and punish corrupt tax officials.

(d) Professional bodies, tax practitioners, consultants and agents

Professional bodies shall:

- (i) act in accordance with professional code of conduct and ethics;
- (ii) not aid and abet tax evasion and corrupt practices; and
- (iii) actively promote effective tax compliance.

(e) Media and advocacy groups

Media and advocacy groups shall:

- (i) promote tax education and awareness;
- (ii) articulate, protect and advance taxpayers right;
- (iii) advance accountability and transparency in the utilisation of tax revenue;
- (iv) ensure accurate, objective and balanced reporting in accordance with their professional code of conduct and ethics; and
- (v) ensure that aspiring political office holders clearly understand the tax policy and the Nigeria tax system and can articulate their plans for the tax system to which they will be held accountable.

1.3.5 Mandates of the three-tiers of government under the National tax policy

Tax authorities at all levels shall administer their mandates in accordance with the following:

(a) Registration of taxable persons

All taxable persons shall be registered and issued with taxpayer identification number (TIN) applicable nationwide. Tax authorities should leverage on the database of the Central Bank of Nigeria (CBN) on Bank Verification Number (BVN), National Identity Management Commission (NIMC), Nigeria Communication Commission (NCC), Corporate Affairs Commission (CAC), Federal Road Safety Commission (FRSC), Nigeria Immigration Service (NIS) and other relevant sources. The current uncoordinated registration by different agencies should be harmonised.

(b) Tax compliance

Government shall apply all available resources and tools at their disposal to ensure that taxpayers voluntarily comply with their tax obligations. To improve voluntary compliance, the relevant authorities should:

- (i) ensure that the option for self-assessment is in place, and the process and procedures are simple;
- (ii) ensure the development of frameworks for tax amnesty to expand the tax net;
- (iii) focus on taxpayers' services, Constant tax education and enlightenment;
- (iv) ensure that the overall performance of the tax system is measured and reported periodically; and
- (v) ensure the establishment of a system to recognise and honour compliant taxpayers.

(c) Efficiency of administration

The following are important in ensuring efficient tax administration:

- (i) payment processing and collection; and

- (ii) collection system shall leverage on modern technology towards advancing ease of payment and prevention of revenue losses.

(d) Record keeping

Tax authorities shall partner with the relevant agencies to set up automated systems and adequately train tax officials in the use and maintenance of such systems. Electronic systems of record keeping in line with global best practices should be entrenched to enhance the tax administration process.

(e) Exchange of information

Tax authorities shall develop an efficient framework for cooperation and sharing of information with other tax authorities and relevant local and international agencies. This will mitigate tax evasion and revenue losses.

(f) Enforcement of tax laws

Tax authorities shall ensure the enforcement of civil and criminal sanctions as provided under the various tax laws.

(g) Funding of tax authorities

Government shall provide adequate funding for tax authorities. Accordingly, government should ensure that an adequate percentage of revenue collected should be provided to the authority for its operations.

(h) Funding for tax refunds

Government shall provide adequate funding to meet refund obligations. Tax authorities shall ensure timely and efficient payment of refunds.

(i) Ease of paying taxes

Tax authorities shall ensure that payment procedures and documentation are convenient and cost effective. Tax authorities shall work towards ensuring accelerated improvement on the global index of ease of paying taxes.

(j) Revenue autonomy

Governments at all levels shall ensure a reasonable level of financial and administrative autonomy for their respective tax authorities to facilitate effective discharge of their duties.

(k) Technology and tax intelligence

Tax authorities shall ensure:

- (i) deployment of technology to aid all aspects of tax administration;

(ii) the integrity and regular update of the database; and

(iii) a workable and secure structure for intelligence and information gathering.

(I) Dispute resolution

In the event of any dispute, the tax authority and relevant stakeholders shall leverage on all amicable means of dispute resolution including arbitration and only resort to judicial determination as a last resort.

1.3.6 Implementation measures under the National tax policy

The Federal Ministry of Finance has a pivotal role to play in the development and implementation of the tax policy. Accordingly, the ministry shall take appropriate steps to ensure that it receives cooperation from the following:

(a) The President and Governors

The President and Governors shall ensure that budget speeches and presentations for the fiscal year consistently contain the overriding fiscal policies and summary statements of the expected tax revenue. This will give key stakeholders a sense of what government plans to do and enable them to plan accordingly.

The President and Governors should work towards ensuring that there is only one revenue agency per level of government. This would streamline revenue administration and improve efficiency of revenue collection. Ministries, extra-ministerial departments and agencies other than tax authorities should not become tax collecting bodies.

The executive shall sponsor a bill for the establishment of a tax court as an independent body to adjudicate in tax matters.

(b) Legislature

The consideration and passage of tax bills have not fared well within the existing finance committee of the National and state houses of assembly. The National and state houses of assembly are encouraged to establish a taxation committee to focus on tax matters and collaborate with the tax policy implementation committee.

There shall be an establishment Act for the Joint Revenue Board towards strengthening and repositioning it to contribute meaningfully to the development of the Nigeria tax system through broader mandate beyond its current advisory role.

The qualification for the lower income tax rate applicable to small businesses should be reviewed in line with current economic realities. The income tax rate for small businesses should be further reduced as an incentive to encourage compliance and promote micro, small and medium enterprises (MSMEs).

(c) Ministry of Finance

The Ministry of Finance shall:

- (i) set in motion machinery for tax reform. Taxation is a dynamic tool. Having reviewed the policy, the tax law and administration cannot remain stagnant. It is imperative to streamline existing and future tax laws for an orderly development;
- (ii) establish a tax policy implementation committee to monitor compliance, regularly review the policy and make appropriate recommendations;
- (iii) ensure automation of collection and remittance processes of taxes by all ministries, extra- ministerial departments and agencies;
- (iv) work with the legislature to ensure that the requisite changes to tax laws are enacted together with the appropriation Act of the same year. This would require the executive to timely present tax laws as executive bill for the timely consideration of the National and state houses of assembly;
- (v) establish an office of tax simplification which shall be responsible for ensuring continuous improvement to tax legislation and administration;
- (vi) create a dedicated tax policy website. Apart from sensitizing the general public on the provisions of the tax policy, such a platform would facilitate feedback from stakeholders on the existing and future policy proposals;
- (vii) give periodic reports to the National economic council (NEC) on tax policy implementation agenda. Apart from updating NEC, such obligation will ensure that the Ministry of finance is up to speed in its implementation agenda;
- (viii) ensure that tax authorities develop key performance indices for Nigeria to attain a top 50 position on the global index of ease of paying taxes by 2020 and consistently improve on the ranking; and
- (ix) ensure that there is a minimum threshold for VAT registration and compliance in order to protect micro-businesses.

(d) Ministries, department and agencies (MDAs)

Heads of MDAs shall give periodic report(s) to the Ministry of Finance on the level of implementation of the National Tax Policy. Apart from sensitizing the MDAs to the provisions of the tax policy, such reports would afford the Ministry of Finance the opportunity to determine the level of compliance and devise appropriate responses as may be necessary to improve implementation.

(e) Tax authorities

To promote tax awareness and a tax culture in Nigeria, the federal and state tax authorities through the Joint Revenue Board (JRB) shall set aside a uniform day in the year as a national tax day. Also, government should make concerted efforts to ensure that taxation is taught at all levels of education.

Tax authorities shall establish administrative framework for amnesty and whistle blowing as part of the strategies for curbing evasion and widening the tax net.

Federal and state tax authorities should respond promptly to the changing business environment as it affects tax administration and develop a workable framework to meet the taxpayers' demands in this respect.

(f) Independent National Electoral Commission (INEC)

The Independent National Electoral Commission (INEC) shall, by necessary regulation and rules, mandate political parties to articulate, prepare, provide and make public their tax agenda before and during election campaigns. This will make political parties reflect more deeply in an organised fashion on the financial implications of their promises and the options of financing them. This would also help the taxpayer know the preferences of each party on tax matters and take informed decision.

1.4 The interaction of fiscal policy, monetary policy and trade policy

1.4.1 Introduction

Macroeconomic policies are seen to be very important for the stability and growth of the economy. However, unfavourable macroeconomic policies can create uncertainty in the economy which will discourage investment. Also, uncertainty in an economy will reduce the potential of long run economic growth. Every government has an objective to increase the living standard of people by providing employment and stability in the economy whether it is an underdeveloped, developing or developed country. Governments use two main types of policies for achieving these objectives, which are fiscal and monetary policy. On the other hand, trade policy of a country is also important for prosperity of the economy. It will increase productivity of a country and increase living standard of people as well as growth of economy (Adeeb et al., 2014).

1.4.2 The fiscal policy

This is implemented by the Ministry of Finance and has to do with changes in government expenditure, taxation and government borrowing to control the economic conditions and achieve rapid economic growth.

The term fiscal policy has conventionally been associated with the use of taxation and public expenditure to influence the level of economic activities. The implementation of fiscal policy is essentially routed through government's budget. The budget is, therefore, more than a plan for administering the government sector. It both reflects and shapes a country's economic life. In fact, the most important aspect of a public budget is its use as a tool in the management of a nation's economy (Omitogun & Ayinla, 2007).

Fiscal policy deals with government deliberate actions in spending money and levying taxes with a view to influencing macro-economic variables in a desired direction. This includes sustainable economic growth, high employment creation and low inflation. Thus, fiscal policy aims at stabilizing the economy spending or a reduction in taxes tend to pull the economy out of a recession; while reduced spending or increased taxes slow down a boom (Dornbusch & Fischer, 1990).

Fiscal policy is also used to reconcile the changes which government modifies in taxation and expenditure, programmes or to regulate the full employment, price and total demand to be used through instruments such as government expenditures, taxation and debt management (Hottz- Eakin, et al. 2009).

As noted by Anyanwu (1993), the objective of fiscal policy is to promote economic conditions conducive to business growth while ensuring that such government actions are consistent with economic stability.

In principle, fiscal dominance occurs when fiscal policy is set exogenously to monetary policy in an environment where there is a limit to the amount of government debt that can be held by the public. Hence, if the inter-temporal budget constraint must be satisfied, fiscal deficits would have to be magnetized, sooner or later. In fact, when the size of the financial system is small relative to the size of the fiscal deficits, a central bank may have no choice but to magnetize the deficits. Thus, in countries with shallow financial systems, monetary policy is the reverse side of the coin of fiscal policy and can only play an accommodative role. In such low-income countries, government securities markets are underdeveloped, and central banks do not hold enough tangible securities and the central bank's lack of suitable and adequate instruments of monetary control constitutes one of the factors that induce fiscal dominance. Where fiscal dominance applies, the country's economic policy is only as good as its fiscal policy and institutionalised central bank independence may not necessarily bring about an independent monetary policy (Oyejide, 2003).

1.4.3 The monetary policy

This is implemented by the central bank, and it involves policies aimed at controlling the stock of money in the economy which has the potential to reduce inflation and increasing productivity.

Monetary policy is concerned with discretionary control of money supply by the monetary authorities (Central Bank of Nigeria) to achieve stated or desired economic goals. Governments try to control the money supply because most governments believe that its rate of growth influences the rate of inflation. [International Journal of Academic Research in Economics and Management Sciences September 2012, Vol. 1, No. 5 ISSN: 2226-3624]

Monetary policy is the deliberate use of monetary instruments (direct and Indirect) at the disposal of monetary authorities such as central bank to achieve macroeconomic stability. Monetary policy is essentially the tool for executing the mandate of monetary and price stability.

Monetary policy is essentially a programme of action undertaken by the monetary authorities, generally the central bank, to control and regulate the supply of money with the public and the flow of credit with a view to achieving predetermined macroeconomic goals (Dwivedi, 2005).

Monetary policy is one of the tools of controlling money supply in the economy of a nation by the monetary authorities to achieve desirable economic growth. Monetary policies are effective only when economies are characterised by well-developed money and financial markets like developed economies of the world. This is where a deliberate change in monetary variable influences the movement of many other variables in the monetary sector.

Monetary policy consists of a government's formal efforts to manage the money in its economy in order to realise specific economic goals. Three basic kinds of monetary policy decisions can be made about:

- (a) the amount of money in circulation;
- (b) the level of interest rate; and
- (c) the functions of credit markets and the banking system (Ogunjimi, 1997).

The combination of these measures is designed to regulate the value, supply and cost of money in an economy, in line with the level of economic activity. Excess supply of money will result in an excess demand for goods and services, prices will rise, and balance of payments will deteriorate. The challenge of monetary policy management rest wholly on monetary authorities which has over the years been committed to its effective control.

As noted by Babangida (1993), the lack of fiscal discipline is the bane of our economy. Despite realised revenues being above budgetary estimates, extra budgetary expenditure has been rising so fast and resulting in ever bigger deficit. To say the least, this is a sobering revelation, and we must all ensure that the deficit is not only minimised but eventually eliminated.

1.4.4 Trade policy

This involves measures taken by government, in addition to exchange rate policy, to influence the magnitude and the direction of foreign trade. Studies found the positive role of trade openness in economic growth.

Trade openness increases the efficiency in the production process which affects economic activities.

In summary, the three policies have the long-run objective of achieving economic growth in a country.

There is consensus on the role of these macroeconomic policies in determining economic growth. The relationship between macroeconomic policies and economic growth has very much importance and has engaged economists and policy makers to analyse the role of macroeconomic policies on economic growth.

Fiscal and monetary policies are inextricably linked in macro-economic management; developments in one sector directly affect developments in the other. Undoubtedly, fiscal policy is central to the health of any economy, as government's power to tax and to spend affects the disposable income of citizens and corporations, as well as the general business climate and international trade.

1.5 Chapter review

This chapter gives a comprehensive overview of the National tax policy, stating its key objectives and relevance of a good tax system to wealth creation and employment opportunities.

The chapter also dwells on the responsibilities of the stakeholders and implementations measures under the National tax policy.

1.6 Worked examples

1.6.1 Questions

- (1) (a) A tax system is the framework through which a government collects revenue from individuals, businesses, and other entities to fund public services and infrastructure.

Required:

Discuss:

- (i) Tax policy
- (ii) Tax laws
- (iii) Tax administration

- (b) For the purpose of the National tax policy (NTP), 2017, “tax” is any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not. The National tax policy is now applicable to all the tiers of government in Nigeria. It establishes fundamental principles to guide an orderly development of the Nigeria tax system and reinforces the need for tax laws and administrative practices to promote economic development.

Required:

Advise on the guiding principles of National tax policy (NTP), 2017.

- (2) The National tax policy (NTP), 2017, serves as a strategic framework for guiding the development, implementation, and administration of the country’s tax system. It outlines the roles and responsibilities of key stakeholders, ranging from government bodies to taxpayers and professional institutions ensuring clarity, accountability, and collaboration in achieving a fair, efficient, and growth-oriented tax environment.

By identifying and examining these stakeholders, the policy aims to foster transparency, improve compliance, and promote sustainable economic development through effective taxation.

Required:

Identify the stakeholders and their respective responsibilities under the National tax policy (NTP), 2017.

- (3) The fiscal and monetary policies are the two major instruments being used by various governments to achieve the primary objective of increasing the living standard of their citizens.

Required:

Discuss the ways by which these two instruments are being employed by the Nigerian government to improving the living standards of the citizenry.

1.6.2 Suggested solutions to questions

- 1 (a) **The tax system is a combination of the tax policy, the tax laws and the tax administration:**

- (i) **Tax policy:** The tax policies are general statements of intention, which guide the thinking and the action of all stakeholders towards the

realisation of the set tax goals for example, emphasis on indirect tax which is less prone to tax evasion, and self-assessment scheme to encourage taxpayer participation.

(ii) **Tax laws:** The tax laws give legal backing to tax imposition. Tax laws are reviewed periodically in line with the changes in social, political and economic conditions of the country.

(iii) **Tax administration:** This involves practical interpretations and application of the tax laws. The bodies charged with the administration of tax in Nigeria are the Federal, the State and Local governments.

(b) According to the new National tax policy, all existing and future taxes are expected to align with the following fundamental features:

(i) **Equity and fairness:** Nigeria tax system should be fair and equitable devoid of discrimination. Taxpayers should be required to pay according to their ability;

(ii) **Simplicity, certainty and clarity:** Tax laws and administrative processes should be simple, clear and easy to understand;

(iii) **Convenience:** The time and manner for the fulfilment of tax obligations shall take into account the convenience of taxpayers and avoid undue difficulties;

(iv) **Low compliance cost:** The financial and economic costs of compliance to the taxpayer should be kept to the barest minimum;

(v) **Low cost of administration:** Tax administration in Nigeria should be efficient and cost-effective in line with international best practices;

(vi) **Flexibility:** Taxation should be flexible and dynamic to respond to changing circumstances in the economy in a manner that does not retard economic activities; and

(vii) **Sustainability:** The tax system should promote sustainable revenue, economic growth and development. There should be a synergy between tax policies and other economic policies of government.

2. The key stakeholders under the National tax policy and their respective responsibilities are:

(a) The government

All levels and arms of government, ministries, extra-ministerial departments and agencies where applicable shall:

- (i) Implement and regularly review tax policies and laws;
- (ii) provide information on all revenue collected on a quarterly basis;
- (iii) ensure adequate funding, administrative and operational autonomy of tax authorities; and
- (iv) ensure a reasonable transition period of between three and six months before implementation of a new tax.

(b) The taxpayer

A taxpayer is a person, group of persons or an entity that pays or is liable to tax. The taxpayer is the most critical stakeholder and primary focus of the tax system. The taxpayer shall consider tax responsibilities as a civic obligation and constant duty that must be discharged as and when due. The taxpayer shall be entitled to:

- (i) relevant information for the discharge of tax obligations;
- (ii) receive prompt, courteous and professional assistance in dealing with tax authorities;
- (iii) raise objections to decisions and assessments and receive response within a reasonable time;
- (iv) a fair and impartial appeal; and
- (v) self-representation or by any agent of choice, provided an agent acting for financial reward shall be an accredited tax practitioner

(c) Revenue agencies

Any agencies responsible for the collection and administration of revenue shall:

- (i) treat the taxpayer as a customer;
- (ii) ensure efficient implementation of tax policies, laws and international treaties;
- (iii) facilitate inter-agency co-operation and exchange of information;
- (iv) undertake timely audits and investigations;
- (v) undertake tax awareness and taxpayers' education; and
- (vi) establish a robust process to prevent, detect and punish corrupt tax officials.

(d) Professional bodies, tax practitioners, consultants, and agents

Professional bodies shall:

- (i) act in accordance with professional code of conduct and ethics;
- (ii) not aid and abet tax evasion and corrupt practices; and
- (iii) actively promote effective tax compliance.

(e) Media and advocacy groups

Media and advocacy groups shall:

- (i) promote tax education and awareness;
- (ii) articulate, protect and advance taxpayers right;
- (iii) advance accountability and transparency in the utilisation of tax revenue;
- (iv) ensure accurate, objective and balanced reporting in accordance with their professional code of conduct and ethics; and
- (v) ensure that aspiring political office holders clearly understand the tax policy and the Nigeria tax system and can articulate their plans for the tax system to which they will be held accountable.

3. Fiscal policy and improvement in living standard

Fiscal policy is implemented by the Ministry of Finance and has to do with changes in government expenditure, taxation and government borrowing to control the economic conditions and achieve rapid economic growth.

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Fiscal policy is also used to reconcile the changes which government makes in taxation and expenditure, programmes or to regulate the full employment, price

and total demand to be used through instruments such as government expenditures, taxation and debt management.

The objective of fiscal policy is to promote economic conditions conducive to business growth while ensuring that any such government actions are consistent with economic stability.

In principle, fiscal dominance occurs when fiscal policy is set exogenously to monetary policy in an environment where there is a limit to the amount of government debt that can be held by the public. Hence, if the inter-temporal budget constraint must be satisfied, fiscal deficits would have to be magnetized, sooner or later. In fact, when the size of the financial system is small relative to the size of the fiscal deficits, a central bank may have no choice but to magnetise the deficits.

Thus, in countries with shallow financial systems, monetary policy is the reverse side of the coin of fiscal policy and can only play an accommodative role. In such low-income countries, government securities markets are underdeveloped and central banks do not hold sufficient amounts of tangible securities and the central bank's lack of suitable and adequate instruments of monetary control constitutes one of the factors that induce fiscal dominance. Where fiscal dominance applies, the country's economic policy is only as good as its fiscal policy and institutionalized central bank independence may not necessarily bring about an independent monetary policy.

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Three basic kinds of monetary policy decisions can be made about:

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The combination of these measures is designed to regulate the value, supply and cost of money in an economy, in line with the level of economic activity. Excess supply of money will result in an excess demand for goods and services, prices will rise, and balance of payments will deteriorate. The challenge of monetary policy management rests wholly on monetary authorities which has over the years been committed to its effective control.

INTRODUCTION TO TAX ADMINISTRATION

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- 2.3 Composition and functions of the various organs of tax administration
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2 Introduction to Tax Administration

2.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the basic concepts of tax administration in Nigeria.

2.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) understand the fiscal federalism and the Nigerian tax administration system;
- (b) ascertain the composition and functions of the various organs of tax administration;
- (c) evaluate the limitations of tax administration;
- (d) determine the challenges of multiplicity of taxes and possible solutions; and
- (e) ascertain the impact of multiplicity of taxes on tax compliance and revenue yield.

2.2 Fiscal Federalism and the Nigerian Tax Administration System

2.2.1 Constitutional provisions regarding fiscal federalism in Nigeria

Fiscal federalism is the system of revenue generation and redistribution within a federal system. It concerns the financial and attendant functions and responsibilities of component units within a federal structure.

Nigeria's fiscal federalism is a product of historical, economic, political, geographical, cultural and social factors.

The Constitution of the Federal Republic of Nigeria (CFRN) Cap C.23 LFN 2004 (as amended) entrenches the fundamental principles of federalism.

Fiscal federalism is the system of revenue generation and redistribution within a federal system. It concerns the financial and attendant functions and responsibilities of component units within a federal structure.

Section 2(1) of the CFRN, provides that "Nigeria is one indivisible sovereign state to be known by the name of the Federal Republic of Nigeria" while section 2(2) further provides that "Nigeria shall be a federation consisting of states and a federal capital territory".

The above provisions of the CFRN implies that Nigeria is one indivisible sovereign state to be known by the name "the Federal Republic of Nigeria" and Nigeria shall be a federation consisting of states and a federal capital territory.

2.2.2 Structure and taxing rights of different levels of government

For tax purposes and in accordance with its constitutional provision, Nigeria is divided into three constituencies - The Federal, State and Local governments.

The Federal Government is responsible for the assessment and collection of taxes due from all taxable corporate bodies, personnel of the Nigerian armed forces and those employed in Nigeria's foreign missions. With the enactment of Federal Capital Territory Internal Revenue Service (FCT-IRS) Act of 2015, the FCT-IRS is responsible for the assessment and collection of taxes due from all taxable individual residents of the Federal Capital Territory, Abuja. Prior to the enactment of FCT – IRS Act of 2015, the Federal Government is responsible for the assessment and collection of taxes due from all taxable individual residents in Federal Capital Territory, Abuja.

Each State government is responsible for the assessment and collection of the taxes due from all taxable persons resident in the state except for personnel of the Nigerian Armed Forces, employees of the Nigeria foreign missions and individual residents of the Federal Capital Territory, Abuja.

Also, each Local government is responsible for assessment and collection of taxes and levies at the local government level.

2.2.3 Jurisdiction of tier of government on collection of taxes and levies

The tax jurisdiction of each tier of government and their respective tax authorities are spelt out in the Nigeria Tax Administration Act, 2025. However, a tax authority, with the approval of the relevant government, may authorise another tax authority to administer taxes within its jurisdiction on its behalf, on such terms as they may agree.

(a) The Federal Government

In line with the provisions of the Nigeria Tax Administration Act, 2025, the Nigeria Revenue Service shall have jurisdiction to collect the following taxes and levy on behalf of the federal government:

- i. companies income tax for both resident and non-resident companies including tax on Chargeable gains;
- ii. withholding tax on companies and non-resident individuals;
- iii. petroleum profits tax;
- iv. hydrocarbon tax;
- v. value added tax;
- vi. development levy;
- vii. stamp duties on bodies corporate; and
- viii. personal income tax of:
 - a person employed in the Nigerian Army, the Nigerian Navy, the Nigeria Air Force and the Nigeria Police Force, other than in a civilian capacity;
 - officers of Nigeria foreign service; and

- any income derived from employment in Nigeria by a person, not being a resident of any State in Nigeria

Note: The Nigeria Tax Act, 2025, introduced development levy that replaced; (i) tertiary education tax, (ii) National Information Technology Development Agency (NITDA) levy, (iii) Nigeria Police Trust Fund (NPTF) levy, and (iv) National Agency for Science and Engineering Infrastructure (NASENI) levy.

(b) The State Government and Federal Capital Territory

As contained in the provisions of the Nigeria Tax Administration Act, 2025, each of the State Internal Revenue Service and the Federal Capital Territory Internal Revenue Service shall be responsible for:

- the administration of taxes on income, profits or Chargeable gains, stamp duties for resident individuals; and
- exercising such other powers and functions conferred on it under any tax law enacted by the National Assembly.

(c) The Local Government

Each Local Government Revenue Committee shall be responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction.

Note:

Taxes and levies collectible by state governments and local governments

Concerted efforts are being put in place to ensure that the model Tax Harmonisation Law developed by the Presidential Fiscal Policy and Tax Reforms Committee, in collaboration with the Joint Revenue Board, are adopted by States and Local Governments. States are expected to domesticate this law which should be passed by the States House of Assembly.

It should be stated that the Taxes and Levies (Approved List for Collection) Act, Cap. T2 LFN 2004 is yet to be repealed or consequentially amended by sections 195 and 196 of the NTA, 2025.

When the States Harmonised Taxes and Levies (Approved List for Collection) Bill, 2025, is fully passed into law by the States House of Assembly, the taxes and levies that are collectible by the States and Local Governments are as follows:

(a) States

The taxes to be collected by the States are as follows:

- income tax;
- stamp duties;
- property tax;
- road tax;
- haulage levy; and

(vi) economic development levy.

(b) Local Governments

The levies and charges to be collected by the Local Governments are as follows:

- (i) harmonised levy covering, shops, slaughter slab fee, motor parks, domestic animal fee, bicycles, trucks, canoes, wheelbarrows and carts;
- (ii) liquor licences;
- (iii) TV/radio fees and other levy payable to the Local Government;
- (iv) user charge covering, marriage, birth and death registration fees, naming of streets fees, signage and mobile advertisements, sewage and refuse disposal fees, burial ground permit fees, religious places establishment fees and wharf landing charge; and
- (v) daily ticketing covering, all market levies, including transporters' tickets.

2.3 Composition and functions of the various organs of tax administration

The tax reform in Nigeria introduced four (4) tax Acts. These are Nigeria Tax Act, 2025, Nigeria Tax Administration Act, 2025, Nigeria Revenue Service (Establishment) Act, 2025, and Joint Revenue Board of Nigeria (Establishment) Act, 2025.

These tax Acts specify the composition and functions of the various organs of tax administration in Nigeria.

2.3.1 Nigeria Revenue Service ("the Service" or "NRS")

The Nigeria Revenue Service ("the Service") established by the Nigeria Revenue Service (Establishment) Act, 2025 is empowered to administer taxes and revenues accruable to the Government of the Federation.

(a) Composition of Nigeria Revenue Service and the Management Committee of the Service Executive Chairman of the Service

The Executive Chairman of the Service shall:

- i. be appointed by the President, subject to confirmation by the Senate;
- ii. be the chief executive and accounting officer of the Service;
- iii. be responsible for the execution of the policies and the overall administration of the Service; and
- iv. have relevant qualifications, cognate experience and expertise in accountancy, economics, taxation or law.

Executive Directors of the Service

The provisions of the Nigeria Revenue Service (Establishment) Act with respect to the Executive Directors are:

- i. The President shall appoint six Executive Directors for the Service, each representing a geopolitical zone on rotational basis among the States in the zone in alphabetical order provided that the Executive chairman and an Executive Director shall not come from the same State.
- ii. An Executive Director appointed by the President shall possess academic or professional qualifications and expertise in taxation, accountancy, economics, law, human resource management, or information technology, and the appointment shall ensure diversity of academic or professional qualifications and expertise in the listed fields.
- iii. An Executive Director shall:
 - head, and be responsible for the day-to-day administration of a Directorate in the Service; and
 - perform all such duties or functions as may, from time to time, be required by the Board, Management or Executive Chairman of the Service.
- iv. An Executive Director shall hold office for a term of four years and may be renewed for a further term of four years and no more.
- v. An Executive Director shall be paid such remuneration and allowances as may be determined by the Board.
- vi. An Executive Director shall, as provided in the Nigeria Revenue Service (Establishment) Act, be subject to the terms and conditions of his appointment.
- vii. Notwithstanding the provisions on the tenure of office, an Executive Director shall cease to hold office as an Executive Director of the Service, where the:
 - person resigns by a notice, under his hand, and addressed to the President through the Executive Chairman;
 - person becomes incapable of carrying on the functions of the office either arising from an infirmity of body or mind;
 - person is convicted of a felony or any offence involving dishonesty or fraud; or
 - the President is satisfied that it is not in the interest of the Service or in the interest of the public for the person to continue in office, and the Board removes such person from office.

Establishment and composition of the Management Committee of the Service

The Nigeria Revenue Service (Establishment) Act, 2025 makes provisions for a management committee of the Service to be known as the Nigeria Revenue Service Management Committee ("the Management") which shall be responsible for policy implementation, and supervision of the day-to-day activities of the Service.

The Management shall consist of the:

- i. Executive Chairman of the Service, who shall be the head; and
- ii. Executive Directors appointed under the Nigeria Revenue Service (Establishment) Act.

(b) Functions of Nigeria Revenue Service ("the Service")

In line with the provisions of the Nigeria Revenue Service (Establishment) Act, 2025, the following are the functions of the Service:

- i.
 - Assess persons including corporations, companies and individuals chargeable with tax, other than individuals, resident in any state of the Federation or the Federal Capital Territory;
 - Collect or recover tax assessed, enforce payment of taxes and remit tax collected, under the provisions of Nigeria Revenue Service (Establishment) Act or any other law, into designated accounts;
 - Account for all revenue accruing to the Government;
 - In collaboration with the relevant Ministries and Agencies of Government, subject to the approval of the National Assembly, review the tax regimes and promote the use of taxation to develop, stimulate and grow economic activities;
 - Carry out examination and investigation exercises with a view to enforcing compliance with the provisions of the Nigeria Revenue Service (Establishment) Act, and any other tax law;
 - Make a determination of the extent of financial loss and such other losses by Government arising from tax fraud or evasion, and revenue foregone arising from tax waivers and other related matters;
 - Adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion, in line with the provisions of the Nigeria Revenue Service (Establishment) Act;
 - Adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance with tax laws;

- Collaborate and facilitate exchange of information with relevant national or international agencies or bodies on tax matters;
- Undertake exchange of personnel or other experts with complementary agencies for purposes of comparative experience or capacity building;
- Establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions, and the perpetrators or other persons involved;
- Provide and maintain access to up-to-date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of Government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;
- Maintain database, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating to tax waivers, fraud or evasion;
- Undertake and support research or similar measures with a view to stimulating economic development and determine the manifestation, extent, and effects of tax waivers, fraud, evasion and other matters that affect effective tax administration and make recommendations to the Government on appropriate intervention and preventive measures;
- Collate and continually review all policies of the Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;
- Liaise with the office of the Attorney-General of the Federation, any Government security and law enforcement agency, and such other financial supervisory institutions in the enforcement and eradication of tax related offences;
- Issue taxpayer identification or any other equivalent identity to every relevant taxable person in collaboration with tax authorities of States or Local Governments, or the Joint Revenue Board;
- Carry out and sustain public awareness and enlightenment campaign on the benefits of tax compliance;
- Carry out assigned administrative and oversight functions over all taxes and levies accruable to the Government of the Federation and, as it may be required, query, subpoena, sanction or reward any activity pertaining to the assessment, collection of and accounting for revenues accruable to the Government; and
- Provide or receive assistance in the collection of revenue claims or any other administrative assistance in tax matters with respect to any

agreement or arrangement made between the Government of the Federal Republic of Nigeria and the Government of any country, person or body as may be deemed necessary.

- ii. The Service shall, with the approval of the Minister, make rules and issue regulations as, in its opinion, are necessary or expedient for giving full effect to the provisions of Nigeria Revenue Service (Establishment) Act and for the due administration of its provisions; and such rules and regulations shall provide compliance requirements and may include consequences for non-compliance in line with relevant laws.
- iii. The Service shall carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under the Nigeria Revenue Service (Establishment) Act, including:
 - specifying the form of returns, claims, statements or notices necessary for the due administration of the powers conferred on it by the Nigeria Tax Administration Act; and
 - deploying appropriate technology or digital platforms to automate any of its tax administration processes or in carrying out any of its functions under the Nigeria Revenue Service (Establishment) Act.

(c) The Nigeria Revenue Service Board ("the Board")

The Nigeria Revenue Service (Establishment) Act, 2025 established a governing board for the Service known as the Nigeria Revenue Service Board ("the Board").

Composition of the Nigeria Revenue Service Board ("the Board")

The Board comprises:

- i. the Chairman, who shall be the Executive Chairman of the Service appointed by the President subject to confirmation of the Senate;
- ii. the following ex-officio members:
 - a representative of the Minister responsible for Finance not below the rank of a Director;
 - a representative of the Minister responsible for National Planning not below the rank of a Director;
 - a representative of the Attorney-General of the Federation not below the rank of a Director;
 - a representative of the Minister responsible for Petroleum and Gas Resources not below the rank of a Director;

- the Governor of the Central Bank of Nigeria or a representative not below the rank of a Deputy Governor;
- the Chairman of the Revenue Mobilisation, Allocation and Fiscal Commission or a representative who shall be a Commissioner representing one of the States of the Federation;
- the Comptroller-General of the Nigeria Customs Service or a representative not below the rank of Deputy Comptroller-General;
- the Registrar-General of the Corporate Affairs Commission or a representative not below the rank of a Director; and
- Executive Directors appointed by the President under the Nigeria Revenue Service (Establishment) Act.

Note: All members of the Board, except the Executive Chairman, and the Executive Directors shall serve on a part-time basis. In addition, the Executive Chairman and other members of the Board, other than ex-officio members, shall each hold office for a term of four years, renewable for another term of four years and no more and a member of the Board shall hold office on such terms and conditions as in his letter of appointment.

(d) Powers and functions of the Board – The Board shall:

- provide general policy guidelines relating to the functions of the Service
- evaluate the implementation of the policies of the Service on matters relating to the assessment, collection and accounting system under Nigeria Revenue Service (Establishment) Act or any other law;
- review and approve the strategic plans of the Service;
- employ staff, and determine the terms and conditions of service, including disciplinary measures, of the employees of the Service;
- stipulate remunerations, allowances, benefits and pensions of the staff and employees;
- with the approval of the Minister, make rules and issue regulations as, in its opinion, are necessary or expedient for giving effect to the provisions of the Nigeria Revenue Service (Establishment) Act and for the administration of its provisions and such rules and regulations and provide compliance requirements and may include consequences for non-compliance;
- assign each Executive Director a directorate as appropriate; and
- do such other things which, in its opinion, are necessary to ensure the efficient performance of the functions of the Service under the Nigeria Revenue Service (Establishment) Act.

(e) Secretary to the Board

The Secretary to the Board shall be appointed by the Board from within the Service. The Secretary shall be a lawyer, or a chartered accountant or a chartered secretary, who shall not be less than the rank of an Assistant Director.

(f) Duties of the Secretary to the Board

The Secretary shall be responsible for:

- i. issuing notices of meetings of the Board;
- ii. keeping records of the proceedings of the Board; and
- iii. carrying out such other duties as the Executive Chairman or the Board may direct

(g) Establishment of Technical Committee of the Board

Composition: There shall be a technical committee of the Board ("the Technical Committee") which shall consist of:

- i. the Executive Chairman as the Chairman;
- ii. two members of the Board of the Service;
- iii. the Executive Directors in the Service;
- iv. the Director Legal of the Service as appointed by the Board;
- v. the Director in charge of Tax Policy matters; and
- vi. the Secretary to the Board shall be the Secretary to the Technical Committee.

The above composition notwithstanding, the Technical Committee may co-opt, from the Service, such director or officer as it may deem necessary for the effective performance of its functions under the Nigeria Revenue Service (Establishment) Act.

(h) Functions of the Technical Committee – The Technical Committee of the Board are to:

- i. consider all tax matters that require professional or technical expertise and make recommendations to the Board;
- ii. advise the Board on any aspect of the functions and powers of the Service under the Nigeria Revenue Service (Establishment) Act; and
- iii. attend to such other matters as may be referred to it by the Board.

2.3.2 The Joint Revenue Board

The Joint Revenue Board of Nigeria (Establishment) Act, 2025 established the Joint Revenue Board who shall be a body corporate with perpetual succession and a common seal, may sue and be sued in its corporate name, and may acquire, hold or dispose of its property and its head office shall be located in the Federal Capital Territory.

(a) Composition: The Joint Revenue Board shall comprise:

- i.
 - the Chairman, who shall be the Executive Chairman of the Nigeria Revenue Service; and
 - the Chairman of each State Internal Revenue Service and the Federal Capital Territory Internal Revenue Service.
- ii. The following persons shall be ex-officio members of the Board:
 - (a) a representative of the Minister of Finance not below the rank of a Director;
 - (b) the Director-General of the National Identity Management Commission or representative not below the rank of a Director;
 - (c) the Chairman of the Revenue Mobilisation, Allocation and Fiscal Commission or its representative not below the rank of a Director,
 - (d) the Comptroller-General of the Nigerian Immigration Service or a representative not below the rank of Assistant Comptroller-General;
 - (e) the Corps Marshall of the Federal Road Safety Corps or its representative not below the rank of an Assistant Corps Marshall;
 - (f) the Comptroller-General of the Nigeria Customs Service or its representative not below the rank of an Assistant Comptroller-General; and
 - (g) a representative of the Nigeria Revenue Service not below the rank of a Director.

(b) Functions of the Joint Revenue Board

- i. integrate and maintain a database of Taxpayer Identification Numbers for every taxable person in Nigeria in collaboration with the Nigeria Revenue Service, State Internal Revenue Service, Local Government Revenue Committee and other relevant government agencies;
- ii. resolve disputes between various tax authorities on the issue of determination of residency;
- iii. advise government on double taxation matters within Nigeria, and in respect of double taxation arrangements concluded or under consideration with any other country, including other taxation matters having effect throughout Nigeria;
- iv. resolve disputes between different tax authorities;
- v. maintain a platform for revenue data collection, integration and exchange of information among the various tax authorities in Nigeria;
- vi. promote harmonisation of taxes, levies, rates, charges and other payments and ensure uniformity in revenue administration across Nigeria;

- vii. advise the Federal and State Governments on introduction of new taxes and changes to existing ones;
- viii. provide periodic impact analysis with recommendations on tax framework and capacity building for all tiers of Government;
- ix. collaborate with relevant agencies to carry out surveys, ascertain and publish relevant tax indices and statistics;
- x. recommend, participate, facilitate or initiate fiscal and tax policy reform in collaboration with relevant bodies;
- xi. receive, collate, analyse and publish periodic tax revenue collected by all tax authorities;
- xii. receive, collate, analyse and publish tax expenditure on account of tax waivers, exemptions or incentives granted by each government;
- xiii. collaborate with tax authorities to undertake or support research or similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion or other matters that affect effective tax administration and make recommendations to the Government on appropriate intervention and preventive measures;
- xiv. provide guidance for the accreditation of tax agents by the relevant tax authorities in accordance with the relevant law; and
- xv. carry out any other function as may be assigned to it by an Act of the National Assembly.

(c) Executive Secretary of the Joint Revenue Board

- i. The Executive Secretary shall be appointed by the Joint Revenue Board who shall be:
 - the Chief Executive and accounting officer of the Board; and
 - responsible for the execution of the policies formulated by the Board and administration of the Board.
- ii. The Executive Secretary shall:
 - have requisite qualifications in taxation, accountancy, economics or law; and
 - possess at least 10 years of relevant experience in tax administration or professional tax practice.
- iii. The Executive Secretary shall hold office:
 - for a term of four years, renewable for another term of four years and no more; and

- on such other terms and conditions as may be specified in the letter of appointment.
- iv. The Executive Secretary shall be responsible for:
- issuing notices of meetings of the Board;
 - keeping records of the proceedings of the Board;
 - conducting the Board's correspondence; and
 - carrying out such other duties as the Board may determine.
- v. The Executive Secretary shall be paid such emoluments, allowances and benefits as may be approved by the Board.

2.3.3 The State Internal Revenue Service (“State Service”)

The Nigeria Tax Administration Act, 2025 established the State Internal Revenue Service (“State Service”).

(a) Appointment of the Executive Chairman of the State Service

The Executive Chairman of the State Service shall be appointed by the State Governor, subject to confirmation by the State House of Assembly.

The Executive Chairman shall be:

- i. the Chief Executive and Accounting Officer of the State Service;
- ii. responsible for the execution of the policy and the day-to-day administration of the affairs of the State service; and
- iii. a person with experience in taxation and a member of a relevant recognised professional body.

(b) Functions of the State Service

- i. Assess individuals, estates, trusts and settlements, communities and families.
- ii. Assess, collect, account and enforce payment of taxes as may be due to the State Government or any of its agencies.
- iii. Collect, recover and remit to the designated account any tax under the provisions of the Nigeria Tax Administration Act or any other enactment or law.
- iv. Carry out examinations and investigations with a view to enforcing compliance with the provisions of the Nigeria Tax Administration Act in collaboration with the relevant law enforcement agencies.
- v. Carry out such other functions as may be prescribed by a law of the State House of Assembly.

(c) Management Board of the State Service

Composition: A State Board which shall have overall supervision of the State Service shall comprise:

- i. the Executive Chairman of the State Service, who shall be the Chairman of the State Board;
- ii. directors from within the State Service;
- iii. a director from the State Ministry of Finance;
- iv. three other persons appointed by the State Governor on their personal merit, each representing a Senatorial District in the State, who shall possess relevant experience and knowledge in taxation and other related fields; and
- v. the Legal Adviser to the State Service, who shall serve as Secretary to the Board.

(d) Quorum

Five members of the State Board, one of whom shall be the Chairman or a Director, shall constitute a quorum.

(e) Functions of the State Board

- i. Provide general policy guidelines relating to the functions of the State Service.
- ii. Manage and superintend policies of the State Service on matters relating to the administration of the revenue assessment, collection and accounting system under the Nigeria Tax Administration Act or any other law.
- iii. Review and approve the strategic plans of the State Service.
- iv. Employ and determine the terms and conditions of service including disciplinary measures of the employees of the State Service.
- v. Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the Governor.
- vi. Provide an amount of revenue collected, as may be approved by a State House of Assembly, which shall be retained by the State Service to defray cost of collection and administration.
- vii. Make recommendations, where appropriate, to the Unified Revenue Commission on tax policy, reform, legislation, treaties and tax exemption as may be required, from time to time.
- viii. Do such other things which in its opinion are necessary to ensure efficient performance of the functions of the State Service under the Nigeria Tax Administration Act.

(f) Establishment of the Technical Committee of the State Board

Composition: The Technical Committee of the State Board ("Technical Committee"), shall comprise the:

- i. Executive Chairman of the State Board, as Chairman.
- ii. Directors within the State Service; and
- iii. Legal Adviser to the State Service.

(g) Functions of the Technical Committee of the State Board

The Technical Committee of the State Board are to:

- i. consider all matters that require professional and technical expertise and make recommendations to the State Board;
- ii. advise the State Board on all its powers and duties specifically mentioned in the Nigeria Tax Administration Act;
- iii. have powers to co-opt additional staff from within the State Service in the discharge of the duties; and
- iv. attend to such other matters as may, from time to time, be referred to it by the State Board.

2.3.4 Local Government Revenue Committee

Each local government area of a State shall have a Committee to be known as the Local Government Revenue Committee ("Revenue Committee")

(a) Composition

The Revenue Committee shall comprise:

- i. the Local Government Supervisor for Finance, as Chairman;
- ii. three local government Councillors as members; and
- iii. two other persons experienced in revenue matters to be nominated by the Chairman of the Local Government on their personal merits.

(b) Functions of the Local Government Revenue Committee

The Revenue Committee shall be responsible for:

- i. the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for the amounts collected, in a manner to be prescribed by the Local Government; and
- ii. the day-to-day administration of the Department, which forms its operational arm, and shall be autonomous of the local government treasury.

2.3.5 State Joint Revenue Committee

(a) Composition

Each State of the Federation shall have a State Joint Revenue Committee, which shall comprise:

- i. the Executive Chairman of the State Service as the Chairman;
- ii. the Chairmen of the Local Government Revenue Committees;
- iii. a representative of the agency responsible for local government affairs, not below the rank of a Director;
- iv. a representative of the Revenue Mobilisation Allocation and Fiscal Commission, as an observer;
- v. the State Sector Commander of the Federal Road Safety Commission, as an observer;
- vi. the Legal Adviser of the State Service; and
- vii. the Secretary of the Committee, who shall be a staff of the State Service

(b) Functions of the State Joint Revenue Committee

- i. Implement decisions of the Joint Revenue Board;
- ii. advise the Joint Revenue Board and the State and local governments on revenue matters;
- iii. Harmonise tax administration in the State;
- iv. Enlighten members of the public generally on State and local government revenue matters; and
- v. Carry out such other functions as may be assigned to it by the Joint Revenue Board.

2.4 Limitations of tax administration

The following are some of the 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 personnel of tax authorities (administrative ineffectiveness);
- (g) loopholes in the relevant laws; and
- (h) poor governance.

2.5 Challenges of multiplicity of taxes and possible solutions

2.5.1 Definition of tax

According to the National Tax Policy [NTP] document, tax is defined as “any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called tax or not”.

2.5.2 Multiple taxation

Multiple taxation occurs “where the tax, fee or rate is levied on the same person in respect of the same liability by more than one taxing authority (Federal, State or Local Government Council).”

In addition to the above, multiple taxation shall be deemed to occur: when there is unlawful and compulsory payments to the government without legal backing, where a taxpayer is faced with demands from the state or local government for the same or similar taxes for example, Value added tax (VAT) and sales/consumption tax, where the government imposes more than one tax on the same tax base for example, Companies income tax, tertiary education tax and technology levy on corporate taxpayers.

2.5.3 Causes of multiplicity of taxes

- a. Under the Nigeria Constitution, the Federal, the State and the Local governments have autonomous powers on tax collection. This implies that the different tiers of government have the right to impose and collect taxes within the dictate of the Constitution and other relevant laws. Accordingly, there is tendency of multiple taxation when each tier exercises these powers.
- b. Unfair revenue sharing among the three tiers of government. Nigeria's revenue sharing is widely considered unfair with the Federal Government receiving a disproportionate highest percentage of national revenue. This structure causes fiscal imbalance, limiting the ability of state and local governments to fund developmental projects and infrastructure.
- c. Some of the States Governments deliberately deny their Local Governments the revenue due to them and in some cases have even usurped the taxes assigned to the local governments. Consequently, the local governments, as a way of survival desperately and aggressively focus on anything that will generate revenue for them.
- d. All the tiers of government usually fail to adequately fund their departments and agencies. These developments make them to embark on aggressive revenue drive even illegally in the name of increasing their internally generated revenue.
- e. Dwindling revenue from oil - As revenue from oil decreases, states and local governments are pushing to increase internally generated revenue. This leads to the introduction of new, arbitrary, or overlapping taxes.
- f. Activities of illegal tax collectors - Many unauthorised agents and touts, often backed by local government officials, impose illegal levies on vehicles and goods in transit, creating illegal taxes.

- g. Use of private consultant - States hiring private consultants for tax collection often lead to aggressive, arbitrary, and sometimes illegal tax enforcement to meet revenue targets.

Note:

However, the Nigeria Tax Administration Act, 2025 has taken care of the problem of multiplicity of taxes by harmonising taxes collectible by different tiers of Government.

2.6 Impact of multiplicity of taxes on tax compliance and revenue yield

2.6.1 Problems arising from multiplicity of taxes

Some of the ways by which multiplicity of taxes impacts on tax compliance and revenue yield include:

- a. Uncertainty in investment: Multiplicity of taxes comes with a lot of uncertainties in the investment environment. The investors are not sure of the extent to which their incomes or profits would be taxed.
- b. Erosion of tax base: Multiplicity of taxes has led to large corporate entities moving their operations out of some states or from Nigeria to neighbouring countries thereby reducing the tax base in Nigeria.
- c. Disincentive to tax compliance: Multiplicity of taxes has negative impact on taxpayer's adherence to tax laws and regulations in terms of correct and timely filing of tax returns to the tax authorities.
- d. Low tax yield: Tax yield is the revenue that accrues to government after taking account of the cost of tax administration. Multiplicity of taxes contribute to low tax yield as a result of numerous taxes that bring in little but with high cost of administration.

2.7 Chapter review

This chapter examines the dynamics of fiscal federalism, the Nigerian tax administration system, and the composition/functions of the various organs of tax administration and factors inhibiting effective tax administration in Nigeria.

Readers must have learnt about the causes of multiple taxation in Nigeria, its associated problems, impacts as well the possible solutions to multiple taxation.

2.8 Worked examples

2.8.1 Questions

1. Ms. Lilian Abu is a Nigerian born with a British mother. She grew up and schooled in the UK after which she took up a job with Her Majesty Revenue and Customs (HMRC) as a Revenue Officer. She has been selected to join a team of international reviewers visiting Nigeria in the coming months, under a project funded by the World Bank.

Lilian has contacted you as part of her initial research to understand the tax system in Nigeria ahead of her visit.

Required:

- (a) Discuss the structure of the tax administration system in Nigeria.
 - (b) Examine the functions of **Two** (2) organs of tax administration in Nigeria.
2. Section 95 of the Nigeria Tax Administration Act, 2025 provides the legal framework for the establishment of the State Joint Revenue Committee (SJRC) in Nigeria.

Required:

Analyse and evaluate the composition and functions of the State Joint Revenue Committee SJRC.

3. While on a research visit to the country, a Nigerian American who teaches Taxation and Fiscal Policy in one of the leading universities in the United States, informed you of the outcome of his interaction with some key players in the Nigerian business environment. He submitted that these key players, especially those in the manufacturing sector, are seriously embittered about the issue of multiple taxation.

You were appointed as a consultant to handle the company's tax matters.

Required:

Assess and advise on the causes and possible solutions of multiple taxation in Nigeria.

2.8.2 Suggested Solutions to questions

1(a) Structure and taxing rights of different levels of government

For tax purposes and in accordance with its constitutional provision, the three tiers of government responsible for taxes collection in Nigeria are the Federal, State and Local Governments. The tax jurisdiction of these tier of government and their respective tax authority are spelled out in the Nigeria Tax Administration Act, 2025. However, a tax authority, with the approval of the

relevant government, may authorise another tax authority to administer taxes within its jurisdiction on its behalf, on such terms as they may agree.

The Federal Government is responsible for the administration and collection of taxes due from all taxable corporate bodies, personnel of the Nigerian Armed Forces and those employed in Nigeria's foreign missions through the Nigeria Revenue Service (NRS).

Examples of taxes collected by Federal Government are Companies income tax, Development levy, Hydrocarbon tax, Petroleum profits tax, Value added tax, Personal income tax from members of armed forces personnel, police force, Capital gains tax for companies and non-residents up to 2025 assessment year, withholding tax from companies, stamp duties.

Note that with the enactment of the FCT-IRS Act 2015, taxes payable by residents of the FCT are now collectible by the FCT-IRS.

Each state government is responsible for administration, assessment and collection of the taxes due from all taxable persons resident in the state through each State Internal Revenue Service (SIRS) except for the Nigerian Armed Forces and employees of the Nigeria foreign missions.

Examples of taxes collected by State Government are Personal income tax, withholding tax from individuals and unincorporated entities, Capital gains tax for individuals and unincorporated entities up to 2025 assessment year, stamp duties, road taxes, pools betting and lotteries, gaming and casino taxes, development levy, etc.

Local government is responsible for collecting levies such as shop and kiosk rates, tenement rates, on and off liquor licenses fees, slaughter slab fees, marriage, birth and death registration fees, motor park levies, road closure levy, etc.

Local government taxes/levies are collected by the Local Government Revenue Committee in each state.

(b) Functions of organs of tax administration in Nigeria

(i) Nigeria Revenue Service Board (NRSB)

The functions of NRSB are to:

- provide the general policy guidelines relating to the functions of the Service;

- evaluate the implementation of the policies of the Service on matters relating to the assessment, collection and accounting system under Nigeria Revenue (Establishment) Act or any other 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;
- with the approval of the Minister, make rules and issue regulations as, in its opinion, are necessary or expedient for giving effect to the provisions of the Nigeria Revenue Service (Establishment) Act and for the administration of its provisions and such rules and regulations and provide compliance requirements and may include consequences for non-compliance;
- stipulate remunerations, allowances, benefits and pensions of the staff and employees;
- assign each Executive Director a directorate as appropriate; and
- do such other things which, in its opinion, are necessary to ensure the efficient performance of the functions of the Nigeria Revenue Service (Establishment) Act.

(ii) **State Board of Internal Revenue Service (SBIRS)**

The functions of the SBIRS are to:

- provide general policy guidelines relating to the functions of the State Service;
- manage and superintend policies of the State Service on matters relating to the administration of the revenue assessment, collection and accounting system under the Nigeria Tax Administration Act, 2025 or any other law;
- review and approve the strategic plans of the State Service;
- employ and determine the terms and conditions of service including disciplinary measures of the employees of the State Service;
- stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the Governor;
- provide an amount of revenue collected, as may be approved by a State House of Assembly, which shall be retained by the State Service to defray cost of collection and administration;
- make recommendations, where appropriate, to the Unified Revenue Commission on tax policy, reform, legislation, treaties and tax exemption as may be required, from time to time; and
- do such other things which in its opinion are necessary to ensure efficient performance of the functions of the State Service under the Nigeria Tax Administration Act, 2025.

(iii) Local Government Revenue Committee (LGRC)

The LGRC shall be:

- responsible for the assessment and collection of all taxes, fines and rates, under its jurisdiction and shall account for all amounts so collected, in a manner to be prescribed by the Chairman of the Local Government;
- 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;
- responsible for taxpayer education; and
- responsible for collection of data and information to develop and reform tax policies legislation and administration.

2. Composition and functions of the State Joint Revenue Committee.

(a) Composition

In line with the provisions of the Nigeria Tax Administration Act, 2025, each State of the Federation shall have a State Joint Revenue Committee, which shall comprise:

- (i) the Executive Chairman of the State Service as Chairman of the Committee;
- (ii) the Chairmen of the Local Government Revenue Committee;
- (iii) a representative of the agency responsible for Local Government Affairs not below the rank of a Director;
- (iv) a representative of the Revenue Mobilisation, Allocation and Fiscal Commission, as an observer;
- (v) the State Sector Commander of the Federal Road Safety Commission (FRSC) as an observer;
- (vi) the Legal Adviser of the State Service; and
- (vii) the Secretary to of the Committee who shall be a staff of the State Service.

(b) Functions of the State Joint Revenue Committee

The functions of the Committee shall be to:

- (i) implement decisions of the Joint Revenue Board;
- (ii) advise the Joint Revenue Board and the State and Local Governments on revenue matters;
- (iii) harmonise tax administration in the State;
 - enlighten members of the public generally on State and Local Government revenue matters; and
 - carry out such other functions as may be assigned to it by the Joint Revenue Board.

3. Report explaining the causes and possible solutions of multiple taxation in Nigeria

Multiple taxation is a tax regime under which various and similar types of taxes are imposed on taxpayers by different tiers of government. For instance, while the Federal Government imposed the Value added tax on consumption and made it applicable throughout the Federation, some States notably, Lagos State, introduced the sales tax based on the same principle as the former and made it applicable in Lagos State.

The possible causes of multiple taxation in Nigeria are:

- (i) the Constitution of the Federal Republic of Nigeria grants the three tiers of government autonomous powers to impose tax and the exercise of such powers create multiple taxation;
- (ii) insufficient funding, especially at the state level, often leads to instances of multiple taxation, where State Boards impose additional taxes to generate revenue, even when such taxes have already been levied by either the Federal or Local governments;
- (iii) some of the state governments deliberately deny their local governments the revenue due to them, consequently the local government as a way of survival desperately and aggressively focus on anything that will generate revenue to them;
- (iv) inability of all the tiers of government to adequately fund their departments and agencies;
- (v) multiplicity of revenue agencies;
- (vi) unfair revenue sharing among the three tiers of government with the federal government receiving a disproportionate highest percentage of national revenue thereby limiting the ability of the state and local governments to fund developmental projects and infrastructure; and
- (vii) manual tax administration system and unorthodox tax collection mechanism.

Possible solutions to multiple taxation in Nigeria include:

- (i) streamlining the number of taxes in Nigeria in view of the low yields of many of the taxes, this will involve the review of current statutory provisions in Nigeria;
- (ii) reviewing all the existing taxes in Nigeria and harmonise where necessary, as recommended by various study groups;
- (iii) reviewing of the Constitution to address the overlap in taxing rights and limit the number of taxes that can be imposed by different levels;
- (iv) the states should make available to the local government all revenue due to them from the Federation Account and withholding of local government revenue by the states should stop;
- (v) abolishing unorthodox method of tax collection and implementing technology for tax administration; and
- (vi) limiting the number of revenue agencies.

OBJECTION AND APPEAL PROCEDURES

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3 Objection and Tax Appeal Procedures

3.0 Learning objective

The objective of this chapter is to enhance readers' understanding of objection and appeal procedures as well as dispute resolution mechanism in Nigerian tax administration.

3.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) know the composition and jurisdiction of Tax Appeal Tribunal;
- (b) understand what constitutes an appeal;
- (c) know the procedure for raising objections to tax assessments;
- (d) know the procedure for the hearing of appeals;
- (e) know the procedure to be followed for further appeals to the High Court, Court of Appeal and Supreme Court;
- (f) know taxpayers' rights in a dispute; and
- (g) understand the roles of Tax Ombud as an independent and impartial arbiter.

3.2 Self-assessment and tax authority compliance check

- (a) Provisions of the Nigeria Tax Administration Act, 2025

In line with the provisions of section 34 of the Nigeria Tax Administration Act, 2025, every taxable person shall, on or before the due date, submit a self-assessment tax return with the relevant tax authority. A taxable person who has submitted a self-assessment return in the prescribed form for a reporting period is deemed to have made an assessment of the amount of tax payable, including a negative or nil amount, for the reporting period to which the return relates.

A tax return in the approved form completed and submitted electronically by a taxable person is a self-assessment notwithstanding that:

- i. the form contains pre-entered information supplied by the tax authority; and
- ii. an estimate of the tax payable is computed electronically as information is being entered into the form by a taxable person.

Where a taxable person has delivered a tax return, the relevant tax authority may:

- i. accept the tax return without making an additional assessment;
- ii. accept the tax return and make additional assessment; or
- iii. reject the tax return and, to the best of its judgement, determine the amount of the tax due from the taxable person and make an assessment accordingly.

Where the taxable person fails to declare the true and correct amount of income or tax payable in its self-assessed tax returns, the taxable person is liable to pay any outstanding tax from the due date of the returns. The outstanding tax shall be subject to penalty and interest from the date the returns become due.

3.3 Administrative assessment

Where a taxable person has not delivered a tax return, and the relevant tax authority is of the opinion that such taxable person is liable to pay tax, it may, to the best of its judgement, determine the amount of the tax due from the taxable person and make an assessment accordingly (section 35 of the Nigeria Tax Administration Act, 2025).

The assessment issued by the relevant tax authority where a taxable person fails to render shall not affect the imposition of any other liability incurred by the taxable person by reason of its failure or neglect to deliver a return.

The relevant tax authority may prescribe the rules, guidelines and procedures for the issuance of administrative assessment.

Administrative assessment may be made by the relevant tax authority upon a taxable person for any year before the expiration of the time within which it is required to deliver a return or a notice may be given, if the relevant tax authority considers such assessment to be in jeopardy.

3.4 Additional assessment

In line with the provisions of section 36 of the Nigeria Tax Administration Act, 2025, where the relevant tax authority discovers or is of the opinion, at any time, that any taxable person liable to tax has not been assessed or has been assessed at an amount less than that which ought to have been charged, the relevant tax authority may, within six years of an assessment, assess the taxable person at such amount or additional amount, as ought to have been charged.

The six-year limitation period shall not preclude the relevant tax authority from continuing with a tax audit and for raising additional assessment where the tax audit commenced before the expiration of the six-year limit.

However, where there is a deliberate misstatement by a taxable person in connection with any tax imposed under any tax law in Nigeria, the relevant tax authority may at any time and as often as may be necessary, assess the taxable person to such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the deliberate misstatement. This implies that the six-year limitation will not hold in case of deliberate misstatement or tax fraud by a taxable person.

3.5 Deemed profit assessment or income assessment

Where a business produces either no assessable profit or an assessable profit which is less than expected from that business or the true amount of the assessable profit cannot be readily ascertained, the relevant tax authority may, in the case of:

- (a) a resident, assess and charge that taxable person on such fair and reasonable percentage of the gross income from the trade or business as the relevant tax authority may determine; or
- (b) a non-resident, the profits shall be any amount resulting from applying the profit margin of the person to the turnover generated from Nigeria.

Profit margin for the non-resident taxable person shall be the proportion of the Earnings Before Interest and Tax ("EBIT") to income or revenue in the published audited financial statement of the business, and in the case of persons that are not required to publish financial statements, the profit margin as may be ascertained by the relevant tax authority from financial statements of comparative companies (section 38 of the Nigeria Tax Administration Act, 2025).

3.6 Mode of assessment and payment

Tax shall be assessed and paid in the currency of transaction. Also, tax, including royalty, assessed in a currency other than the Nigerian Naira shall be paid in that currency.

3.7 Service of notice of assessment

The relevant tax authority shall serve the notice of assessment in respect of any tax charged by registered post, courier service or electronic means to each taxable person or person in whose name a taxable person is chargeable. The notice of assessment shall also contain the mode and the place at which the payment of tax charged should be made and the rights of taxable person relating to the objection shall also be stated in the notice of assessment.

3.8 Essential elements of a valid objection

According to section 41 of the Nigeria Tax Administration Act, 2025, where a taxable person disputes a tax assessment, the taxable person may, by a written notice of objection delivered in person, by courier service or via electronic means, apply to the relevant tax authority for the revision and amendment of the assessment made upon it.

For the taxable person's objection to tax assessment to be valid, it must:

- a. be in writing;
- b. be delivered to the relevant tax authority within 30 days from the date of service of the disputed notice of assessment; and

- c. contain the grounds of objection to the assessment, that is, the:
 - i. specific issues disputed or errors observed with their monetary values,
 - ii. amendment required to be made so as to resolve the dispute or correct the error,
 - iii. justification for the amendments,
 - iv. amount of assessable and total profits, income or value of transactions admitted by the taxable person for the relevant reporting period, and
 - v. amount of tax admitted by the taxable person or that no amount of tax is admitted as payable.

Note that in line with the provisions of the Nigeria Tax Administration Act, 2025, the relevant tax authority may, for any satisfactory and good cause shown by a taxable person, extend the time for making the objection application to such reasonable time in the particular circumstances.

3.9 Errors, defects and validity of assessment, notice and warrant

An assessment, notice, warrant shall not be invalidated for want of form or be affected by reason of a mistake, defect or omission, if:

- (a) substance and effect of the assessment is in conformity with the provisions of the laws; and
- (b) company assessed or intended to be assessed or affected is designated according to common intent and understanding.

In addition, an assessment shall not be invalidated or affected by reason of:

- (a) a mistake as to the:
 - (i) name of a company liable or of a person in whose name a company is assessed,
 - (ii) the description of any profits, or
 - (iii) amount of the tax charged; or
- (b) any variance between the assessment and the notice, if in cases of assessment, the notice:
 - (i) is duly served on the company intended to be assessed or on the person in whose name the assessment was to be made; and
 - (ii) contains, in substance and effect, the particulars on which the assessment is made.

3.10 Revision of assessment due to objection and taxable person right of appeal

Upon receipt of the notice of objection from taxable person, the relevant tax authority may:

- (a) require the taxable person to furnish such particulars as it may deem necessary and to produce all books or other documents relating to the profits, income or transactions of the taxable person; and
- (b) summon any person to give evidence in respect of the assessment to appear for examination before an authorised officer of the relevant tax authority or make a declaration on oath in respect of the assessment.

Where the taxable person and the relevant tax authority agree as to the amount of tax to be assessed, the disputed assessment shall be amended, and a revised notice of the tax payable shall be served upon the taxable person.

The relevant tax authority shall respond to the objection notice within 90 days otherwise the objection of the taxpayer shall be upheld.

Where the relevant tax authority considers the notice of objection submitted by the taxable person as invalid, or where the taxable person and the relevant tax authority do not agree as to the amount of tax to be assessed, the taxpayer may exercise the right of appeal.

3.11 Taxable person appeals from decisions of the relevant tax authority

Where a taxable person is aggrieved by an assessment, demand notice, action, decision of the tax authority, or a dispute as to residency under the provisions of the tax laws and both the taxable person and the relevant tax authority do not agree as to the amount of tax to be assessed, such taxable person may appeal against such decision or assessment to the Tax Appeal Tribunal.

The appeal by the taxable person to the Tax Appeal Tribunal shall be filed within a period of 30 days from the date on which a copy of the assessment, demand notice, action or decision which is being appealed against is made, or deemed to have been made by the relevant tax authority.

The appeal shall be in such form and be accompanied by such fee as may be prescribed by the Tax Appeal Tribunal.

The Tribunal may entertain an appeal from taxable person after the expiry of the period of 30 days if it is satisfied that there was sufficient cause for the delay.

Where a notice of appeal is not given by the taxable person within a period of 30 days or extended date granted by the Tax Appeal Tribunal, the assessment or demand

notices shall become final and conclusive and the relevant tax authority may charge interests and penalties in addition to recovering the outstanding tax liabilities which remain unpaid from any person through proceedings at the Tribunal.

3.12 Relevant tax authority appeals from actions of taxable person

A relevant tax authority that is aggrieved by the non-compliance by a taxable person in respect of any provision of the tax laws or in respect of any assessment, demand notice, action or decision may appeal to the Tax Appeal Tribunal in the Zone where the taxable person is resident giving notice in writing through the Secretary to the Tribunal.

The appeal by the relevant tax authority to the Tax Appeal Tribunal shall be filed within a period of 30 days from the date on which the non-compliance actions by a taxable person which is being appealed against is made or deemed to have been made.

The Tribunal may entertain an appeal from the relevant tax authority after the expiry of the period of 30 days if it is satisfied that there was sufficient cause for the delay.

3.13 Contents of a notice of appeal to the Tribunal

The following information must be included in the notice of appeal to the Tax Appeal Tribunal:

- a) the tax file number;
- b) the relevant year of assessment;
- c) the date the assessment, demand notice, action or decision which is being appealed against was made;
- d) the assessable profit for the year of assessment being disputed;
- e) the taxable/total profit being disputed
- f) the amount of tax payable disputed; and
- g) the grounds of appeal. Note that the grounds of appeal may not be different from the grounds of objection.

3.14 Settlement out of the Tax Appeal Tribunal

Where an appeal is before the Tribunal for the first time, the Chairman of the Tribunal may grant to the parties (i.e. taxable persons and relevant tax authority) time, not exceeding 30 days, within which parties may explore possibilities for settlement of the dispute.

Where the parties fail to settle within 30 days or such other period as the Tribunal may grant, the case shall proceed to trial.

3.15 Tax Appeal Tribunal and Tax Appeal Commissioners

3.15.1 Tax Appeal Tribunal

The Tax Appeal Tribunal was established by section 23 (1) of the Joint Revenue Board of Nigeria (Establishment) Act, 2025 as provided in part V to the Act. The Joint Revenue Board of Nigeria (Establishment) Act, 2025 repealed the provision of section 59 and the Fifth Schedule of the Federal Inland Revenue Service (Establishment) Act, 2007 that established the Tax Appeal Tribunal with the provision that the Tribunal shall continue to hear and conclude proceedings commenced before the coming of the The Joint Revenue Board of Nigeria (Establishment) Act, 2025. The Tax Appeal Tribunal (TAT) shall have power to adjudicate on tax disputes, and controversies arising from Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 or any other tax law made by the National Assembly or the House of Assembly of a State. The Tribunal shall apply the provisions of Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 or any other tax law made by the National Assembly or the House of Assembly of a State in the determination or resolution of any dispute or controversy before it.

The tribunal is the first forum for aggrieved persons (taxpayers or tax authorities) to litigate before approaching the High Court.

The tribunal operates in six (6) geo-political zones, with eight locations. These zones are:

North-Central Zone, North-East Zone, North-West Zone, South-East Zone, South-South Zone, and South-West Zone. Additionally, TAT has physical offices in the following locations: Abuja, Bauchi, Benin, Enugu, Ibadan, Kaduna, Gombe and Jos. These offices allow taxpayers to file appeals and have their tax disputes resolved more conveniently.

Each zone's tax appeal tribunal is composed of a five-man panel, headed by a legal practitioner with at least 10 years' experience in tax legislation and tax matters (hereinafter referred to as "Tax Appeal Commissioners") to be appointed by the Minister of Finance.

3.15.2 Appointment and meetings of the Tribunal

A Chairman for each zone shall be a legal practitioner who has been so qualified to practice for a period of not less than 10 years with cognate experience in tax legislation and tax matters.

The Chairman shall preside at every sitting of the Tribunal and in his absence; the members shall appoint one of them as the Chairman.

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

The Tribunal may conduct its hearing remotely via virtual means using such technology or application as may be necessary to ensure fair hearing – paragraph 20 of the Fifth Schedule of CITA was amended by section 57 of the Finance Acts, 2020 accordingly.

- (a) During its meetings, the Tribunal shall have the power to conduct its proceedings in a manner it deems fit to ensure speedy dispensation of justice.
- (b) The hearing of an appeal shall be commenced by the appellant presenting documents and statements which he intends to rely upon as well as the witnesses he desires to call.
- (c) The respondent or his representative may in like manner present any document or statement he intends to rely upon as well as the witnesses he desires to call.
- (d) At the hearing of an appeal, the Tribunal shall admit all relevant evidence, oral or documentary, adduced by the appellant or the respondent or any person appearing on their behalf.
- (e) The oral examination of a witness during his evidence in chief shall be limited to confirming his written deposition and tendering in evidence all documents or other exhibits referred to in his deposition.
- (f) Thereafter the other party may cross-examine the witness who may then be re-examined.
- (g) Where the Tribunal deems it necessary, it may call upon or, as the case may be, permit any party to produce any additional document or call additional witnesses or file any affidavit to enable it to issue proper directions or orders.
- (h) Where the Tribunal, on application of any party, directs that any person shall be summoned to give evidence, or tender any document, the Tribunal may order the deposit of such amount of money before the issue of a summons, as in Form TAT 6 in the First Schedule to the Rules, as will cover the expenses of such person in so attending.
- (i) Where a witness does not appear to a summons, the Tribunal upon proof of service of the summons, a note of which shall be made on the record book, may issue a warrant as in Form TAT 7 in the First Schedule to the Rules to bring such witness before the Tribunal at such time as may be convenient.

3.15.3 Tax Appeal Commissioner

a) Qualification for appointment

A person shall be qualified for appointment as a Tax Appeal Commissioner if the person has requisite qualification from a recognised institution, with at least 10 years cognate experience in law, accounting, business administration, finance, economics or taxation; or is a retired public servant, with at least 10 years' experience in tax administration; or is a member of the organised private sector, that is a registered business association in Nigeria.

b) Term of office of a Tax Appeal Commissioner

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.

c) Cessation of office of a Tax Appeal Commissioner

A Tax Appeal Commissioner shall cease to be in office, where the person;

- i. attains the age of 70 years;
- ii. resigns by giving three months' notice, addressed to the Minister or until a person duly appointed as his successor assumes his office, whichever is earlier;
- iii. becomes incapable of carrying on the functions of the office arising from an infirmity of mind or body;
- iv. is convicted of a felony or of any offence involving dishonesty or fraud;
- v. is removed from office by the Minister on grounds of public interest or in the interest of the Tribunal;
- vi. has been found guilty of gross misconduct in relation to the duties of the office; or
- vii. is disqualified from professional qualification by a professional body by virtue of which the person qualified for the appointment.

(d) Salary, allowances and conditions of Service of Tax Appeal Commissioner

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 their disadvantage after appointment.

e) Filling up of vacancies of Tax Appeal Commissioner

If for any 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 the Act to fill the vacancy.

f) 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.

g) Coordinating Secretary to the Tribunal and Secretaries to the zone

The Minister shall appoint a Coordinating Secretary for the Tribunal, who shall be responsible for keeping records of the proceedings of the Tribunal and also serve as the head of the secretariat and responsible for the day-to-day administration, and direction and control of all other employees of the Tribunal.

In addition to the Coordinating Secretary, the Minister shall appoint a secretary for each of the zones of the Tribunal who shall be responsible for; keeping records of the proceedings of the Tribunal at the zone; the day-to-day administration of the Tribunal at the zone; and the direction and control of all other employees of the Tribunal at the zone.

The Secretary shall hold office for a term of four years and may be renewed for a further term of four years and no more; or until the attainment of the age of 60 years, whichever is earlier.

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

The Secretary of each zone shall report to the Coordinating Secretary in the exercise of their functions.

h) Appointment of other staff of the Tribunal

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.

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.

i) Jurisdiction of the Tribunal

The Tax Appeal Tribunal (TAT) shall have power to adjudicate on tax disputes, and controversies arising from Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 or any other tax law made by the National Assembly or the House of Assembly of a State.

The Tribunal shall apply the provisions of Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 or any other tax law made by the National Assembly or the House of Assembly of a State in the determination or resolution of any dispute or controversy before it.

j) Criminal prosecution

Where during its adjudication, the Tribunal discovers evidence of possible criminality; the tribunal shall be obliged to pass such information to the appropriate criminal prosecuting authorities, including relevant tax authority, 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.

k) Disclosure of interest by Tax Appeal Commissioner

Where the Tax Appeal Commissioner:

- i. has a direct or indirect interest in a matter which he has been nominated to serve as a panel member;
- ii. has an interest that could reasonably conflict with the proper performance of the functions of the Commissioner; or
- iii. is or was a client to any of the parties in professional capacity, the Tax Appeal Commissioner shall disclose such interest and refrain from sitting in any proceeding for the hearing of such appeal.

Failure of the Commissioner to disclose the interest shall be considered as misconduct and shall be dealt with in accordance with the provisions of the Joint Revenue Board of Nigeria (Establishment) Act, 2025 by the Minister of Finance.

In addition, a Tax Appeal Commissioner shall not, during his tenure as Tax Appeal Commissioner, appear as counsel before the proceedings of the Tribunal at any zone of the Tribunal.

3.16 Procedure before Tax Appeal Tribunal

The procedure of Tax Appeal Tribunal for cases under trial are:

- a. Tax Appeal Commissioners shall meet to hear appeals in the jurisdiction or zone assigned to that Tribunal.

- b. The Secretary to the Tribunal shall give seven clear days' notice to the parties 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.
- c. All notices, documents, other than decisions of the Tribunal, may be signified under the hand of the Secretary.
- d. Appeals before the Tax Appeal Commissioners shall be held in public.
- e. The onus of proving that the assessment complained of is excessive (in the case of taxable person) or due for payment (in the case of tax authority), as the case may be, shall be on the appellant.
- f. At the hearing of an appeal, where the representative of the relevant tax authority proves to the satisfaction of the Tribunal that:
 - i. the appellant has for the year of assessment concerned, failed to prepare and deliver to the tax authority returns required to be furnished under the relevant provisions of the Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025;
 - ii. the appeal is frivolous or vexatious or constitutes 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.
- g. The Tribunal may adjourn the hearing of the appeal to any subsequent day and order the appellant to deposit with the tax authority, before the day of the adjourned hearing, an amount on account of the tax charged by the assessment under appeal equal to, the lesser of;
 - i. the tax charged upon the appellant for the preceding year of assessment; and
 - ii. one half of the tax charged by the assessment under appeal.
- h. Where 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 in the tribunal with respect to that assessment.
- i. 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.
- j. Every decision of the Tribunal shall be recorded in writing by the Chairman and a certified copy of such decision shall be supplied to the appellant or the tax authority by the Secretary, upon a request made within 7 days of the decision.
- k. Where on 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 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 a representative, at the hearing of the appeal, has neglected or refused to comply with a notice from 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 an agent (other than a legal practitioner or accountant acting for them in connection with their liability to tax) has refused to answer any question put to them by the Tribunal, without showing any reasonable cause, the Chairman of the Tribunal shall record particulars of the same in his written decision.
- I. The proceedings of the Tribunal and its decisions shall be in compliance with the provisions of the Evidence Act

3.17 Procedure following decision of the Tribunal

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.

An award or judgment of the Tribunal shall be enforced as if it were a judgment 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.

3.18 Appeal to the Federal High Court

- (a) Any person dissatisfied with a decision of the Tribunal constituted under the Joint Revenue Board of Nigeria (Establishment), Act 2025 (the Act) 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 shall set out all the grounds of law on which the appellant's case is based.
- (c) Where the relevant tax authority is dissatisfied with the decision of the Tribunal, it may appeal against such decision to the High Court on points of law by giving notice in writing 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 the Act and until such rules are made, the Federal

High Court rules relating to hearing of appeals shall apply to the hearing of an appeal under the Act.

3.19 Right to legal representation

A complainant or appellant may either appear in person or authorise one or more legal practitioners, a professional with the requisite knowledge and experience in tax matters or any of its officers to represent him or its case before the Tribunal.

Where the representative in any matter before the Tribunal is unable for good cause to attend hearing, 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.

3.20 Powers and procedures of the Tribunal

- (a) The Tribunal may make rules regulating its procedures.
- (b) The Tribunal shall, for the purposes of discharging its functions under the Act , 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 *ex parte*;
 - (vii) set aside any order or dismissal of any application for default or any order passed by it *ex parte*; and
 - (viii) do anything which in the opinion of the Tribunal is incidental or auxiliary 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.

3.21 Further appeals to the Court of Appeal and Supreme Court

- (a) 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.
- (b) The Supreme Court - An aggrieved party can further challenge the matter at the Supreme Court.

3.22 Office of the Tax Ombud

The Office of the Tax Ombud shall be a body corporate with perpetual succession and a common seal, may sue and be sued in its corporate name, and may own or dispose of property whether movable or immovable.

The Office of the Tax Ombud shall have its head office in the Federal Capital Territory and at least a branch office in each of the six geo-political zones.

(a) Appointment of the Tax Ombud

The Tax Ombud shall be the Chief Executive and Accounting Officer of the Office of the Tax Ombud. A Tax Ombud shall:

- i. be appointed by the President on the recommendation of the Minister;
- ii. be a citizen of Nigeria;
- iii. have relevant qualifications and at least 10 years cognate experience in taxation, law, accounting, auditing, administration or dispute resolution; and
- iv. hold office for a term of 4 years and may be renewed for a further term of 4 years and no more.

(b) Powers and functions of the Office of the Tax Ombud

The Office of the Tax Ombud has the following powers and functions to:

- i. serve as an independent and impartial arbiter to review and resolve complaints relating to tax, levy, regulatory fee and charges, customs duty or excise matters;
- ii. review complaint against tax officials and authorities and resolve it through mediation or conciliation by adopting informal, fair and cost-effective procedures;
- iii. receive and investigate complaints lodged by taxpayers regarding the actions or decisions of the tax authorities, agencies or their officials;
- iv. enter and inspect any premises or place where any tax authority, agency or official performs any function or duty under any law imposing taxes, levies, charges and fees for the purpose of carrying out investigation;
- v. invite and examine any person who may have information or evidence relating to a complaint or an investigation;
- vi. make recommendations of its findings to the revenue authorities and other government agencies on matters relating to taxes, levies, charges and fees, for implementation;
- vii. institute legal proceedings on behalf of the taxpayer;
- viii. provide information and raise awareness of taxpayer rights and obligations, functions of the tax authorities and the role of the office of the Tax Ombud;
- ix. identify and review systemic and emerging issues on fiscal policies and its impact on the tax system, in collaboration with the relevant agencies;
- x. serve as a watch-dog against any arbitrary fiscal policy of the Government or by any of its agency and report such policy to the National Assembly;

- xi. issue guidelines, directives or orders for the resolution of complaints or the implementation of recommendations; and
- xii. delegate any of the powers or functions to any officer of the Tax Ombud.

Note: In the exercise of its functions under the Joint Revenue Board of Nigeria (Establishment) Act, 2025 the Office of the Tax Ombud shall not charge a fee. The Office of the Tax Ombud shall be funded from the Consolidated Revenue Fund, as may be appropriated by the National Assembly.

(c) Cessation of tenure of the Tax Ombud

A person shall cease to be the Tax Ombud, where the person:

- i. resigns from the appointment by a notice addressed to the President;
- ii. becomes incapable of carrying on the functions of the office either arising from an infirmity of mind or body;
- iii. becomes bankrupt or makes a compromise with creditors;
- iv. is convicted of a felony or of any offence involving dishonesty or fraud;
- v. is removed from office by the President on grounds of public interest;
- vi. has been found guilty of contravening the Code of Conduct Bureau and Tribunal Act or gross misconduct in relation to their duties; or
- vii. is disqualified from professional qualification by a professional body by virtue of which the person qualified for the appointment.

3.23 Tax refund under the Nigeria Tax Administration Act, 2025

In line with the provisions of section 55 of the Nigeria Tax Administration Act, 2025, there shall be refunded to taxpayers, after an audit by the relevant tax authority, such overpayment or any excess of tax as is due.

The relevant tax authority may make such rules and conditions necessary to facilitate the tax refund.

Any tax refund due shall be made within 90 days of the decision of the relevant tax authority made, with the option of a set-off against any tax liability of the taxpayer.

For the purpose of tax refund, the Accountant-General of the Federation or of a State shall open a dedicated account for each tax-type into which shall be paid money for settling tax refunds.

To facilitate posting into the dedicated account opened for settling tax refunds, the relevant tax authority shall provide the Accountant-General of the Federation or of a State an estimate of the amount to be set aside for tax refunds.

The dedicated accounts open by the Accountant-General of the Federation or of a State shall be administered by the relevant tax authority and be funded from the respective accounts of Government into which revenue of each tax-type is remitted.

No claim for refund of tax under this section shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.

3.24 Alternative dispute resolution (ADR) mechanism

In line with the provisions of the Nigeria Tax Administration Act, 2025, the relevant tax authority and the taxable person may initiate to resolve any tax matters amicably at any stage of the dispute subject to terms and conditions as may be prescribed by the extant tax laws.

Such alternative tax dispute resolution mechanism will be undertaken by the relevant tax authority in whole or part where:

- (a) such settlement will be in the interest of public revenue or public policy;
- (b) due consideration is given to the cost of litigation in comparison to the possible benefits;
- (c) a participant or a group of participants in a tax arrangement has accepted the position of the relevant tax authority in the dispute, in which case the settlement may be negotiated in a manner required to adjust the tax arrangements or disposition; or
- (d) under a whistleblowing arrangement, the settlement will facilitate full disclosure of undisclosed tax planning or evasion schemes which may lead to significant recovery of tax revenue.

However, settlement of dispute shall not be considered where:

- (a) the action by the taxable person concerned leading to the 'dispute' constitutes intentional tax evasion or fraud inimical to the government revenue; or
- (b) it is in the public interest to have judicial clarification of the issue and the case will significantly promote taxpayer compliance with the relevant tax law.

The procedure for settlement of disputes shall be as follows:

- (a) a person participating in a settlement procedure shall disclose all relevant facts during the discussion phase of the process of settling a dispute and such facts disclosed only for the purpose of settlement shall be confidential;
- (b) a dispute settled in whole or in part shall be evidenced by an agreement in writing between the parties in the prescribed format as may be determined by the relevant tax authority and must include details on:
 - (i) how each particular issue is settled,
 - (ii) relevant undertakings by the parties,
 - (iii) treatment of the issue in future years,
 - (iv) withdrawal of objections and appeals; and
 - (v) arrangements for payment; and
- (c) the agreement shall be signed by authorised officers of both parties.

Finality of settlement agreement is where the;

- (a) settlement agreement represents the final agreed position between the parties and it is a full and final settlement of all or specified aspects of the dispute in question between the parties; and
- (b) relevant tax authority shall enforce collection of the settlement amount under the collection provisions of the Act as a debt due to the relevant tax authority.

3.25 Procedure for presentation before the Tax Appeal Tribunal

a) Pre-hearing procedure

- i. **Filing of appeal:** The company will file a notice of appeal with the TAT, stating the grounds of appeal and the relief sought.
- ii. **Payment of filing fee:** The company will pay the prescribed filing fee.
- iii. **Service of notice of appeal:** The company will serve the notice of appeal on the respondent (relevant tax authority).
- iv. **Response to notice of appeal:** The respondent files a response to the notice of appeal, stating their defence.

b) Hearing procedure

- i. **Fixing of hearing date:** The TAT fixes a date for the hearing and notifies the parties.
- ii. **Appearance:** The parties appear before the TAT, either in person or through their representatives.
- iii. **Opening statements:** The appellant and respondent make opening statements, outlining their cases.
- iv. **Presentation of evidence:** The parties present their evidence, including witnesses and documents.
- v. **Cross-examination:** The parties cross-examine each other's witnesses.
- vi. **Closing statements:** The parties make closing statements, summarizing their cases.

c) Post-hearing procedure

- i. **Judgment:** The TAT delivers its judgment, either immediately or at a later date.
- ii. **Service of judgment:** The TAT serves the judgment on the parties.
- iii. **Appeal:** Either party may appeal the judgment to the Federal High Court.

d) General requirements

- i. **Representation:** Parties may be represented by legal practitioners, accountants, or other authorised representatives.
- ii. **Evidence:** Parties must provide evidence to support their claims.

- iii. **Conduct:** Parties must conduct themselves in a respectful and professional manner during the hearing.

Please note that these procedures are subject to the Tax Appeal Tribunal (Procedure) Rules 2010 and the Second schedule of the Joint Revenue Board of Nigeria (Establishment) Act 2025.

3.26 Chapter review

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

The right of appeal of a taxpayer and the tax authority to seek further redress from the Federal High Court, Court of Appeal and Supreme Court is also discussed.

Besides, the chapter discussed the roles of the Tax Ombud in tax administration as well as the alternative tax dispute resolution mechanism.

3.27 Worked examples

3.27.1 Questions

1. Your firm has been the tax consultants to JAA Limited for the past five years. The company makes up accounts to December 31, each year. You submitted the company's tax returns to the Nigeria Revenue Service, Lagos on June 24, 2026. On July 28, 2026, the company forwarded to your office a BOJ assessment notice served on it on July 27, 2026 and dated July 20, 2026, with number LC/0005/23. The tax computations which you submitted on behalf of your client showed ₦1,150,000 as tax payable, but the BOJ assessment notice showed a total profit of ₦13,150,000 and tax payable of ₦3,945,000. The accounts of JAA Limited also contained information on a Mercedes Benz Tractor purchased during the 2018 accounting year, for the sum of ₦250,000,000 which developed some fault and a sum of ₦10,000,000 was spent on repairing it during 2025 accounting year. You did object to the BOJ and it was discharged. However, during examination of the accounts, the Tax Inspector disallowed the expenses on the tractor and added it back to the profit to form the basis of an additional assessment of ₦3,000,000.

You duly objected to the additional assessment, but the Tax Inspector stood his ground and sent a final demand notice for the additional assessment.

Required:

- (a) Prepare a letter of objection to the Nigeria Revenue Service, Lagos, on the BOJ assessment sent to the company.
 - (b) Recommend the steps to be taken to seek redress in respect of the additional tax.
2. The recent tax reform in Nigeria introduced four (4) tax Acts which have been described by many stakeholders as game changers in Nigeria tax administration. Among these tax acts is the Joint Revenue Board of Nigeria (Establishment) Act, 2025 which established the office of Tax Ombud that has been applauded as a welcome development.

Required:

Identify the steps in the process of dispute resolution in the office of the Tax Ombud.

3. The management of ABC Limited was slammed with a liability of ₦900 million by the Nigeria Revenue Service (NRS). VAT amounted to ₦500 million, while, the balance represented withholding tax, company income tax and education tax.

The Tax Manager of ABC Limited requested for a breakdown of the amount stated but no response from the NRS. The NRS subsequently sent in a letter inviting ABC Limited for a reconciliation meeting.

The management of ABC Limited is panicking because of the fear of uncertainties. There is the myth that it is herculean to object and bring matters to the Tax Appeal Tribunal (TAT). ABC Limited contacted Odiokanka & Co., a firm of Chartered Accountants, your employer for necessary advice.

The Senior Manager, your direct supervisor in your firm, has instructed you to prepare a detailed presentation on the procedures for bringing tax disputes before the Tax Appeal Tribunal.

Required:

Prepare a detailed presentation covering the procedures relating to pre-hearing, hearing, and post-hearing of appeals at the Tax Appeal Tribunal.

3.27.2 Suggested solutions to questions

1

(a)

XYZ & Co. (Chartered Accountants)

3, Badiya Street, Maiduguri,
Borno State

August 10, 2026

The Chairman
Nigeria Revenue Service
Emerging Taxpayers Office
Broad Street
Lagos

Dear Sir,

RE: JAA LIMITED

TIN: 25262728-0001

Notice of objection to BOJ assessment

We write on behalf of our above-named client and wish to acknowledge receipt of your notice of BOJ assessment as detailed below:

Assessment notice no.: LC/0005/23

Date of assessment : July 20, 2026

Date of delivery : July 27, 2026

Period of assessment: 1/1/ 2025 - 31/12/ 2025

Total profit : ~~₦~~13,150,000

Tax payable : ~~₦~~3,945,000

We write to object to the said assessment based on the following grounds:

- (a) that the Best of Judgement assessment of ~~₦~~3,945,000 is arbitrary, excessive, punitive and without a valid basis;
- (b) the returns for the assessment year 2026 based on the accounts for the year ended December 31, 2025, were filed on June 24, 2026, which was within the due date; and
- (c) the tax computations, the duly filed self-assessment form together with the tax receipts were included in the returns, all of which have been disregarded by you.

We, therefore, appeal to you to discharge the Best of Judgement assessment raised on our client and accept the tax returns already sent to your office.

Whilst looking forward to receiving your letter of discharge, we use this opportunity to thank you for your understanding and co-operation.

Yours faithfully,
For: XYZ & Co.

R. O. Zaccaeus
Managing Partner

(b) Recommendations on steps to resolve the additional tax liability

- (i) Write to object to the final demand notice of the additional assessment raised.
- (ii) In the objection letter, refer to the relevant section of the Nigeria tax laws that states that expenses on repairs and cost of spare parts for plant, tools etc; are to be treated as allowable expenses for income tax purposes.
- (iii) Schedule a reconciliation meeting with the Tax Inspector.
- (iv) Ensure that you receive a response from the inspector in writing, communicating their position based on the reconciliation meeting you had with them.
- (v) After the meeting, if they refuse to discharge the demand notice on the additional assessment, advise your client to proceed to the Tax Appeal Tribunal (TAT).
- (vi) File a notice of appeal with the Tax Appeal Tribunal and serve the tax office a copy of the notice of appeal.

2. The following are the steps in the process of dispute resolution in the office of the Tax Ombud:

(a) Complaints

- i. A person may lodge a complaint with the Office of the Tax Ombud, in writing or through any other means or platform, as may be provided by the Office of the Tax Ombud.
- ii. A complainant shall only lodge a complaint with the Office of the Tax Ombud, if the issue is unresolved by the relevant agencies.
- iii. The Tax Ombud shall review and assess the complaint to determine whether it falls within its jurisdiction and mandate.
- iv. The Office of the Tax Ombud shall not entertain anonymous complaints.

- v. Where the Office of the Tax Ombud finds a complaint to be false or misleading in any material respect, it may strike out or disregard such complaint.
- vi. Where a complaint relates to malicious misrepresentation of facts of a criminal nature, the matter shall be referred to the relevant law enforcement agency for further investigation and possible prosecution.

(b) Investigation

The Office of the Tax Ombud shall initiate an investigation by;

- i. engaging the complainant, the officer or the relevant revenue or government agency to acquire additional information and evidence; and
- ii. conducting site visits, interviews or inspections.

An investigation shall be conducted within 14 days of receipt of the complaint, provided that the Office of the Tax Ombud may, where necessary, extend the period of an investigation by seven days.

The conduct of an investigation shall not affect any action taken or to be taken by the relevant revenue or government agency.

Where the Office of the Tax Ombud decides not to conduct an investigation, a statement of the reasons for not conducting the investigation shall be communicated to the complainant within seven days of receipt of the complaint.

(c) Resolution and Recommendations

- i. The Office of the Tax Ombud may resolve a complaint by making recommendations to the relevant revenue or government agency or the complainant.
- ii. Where the Office of the Tax Ombud is of the opinion that the complaint amounts to abuse of office or breach of procedure, it shall communicate its recommendations to the relevant tax authority or the persons concerned within a period of 14 days after determination of the complaint.
- iii. Where the Office of the Tax Ombud has reason to believe that a relevant revenue or government agency has acted beyond the scope of authority or in a manner warranting criminal proceedings against such an officer, the matter shall be referred to the relevant revenue or government agency authority for necessary action, provided that where the relevant tax authority fails to take appropriate action in respect of the allegations within 30 days, the Office of the Tax Ombud shall refer the matter to the relevant law enforcement agency for necessary action.

(d) Non-Compliance with Recommendations

- i. The relevant revenue or government agency shall report to the Office of the Tax Ombud within 21 days of receiving its recommendations stating reasons for non-compliance with the recommendations of the Office of the Tax Ombud.
- ii. Where a relevant revenue or government agency fails to implement a recommendation, without providing satisfactory reasons for non-compliance, the Office of the Tax Ombud shall refer the matter to the National Assembly or the State House of Assembly to perform its oversight functions over such recommendation.

(e) Dispute Resolution Process

The Office of the Tax Ombud may encourage parties to explore alternative dispute resolution mechanisms with respect to the complaint lodged before it.

The representative of the relevant revenue or government agency, its officers or the complainant shall;

- i. appear before the Tax Ombud when requested to do so;
- ii. not take any step which will impede or will be capable of obstructing the Office of the Tax Ombud in the performance of its functions; or
- iii. not take any action which tends to prejudice or undermine a matter before the Office of the Tax Ombud.

Where a party to the issue fails to comply with the laid down procedures of the Tax Ombud, the complaint shall be deemed to be resolved against such party.

3. The procedures for presentation before the Tax Appeal Tribunal (TAT) are highlighted below:

a) Pre - hearing procedure

- (i) **Filing of appeal:** Your company will file a notice of appeal with the TAT, stating the grounds of appeal and the relief sought.
- (ii) **Payment of filing fee:** Your company will pay the prescribed filing fee.
- (iii) **Service of notice of appeal:** Your company will serve the Notice of Appeal on the respondent (NRS).
- (iv) **Response to notice of appeal:** The respondent files a response to the notice of appeal, stating their defence.

b) Hearing procedure

- (i) **Fixing of hearing date:** The TAT fixes a date for the hearing and notifies the parties.

- (ii) **Appearance:** The parties appear before the TAT, either in person or through their representatives.
 - (iii) **Opening statements:** The appellant and respondent make opening statements, outlining their cases.
 - (iv) **Presentation of evidence:** The parties present their evidence, including witnesses and documents.
 - (v) **Cross-examination:** The parties cross-examine each other's witnesses.
 - (vi) **Closing statements:** The parties make closing statements, summarising their cases.
- c) **Post-hearing procedure**
- (i) **Judgment:** The TAT delivers its judgment, either immediately or at a later date.
 - (ii) **Service of judgment:** The TAT serves the judgment on the parties.
 - (iii) **Appeal:** Either party may appeal the judgment to the Federal High Court.
- d) **General requirements**
- (i) **Representation:** Parties may be represented by legal practitioners, accountants, or other authorised representatives.
 - (ii) **Evidence:** Parties must provide evidence to support their claims.
 - (iii) **Conduct:** Parties must conduct themselves in a respectful and professional manner during the hearing.

COMPANIES INCOME TAX

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4 Companies Income Tax

4.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the provisions of the Nigeria Tax Act, 2025 as they relate to the computations of companies income tax.

4.1 Learning outcomes

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

- (a) understand the legal framework for the imposition of taxes on companies in Nigeria;
- (b) distinguish between Nigerian and non-Nigerian company;
- (c) understand in whose name a company is chargeable to tax;
- (d) know the bases of assessing companies to tax;
- (e) understand the company incomes, profits or gains chargeable to tax in Nigeria;
- (f) understand the company incomes, profits or gains exempted from tax in Nigeria;
- (g) know the provisions of Finance Act, 2019 on classification of companies and rates of tax; and
- (h) know the provisions of Nigeria Tax Act, 2025 on classification of companies and rates of tax.

4.2 Legal framework for the imposition of taxes on companies in Nigeria

The legal basis for the imposition of taxes on companies in Nigeria are as follows:

(a) The Constitution of the Federal Republic of Nigeria

The Constitution of the Federal Republic of Nigeria provides for the exclusive and concurrent lists. Under the exclusive list, the Federal government reserves the exclusive right to provide legislation on the taxation of incomes, profits and capital gains in Nigeria.

(b) Tax legislations

In Nigeria, some legislations impose tax on the incomes, profits and gains of companies other than corporation soles. Such legislations that govern the imposition of taxes on companies in Nigeria up to 31 December 2025 include:

- i. Companies Income Tax Act Cap C21 LFN, 2004 (as amended);
- ii. Tertiary Education Trust Fund (Establishment, Etc.) Act, 2011 (as amended);
- iii. Petroleum Industry Act, 2021 (as amended);
- iv. Capital Gains Tax Act Cap C1 LFN, 2004; (as amended);
- v. National Information Technology Development Agency Act, 2007;
- vi. Nigeria Police Trust Fund (Establishment) Act, 2019;

- vii. National Agency for Science and Engineering Infrastructural Act (cap N3 LFN 2004) as amended by Finance Act, 2021;
- viii. Federal Inland Revenue Service (Establishment) Act, 2007 (as amended);
- ix. Finance Acts, 2019, Finance Act, 2020, Finance Act, 2021 and Finance Act, 2023;
- x. Other subsidiary legislations (for example, Industrial Development Act (IDA) CAP 17 LFN 2004);
- xi. Income Tax (Transfer Pricing) Regulations 2018;
- xii. Income Tax (Country by Country Reporting) Regulations, 2018; and
- xiii. Companies Income Tax (Significant Economic Presence) Order, 2020.

Effective January 1, 2026, the following legislation govern the imposition of taxes on companies in Nigeria:

- i. Nigeria Tax Act, 2025
- ii. Nigeria Tax Administration Act, 2025
- iii. Nigeria Revenue Service (Establishment) Act, 2025
- iv. Joint Revenue Board of Nigeria (Establishment) Act, 2025

4.3 Nigerian company and non-Nigerian company

A Nigerian company is defined as a company that was incorporated under the Companies and Allied Matters Act, 2020 (as amended). It is also called resident company or local company.

A non-Nigerian company is defined as a company that was not incorporated under the Companies and Allied Matters Act, 2020 (as amended). It is also called non-resident company or foreign company.

The profits of a Nigerian company are deemed to accrue in Nigeria wherever the profits arise and whether or not such profits have been brought into or received in Nigeria. This implies that the global profits of a Nigerian company is chargeable to companies income tax in Nigeria. For a non-Nigerian company, the portion of its profits that are attributable to its operation in Nigeria are liable to companies income tax in Nigeria.

In line with the provisions of the Nigeria Tax Act, 2025 where a foreign company which is controlled by a Nigerian company has not, in a year, distributed profits to its shareholders, the proportion of the profits of the controlled foreign company attributable to the Nigerian company, which could have been distributed without detriment to the company's business shall be construed as distributed and included in the profits of the Nigerian company tax is liable to tax in Nigeria.

Also, the Nigeria Tax Act, 2025 provides that where the income tax paid by a non-resident company which is a subsidiary of a Nigerian company or a member of a multinational group of a Nigerian company in any year yields less than the minimum effective tax rate prescribed by the Nigeria Tax Act, 2025, the Nigerian parent company shall pay an amount to make that non-resident subsidiary's income tax equal to the minimum effective tax rate.

4.4 Chargeability of company to tax in Nigeria

A company may be charged to tax:

- (a) in its own name;
- (b) in the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria in the same manner or amount that the company would have been charged; or
- (c) in the name of its receiver, liquidator, or administrator, in the same manner or amount that the company would have been charged if no receiver, liquidator or administrator had been appointed.

It should be noted that (a) and (b) above relate to a going concern company, while (c) is in respect of any company that is in receivership or in liquidation.

4.5 Bases of assessing companies to tax

Basis period: This is a defined period in the life a company. It is defined as the basis upon which tax liability would be computed. It is an accounting period which is related to any assessment year. All chargeable profits/income fallen within this period shall be assessed as appropriate.

4.5.1 Relevant definitions

- (a) **Basis period:** This is defined as the basis upon which the tax liability of a company would be computed.
- (b) **Tax year or year of assessment:** This is the government financial or fiscal year which runs from January 1 and ended December 31. It is also described as the income tax year. A company's accounting year will be related to the government's tax year in which the operating result of such company is to be assessed to tax. Therefore, a tax year is a year that is covered by a tax return.
- (c) **Preceding year basis [PYB]:** This is the basis period that ended before the beginning of the government fiscal year or tax year. It means that the basis period of the taxpayer for the relevant tax year ends in the year before the tax year.
- (d) **Actual year basis [AYB]:** This is the basis period that coincides with the government fiscal year running from January 1 to December 31 of every year.
- (e) **Normal basis period:** A normal basis period is made up of 12 months. It will start immediately the previous tax year's basis period ends.

- (f) **Abnormal basis period:** It is either less than or more than 12 months. It may not start immediately the previous tax year's basis period ends. There are three situations in the tax Acts leading to abnormal basis period. These are:
- (i) when there is commencement of new trade or business;
 - (ii) when there is cessation of existing trade or business; and
 - (iii) when there is a change of accounting date.

Up to December 31, 2025, the general rules for determining basis period of assessments are contained in the provisions of Companies Income Tax Act Cap C21 LFN, 2004 (as amended by the Finance Act, 2019). Effective January 1, 2026, the general rules for determining basis period of assessment are contained in sections 22, 23 and 24 of Nigeria Tax Act, 2025.

4.5.2 Basis period on commencement of new trade or business

The basis of assessing such a business to tax for the three years is as stated below:

The provisions of Companies Income Tax Act Cap C21 LFN, 2004 (as amended by the Finance Act, 2019) provides that “the assessable profits of any company from any trade or business (or in the case of a company other than a Nigerian company) for its first year of assessment and the two following years of assessment (which years are respectively referred to as “the first year”, “the second year” and “the third year”) shall be ascertained in accordance with the following:

- (a) for the first year, the assessable profits shall be the profits from the date in which it commenced to carry on such trade or business in Nigeria to the end of its first accounting period;
- (b) for the second year, the assessable profits shall be the profits from the first day after its first accounting period to the end of its second accounting period; and
- (c) for the third year and for each subsequent year, the assessable profits shall be the profits from the day after the accounting period just ended.

This implies that the preceding year basis rule shall apply to every basis period.

With effect from January 1, 2026, the above provisions of Companies Income Act Tax Cap C21 LFN, 2004 (as amended by the Finance Act, 2019) was also retained in section 22 of the Nigeria Tax Act, 2025, which state that “ the profits of any trade, business, profession or vocation for each year of assessment (the assessable profits) shall be the profits of the accounting period immediately preceding the year of assessment from all sources and the assessable profits of the first year of assessment for a new business, shall be the profits from the date in which such trade, business, profession or vocation commences in Nigeria to the end of the first accounting period”.

Illustration 4.1

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

Required:

Assess and advise on the first three relevant assessment years and the profits to be assessed.

Suggested solution to illustration 4.1

The first assessment year is 2021 and the profits to be assessed will relate to March 1, 2020 to October 31, 2020.

The second assessment year is 2022 and the profits to be assessed will relate to November 1, 2020 to October 31, 2021.

The third assessment year is 2023 and the profits to be assessed will relate to November 1, 2021 to October 31, 2022.

Illustration 4.2

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

Required:

Assess and advise on the basis periods for the first four years of assessment

Suggested solution to illustration 4.2

Sokoto Limited basis periods for the first four years of assessment

Year of assessment (YOA)	Basis period
2021	1/4/2020 – 30/11/2020
2022	1/12/2020 – 30/11/2021
2023	1/12/2021 – 30/11/2022
2024	1/12/2022 – 30/11/2023

4.5.3 Ascertainment of the end of the first accounting period

The ascertainment of the end of the first accounting period is key in the determination of basis and the first year of assessment.

The first accounting period begins from the date of commencement of business to the end of its first accounting year-end.

In a situation where a company prepares the audited financial statements for a period shorter or longer than the first accounting period, the assessable profits for the first accounting year will be determined on pro-rata basis.

Illustration 4.3

Okorie Limited was incorporated in December 2018 and commenced business on October 1, 2019. The first set of financial statements prepared by the company covered a period of 15 months, that is October 1, 2019 to December 31, 2020 and the adjusted profit was ~~N~~3,000,000.

Required:

Assess and advise on the relevant basis periods and the assessable profits for the relevant assessment years.

Suggested solution to illustration 4.3

Okorie Limited

Ascertainment of the relevant basis periods and assessable profits for the relevant assessment years

YOA	Basis period	Assessable profit N
2019	1/10/19 – 31/12/19	600,000
2020	-	0
2021	1/1/20 – 31/12/20	<u>2,400,000</u>
		3,000,000

Arising from the above, the company did not have any assessable profit for 2020 assessment year, hence it will not pay companies income tax.

Given the provisions of the Finance Act, 2019, the first assessment year which is 2019, falls under the old provision (i.e. provision of CITA before its amendment by the Finance Act, 2019), hence, the basis period (1/10/19 – 31/12/19) was treated in assessment year 2019.

The implications of the above revised commencement rule contained in Finance Act, 2019 are:

- (i) elimination of the complexity surrounding taxation of new companies;

- (ii) the risk of subjecting profit of a new company to tax twice is eliminated. This implies that overlapping basis period has been eliminated; and
- (iii) assessments of new company are now based on prior year's accounts (PYB).

As stated earlier, the revised commencement rules introduced by the Finance Act, 2019 was retained by the Nigeria Tax Act, 2025.

4.5.4 Cessation of trade or business

With the implementation of Finance Act, 2019, effective 2020 year of assessment, the assessable profits of a company ceasing to carry on business is the amount of the profits from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within six months from the date of cessation.

The implication of the revision of cessation rule is that the consideration of penultimate year's assessment under the old provision is no longer relevant.

Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) in an accounting period, its assessable profits therefrom shall be the amount of the profits from the beginning of the accounting period to the date of cessation and the tax thereof shall be payable within six months from the date of cessation.

Arising from the above, a company that ceased business between January 1 and June 30, will file its returns and pay taxes in that year of cessation, whilst the company that ceased business between July 1 and December 31, will be expected to file returns and pay taxes in the following year.

Effective January 1, 2026, the above provisions of Companies Income Tax Act Cap C21 LFN, 2004 (as amended by the Finance Act, 2019) was also retained in section 24 of the Nigeria Tax Act, 2025 which states that "where a trade, business, profession or vocation permanently ceases to carry on operations in Nigeria in an accounting period, the assessable profits for the relevant year of assessment shall be the amount of the profits from the beginning of the accounting period to the date of cessation and the tax shall be payable within six months from the date of cessation".

Illustration 4.4

Apex Nigeria Limited that was incorporated in 1990, ceased operation on March 31, 2024, having been in business for about 34 years. The accounting year-end of the company is December 31, annually.

Required:

Assess and advise on the relevant years of assessment and the due dates of payment of tax.

Suggested solution to illustration 4.4

YOA	Basis period	Due date of payment of tax
2024	1/1/23 – 31/12/23	June 30, 2024 (PYB)
2024	1/1/24 – 31/3/24	September 30, 2024 (Six months after the date of cessation)

Illustration 4.5

Given the same scenario stated above, assume the company ceased operation on August 31, 2024.

Suggested solution to illustration 4.5

YOA	Basis period	Due date of payment of tax
2024	1/1/23 – 31/12/23	June 30, 2024 (PYB)
2025	1/1/24 – 31/8/24	February 28, 2025 (Six months after the date of cessation)

4.5.5 Receipts and payments after the date of cessation

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.

Illustration question 4.6

Enugu Ltd, a once booming enterprise, due to mismanagement of fund went into liquidation on 30/09/25.

The assessable profits of the company prior to this date are as follows:

	₦
Year ended 31/12/ 22	9,000,000
Year ended 31/12/ 23	700,000
Year ended 31/12/ 24	540,000

Period to 30/09/ 25

360,000

Additional information:

On October 1, 2025, the liquidator received ~~N~~20,000.00 written off as bad debt at the end of 2022 accounting year. Also, the liquidator paid the rent due ~~N~~40,000.00 at the end of 2023 accounting year on the same date.

Required:

Assess and advise on the assessable profits for all available years of assessment.

Suggested solution to illustration 4.6

Enugu Limited

Computation of assessable profits for relevant tax years

Assessable profit

Year of Assessment	Basis Period	Assessable profit N	N
20 23	1/1/ 22 -31/12/ 22		9,000,000
20 24	1/1/ 23-31/12/ 23		700,000
20 25	1/1/ 24 - 31/12/ 24		540,000
20 25	1/1/ 25 - 30/09/ 25		340,000

Workings

Profit adjustment	N
Terminal profit (30/9/ 25)	360,000
Add bad debt recovered	20,000
Deduct rent paid	-40,000
Adjusted profit	340,000

Effective January 1, 2026, the above provisions of Companies Income Tax Act Cap C21 LFN, 2004 (as amended by the Finance Act, 2019) relating to the treatment of receipts or payments after the date of cessation of business was retained under section 24 of the Nigeria Tax Act, 2025 with additional disclosure requirement by the company to the relevant authority and the company's right of objections and appeals.

Section 24 of the Nigeria Tax Act, 2025 states that "where, after the date of cessation, the trade, business, profession or vocation, or its receivers or liquidators, receive or pay any sum which ought to have been included in or deducted from the profits of that trade

or business if it had been received or paid prior to that date, such sum shall be deemed to have been received or paid by the trade, business, profession or vocation on the last day before such cessation occurred and such sums shall be disclosed to the relevant tax authority within one month of the receipt or payment. Also, any additional assessment or claim for reduction of assessment or repayment of tax shall be made as may be necessary to give effect to the receipts or payments subsequent to cessation date and the provisions of the Nigeria Tax Administration Act, 2025 relating to objections and appeals shall apply to the additional assessment or claim of reduction of assessment or repayment of tax relating to the treatment of post-cessation receipts or payments.

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

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

The Finance Act, 2019, introduced the following:

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

4.5.7 Change of accounting date

Change of accounting date occurs when a company that usually prepares accounts to a given date suddenly prepares accounts to another date. When this happens, the understated procedure/steps shall be adopted by the Nigeria Revenue Service for the purpose of computing assessable profits of such a company:

- Step 1:** Identify the first tax year when the change occurred;
- Step 2:** Identify the next two years following “1” above;
- Step 3:** Compute assessable profit, on preceding year basis, using the existing accounting date, for the three years stated in ‘1’ and ‘2’ above;
- Step 4:** Compute assessable profit, on preceding year basis, using the new accounting date, for the three years stated in ‘1’ and ‘2’ above;
- Step 5:** Add up separately your computations in ‘3’ and ‘4’ above; and
- Step 6:** Select the higher of your additions in ‘5’ above.

Notes

The assessable profit selected in step 6 above shall be available for tax computation for the three relevant statutory tax years.

Any tax year before the three relevant tax years shall be assessed to tax on preceding year basis using the old accounting date.

Any tax year after the three relevant tax years shall be assessed to tax on preceding year basis using the new accounting date.

The procedures/steps demonstrated above are in line with the provisions of the Companies Income Tax Act Cap C21 LFN, 2004 (as amended) and it was not amended by the Finance Acts. Therefore, the above procedures/steps subsist for the purposes of computing assessable profits of company that changes its accounting year end prior to January 1, 2026.

Effective January 1, 2026, where a taxable person changes the date to which it usually computes its assessable profit, the basis period for the computation of the assessable profits for the relevant year of assessment shall be the period commencing from the first day after the basis period of the immediately preceding year of assessment up to the new date on which the account was made, and the assessable profits of subsequent years of assessment shall be computed on the basis of the new accounting period **{section 23 (1), NTA, 2025}**.

Where there is a change in the accounting date under the above, the taxable person shall notify the relevant tax authority not later than thirty days before the usual due date of filing its income tax returns **{section 23 (2), NTA, 2025}**.

Illustration 4.7

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

Details		Adjusted profit (₦)
Year ended	30/06/19	400,000
Year ended	30/06/20	520,000
Year ended	30/06/21	600,000
Period to	30/09/22	470,000
Year ended	30/09/23	820,000
Year ended	30/09/24	960,000

Required:

Assess and advise on assessable profit for Bako Ltd for the three relevant assessment years.

Suggested solution to illustration 4.7

Bako Limited

Computation of assessable profit

For 2022, 2023 and 2024 years of assessment

Year of assessment	Old date	Assessable profit (N)	New date	Assessable profit (N)
	Basis period		Basis period	
2022	1/7/20-30/6/21	600,000	1/10/20-30/9/21	544,000
2023	1/7/21-30/6/22	376,000	1/10/21-30/9/22	376,000
2024	1/7/22-30/6/23	709,000	1/10/22-30/9/23	820,000
		1,685,000		1,740,000

Workings

Profit allocation to basis period Old accounting date

2022	1/7/20 - 30/6/20	Adjusted profit given	~~N~~ 600,000
2023	1/7/21 - 30/6/22		
	$\frac{12\text{mths}}{15\text{mths}} \times \text{N}470,000$	=	~~N~~ 376,000
2024	(1/7/22-30/6/23)		~~N~~
i)	$\frac{[1/7/22-30/9/22]}{\text{N}470,000} \times 3\text{mths}/15\text{mths}$	x	94,000
ii)	$[1/10/22-30/6/23] \times 9\text{mths}/12\text{mths} \times \text{N}820,000$		<u>615,000</u>
			<u>709,000</u>

New Accounting Date:

2022	(1/10/20 - 30/9/21)	~~N~~
i)	(1/10/20 -30/6/21) $[9/12 \times 600,000]$	450,000

ii)	(1/7/21 - 30/9/21) [3/15 x 470,000]	<u>94,000</u>
		<u>~~N~~544,000</u>
2023	(1/10/21 -30/9/22)	~~N~~
	12mths/15mths x 470,000	~~N~~ 376,000
2024	(1/10/22 - 30/9/23)	
	Adjusted profit given	= ~~N~~ 820,000

Based on the foregoing, Bako Limited will be assessed to companies income tax for 2022, 2023 and 2024 assessments years based on the new accounting date because it produced higher assessable profit of ~~N~~1,740,000.

4.5.8 Provisions of Nigeria Tax Act, 2025 on Change of accounting date

In line with the provisions of section 23 of the Nigeria Tax Act, 2025, the basis period for the year of change is now from the first day after the basis period of the immediately preceding year of assessment up to the new date on which the account was made.

The assessable profits of subsequent years of assessment shall be computed on the basis of the new accounting period.

Also, where there is a change in the accounting date, the company shall notify the Nigeria Revenue Service not later than 30 days before the usual due date of filing its income tax returns.

Illustration 4.8

Chukwuma Limited has December 31 as its accounting year end and prepared its accounts yearly up to December 31, 2025 but changed its accounting year end to June 30, 2026. The following information were extracted from the financial records of the company:

Details		Adjusted profit (N)
Year ended	31/12/23	650,000
Year ended	31/12/24	800,000
Year ended	31/12/25	920,000
Period to	30/06/26	550,000
Year ended	30/06/27	970,000

Required:

Assess and advise on assessable profit for Chukwuma Limited for the relevant assessment years.

Suggested solution to illustration 4.8

Chukwuma Limited

Determination of basis period and assessable profit for 2024 to 2028 assessment years

YOA	Basis period	Assessable Profit (N)
2024	1/1/23 – 31/12/23	650,000
2025	1/1/24 – 31/12/24	800,000
2026	1/1/25 – 31/12/25	920,000
2027	1/1/26 – 30/06/26	550,000
2028	1/7/26 – 30/06/27	970,000

4.6 Company incomes, profits or gains chargeable to tax in Nigeria

In line with section 4 of Nigeria Tax Act, 2025 income, profits or gains of a company accruing in or derived from Nigeria are liable to tax, including

- (a) profits or gains from any trade, business, profession or vocation for whatever period of time such trade or business may have been carried on;
- (b) royalties, fees, rents or interests arising from a right granted for the use, exploitation or occupation of any property;
- (c) dividends, premium, charges or annuities;
- (d) fees, dues, allowances, or any remuneration for services rendered;
- (e) discounts or rebates;
- (f) disposal of money or money instruments;
- (g) income, profits or gains from disposal or lending of securities;
- (h) prizes, winnings, honoraria, grants, awards, laurels, etc.;
- (i) profits or gains from the disposal of property or fixed assets;
- (j) profits or gains from transactions in digital assets; and
- (k) any other income, profit or gain not falling within the preceding categories.

4.7 Company incomes, profits or gains exempted from tax in Nigeria

In line with the provisions of section 162 of Nigeria Tax Act, 2025, the following are exempted from tax:

- a. Income generated by friendly societies, co-operatives, charitable/religious / educational entities, except any income derived from trading.

- b. Income derived by trade unions, except any income derived from trading.
- c. Income derived by the Government or Government Ministries, Departments, Agencies, and parastatals, except any income derived from trading.
- d. Income earned from bonds issued by the State or Federal Government.
- e. Income generated by agricultural businesses in the first five (5) years of business
- f. Profits of a company engaged in sporting activities
- g. Profits from exports of goods and services, provided the proceeds are repatriated through official channels
- h. Wholly export-oriented dividends.
- i. Dividend received from an authorised collective investment scheme
- j. Dividend or rental income received by a Real Estate Investment Company (REICO), provided that at least 75% of such income is distributed within 12 months of the year-end.
- k. Compensating payments which qualify as a dividend or interest received by an approved lender or borrower, or agent in a Regulated Securities Lending Transaction (RSLT)

4.8 Provisions of Finance Act, 2019 on classification of companies and rates of tax

The position of Companies Income Tax Act (CITA) prior to commencement of Finance Act, 2019 is that all Nigerian companies are liable to the same Companies Income Tax (CIT) rate of 30% as stated above with exception of small businesses whose turnover does not exceed ₦1,000,000 that are taxed at reduced rate of 20%.

The Finance Act, 2019 has classified companies into various categories and tax rates are as follows:

Types of companies	Basis of classification	Applicable tax rate
Small companies	Annual gross turnover of ₦25,000,000 or less	0%
Medium-sized companies	Annual gross turnover of greater than ₦25,000,000 but less than ₦100,000,000	20%
Large companies	Annual turnover of ₦100,000,000 and above	30%

The Implications of classification of Nigerian companies include but not limited to:

- (i) small businesses are still required to register for tax, prepare audited financial statements and file tax returns as and when due; and
- (ii) small companies are no longer liable to Withholding Tax (WHT) on their income since WHT is an advance payment of companies income tax.

4.9 Provisions of Nigeria Tax Act, 2025 on classification of companies and rates of tax

The Nigeria Tax Act, 2025 that took effect from January 1, 2026 has classified companies into two major categories and tax rates are as follows:

Types of companies	Basis of classification	Applicable tax rate
Small companies	Companies that earn gross turnover of ₦100,000,000 or less per annum with total fixed assets not exceeding ₦250,000,000	0%
Other companies	Companies that earn gross turnover of more than ₦100,000,000 per annum or total fixed assets exceeding ₦250,000,000	30%

The Implications of classification of Nigerian companies by Nigeria Tax Act, 2025 include but not limited to:

- (i) small companies are still required to register for tax, prepare audited financial statements and file tax returns as and when due;
- (ii) small companies are not liable to Withholding Tax (WHT) on their income since WHT is an advance payment of companies income tax;
- (iii) medium size company categorisation introduced by the Finance Act, 2019 has been scrapped; and
- (iv) the fixed assets base of a company will be additional indicator of whether it qualifies as a small company.

4.10 Chapter review

The chapter provides detailed explanation on the procedures for assessing companies that commence, cease and change their accounting dates in line with the provisions of the Nigeria Tax Act, 2025. Also, covered in this chapter are incomes, profits and gains liable to tax and those that were exempted.

4.11 Worked examples

4.11.1 Questions

1. Olubiyi Limited commenced business on September 1, 2019, and it prepared its first set of financial statements, covering 16 months ended December 31, 2020.

Required:

Identify the company's year-end for the first three years of assessment as well as the relevant basis periods.

2. Opari Limited makes up its account to December 31 and permanently ceased operation on April 30, 2020.

Required:

Identify the relevant year(s) of assessment and the due date for payment of tax due.

3. Abiodun & Brothers Limited had for many years prepared accounts to December 31 but in 2022 decided to prepare a sixteen-month account to April 30. The adjusted profits were as follows:

	₦
12 months to December 31, 2019	1,800,000
12 months to December 31, 2020	2,400,000
16 months to April 30, 2022	3,360,000
12 months to April 30, 2023	1,440,000
12 months to April 30, 2024	4,200,000

Required:

Compute the assessment arising from the above financial results.

4.11.2 Suggested solutions to questions

1. The first assessment year is 2019, which falls under the old provision. Thus, the basis period for the determination of assessable profit is September 1, 2019 – December 31, 2019. The first accounting year end is December 2019 and not December 2020.
The second assessment year is 2021 and it falls under the new provision. Thus, the basis period is January 1, 2020 – December 31, 2020. The accounting year-end is December 2020.

The third assessment year is **2022** and the basis period is January 1, 2021 – December 31, 2021.

From the analysis above, there was a gap between 2019 (1st assessment year) and 2021 (2nd assessment year). The gap was not a gap of “basis period” **but a gap of year of assessment**. This means that the company has no Companies Income Tax returns for 2020 year of assessment.

2. Assessment Year	Basis period	Due date of payment
2020	1/1/2019 – 31/12/2019	June 30, 2020 (PYB)
2021	1/1/2020 – 30/4/2020	October 31, 2020 (cessation)

3. **Abiodun & Brothers Limited**
Computation of assessable profits
For the relevant assessment years

Old accounting date

2021 assessment year

Basis period 1/1/20 – 31/12/20

Assessable profit (Given) **₦2,400,000**

2022 assessment year

Basis period 1/1/ 21 – 31/12/21

Profit for 16 months ended 30/4/22 = ₦3,360,000

Assessable profit for 12 months ended 31/12/20

= 12/16 x ₦3,360,000 **₦2,520,000**

2023 assessment year

Basis period 1/1/ 22– 31/12/22

Profit for 4 months (Jan – April 2022)

= 4/16 x ₦3,360,000 **₦840,000**

Profit for 8 months (May – Dec 2022)

= 8/12 x ₦1,440,000 **960,000**

Assessable profit **1,800,000**

New accounting date2021 assessment year

Basis period 1/5/19 – 30/4/20

Profit for 8 months (May – Dec 2019)

 $= 8/12 \times \text{N}1,800,000$

N1,200,000

Profit for 4 months (Jan – April 2020)

 $= 4/12 \times \text{N}2,400,000$ 800,000

Assessable profit

2,000,0002022 assessment year

Basis period 1/5/ 20 – 30/4/21

Profit for 8 months (May – Dec 2020)

 $= 8/12 \times \text{N}2,400,000$

N1,600,000

Profit for 4 months (Jan – April 2021)

 $= 4/16 \times \text{N}3,360,000$ 840,000

Assessable profit

2,440,0002023 assessment year

Basis period 1/5/21 – 30/4/22

Assessable profit for 12 months ended 30/4/22

 $= 12/16 \times \text{N}3,360,000$ **N2,520,000****Summary of assessable profits**

Assessment year	Old accounting date	New accounting date
	N	N
2021	2,400,000	2,000,000
2022	2,520,000	2,440,000
2023	<u>1,800,000</u>	<u>2,520,000</u>
Total	<u>6,720,000</u>	<u>6,960,000</u>

Recommendation: The practice of the tax authority is to select one of the two assessments that gives the higher tax income. In this situation, the company will be assessed to tax based on the new accounting date. This is because the total assessable profits of ~~N~~6,960,000 is greater than that of the old accounting date of ~~N~~6,720,000. Thereafter, the company will be allowed to change to its new accounting date of April every year.

ASCERTAINMENT OF ADJUSTED PROFIT

Contents

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5 Ascertainment of Adjusted Profit

5.0 Learning objective

The objective of this chapter is to enhance readers' understanding of ascertainment of adjusted profits of corporate businesses.

5.1 Learning outcomes

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

- (a) understand the reasons why business profits based on the financial statements may not be acceptable directly for the computation of companies income tax;
- (b) know those expenditure items allowable as deductions from business income for tax purposes;
- (c) understand those expenditure items not acceptable as deductions from business income for tax purposes;
- (d) know the types of donations allowable as deductions from business income in the ascertainment of adjusted profit;
- (e) know the amendments made to allowable and disallowable expenses by Finance Acts, 2019 and 2020;
- (f) know the amendments made to allowable and disallowable expenses by Nigeria Tax Act, 2025; and
- (g) know the procedure for the computation of adjusted/assessable profit.

5.2 Introduction

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 paid 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 statement of profit or loss (SPL);
- (c) items credited in the SPL 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.

5.3 Allowable deductions

In line with the provisions of Companies Income Tax Act Cap C21 LFN, 2004 (as amended), 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 disallowed under any other provision of CITA (as amended).

Also in line with the Nigeria Tax Act, 2025 that repealed Companies Income Tax Act Cap C21 LFN, 2004 (as amended), all expenses of a company that are wholly and exclusively incurred in the production of the income shall be allowed for the purposes of ascertaining the profits or loss from any trade, business, profession or vocation. Therefore, while CITA (as amended) considered wholly, exclusively, necessarily, and reasonably as tests for allowability of expense, the Nigeria Tax Act, 2025 lay emphasis on wholly and exclusively.

As provided under section 20 of the Nigeria Tax Act, 2025, the following expenses are allowable for the purposes of ascertaining the profits or loss from any trade, business, profession or vocation provided they are wholly and exclusively incurred in the production of the income:

- (a) any sum payable by way of interest on debt employed in generating the income of the trade, business, profession or vocation, subject to the limit imposed on total interest paid or payable to a connected person;
- (b) rent and premiums, incurred during that period, in respect of land or building occupied for the purposes of generating the income;
- (c) any outlay or expenses incurred in respect of;
 - (i) salary, wages or other remuneration paid to employees, and
 - (ii) cost to the company of any benefit or allowance provided to its employees;
- (d) any expense incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewals, repair or alteration of any implement, utensil or articles so employed;
- (e) any amount of expenditure incurred for establishing, preserving or defending title to or rights over an asset;
- (f) any contribution to any staff pension, provident or other retirement benefits fund, society or scheme approved under the Pension Reform Act or any similar enactment in Nigeria;
- (g) any expense proven to the satisfaction of the relevant tax authority to have been incurred, being damage to, or loss of stock or inventory of the trade, business, profession or vocation;
- (h) bad or doubtful debts incurred during a trade or business, notwithstanding that the debts were due and payable before the commencement of the basis period, being;
 - i. debts becoming bad during the said basis period other than bad debt incurred in respect of transaction with a related party,
 - ii. doubtful debts estimated in accordance with generally acceptable accounting principles and to the extent that it is proven, to the satisfaction of the relevant tax authority, that the debts in respect of which a deduction is claimed were incurred during the company's business operations that produced the assessable profits;
- (i) any expense incurred by the trade, business, profession or vocation on research and development for the period;
- (j) any other expense incurred during any previous period for the purpose of such trade or business, or specifically for the period which the profits are being ascertained, provided that any expenditure incurred within six years prior to commencement of business which would have been deductible if incurred after commencement of business, shall be deemed to have been incurred on the first day of commencing the trade or business;

- (k) dividends or mandatory distributions made by a real estate investment company duly approved by the Securities and Exchange Commission, to its shareholders;
- (l) compensating payments made by a lender to its approved agent or a borrower in a regulated securities lending transaction, which qualify as interest; and
- (m) any expense incurred by a person on assistive devices and disability-related products including hearing aids, wheelchairs, and braille materials.

5.3.1 Deductibility of expense incurred in foreign currency

In line with the provision of the Nigeria Tax Act, 2025, any expense incurred in a currency other than the Naira may only be deducted to the extent of its Naira equivalent at the official exchange rate published by the Central Bank of Nigeria for the relevant date or period. This implies that if any expense that has been proven to have been wholly and exclusively incurred for the production of incomes or profits being subjected to tax is incurred in foreign currency and converted to Naira using any other exchange rate other than the official exchange rate published by the Central Bank of Nigeria for the relevant date or period, the excess will be disallowed if the rate used for the conversion is higher than the official exchange rate published by the Central Bank of Nigeria

5.3.2 Deductibility of bad or doubtful debts and treatment of bad debts recovered

As provided by the provisions of the Nigeria Tax Act, 2025, the following are the salient points for the allowability of bad or doubtful debts for tax purposes:

- (i) it could be the bad debt that became bad during the said basis period or became bad before the commencement of the said basis period;
- (ii) the bad debt must not to have been incurred in respect of transactions with a related party;
- (iii) the doubtful debts must have been estimated in accordance with generally acceptable accounting principles;
- (iv) it must be proven to the satisfaction of the Nigeria Revenue Service that the debts in respect of which a deduction is claimed were incurred during the company's business operations that produced the assessable profits; and
- (v) the company must provide via documentary evidence that any or all of the attempts have been undertaken to recover the debt from the debtor.

With respect to the tax treatment of bad debts recovered, all sums recovered on account of sums previously written off or allowed for deduction in respect of bad or doubtful debts shall be added to the profits of the trade, business, profession or vocation in the period of recovery. This implies that bad or doubtful debts that were previously allowed are recovered, it should be subjected to tax in the year of recovery.

As could be seen from the provisions of the Nigeria Tax Act, 2025 above, no reference was made as to the doubtful debts being specific or general in nature as obtained under the provisions of Companies Income Tax Act Cap C21 LFN, 2004 (as amended). Under the Companies Income Tax Act Cap C21 LFN, 2004 (as amended) that was applicable up to December 31, 2025, provisions for doubtful debts that are specific are allowable while provisions for doubtful debts that are general in nature are disallowed. Provided below are some illustrations on the treatments.

Illustration 5.1

The bad and doubtful debts account of a company for a year showed the following:

	₦		₦
Trade debts written off	13,000	Reserves b/f:	
Reserves c/f:		Specific	20,000
Specific	22,000	General	16,000
General	<u>15,000</u>	Charged to P or L A/C	<u>14,000</u>
	<u>50,000</u>		<u>50,000</u>

In the statement of profit or loss of this company, the sum of N14,000 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) 13,000
Add: Increase in specific provision (~~₦~~ 22,000 – ~~₦~~ 20,000)	(b) <u>2,000</u>
	15,000
Less: Reduction in general provision (N16,000 – N15,000)	(c) <u>(1,000)</u>
Charged in statement of profit or loss	<u>14,000</u>

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; and
- (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.

Illustration 5.2

The analysis of the bad debt provision account of Chukwu Limited showed the following as at 31/12/24:

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

	₦		₦
Bad debt written off	70,000	Bal b/f	18,000
		Bad debt recovered	59,000
Bal c/d (Specific provision)	<u>48,000</u>	Stat. of profit or loss	<u>41,000</u>
	118,000		118,000
	=====		=====
		Bal c/f	48,000

Amount of provision to be made before arriving at the adjusted profit:

	₦
Amount charged in the account	83,500
Less adjustment from bad debt provision account	<u>(41,000)</u>
Amount to be added back	<u>42,500</u>

5.3.3 Donations

The provisions of Companies Income Tax Act Cap C21 LFN, 2004 (as amended) CITA stipulates, among other things, the conditions to be satisfied before any donation can be allowed. These are:

- donations must be made out of the profits of the company. Thus, if a company makes a loss, whatever donations paid during that year should not be treated as allowable;
- donations should not be expenditure of a capital nature;
- for any year of assessment, the maximum amount allowable is limited to 10% of the total profits of the company before deducting the donations; and
- the donation must be made to any of the approved bodies as contained in the Fifth Schedule to CITA.

Note

Following the provisions of the Companies Income Tax (Amendment) Act 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.

Provisions of Finance Act, 2020 on donations

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

- (a) the cost of in-kind donations made to the Government, and any designated agency shall be allowed as deductions; or
- (b) where companies have either procured or manufactured items for contribution, the cost of purchase, manufacture or supply of such in-kind contributions shall be allowed as deductions. However, the requisite documentation evidencing the donation and the cost thereof are provided to the relevant tax authority and demonstrated to be wholly, reasonably, exclusively and necessarily incurred in relation to the procurement, manufacture or supply of the in-kind contributions.

Meanwhile, the amounts allowable for deduction, in respect of this donation in any year of assessment shall be limited to 10% of assessable profits after deduction of other allowable donations made by the company.

Fifth Schedule to CITA

The funds, bodies and institutions in Nigeria to which donations may be made as contained in the Fifth Schedule to CITA as amended are:

Youths/philanthropic 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

Any hospital owned by the Federal or State Government, including university teaching hospitals, or any hospital operated by a society or association not established for the purpose of generating profits or distributing gains to its individual members, is exempt from taxation.

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 equipping a building used or to be used as a school or college by the Government of the Federation or a state or by a public authority or by a society or association which is carried on otherwise than for the purpose of profit or gain to the individual members of that society or association
- (e) The National Braille Library of Nigeria

- (f) Van Leer Nigerian Educational Trust
- (g) The Institute of Chartered Accountants of Nigeria Building Fund
- (h) Paterson Zochonis Nigeria Technical Education Trust Fund
- (i) 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 January 15, 1970
- (c) Southern Africa Relief Fund
- (d) 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

Public institutions and professional bodies

- a) A public institution established and maintained by a society or association for the promotion or defence of human rights, women empowerment and development or for re-orientation/ rehabilitation/welfare support

service for orphans, widows, physically challenged, refugees and all the categories of persons that may require social or economic rehabilitation and transformation or for youth empowerment and development which is carried on other than for the purpose of profits or gains to the individual members of the society or association or person.

- b) A public institution established and maintained by a society or association for Leadership and Resource Development or for the Promotion of National Unity and Patriotism or for the Promotion of Social and Economic Development which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person.
- c) A public institution or public fund established and maintained by a society or association for accident prevention and control activities or for information system development and awareness which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person.
- d) A public institution established and maintained by a society or association for the creation of awareness for transparency in governance and electoral processes or for the promotion of national unity and patriotism which is carried on other than for the purpose of profits or gains to the individual members of the society, association or person.
- e) Any public institution or public fund established and maintained by a society or association for museum development and promotion of sports, arts and culture which is carried on otherwise than for the purpose of profits or gains to the individual members of the society, association or person.
- f) Any public institution or public fund established and maintained by a society or association for rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development which is carried on other than for the purpose of profits or gains to the individual members of the society, association or person; and
- g) Any professional body established under an Act of the National Assembly for the regulation and practice of the profession.

Others

- (a) The Nigerian Museum
- (b) Nigerian Conservation Fund

The above provisions of the Companies Income Tax Act (as amended) shall guide the allowability of donations made by companies for tax purposes up to December 31, 2025.

References to donations made by a company do not include any payments made by the company for valuable consideration.

Provisions of Nigeria Tax Act, 2025 on donations

Section 163 of the Nigeria Tax Act, 2025 provides that “for the purposes of ascertaining the profits or loss of any company for any period from any source chargeable with tax, there shall be deducted the amount of any donation made for that period by that company to any fund, body or institution in Nigeria and such donation could be revenue or capital in nature. The fund, body or institution that donation could be made to in Nigeria are:

- (a) public funds;
- (b) statutory bodies or institutions;
- (c) religious, charitable, educational and scientific institutions, established in Nigeria;
- (d) bodies recognised under the Diplomatic Immunities and Privileges Act; or

(e) any pandemic, natural disaster or other public emergency interventions.

Other conditions that must be fulfilled are:

- i. company making a deduction for a donation shall provide requisite document evidencing the donation to the Nigeria Revenue Service;
- ii. the total deduction to be allowed to a company, as donation for any year of assessment, shall not exceed an amount equal to 10% of the profit before tax of that company for that year; and
- iii. in the case of a donation other than in cash, the value for the purpose of this section to determine the amount allowable shall be the lower of the market value at the time of the donation or the consideration paid for the item when it was acquired.

5.3.4 Research and development

Prior to the commencement of Nigeria Tax Act, 2025, effective January 1, 2026, the basis for allowing the amounts relating to research and development are in two sections of the Companies Income Tax Act (as amended) .

Section 20(g) (iii)

This section 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

This section 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; and
- (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, Section 22(3) 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.

Provisions of Nigeria Tax Act, 2025 on research and development

Section 164 of the Nigeria Tax Act, 2025 provides that;

- i. for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax, there shall be deducted the amount incurred in that period by that company for research and development;
- ii. the deduction to be allowed to a company for research and development for any year of assessment shall not exceed an amount which is equal to 5% of the turnover for that year; and

- iii. where a company to which this section applies subsequently sells or transfers the outcome of the research and development to another person for exploitation or commercialisation, the proceeds of such sale or transfer shall be subjected to tax.

5.4 Disallowable expenditure

Certain expenditure are disallowed for tax purposes. These are specifically listed in the Companies Income Tax Act (as amended) and they should be added back to accounting profit even if their charge in the statement of profit or loss could be justified under ordinary rules of commercial accountancy. In line with the provisions of CITA as amended, the following are disallowable expenses for the purposes of companies income tax up to December 31, 2025:

- (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 whatsoever incurred within or outside Nigeria involving related parties as defined under the transfer pricing regulations, except to the extent that it is consistent with the transfer pricing regulations;
- (h) any expense incurred in deriving tax-exempt income, losses of capital nature;
- (i) any expenses allowed as a deduction under Capital Gains Tax Act for the purpose of determining Chargeable gains;
- (j) any compensating payment made by a borrower which qualifies as dividends under the Act to its approved agent or to a lender in a regulated securities exchange transaction;
- (k) any compensating payment made by an approved agent which qualifies as interest or dividends under the Act to a borrower or lender in a regulated securities exchange transaction;
- (l) any penalty imposed by any Act of the National or State House Assembly for violation of any statute; and
- (m) any tax or penalty borne by a company on behalf of another person.

Provisions of Nigeria Tax Act, 2025 on disallowable expenses

The following expenses are not allowed for tax purpose in line with section 21 of the Nigeria Tax Act, 2025

- (a) capital repaid or withdrawn from a trade, business, profession or vocation;
- (b) any expenditure of a capital nature;
- (c) domestic or private expense, or expenditure on assets not used for the purpose of trade, business, profession or vocation;
- (d) any sum recoverable under an insurance or contract of indemnity;
- (e) taxes on profit or incomes levied in Nigeria or elsewhere;
- (f) any payment to a savings, widows and orphans, pension, provident or other retirement benefit fund, society or scheme not approved under the Pension Reform Act or any similar enactment in Nigeria;
- (g) depreciation or impairment of any fixed asset, investment or an unrealised exchange difference on any item denominated in foreign currency;
- (h) any sum reserved out of profits;
- (i) any payment to a connected person that is not consistent with the Transfer Pricing Regulations issued by the Service;
- (j) any expense incurred in deriving an income that is exempt from income tax;
- (k) any expense allowable as a deduction in determining Chargeable gains;
- (l) penalty or fine imposed under any law;
- (m) any tax or penalty borne on behalf of another person;
- (n) any compensating payment made by a borrower, which qualifies as dividends to its approved agent or to a lender in a regulated securities lending transaction;
- (o) any compensating payment made by an approved agent, which qualifies as interest or dividends to a borrower or lender in a regulated securities lending transaction; or
- (p) any expense on which value added tax is due but was not charged, or in the case of imported items, any expense on which the applicable import duty or levy was not paid.

5.5 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.

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 should be subjected to capital gains tax (CGT) if applicable, NOT companies income tax, as the liability had not been previously treated as an allowed expense.

The above provisions of Companies Income Tax Act (as amended) was also retained by section 192 of the Nigeria Tax Act, 2025 that states that where a deduction has been allowed in respect of any liability or any expense incurred and the liability is waived or released or such expense is refunded in whole or in part, the amount of that liability or expense which is waived, released or refunded, shall be an income on the day of the waiver, release or refund.

Also, where any liability or expenditure of capital nature is waived, it shall constitute a Chargeable gains that will be included in the determination of companies income tax payable.

5.6 Format/demonstration of adjustment of accounting profit

The taxpayer is expected to file his financial statement with the Nigeria Revenue Service on annual basis. The income statement is limited to the understanding of the taxpayer. Therefore, as stated earlier:

- (i) some income chargeable might have been omitted, for example, investment income, undisclosed revenue, etc.;

- (ii) some income not chargeable might have been included, for example, franked investment Income [dividend], profit on disposal of company's assets/investments etc.;
- (iii) some expenses allowable as deductions might have been omitted due to errors, or mistakes;
- (iv) some expenses not allowable as deductions might have been deducted, for example, expenses not wholly, exclusively, reasonably or necessarily incurred for the purpose of the particular business / company.

Therefore, there is a need to adjust for these shortcomings before tax liability is computed.

Illustrative adjustment

	₦	₦
Net profit/(loss) per accounts		x
Add:		
Expenditure charged in the account which is not deductible	X	-
Income taxable which has not been Included	<u>X</u>	<u>x</u>
		x
Less:		
Profits included in the accounts but which are not taxable	X	
Expenditure which is deductible but which has not been charged in the accounts	<u>X</u>	<u>x</u>
Profit adjusted for tax purposes		<u><u>xx</u></u>

5.7 Expenses incurred in deriving exempt income

The provisions of Companies Income Tax Act (as amended) states that any expense incurred in deriving tax-exempt income, losses of a capital nature and any expense allowable as a deduction under the Capital Gains Tax Act for the purposes of determining Chargeable gains are not allowed in the computation of a company's assessable profits. Put differently, where a deductible expense is incurred for the purposes of generating both exempt and non-exempt income, only the portion that relates to the income assessable to tax shall be allowed at a deduction.

Also, the provisions of the Nigeria Tax Act, 2025 state that any expense incurred in deriving an income that is exempt from income tax as well as any expense allowable as a deduction in determining Chargeable gains shall not be allowed for the purposes of determining the companies income tax payable.

Illustration 5.3

Crystal Clear Limited, a large corporate entity, generated a profit of ₦2,000,000 during the year ended December 31, 2024. It incurred deductible expenses of ₦250,000. Out of the business profit of ₦2,000,000, only ₦1,400,000 is assessable to tax.

Required:

Compute how much of the expenses will be allowed for deduction for income tax purposes.

Solution 5.3

The formula to be applied is

$$\frac{A}{A + B} \times C$$

Where:

A = Income assessable to tax

B = Tax exempt income

C = Total available expenses

Arising from the above, the portion of the deductible expenses to be allowed as a deduction is computed thus:

$$\frac{\text{N1,400,000}}{\text{N1,400,000} + \text{N600,000}} \times \text{N250,000}$$
$$= \text{N175,000}$$

5.8 Restriction on the deductibility of interest

The provisions of Companies Income Tax Act (as amended) restrict the interest deductible by a Nigerian company or a fixed base of a foreign company in Nigeria which incurs any expenditure by a way of interest or of similar nature in respect of debt issued by a foreign connected person, the excess thereon shall be a disallowable deduction for the purpose of this Act.

The excess interest referred to above means an amount of total interest paid or payable more than thirty percent (30%) of earnings before interest, taxes, depreciation and amortisation (EBITDA) of the Nigerian company in that accounting period.

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

Where for any assessment year, the interest expenditure is not wholly deducted against income, so much of the interest expenditure that has not been deducted, shall be carried forward to the following assessment year or assessment years, and it shall be allowed as a deduction against profits, if any, of any business carried on by it and assessable for that assessment year to the extent permitted (i.e. not exceeding 30% of EBITDA). However, it should be noted that no interest expenditure shall be carried forward for more than five (5) assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

The above provisions of the Companies Income Act, 2025 relating to restriction on interest deductibility was also retained by the Nigeria Tax Act, 2025 effective January 1, 2026.

5.9 Concepts of connected persons and debts

(a) "Connected persons" means:

- (i) any person controlled by or under common control, ownership or management;
- (ii) any person who is not connected but receives an implicit or explicit guarantee or deposit for the provision of corresponding or matching debt; or
- (iii) any related party as described under the Nigerian Income Tax (Transfer Pricing) Regulations, 2018.

- (b) “Debt” means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under “profits and gains of business or profession”.

As provided for under the Nigeria Tax Act, 2025, bad debt emanating from a related or connected person transaction is not an allowable expense.

Illustration 5.4

Jones Nigeria Limited, a large organisation, was incorporated on November 2, 2011, and it commenced operations on April 4, 2012. ABC (Canada) Limited is its subsidiary in Canada.

An extract of the financial statements of Jones Nigeria Limited for the year ended December 31, 2024, revealed the following:

Assessable profit	N 1,000,000
Interests and depreciation deducted before arriving at the assessable profit of N1,000,000, are as follows:	
Interest on loan paid to:	
- Other creditors	500,000
- ABC (Canada) Limited	750,000
Depreciation	300,000

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

Required:

- (a) Compute the interest deductible in the relevant assessment year.
- (b) Advise how the excess interest not deductible in the relevant assessment year will be treated.

Solution 5.4

(a) Jones Nigeria Limited

Computation of interest deductible in 2025 assessment year

Computation of earnings before interest, taxes, depreciation and amortisation (EBITDA)

	₦	₦
Assessable profit		1,000,000
Add:		
Interests deducted	1,250,000	
Depreciation	<u>300,000</u>	<u>1,550,000</u>
EBITDA		<u>2,550,000</u>
Interest deductible before restriction		
Interest paid to other creditors		500,000
Interest paid to ABC (Canada) Limited		<u>750,000</u>
Total interest expenses		1,250,000
Interest for tax exempt profit		<u>(200,000)</u>
Interest qualifying for deduction		<u>1,050,000</u>

Restriction:

30% of EBITDA (30% of ₦2,550,000) = ₦765,000

Amount of interest deductible in 2025 assessment is the lower of:

(i)	30% of EBITDA (₦2,550,000)	=	₦765,000; or
(ii)	Interest qualifying for deduction	=	₦1,050,000

This is ₦765,000.

(b) Treatment of excess interest not deductible in the relevant assessment year

The excess interest of ₦1,050,000 less ₦765,000, which is ₦285,000, will be carried forward and added to the interest expense for that year with a view to computing the restriction for that year.

It should be noted that the excess interest of ₦285,000 may only be carried for a period not exceeding five years, that is, 2030 assessment year, whilst applying for each of the years, the same rule based on which the excess interest expenditure was first computed.

5.10 Tax or penalty borne by a company on behalf of another person

The provisions of CITA (as amended) disallows any tax or penalty borne by a company on behalf of another person as an allowable deduction for tax. These provisions were also retained by the Nigeria Tax Act, 2025 effective January 1, 2026.

Illustration 5.5

XYZ Company Limited hired a hall from ABC Nigeria Limited for the sum of ₦1,000,000, net of withholding tax, and decided to remit the withholding tax of ₦100,000 to the Nigeria Revenue Service (NRS). XYZ Company Limited may pay ₦1,000,000 as rent but ₦100,000 remitted to NRS on behalf of ABC Nigeria Limited is not tax deductible.

5.11 Interest on loan relating to gas utilisation (downstream operations)

Hitherto, section 39(1) (e) of CITA, allowed interest payable on any loan obtained with the prior approval of the Minister for a gas project as tax deductible.

The Finance Act, 2019, deleted paragraph (e) mentioned above. Such interest on loan will only be deducted if the interest:

- (a) is in line with the interest deductibility rules introduced by section 24(a) of the seventh schedule of CITA;
- (b) satisfies the principle of wholly, exclusively, necessarily and reasonably for the production of profits chargeable (WREN); and
- (c) relates to income or profit that is not exempt from tax.

5.12 Chapter review

This chapter explains the reasons for profit adjustments, allowable and non- allowable expenditures, specific allowance (provision) for bad and doubtful debt donations. The chapters also include the amendments made to the provisions of companies income tax by the Nigeria Tax Act, 2025 with respect to allowable deductions and non-allowable deductions.

5.13 Worked examples

5.13.1 Questions

1. Shine Your Eye (SYE) Limited is a company which has been in business for many years. The operating results for the year ended December 31, 2024, are as follows:

	₦'000	₦'000
Turnover		85,000
Less: Expenses		
Purchase	45,000	
Transport and traveling	6,000	
Salaries and wages	7,000	
Fines and traffic offence	100	
Donations	1,800	
Audit fees	1,000	
Rent	1,600	
Depreciation	2,400	
Expenses on increase in share capital	50	
Education tax provision	600	
Printing and stationery	2,520	
Legal fees	940	
Defalcations and embezzlement	<u>400</u>	<u>69,410</u>
Net profit		<u>15,590</u>

Other relevant details:

- (i) Agreed capital allowance is ₦1,800,000
- (ii) 25% of the donation was expended on hiring a first-class musician to play at the birthday party of the company's chairman, Chief Mustapha.
- (iii) Included in rent was ₦288,000 paid to a landlord, in whose house the MD's cousin, Miss Charity, resides.
- (iv) The MD perpetrated 50% of the defalcation.
- (v) Legal fees is made up of:

	N'000
Legal fee paid on long lease	500
Legal fee paid on short lease	200
Retainership on short lease	<u>240</u>
	<u>940</u>

Required:

Compute the adjusted profit of SYE Limited for the relevant year of assessment.

2. Mohammed Limited has been in business for many years and makes up accounts to November 30, annually. The statement of financial position contained the following for the year ended November 30, 2024:

	N	N
Gross profit		1,230,936
Miscellaneous income		<u>31,440</u>
		1,262,376
Salaries and wages	251,240	
Electricity and other utilities	19,260	
Rent and rates	145,080	
Repairs and renewals	40,920	
Motor vehicle expenses	130,140	
Depreciation	171,300	
Interest and bank charges	27,120	
Allowance for doubtful debts	40,540	
Miscellaneous expenses	44,840	
Legal and professional charges	30,900	
Pensions contributions [employer]	38,240	
Audit fees	34,400	
Donations and subscriptions	37,200	
Directors emoluments	<u>36,000</u>	
		<u>1,047,180</u>
Net profit		215,196
		=====

You are given the following additional information:

- (i) **Allowance for bad and doubtful debts consists of:**

	N
General provision	12,000
Specific provision	27,100
Bad debts written off	6,500
	<u>(5,060)</u>
Bad debts recovered	<u>40,540</u>

- (ii) **Miscellaneous income includes:**

	N
Profit on disposal of PPE	8,690

- (iii) **Legal and professional charges include:**

Debt collection	6,000

Renewal of short leases	2,400
Defense for traffic offence	1,500
Land acquisition	15,000
Retainership fee	<u>6,000</u>
	<u>30,900</u>

(iv) Miscellaneous expenses comprise:

Court fine	2,400
Exchange loss on translation of intercompany balance	5,140
Exchange loss on remittance	6,500
Office expenses	<u>10,800</u>
	<u>44,840</u>

(v) Donations and subscriptions comprise:

Lagos Chambers of Commerce	3,000
Motor Boat Club	1,200
Polo Club	1,000
Political parties	30,000
National Relief Fund	<u>2,000</u>
	<u>37,200</u>

Required:

Compute the adjusted profit for the relevant assessment year.

3. Ultimate Nigeria Plc has been in buying and selling business for several years making up its accounts to July 31, annually. Its statement of trading, profit or loss for the year ended July 31, 2023, is as follows:

	₦	₦
Sale of Log. plywood etc		2,320,586
Inventory - 31-07-2022	1,140,796	
Inventory - 31-07-2023	<u>(721,058)</u>	
	419,738	
Cost of sale of imported	640,690	
Draft interest for goods imported	18,666	
Goods lost and damaged	21,136	
Felling fees and royalties	5,128	
Rafting	2,000	
Store-insecticide-consumed	21,126	
Diesel oil and lubricants	7,178	
Engineering inventory depreciation	30,000	
Engineering spares	1,900	
Salaries and wages	120,000	
Pension contributions	31,260	
Technical school expenses & staff training	102,600	
Industrial training levy adjustment	2,760	
Stationery, postage and telephone	8,000	
Licenses and insurance	11,200	
Technical school expenses and staff training	102,600	
Industrial training levy adjustment	2,760	

	N	N
Stationery, postage and telephone	8,000	
Licenses and insurance	11,200	
Bank and other finance charges	21,000	
Legal and professional fees	70,000	
Donations and subscriptions	8,400	
Rent and rates	50,600	
Repairs and maintenance	11,368	
Depreciation	33,476	
Concession rent written off	10,912	
Loss on sale of property, plant and equipment	20,000	
Sundry trade expenses	5,138	
Bad debts provision	32,920	
Provision for bad and doubtful debts	32,000	
Hire of equipment	40,000	
Advertising	67,200	1,847,156
Profit for the year		<u>474,190</u>

Note:

- (i) Included in donations and subscription are:
 - Institute of Chartered Accountants secretariat's project N5,000
 - Sports Council N 400
 - Various other charitable donations to Island Club, Supreme Executive circle and kaukaus Club of Nigeria (each) N3,000
- (ii) Advertising includes a specific provision against impending N50,000 international trade fair in which the company was to participate
- (iii) In arriving at the figures for bad debts, individual assessment of the debts was made
- (iv) Technical school expenses item is made up of the various amounts spent on furniture and equipment for the school building just completed.
- (v) Legal and professional fees include N30,000 paid to the company's lawyers in the defense of an action brought by a group of villagers on the company's concession.

Required:

Compute the adjusted profit for the relevant assessment year.

4. It is not all items of expenses charged in the statement of profit or loss and other comprehensive income of a taxpayer that qualify as deductions from the income of a relevant year of assessment.

Required:

Discuss this assertion with close reference to the provisions of Nigeria Tax Act, 2025 in relation to allowable expenses.

5.13.2 Suggested solutions to questions

1.

Shine Your Eye Limited

Computation of adjusted profit

For the year ended December 31, 2024 (2025 assessment year)

	N'000	N'000
Net profit as per accounts		15,590
Add: Disallowable items:		
Fines and traffic offence	100	
Depreciation	2,400	
Expenses on increase in share capital	50	
Education tax for provisions	600	
Donation (25% of N1,800)	450	
Rent	288	
Defalcation (50% of N400)	200	
Legal fees (N500 + N200)	<u>700</u>	<u>4,788</u>
Adjusted profit		<u><u>20,378</u></u>

(2)	Mohammed Limited		
	Computation of adjusted profit		
	For the year ended Nov 30, 2024 (2025 assessment year)		
		N	N
	Net profit per accounts		215,196
	Add:		
	Depreciation	171,300	
	General allowance for doubtful debts	12,000	
	Legal expenses: re-land acquisition	15,000	
	Traffic offence	1,500	
	Miscellaneous expenses: re-court fine	2,400	
	Donations and subscriptions:		
	- Motor boat club	1,200	
	- Polo club	1,000	
	- Political parties	30,000	
	Translation of inter-company balances	<u>25,140</u>	<u>259,540</u>
			474,736
	Deduct:		
	Profit on sale of property, plant and equipment		<u>(8,690)</u>
	Adjusted profit		<u><u>466,046</u></u>

(3)

Ultimate Nigeria Plc.
Computation of adjusted profit
For year ended July 31, 2023 (2024 assessment year)

	N	N
Net profit per accounts		474,190
Add:		
Depreciation	33,476	
Loss on sale of property, plant and equipment	20,000	
Doubtful debts provision	32,000	
Donations and subscriptions;		
- Charitable donations	3,000	
Provision:		
- Re: Impending trade fair	50,000	
Expenditure on furniture and equipment	<u>102,600</u>	<u>241,076</u>
Adjusted profit		<u>715,266</u>

Note:

Charitable Donations

Section 25 of CITA 2004 (as amended) and the Fifth Schedule to the Act, specifically listed bodies to which companies can donate fund. Outside this list, donations shall be disallowed. Consequently, charitable donations of N3,000 being general has been disallowed.

4. In line with the provisions of section 20 of the Nigeria Tax Act, 2025, the following expenses are allowable for the purposes of ascertaining the profits or loss from any trade, business, profession or vocation provided they are wholly and exclusively incurred in the production of the income:

1. Expenses in general

- (a) any sum payable by way of interest on debt employed in generating the income of the trade, business, profession or vocation, subject to the limit imposed on total interest paid or payable to a connected person;
- (b) rent and premiums, incurred during that period, in respect of land or building occupied for the purposes of generating the income;
- (c) any outlay or expenses incurred in respect of;
 - (i) salary, wages or other remuneration paid to employees, and
 - (ii) cost to the company of any benefit or allowance provided to its employees;
- (d) any expense incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewals, repair or alteration of any implement, utensil or articles so employed;
- (e) any amount of expenditure incurred for establishing, preserving or defending title to or rights over an asset;
- (f) any contribution to any staff pension, provident or other retirement benefits fund, society or scheme approved under the Pension Reform Act or any similar enactment in Nigeria;
- (g) any expense proven to the satisfaction of the relevant tax authority to have been incurred, being damage to, or loss of stock or inventory of the trade, business, profession or vocation;
- (h) bad or doubtful debts incurred during a trade or business, notwithstanding that the debts were due and payable before the commencement of the basis period, being;
- (i) debts becoming bad during the said basis period other than bad debt incurred in respect of transaction with a related party,
- (ii) doubtful debts estimated in accordance with generally acceptable accounting principles and to the extent that it is proven, to the satisfaction of the relevant tax authority, that the debts in respect of which a

deduction is claimed were incurred during the company's business operations that produced the assessable profits;

- (i) any expense incurred by the trade, business, profession or vocation on research and development for the period;
- (j) any other expense incurred during any previous period for the purpose of such trade or business, or specifically for the period which the profits are being ascertained, provided that any expenditure incurred within six years prior to commencement of business which would have been deductible if incurred after commencement of business, shall be deemed to have been incurred on the first day of commencing the trade or business;
- (k) dividends or mandatory distributions made by a real estate investment company duly approved by the Securities and Exchange Commission, to its shareholders;
- (l) compensating payments made by a lender to its approved agent or a borrower in a regulated securities lending transaction, which qualify as interest; and
- (m) any expense incurred by a person on assistive devices and disability-related products including hearing aids, wheelchairs, and braille materials.

2. Allowable donations

Section 163 of the Nigeria Tax Act, 2025 provides that "for the purposes of ascertaining the profits or loss of any company for any period from any source chargeable with tax, there shall be deducted the amount of any donation made for that period by that company to any fund, body or institution in Nigeria and such donation could be revenue or capital in nature. The fund, body or institution in that donation could be made to in Nigeria are:

- (a) public funds;
- (b) statutory bodies or institutions;
- (c) religious, charitable, educational and scientific institutions, established in Nigeria;
- (d) bodies recognised under the Diplomatic Immunities and Privileges Act; or
- (e) any pandemic, natural disaster or other public emergency interventions.

Other conditions that must be fulfilled are:

- i. company making a deduction for a donation shall provide requisite document evidencing the donation to the Nigeria Revenue Service;
- ii. the total deduction to be allowed to a company, as donation for any year of assessment, shall not exceed an amount equal to 10% of the profit before tax of that company for that year; and
- iii. in the case of a donation other than in cash, the value for the purpose of this section to determine the amount allowable shall be the lower of the market value at the time of the donation or the consideration paid for the item when it was acquired.

5. Allowable research and development expenditure

Section 164 of the Nigeria Tax Act, 2025 provides that;

- a. for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax, there shall be deducted the amount incurred in that period by that company for research and development;
- b. the deduction to be allowed to a company for research and development for any year of assessment shall not exceed an amount which is equal to 5% of the turnover for that year; and
- c. where a company to which this section applies subsequently sells or transfers the outcome of the research and development to another person for exploitation or commercialisation, the proceeds of such sale or transfer shall be subjected to tax.

LOSS RELIEF

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6 Loss Relief

6.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the treatment of loss relief in Nigeria.

6.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) know the characteristics of relevant loss relief procedure;
- (b) understand the treatment of losses during commencement of business;
- (c) know how to treat losses when there is overlapping of basis periods;
- (d) know the treatment of losses at cessation of business; and
- (e) understand the provisions of Nigeria Tax Act, 2025 on loss relief for company

6.2 Introduction

A company makes a loss from its trade or business when its allowable operating expenses exceed its total revenue.

In arriving at the chargeable profits of a company, losses, if any, brought forward from the preceding year of assessment are to be deducted. The carry forward loss relief is available to a corporate taxpayer.

6.3 Rules governing loss relief

Section 27 of the Companies Income Tax Act, 2004 (as amended) contains the provisions applicable to losses incurred by companies. Essentially, these are:

- (a) the amount of loss to be allowed should be that which the Revenue Service is satisfied with 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 means logically current year losses cannot be relieved since the company must make profits to do so;
- (b) in no circumstance shall the amount to be relieved exceed the total amount of the loss incurred;
- (c) relief can only be against profits from the same trade or business in which the loss was incurred;
- (d) with effect from 2007, losses can be carried forward indefinitely and relieved against future profits; and
- (e) the loss available for relief should be computed on the same basis as that of assessable profit, for a year of assessment.

6.4 Current year loss relief

This is one of the methods of relieving losses. It is applicable to only individuals. In this case, losses incurred from a particular source of income can be relieved against other sources. To enjoy this relief, a written claim must be made within 12 months after the end of the year of assessment in which the loss arises. It is important to note that the current year's loss relief is applicable to a loss incurred only in the first year. Any unrelieved loss can only be set off against profit from the source from which the loss was incurred.

6.5 Carry forward loss relief

This is available to all taxpayers (individuals and companies). The features of this type of relief are as stated below:

- (a) there is no need for a written application by the taxpayer as it is automatically granted to them;
- (b) the relief is granted on preceding year basis;
- (c) the loss of a source of income is relievable against future income earned from the same source of income; and
- (d) the loss of a source of income shall be available for relief against future profit from the same source of income until it is fully relieved.

6.6 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 preceding year 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)).

6.7 Provisions of Nigeria Tax Act, 2025 on loss relief

The above provisions of the Companies Income Tax Act (as repealed) subsist for relieving of the loss of a company in the determination of its total profit up to December 31, 2025. The provisions of CITA on loss relief for companies were not materially changed by the Nigeria Tax Act, 2025 that became effective from January 1, 2026. In line with the provisions of the Nigeria Tax Act, 2025, the total profits of a company for any year of assessment shall be the amount of its total assessable profits from all sources, including Chargeable gains, less the amount of any loss and capital allowance.

The loss to be relieved before arriving at the total profit of the company according to the provisions of the Nigeria Tax Act, 2025 must satisfy the following conditions:

- (a) in no circumstances shall the aggregate loss deductions from the assessable profits or income exceed the amount of that loss;
- (b) loss can only be deducted from the trade or business in which the loss was incurred;
- (c) the loss shall be deducted to the extent possible from the amount of the assessable profits of the first year of assessment after that in which the loss was incurred, and in subsequent years until the loss is fully recouped;
- (d) the loss incurred during any year of assessment shall be computed, in accordance with the basis period of assessment; and
- (e) any loss incurred in any period from sales, disposal or any other transaction in digital assets shall only be deductible in determining the profits from the business relating to digital or virtual assets.

6.8 Chapter review

This chapter defines what constitutes a loss for a company in trade or business and provides rules on loss relief. The readers must have known the operations of this relief in terms of how and when and to what category of taxpayers can benefit from this relief. In addition, readers must have known the features and characteristics of carry forward loss relief applicable to the corporate taxpayers and contained in the provisions of Nigeria Tax Act, 2025.

6.9 Worked examples

6.9.1 Questions

- (a) Colanin Manufacturing Company Limited was incorporated in September 2010 for the purpose of producing quality textile and garment materials. The company, however, commenced business on January 1, 2011. Its accounting date is December 31 each year.

The company presented the following operational results:

Trading periods	Adjusted profits/(losses)
	₦
Year ended 31/12/19	(10,000,000)
Year ended 31/12/20	3,000,000
Year ended 31/12/21	2,500,000
Year ended 31/12/22	2,000,000
Year ended 31/12/23	1,500,000
Year ended 31/12/24	(3,200,000)

Required:

Compute the assessable profits for the relevant years.

2. The total profits of a company for any year of assessment shall be the amount of its total assessable profits from all sources, including Chargeable gains, less the amount of any loss and capital allowance.

Required:

In line with the provisions of the Nigeria Tax Act, 2025, explain the conditions that must be met for any loss to be relieved by a company.

3. Olympus Nigeria Limited, Abeokuta, is into manufacturing of soaps and detergents. In its last management meeting, the Managing Director was of the opinion that the company having made a loss of ₦10,750,000 during the year ended December 31, 2020, the company, ordinarily, would have enjoyed some tax rebates from the Nigeria Revenue Service (NRS). It was then recommended that a topnotch tax consultant should be appointed to review the company's financials and tax payments in the last few years.

The company has just appointed you as its Tax Consultant, with the sole mandate of reviewing its tax computations for some relevant years of assessment

The following details were provided by the company's Financial Accountant:

- (a) Analysis of turnover and adjusted profit/(loss)

Year ended December 31	Turnover	Adjusted profit/(loss)
	₦	₦
2020	90,980,000	(10,750,000)
2021	124,200,000	2,400,000
2022	110,600,000	3,100,000
2023	170,300,000	4,700,000
2024	195,250,000	6,360,000

- (b) Capital allowances as agreed with the NRS:

Tax year	Amount ₦
2020	1,180,000
2021	1,200,000
2022	2,500,000
2023	1,800,000
2024	3,650,000
2025	3,900,000

Required:

As the company's Tax Consultant, you are to prepare a report showing the company's tax liabilities for all the relevant assessment years for the consideration of the company's Managing Director.

6.9.2 Suggested solutions to questions

1.

**Colanin Manufacturing Company Limited
Computation of assessable profits
For 2020 – 2025 tax years**

	₦	₦
2020 tax year		
Basis period 1/1/19 - 31/12/19		
Loss for the year ended 31/12/19		(10,000,000)
Loss relieved		<u>Nil</u>
Unrelieved loss c/f		<u>(10,000,000)</u>
Assessable profit		<u>Nil</u>
2021 tax year		
Basis period 1/1/20 - 31/12/20		
Adjusted profit for the year ended 31/12/20		3,000,000
Unrelieved loss b/f	(10,000,000)	
Loss relieved	<u>3,000,000</u>	<u>(3,000,000)</u>
Unrelieved loss c/f	<u>(7,000,000)</u>	
Assessable profit		<u>Nil</u>
2022 tax year		
Basis period 1/1/21 - 31/12/21		
Adjusted profit for the year ended 31/12/21		2,500,000
Unrelieved loss b/f	(7,000,000)	
Loss relieved	<u>2,500,000</u>	<u>(2,500,000)</u>
Unrelieved loss c/f	<u>(4,500,000)</u>	
Assessable profit		<u>Nil</u>

	₦	₦
2023 tax year		
Basis period 1/1/22 - 31/12/22		
Adjusted profit for the year ended 31/12/22		2,000,000
Unrelieved loss b/f	(4,500,000)	
Loss relieved	<u>2,000,000</u>	<u>(2,000,000)</u>
Unrelieved loss c/f	<u>(2,500,000)</u>	
Assessable profit		<u>Nil</u>
2024 tax year		
Basis period 1/1/23 - 31/12/23		
Adjusted profit for the year ended 31/12/23		1,500,000
Unrelieved loss b/f	(2,500,000)	
Loss relieved	<u>1,500,000</u>	<u>(1,500,000)</u>
Unrelieved loss c/f	<u>(1,000,000)</u>	
Assessable profit		<u>Nil</u>
2025 tax year		
Basis period 1/1/24 - 31/12/24		
Loss for the year ended 31/12/24		(3,200,000)
Unrelieved loss b/f		<u>(1,000,000)</u>
Total loss available for relief		(4,200,000)
Loss relieved		<u>Nil</u>
Unrelieved loss c/f		<u>(4,200,000)</u>
Assessable profit		<u>Nil</u>

Note:

- (i) Colanin Manufacturing Company Limited is allowed to carry forward unrelieved losses indefinitely and recoup same against future profits.
- (ii) Readers are not required to compute the tax liability as it is the computation of assessable profits that is required in the question.

2. The loss to be relieved before arriving at the total profit of the company according to the provisions of the Nigeria Tax Act, 2025 must satisfy the following conditions:

- (a) in no circumstances shall the aggregate loss deductions from the assessable profits or income exceed the amount of that loss;
- (b) loss can only be deducted from the trade or business in which the loss was incurred;
- (c) the loss shall be deducted to the extent possible from the amount of the assessable profits of the first year of assessment after that in which the loss was incurred, and in subsequent years until the loss is fully recouped;
- (d) the loss incurred during any year of assessment shall be computed, in accordance with the basis period of assessment; and
- (e) any loss incurred in any period from sales, disposal or any other transaction in digital assets shall only be deductible in determining the profits from the business relating to digital or virtual assets.

3.

Owo-Ru & Co (Tax Consultants)
Praise Road, Ijebu-Ode

Date:
 The Managing Director
 Olympus Nigeria Limited
 Abeokuta

Dear Sir,

RE: Computations of Tax Liabilities for the Relevant Assessment Years

We refer to your request on computation of tax liabilities for 2021, 2022, 2023, 2024 and 2025 assessment years. Our comments are as follows:

The attached appendix 1 presents the report of the companies income tax and tertiary education tax payable for 2021 through 2025 assessment years.

We hope this report adequately represents the mandate given to us. Should you require further clarification, we will be glad to address it.

Yours faithfully,

Oyefemi Oworu

Appendix 1: Computation of tax liabilities For 2021 – 2025 tax years

	₦	₦
2021 tax year		
Basis period 1/1/20 - 31/12/20		
Loss for the year ended 31/12/20		(10,750,000)
Loss relieved		<u>Nil</u>
Unrelieved loss c/f		(10,750,000)
Capital allowance for the year	1,200,000	
Capital allowance utilised	Nil	<u>Nil</u>
Unutilised capital allowance c/f	1,200,000	
Total profit		<u>Nil</u>
Companies income tax @ 20%		<u>Nil</u>
Tertiary education tax @ 2 of adjusted profit		<u>Nil</u>
2022 tax year		
Basis period 1/1/21 - 31/12/21		
Adjusted profit for the year ended 31/12/21		2,400,000
Unrelieved loss b/f	(10,750,000)	
Loss relieved	<u>2,400,000</u>	(2,400,000)
Unrelieved loss c/f	<u>(8,350,000)</u>	

	N	N
Capital allowance for the year	2,500,000	
Unutilised capital allowance b/f	<u>1,200,000</u>	
Total capital allowances available for utilisation	3,700,000	
Capital allowance utilised	<u>Nil</u>	<u>Nil</u>
Unutilised capital allowance c/f	<u>3,700,000</u>	
 Total profit		<u>Nil</u>
Companies income tax @ 30%		<u>Nil</u>
Tertiary education tax @ 2.5% of N2,400,000		<u>60,000</u>
 2023 tax year		
Basis period 1/1/22 - 31/12/22		
Adjusted profit for the year ended 31/12/22		3,100,000
Unrelieved loss b/f	(8,350,000)	
Loss relieved	<u>3,100,000</u>	(3,100,000)
Unrelieved loss c/f	<u>(5,250,000)</u>	
 Capital allowance for the year	1,800,000	
Unutilised capital allowance b/f	<u>3,700,000</u>	
Total capital allowances available for utilisation	5,500,000	
Capital allowance utilised	<u>Nil</u>	<u>Nil</u>
Unutilised capital allowance c/f	<u>5,500,000</u>	
 Total profit		<u>Nil</u>
Companies income tax @ 30%		<u>Nil</u>
Tertiary education tax @ 2.5% of N3,100,000		<u>77,500</u>
 2024 tax year		
Basis period 1/1/23 - 31/12/23		
Adjusted profit for the year ended 31/12/23		4,700,000
Unrelieved loss b/f	(5,250,000)	
Loss relieved	<u>4,700,000</u>	(4,700,000)
Unrelieved loss c/f	<u>(550,000)</u>	
 Capital allowance for the year	3,650,000	
Unutilised capital allowance b/f	<u>5,500,000</u>	
Total capital allowances available for utilisation	9,150,000	
Capital allowance utilised	<u>Nil</u>	<u>Nil</u>
Unutilised capital allowance c/f	<u>9,150,000</u>	
 Total profit		<u>Nil</u>
Companies income tax @ 30%		<u>Nil</u>
Tertiary education tax @ 3% of N4,700,000		<u>141,000</u>
 2025 tax year		
Basis period 1/1/24 - 31/12/24		
Adjusted profit for the year ended 31/12/24		6,360,000
Unrelieved loss b/f	(550,000)	

	<u>N</u>	<u>N</u>
Loss relieved	<u>550,000</u>	<u>(550,000)</u>
Unrelieved loss c/f	<u>Nil</u>	5,810,000
Capital allowance for the year	3,900,000	
Unutilised capital allowance b/f	<u>9,150,000</u>	
Total capital allowances available for utilisation	13,050,000	
Capital allowance utilised	<u>(5,810,000)</u>	<u>5,810,000</u>
Unutilised capital allowance c/f	<u>7,240,000</u>	
Total profit		<u>Nil</u>
Companies income tax @ 30%		<u>Nil</u>
Tertiary education tax @ 3% of N6,360,000		<u>190,800</u>

CAPITAL ALLOWANCES

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7 Capital Allowances

7.0 Learning objective

The objective of this chapter is to enhance readers' understanding of principles and practice of capital allowances in Nigeria.

7.1 Learning outcomes

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

- (a) define qualifying capital expenditure (QCE) and ascertain what Constitutes QCE;
- (b) explain the various restrictions on capital allowance claims;
- (c) know the conditions for granting capital allowances;
- (d) calculate capital allowances on commencement of business;
- (e) calculate capital allowances for existing businesses operating under the going concern assumption;
- (f) compute capital allowances when there is cessation of business;
- (g) know when carrying backward of capital allowances is applicable;
- (h) calculate capital allowances for assets on hire purchase;
- (i) compute capital allowances based on the provisions of the Nigeria Tax Act, 2025; and
- (j) understand the transitional rules for capital allowances on qualifying capital expenditure (QCE) acquired prior to the commencement of the Nigeria Tax Act, 2025

7.2 Introduction

Prior to the commencement of the Nigeria Tax Act, 2025, effective January 1, 2026, the provision for capital allowances is as contained in the Second Schedule to the Companies Income Tax Act (CITA) 2004 (as amended). Capital allowance is granted in lieu of depreciation. Depreciation is the depreciable part of an asset written off over the useful life of the asset. Effective January 1, 2026, the provision for capital allowance is governed by the First Schedule to the Nigeria Tax Act, 2025.

There are several methods of calculating depreciation and none of the methods can be enforced on all the taxpayers. Consequently, the taxpayers are at liberty to choose any of the methods. This freedom of choice will lead to different values of depreciation expense on similar assets acquired by different taxpayers on the same date and this is a reason for not allowing depreciation as a deductible expense in the process of computing total profit.

Thus, capital allowance reduces all the taxpayers to a common base as the rates adopted are the same.

7.3 Definitions and types of capital allowance

7.3.1 Definition of capital allowances

Capital allowances are a form of relief granted to any company which incurred qualifying capital expenditure during a basis period in respect of property, plant and equipment in use at the end of the basis period for the purpose of a trade or business.

Capital allowances are granted in place of depreciation, which is usually disallowed for income tax purposes. Capital allowances include initial allowance, annual allowance, balancing allowance/(charge) and investment allowance.

7.3.2 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). Initial allowance is granted in full regards the number of months in the basis period of a relevant tax year. 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 relevant tax authority 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.

7.3.2.1 Provisions of Nigeria Tax Act, 2025 on Initial Allowance

The Nigeria Tax Act, 2025 scrapped initial allowance claimable once in the first year of acquisition of qualifying capital expenditure (QCE) provided for under the Second Schedule to CITA. Therefore, for any qualifying capital expenditure (QCE) acquired from January 1, 2026 upward, no initial allowance shall be claimed.

7.3.3 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 N6,250, that is, 25% of (N50,000 – N25,000). Annual allowance once calculated for particular property, plant and equipment 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.

7.3.3.1 Provisions of Nigeria Tax Act, 2025 on Annual Allowance

The annual allowance claimable on qualifying capital expenditure (QCE) provided for under the Second Schedule to CITA was retained under the First Schedule to the Nigeria Tax Act, 2025 but with revision in its method of computation to the extent that it shall be claimed on a straight line basis over the useful or tax life of the QCE.

It is also provided in the Nigeria Tax Act, 2025 that 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 granted proportionately.

Illustration 7.1

Akon Nigeria Limited commenced business on July 1, 2026 and acquired a motor vehicle worth ₦50,000,000 used for the purpose of the business. The company has December 31 as its accounting year end and prepared the first accounts up to December 31, 2026.

Required:

Explain the capital allowance claimable by Akon Nigeria Limited for the relevant year of assessment.

Solution 7.1

The capital allowance rate for motor vehicle is 25% meaning that the capital allowance shall be claimed for four (4) years and the amount claimable per each year of assessment is ₦12,500,000. However, since the basis period for the year of assessment is less than one year i.e. 6 months, the capital allowance claimable by Akon Nigeria Limited in 2027 year of assessment will be prorated and the amount to be claimed shall be ₦6,250,000.

It was equally provided under the First Schedule to the Nigeria Tax Act, 2025 that in claiming capital allowance, there shall be recorded in the capital allowance computation schedule for statistical purposes 1% of qualifying capital expenditure until the asset is disposed. The 1% of qualifying capital expenditure is a notional amount and shall not increase or reduce the amount of capital allowance claimable.

7.3.4 Investment allowance

The Second Schedule to the Companies Income Tax Act (CITA) 2004 (as repealed) made provision for investment allowance at the rate of 10% of qualifying capital expenditure (QCE). The investment allowance is claimable once in the tax life of QCE. This was available to companies in Nigeria up to August 31, 2023 when it was repealed by the Finance Act, 2023 that took effect from September 1, 2023.

The Nigeria Tax Act, 2025 did not make provision for investment allowance.

7.4 Balancing allowance and balancing charge

7.4.1 Balancing allowance

When the sales value of an asset is less than the tax written down value (TWDV), the related loss shall attract balancing allowance. It is claimable as additional allowance along with other capital allowance items as discussed above.

7.4.2 Balancing charge

Where the sales value of an asset exceeds TWDV, balancing charge arises. Balancing charge is a taxable income. It is to be added to the adjusted profit of the taxpayer to arrive at the assessable profit. Proceeds can also be in the form of insurance claims.

This is a claw back of capital allowances previously enjoyed by the company and should not exceed the reliefs given.

7.4.3 Provisions of Nigeria Tax Act, 2025 on balancing allowance and balancing charge

Effective January 1, 2026, the Nigeria Tax Act, 2025 did not make provisions for balancing allowance and balancing charge that was erstwhile provided for under CITA.

7.5 Capital allowance rates and restrictions under CITA

The following are the capital allowances rates under the second schedule to CITA:

	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
Motor vehicles: Others	50	25
Plantation equipment	95	Nil
Housing estate	50	25
Ranching and plantation	30	50
Research and development	95	Nil

The following should also be noted:

- 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;
- a company engaged in gas utilisation (downstream operations) shall be granted accelerated capital allowances after the tax-free period of three years, as follows: An annual allowance of 90 per cent with 10 per cent retention, for investment in plant and machinery, value of the asset;
- 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 which is normally applicable as summarised under capital allowances rates shown 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; and
- (d) capital allowances to be deducted from assessable profits of companies in any year are restricted to 66 $\frac{2}{3}$ % of such assessable profits except for companies engaged in agro-allied industry and manufacturing.

Capital allowances are also restricted when:

- (i) there is a private use, restrict amount granted to official use; and
- (ii) the basis period is less than 12 months, restrict amount calculated to the number of months in the basis period.

7.5.1 Provisions of Nigeria Tax Act, 2025 on capital allowance rates and restrictions

The following are the capital allowance rates as provided under the First Schedule to the Nigeria Tax Act, 2025:

Class	Rate	Qualifying Capital Expenditure
1	10%	(i) Building Expenditure (ii) Agricultural Expenditure (iii) Mast Expenditure (iv) Intangible assets Expenditure (v) Heavy Transportation Expenditure
2	20%	(i) Plant Expenditure (ii) Agricultural Equipment Expenditure (iii) Furniture and Fittings Expenditure (iv) Mining Expenditure (v) Other Equipment Expenditure
3	25%	(i) Motor Vehicle Expenditure (ii) Software Expenditure (iii) Other Capital Expenditure

With respect to restriction of capital allowance, the 66 $\frac{2}{3}$ % of assessable profits provided for under the second schedule of CITA except for companies engaged in agro-allied industry and manufacturing was not retained by the Nigeria Tax Act, 2025. Therefore, effective January 1, 2026, there is no restriction on the capital allowance claimable by the company provided the company has sufficient assessable profit to utilise the capital allowance.

The situations that could lead to capital allowance not to be fully claimed in a year of assessment under the Nigeria Tax Act, 2025 are when:

- i. there is no sufficient assessable profit to utilise the capital allowance;
- ii. QCE is incurred partly for the purposes of a trade or business that is, there is element of a private use. The amount of capital allowance claimable should be restricted to the cost of the QCE used for official purposes; and
- iii. the basis period is less than 12 months, restrict amount calculated to the number of months in the basis period.

7.5.2 Transitional rules for capital allowances under the Nigeria Tax Act, 2025

The Nigeria Tax Act, 2025 made provisions for the following transitional rules with respect to the capital allowance claimable on QCE acquired and have enjoyed capital allowance prior to the commencement date of the Nigeria Tax Act, 2025, effective January 1, 2026.

Where a capital allowance has been granted in respect of an asset before the commencement of Nigeria Tax Act, 2025:

- i. the remaining basis periods in which allowance may be made under the Nigeria Tax Act, 2025, shall be the number of years of assessment for which allowance is to be made under the Nigeria Tax Act, 2025 less the number of years of assessment for which allowance has previously been made;
- ii. where capital allowances were granted, in respect of an asset before the commencement of the Nigeria Tax Act, 2025 for years of assessment equal to or greater than the number of years allowable under the Nigeria Tax Act, 2025, a single allowance shall be granted for the residue upon the commencement of the Nigeria Tax Act, 2025 provided that there shall be recorded in the capital allowance computation schedule for statistical purposes, 1% of the qualifying capital expenditure until the asset is disposed which being a notional amount shall not increase or reduce the amount of capital allowance claimable under the Nigeria Tax Act, 2025
- iii. in respect to qualifying capital expenditure on which capital allowance has been fully granted before the commencement of the Nigeria Act, 2025, capital allowance shall not be granted under the Nigeria Tax Act, on the amount required to be retained in the books under the repealed enactment (CITA).

7.6 Qualifying capital expenditure

Qualifying capital expenditure means expenditure incurred on an asset used for a trade or business, which qualifies for capital allowances in a basis period. Categories of capital expenditure that qualify for the grant of capital allowances are as follows:

- (a) Plant, machinery or fixtures;
- (b) 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 i.e. fleet of buses of not less than three used for public transportation;
- (h) Public transportation (inter-city) new mass transit coach of 25 seats and above operated by a recognised corporate private establishment;
- (i) Development or acquisition of software or other such capital outlays on electronic applications.

Any expenditure which is an allowable deduction in computing the profits of the company's trade or business in accordance with the provisions of CITA, shall not be treated as qualifying expenditure.

7.7 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) to CITA is reproduced below:

"Industrial building or structure means any building or structure in regular use:

- (a) as a mill, factory, mechanical workshop or other similar purposes, or as a structure used in connection with any such buildings;
- (b) as a dock, port, wharf, pier, jetty or other similar building structure;
- (c) 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
- (d) 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.

7.8 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 comments under plantations below.

7.9 Plantations

Qualifying expenditure in connection with plantations is capital expenditure:

- (a) on the clearing of land for planting; and
- (b) on planting (other than replanting).

The part (c) of paragraph 1, Schedule 2, CITA deals with qualifying mining expenditure and is as follows:

- (i) 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);"
- (ii) capital expenditure (hereinafter called qualifying plantation expenditure") incurred in connection with a plantation:
 - On the clearing of land for planting
 - On planting (other than replanting);
 - 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;
 - 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
 - On searching for or on discovering and testing deposits or winning access thereto".

A critical look at the third, fourth and fifth bullets will reveal that they have no bearing to plantations. In fact, they relate to mining expenditure. 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.

7.10 Qualifying capital expenditure under the Nigeria Tax Act, 2025

Paragraphs 7.6, 7.7, 7.8 and 7.9 above relate to the meaning of qualifying capital expenditure and further explanations of some items of qualifying capital expenditure as provided under the second schedule to CITA. These provisions subsisted up to December 31, 2025.

Effective January 1, 2026, the Nigeria Tax Act, 2025 defines qualifying capital expenditure and provides explanations on its components as follows:

Qualifying capital expenditure means, expenditure incurred in a basis period for the acquisition, refurbishment and improvement of the value of the asset. Acquisition cost of an asset includes all cost incurred in bringing an asset to its first use. Qualifying capital expenditure are further explained thus:

- (a) capital expenditure (qualifying plant and equipment expenditure) are expenditure incurred on: (i) plant, (ii) machinery, (iii) manufacturing Industrial plant, (iv) construction plant, including plant, machinery and equipment in use in agricultural trade or business;
- (b) capital expenditure (qualifying building expenditure) are expenditure incurred on the construction of buildings, structures or works of a permanent nature, in regular use for the purpose of trade or business and includes a building, structure or works used (a) as a mill, factory, warehouse, workshop, or other

- similar building; (b) as a structure used in connection with any such buildings; (c) as a housing estate; (d) as a dock, port, wharf, pier, jetty or other similar building structure (e) for the operation of a railway, or for the supply of water or electricity; and (f) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature;
- (c) capital expenditure (qualifying mast expenditure) are expenditure incurred on tall upright pole erected on, or fastened to land or other structure;
 - (d) capital expenditure (qualifying mining expenditure) are expenditure incurred, (other than plant expenditure, machinery expenditure, manufacturing industrial expenditure, construction plant including plant, machinery and equipment in use in agricultural trade or business) in connection with, or in preparation for, the working of a mine or other source of mineral deposits of a wasting nature, on the (i) acquisition of deposits, or rights in or over the deposits, or on the purchase of information relating to the existence and extent of the deposit; (ii) searching for or discovering and testing deposits, or winning access thereto; or (iii) construction of any work or building which is 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 is likely to become valueless when the concession comes to an end to the person working the source immediately before the concession comes to an end;
 - (e) capital expenditure (qualifying agriculture expenditure) are expenditure incurred:
 - (i) in connection with a plantation, on the clearing of land for planting, planting other than replanting, maintenance of the plantation and other pre-production expenses in connection with that plantation shall be qualifying agriculture expenditure, incurred on the first day on which the trade or business commences;
 - (ii) in respect of ranching on: (a) structures used primarily for ranching; (b) raising herds of animals for the purpose of breeding, and does not include raising of animals for the purpose of sale; (c) animals that function as apparatus with which a trade is carried on and the life expectancy is more than 5 years;
 - (f) capital expenditure (qualifying intangible assets expenditure) are expenditure incurred in respect of research and development of: (i) equipment and facilities, patents, licences, secret formulas or process, (ii) information concerning the development of industrial, commercial or scientific process, technical feasibility or products or processes, or (iii) the discovery and testing of products or processes for future market use and such other similar costs which has brought into existence an asset;
 - (g) capital expenditure (qualifying motor vehicle expenditure) are expenditure incurred on: (i) a fleet of buses of not less than three used for public transportation, (ii) public transportation intercity new mass transit coach of twenty five seats and above operated by a private establishment, or (iii) other motor vehicles;
 - (h) capital expenditure (qualifying heavy transportation expenditure) are expenditure incurred on: (i) aircraft engine and fuselages, (ii) pipeline and cables, (iii) vessels, (iv) ships engine, (v) train engine, railway carriages or train tracks and coaches;
 - (i) capital expenditure (qualifying software expenditure) are expenditure incurred on the acquisition of software or other such capital outlays on electronic applications;
 - (j) capital expenditure (qualifying furniture and fittings expenditure), are expenditure incurred on furniture and fittings including those used in vessels, ships, aircrafts, trains, plants, and buildings for the purposes of trade or business.

7.11 Basis period for capital allowance under the Nigeria Tax Act, 2025

As provided by the Nigeria Tax Act, 2025, the basis period for capital allowance is the basis for assessable profit or income. However, where;

- (a) 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, then the interval shall be part of the second basis period; or
- (b) there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases to be carried on by a company or an individual and the basis period for the year in which it ceases, the interval shall form part of the first basis period.

In view of the basis period for assessable profit under the Nigeria Tax Act, 2025 with respect to commencement of business, change in accounting date and cessation of business, the chances of the occurrence of interval between the end of a basis period and another one envisaged for the basis period for capital allowance will be rare.

7.12 Conditions for granting capital allowances under second schedule to CITA

Capital allowances are granted if the following conditions are satisfied:

- (a) The company claiming the allowance must be the owner of the assets at the end of its basis period for a year of assessment;
- (b) 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].

- (c) 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.
- (d) 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 is of the opinion that it would be reasonable and just to do so, for example, where Best of Judgment (BOJ) assessments are raised;
- (e) 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;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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;
- (l) The amount of capital allowances calculated is generally restricted to a percentage (at present 66 2/3%) of the assessable profits. Any company in the agro-allied industry or that which is engaged in manufacturing is not affected by this restriction.

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 to produce rubber, oil palm, coffee, tea and similar crops;
 - (ii) The cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, shea nuts, beniseed, vegetables, pineapples, bananas and plantains;
 - (iii) Animal husbandry, that is, poultry, piggery, cattle rearing, fish farming, and deep sea fish-trawling"; and
- (m) Any expenditure allowable under Section 20 as a trade expense and deductible computation of the company's profit from its trade or business cannot be treated as qualifying capital expenditure.

7.13 Conditions for granting capital allowances under the Nigeria Tax Act, 2025

Under the Nigeria Tax Act, 2025 capital allowances are granted if the following conditions are satisfied:

- a. The company claiming the capital allowance must be the owner of the assets at the end of its basis period for a year of assessment;
- b. The assets must be used for the purpose of a trade or business carried on by the company;
- c. In the case of companies in the priority sector, certificate of acceptance issued by the Industrial Inspectorate Department of the Federal Ministry of Industry, Trade and Investment shall be obtained in respect of the qualifying capital expenditure;
- d. For qualifying capital expenditure that is liable to Valued Added Tax (VAT), the VAT thereon must have been paid and for qualifying capital expenditure that is liable to import duty or levy, the import duty or levy thereon must have been paid;
- e. Where the qualifying capital expenditure is in relation to an asset that is only partly utilised in generating the assessable profits, the capital allowance on such qualifying capital expenditure shall be prorated and only the portion relating to the taxable income shall be allowed as a deduction if the non-taxable income constitutes 10% or more of the total income of the company;
- f. Where the qualifying capital expenditure is in relation to an asset that is only partly utilised in generating the assessable profits, the capital allowance computed shall not be prorated where the non-taxable income constitutes less than 10% of the total income of the company;
- g. The portion of capital allowance attributable to priority activities of a company that enjoys economic development incentive shall be deducted only from the assessable profits of the priority business;
- h. No capital allowance is claimable on expenditure that are allowed for deduction (that is, allowable non-capital expenditure) in the computation of a company assessable profit; and
- i. Capital allowance is not claimable on excess amount incurred on qualifying capital expenditure acquired in foreign currency and paid for with foreign currency obtained from the unofficial foreign exchange market at a rate above the prevailing official market rate on the date of the acquisition.

7.14 Calculation of capital allowances on assets acquired on hire purchase under second schedule to CITA

A company or an individual taxpayer wanting to preserve liquid funds or that fall short of it may elect to enter into hire purchase agreement. Such agreement usually flexes the payment which is made in instalments. Since payment is made in piece meal, such arrangement will attract some interest on cost. Thus, usually the cost of acquiring on hire purchase will be higher than the cost of outright purchase by the margin of the interest charge as per agreement.

Hints on calculation

- a) The interest element must be identified and removed from hire purchase price to arrive at actual cost upon which calculation is based.
- b) Identify date of agreement and pay special attention to dates of payment of deposit and instalments.
- c) Calculate amount paid as deposit and instalments on due dates. Where there is Default in payment of an instalment, identify the actual date of payment.
- d) Determine the relevant year of assessment and related basis period for each payment.

- e) Identify and add all payments (deposit and instalments) falling within the basis period of each relevant year of assessment.
- f) Introduce each additional payment in (e) above as if treating a unit of asset newly acquired and calculate initial and annual allowance on each unit introduced.
- g) In calculating annual allowance (A.A) on new additional payment, the number of years already spent by the asset must be deducted from statutory years determined for the asset for capital allowance purposes.

7.15 Application of capital allowance to assets acquired under hire-purchase or finance lease agreement under the Nigeria Tax Act, 2025

With respect to qualifying capital expenditure acquired under hire-purchase or finance lease agreement, the procedures for computation of capital allowance under CITA was also retained by the Nigeria Tax Act, 2025 to the extent that:

- (a) the qualifying capital expenditure in any basis period shall, in relation to any asset so acquired under hire-purchase or finance lease agreement, be limited to the amount of the instalments paid by the hirer or lessee up to that basis period, excluding any interest paid under the agreement;
- (b) the owner of the asset shall be construed to be the hirer or lessee under the hire-purchase or finance lease agreement; and
- (c) the person letting the asset (that is, the lessor) to the hirer or lessee under the agreement shall not be entitled to capital allowance on such qualifying capital expenditure.

7.16 Capital allowances on commencement of business – Finance Act, 2019

The provision of the Finance Act, 2019 eliminated the problems associated with overlapping of basis period on commencement of business because abnormal basis period is no more in operation as the preceding year basis rule applies in accordance with the Finance Act, 2019. However, if the basis period in the year of commencement is less than twelve (12) months, the annual allowance will be prorated in the year of commencement.

7.17 Capital allowances for existing business operating under the going concern assumption

For this class of business, the tax written down values [TWDV] of existing assets shall be provided with relevant information relating to details of capital allowances granted on them from the first year of using them to the end of the current accounting year. Also details of additional assets acquired; costs of acquisition and dates of acquisition are very necessary for the computation of capital allowance.

Information relating to disposal of the nominal and tax written down values (TWDV), if any is also relevant. This will allow for the computation of balancing charge and or balancing allowance as may be appropriate.

Procedure for computation is as follows:

- (a) Determine the first relevant tax year and allocate the TWDV of assets brought forward to it;
- (b) Allocate the newly acquired assets to relevant tax years using the dates of Acquisition;
- (c) Allocate disposals to relevant tax years using the dates of disposal; and
- (d) Compute capital allowances as appropriate. Note that disposal must be done before the computation of capital allowance because any asset disposed within the year will not enjoy capital allowance;
- (e) For the assets acquired prior to the commencement of the Nigeria Tax Act, 2025 and capital allowances have been claimed on them, take into consideration the transitional rules under the Nigeria Tax Act, 2025 discussed under paragraph 7.5.2 above.

7.18 Computation of capital allowance when there is cessation of business – Finance Act, 2019

The implementation of the provisions of the Finance Act, 2019 removed the issue relating to Actual year basis in the penultimate tax year and eliminated the possibility of 'gap' between basis periods when there is cessation of business that used to be the case under the old provisions on cessation rules. This is because all tax years are

based on preceding year basis as provided by the Finance Act, 2019. Meanwhile, where the basis period in the year of cessation of business is less than twelve (12) months, the annual allowance will be prorated.

7.19 Computation of capital allowances for small companies

Despite the fact that capital allowances are claimable on capital expenditure used to generate taxable income, these allowances are not allowable or carried forward in the case of small companies. Such a company can only claim capital allowances on capital expenditure when it crosses the threshold of ₦25m as it will now qualify as either a medium or large company.

In line with the provisions of Finance Act, 2021, capital allowances, including unabsorbed allowances, available to small companies (i.e., companies with less than 25million annual turnover), would be deemed to have been utilised in each year of assessment. The rationale for this amendment could be linked to the exemption of small companies from income tax i.e., no capital allowances should ideally be claimed by small business that are exempted from income tax.

The Nigeria Tax Act, 2025 defines small business that are exempted from payment companies income tax as a business that earns gross turnover of ₦100,000,000 or less per annum with total fixed assets not exceeding ₦250,000,000. Under the Nigeria Tax Act, 2025 as well, small businesses are not entitled to claim capital allowance on their qualifying capital expenditure.

7.20 Chapter review

This chapter identifies the salient difference between depreciation and capital allowance and the reason why depreciation is not an allowable expense for tax purposes. Readers must have known the different types of capital allowance - initial, annual and investment allowance and how the Finance Act, 2023 and the Nigeria Tax Act, 2025 scrapped investment allowance and initial allowance respectively.

They should be able to compute capital allowances, balancing charge and balancing allowance under CITA and under the Nigeria Tax Act, 2025 and apply their computations to taxpayer's affairs, observing relevant restrictions as may be appropriate. In addition, the treatment of assets acquired on hire purchase and outstanding capital allowances at the date of cessation of business is expected to be well comprehended.

7.21 Worked examples

7.21.1 Questions

1. On September 1, 2014, Supreme Nigeria Limited entered into a hire purchase agreement with Idiarere Limited. Ten (10) generators were acquired on hire purchase by Supreme Nigeria Limited with ₦2,000,000 paid as initial deposit on that date. This was followed by twenty-four equal monthly instalments of ₦200,000, commencing from November 30, 2014. The cash price of the ten (10) generators was ₦5,600,000. Supreme Nigeria Limited prepares its accounts to June 30, every year.

Required:

Compute the capital allowances for the relevant years of assessment. (Ignore investment allowance)

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

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

The following disposals were made during the same year:

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

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

Required:

Compute the capital allowances for the relevant assessment years.

3. There are several methods of calculating depreciation and none of the methods can be enforced on all taxpayers. Consequently, taxpayers are at liberty to choose any of the methods. This freedom of choice will lead to different values of depreciation expense on similar assets acquired by different taxpayers on the same date.

The above-stated assertion is one of the reasons that informed the decision of Revenue Service to disallow depreciation as a deductible expense in the process of computing assessable profit, replacing it with capital allowance.

Consequently, capital allowance reduces all taxpayers to a common base as the rates adopted are the same.

Required:

Explain the conditions for granting capital allowances under the Nigeria Tax Act, 2025

4. Apex Limited incurred qualifying capital expenditure (QCE) of ₦2,000,000 on furniture and fittings in 2020 assessment year when the revenue of the company was ₦24,000,000. The company achieved revenue of ₦27,000,000 in 2023 assessment year.

Required:

Compute and explain the capital allowances claimable for all the relevant years of assessment.

5. Modakeke Limited is a company that has been in business for several years. The company accounting year end is December 31. In 2024 financial year, the company purchased a motor vehicle worth ₦25,000,000. In addition, on March 31, 2026 the company purchased another motor vehicle worth ₦50,000,000

Required:

Compute the capital allowances claimable for 2025 to 2027 years of assessment.

7.21.2 Suggested solution to questions**(1) Supreme Nigeria Limited****Computation of capital allowances for 2016 to 2019 years of assessment**

Initial allowance rate (50%) and annual allowance rate (25%)

Tax year		I	II	III	Capital allowance (₦)
2016	Cost	3,200,000			1,600,000
	I.A	1,600,000			<u>400,000</u>
	A.A	<u>400,000</u>			<u>2,000,000</u>
2017	TWDV	<u>1,200,000</u>			
	Cost		1,800,000		
	I.A		900,000		900,000
	A.A	<u>400,000</u>	<u>300,000</u>		<u>700,000</u>
					<u>1,600,000</u>
2018	TWDV	800,000	600,000		
	Cost			600,000	
	I.A			300,000	<u>300,000</u>
	A.A	<u>400,000</u>	<u>300,000</u>	<u>150,000</u>	<u>850,000</u>
					<u>1,150,000</u>
2019	TWDV	400,000	300,000	150,000	
	A.A	<u>400,000</u>	<u>300,000</u>	<u>149,900</u>	<u>849,900</u>
		<u>0</u>	<u>0</u>	<u>100</u>	

Working Notes:

- i. Principal for capital allowance ₦
- | | |
|------------------------------|----------------|
| Deposit | 2,000,000 |
| Installment (24 x 200,000) | 4,800,000 |
| Hire purchase price | 6,800,000 |
| Cash price | 5,600,000 |
| Hire purchase interest | 1,200,000 |
| Number of instalments | 24 |
| Interest per instalments | <u>50,000</u> |
| Principal (200,000 – 50,000) | <u>150,000</u> |

ii. Schedule of payment

Tax year	Basis period	No of instalment	Amount
2016	1/7/14 – 30/6/15	8	1,200,000
Deposit			<u>2,00,000</u>
			<u>3,200,000</u>
2017	1/7/15 – 30/6/16	12	<u>1,800,000</u>

	2018	1/7/16 – 30/6/17	4	<u>600,000</u>
iii.	2016 Annual allowance			
	Annual allowance	$\frac{= 3,200,000 - 1,600,000}{4}$		= N400,000
iv.	2017 Annual allowance			
	(i) Annual allowance	$= \frac{1,200,000}{4 - 1}$		= N400,000
	(ii) Annual allowance	$= \frac{1,800,000 - 900,000}{4 - 1}$		= N300,000
v.	2018 Annual allowances	= TWD/unexpired tax life		
	(i) Annual allowance	= 800,000/2 = N400,000		
	(ii) Annual allowance	= 600,000/2 = N300,000		
	(iii) Annual allowance	= 300,000/2 = N150,000		
vi.	2019 Annual allowances	TWDV/Unexpired tax life		
	(i) Annual allowance	= 400,000/1 = ~~N400,000~~		
	(ii) Annual allowance	= 300,000/1 = ~~N300,000~~		
	(iii) Annual allowance	= (150,000/2) less ~~N100,000~~ = N149,900		

Note:

In 2019 tax year, it is apparent that this is the last tax year of the generator. Consequently, there is the need to retain the mandatory ₦10 per asset. Since there are ten generators, the sum of 100 must be retained, hence the claim of ₦149,900 instead of the expected ₦150,000 from the last instalment.

(2) **Manufacturing Company Plc**
2015 Capital allowances computation

	Industrial building	Non-Plant & machinery	Motor vehicles	Total allowances
	₦'000	₦'000	₦'000	₦'000
Residue b/f	10,000	2,000	3,000	
Disposal at WDV	<u>-</u>	<u>-</u>	<u>375</u>	
Net residue (A)	10,000	2,000	<u>2,625</u>	
Additions:	5,000	1,750	3,500	
Investment allow.		175		
Initial allow.	<u>750</u>	<u>875</u>	<u>1,750</u>	<u>3,375</u>
	Industrial building	Non-Plant & machinery	Motor vehicles	Total allowances
Balance after initial allow (B)	<u>4,250</u>	<u>875</u>	<u>1,750</u>	
	₦	₦	₦	₦
AA on 2015 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)	<u>11,825</u>	<u>1,656</u>	<u>2,624</u>

WDV of disposal 2013 Assessment year Motor vehicle cost	
Year end 30/6/2012	1,500,000
Less: Initial allowance	<u>750,000</u>
Balance after initial allowance	750,000
Annual allowance for 2 years)	<u>375,000</u>
Tax written down value of disposal	<u>375,000</u>

Note that disposal was in 2015 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 2015 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	<u>375,000</u>
Surplus	<u>1,625,000</u>

Balancing charge has to be restricted to capital allowance previously

Cost	1,500,000
WDV	375,000
Therefore, capital allowance previously granted	1,125,000
Balancing charge	1,125,000

- (3) Capital allowance is granted to companies on qualifying capital expenditure in lieu of depreciation that is not allowable for tax purposes.

In line with the provisions of the Nigeria Tax Act, 2025, the following are conditions for granting capital allowances:

- The company claiming the capital allowance must be the owner of the assets at the end of its basis period for a year of assessment;
- The assets must be used for the purpose of a trade or business carried on by the company;
- In the case of companies in the priority sector, certificate of acceptance issued by the Industrial Inspectorate Department of the Federal Ministry of Industry, Trade and Investment shall be obtained in respect of the qualifying capital expenditure;
- For qualifying capital expenditure that is liable to Valued Added Tax (VAT), the VAT thereon must have been paid and for qualifying capital expenditure that is liable to import duty or levy, the import duty or levy thereon must have been paid;

- e. Where the qualifying capital expenditure is in relation to an asset that is only partly utilised in generating the assessable profits, the capital allowance on such qualifying capital expenditure shall be prorated and only the portion relating to the taxable income shall be allowed as a deduction if the non-taxable income constitutes 10% or more of the total income of the company;
- f. Where the qualifying capital expenditure is in relation to an asset that is only partly utilised in generating the assessable profits, the capital allowance computed shall not be prorated where the non-taxable income constitutes less than 10% of the total income of the company;
- g. The portion of capital allowance attributable to priority activities of a company that enjoys economic development incentive shall be deducted only from the assessable profits of the priority business;
- h. No capital allowance is claimable on expenditure that are allowed for deduction (i.e. allowable non-capital expenditure) in the computation of a company assessable profit; and
- i. Capital allowance is not claimable on excess amount incurred on qualifying capital expenditure acquired in foreign currency and paid for with foreign currency obtained from the unofficial foreign exchange market at a rate above the prevailing official market rate on the date of the acquisition.

(4) **Apex Limited**
Computation of capital allowances
For 2020 to 2024 assessment years

		Furniture and Fittings		Cost	Remarks
		Total capital allowances			
		₦	₦	₦	
<u>Assessment year 2020</u>					
Cost				2,000,000	
Initial allowance	500,000				
Annual allowance	300,000	800,000			
<u>Assessment year 2021</u>					
Annual allowance	300,000	1,100,000			
<u>Assessment year 2022</u>					
Annual allowance	300,000	1,400,000	(1,400,000)		Not utilised
W.D.V. c/f to A.Y. 2023			600,000		
<u>Assessment year 2023</u>					
Annual allowance			(300,000)		
W.D.V c/f to A.Y. 2024			300,000		
<u>Assessment year 2024</u>					
Annual allowance			(299,990)		
Amount retained in the books				10	

Note:

Given the fact that the company did not achieve the ₦25,000,000 revenue until 2023 assessment year, it will be regarded as a small company and the initial allowance of ₦500,000 (25%) and the annual allowance of ₦300,000 (₦1,500,000 x 20%) will be deemed utilised in assessment years 2020, 2021 and 2022.

The written down value of the QCE brought forward to A.Y. 2024 will be ₦2,000,000 less ₦500,000 (I.A), less ₦900,000 (A.As for 3years), which equals ₦600,000.

The capital allowances claimable in A.Y. 2023 is ₦300,000, whilst that of A.Y. 2024 is ₦299,990, that is ₦300,000 less retention of ₦10.

(5) Modakeke Limited

Computation of capital allowance for 2025 to 2027 years of assessment

2025 year of assessment (YOA)

	₦	₦
Cost	25,000,000	
Initial allowance @ 50%	(12,500,000)	12,500,000
Annual allowance @ 25%	(3,125,000)	<u>3,125,000</u>
Total capital allowance		<u>15,625,000</u>
TWDV c/f	9,375,000	

2026 year of assessment

	₦	₦
TWDV b/f	9,375,000	
Annual allowance	(3,125,000)	
Total capital allowance		3,125,000
TWDV c/f	6,250,000	

2027 year of assessment

TWDV b/f	6,250,000	
Annual allowance	(3,125,000)	3,125,000
TWDV c/f to 2028 YOA	<u>3,125,000</u>	
Cost (addition)	50,000,000	
Annual allowance on addition (25%)	(12,500,000)	<u>12,500,000</u>
TWDV c/f to 2028 YOA	37,500,000	
Total capital allowance		<u>15,625,000</u>

Notional amount for the Motor Vehicles

	₦
Motor vehicle purchased in 2024 accounting year (1% of cost)	250,000
Motor vehicle purchased in 2026 accounting year (1% of cost)	500,000

ASCERTAINMENT OF CHARGEABLE GAINS

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8 Ascertainment of Chargeable gains

8.0 Learning objective

The objective of this chapter is to enhance readers' understanding of ascertainment of Chargeable gains in Nigeria.

8.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) know what constitutes chargeable assets, chargeable disposal and Chargeable gains;
- (b) know the significance of market value to Chargeable gains for transactions that are not at arm's length;
- (c) understand allowable deductions for the purposes of ascertaining Chargeable gains;
- (d) understand how to compute Chargeable gains in line with the provisions of the Nigeria Tax Act, 2025;
- (e) understand the relevance of Chargeable gains in the determination of taxable person's income tax liability; and
- (f) understand Chargeable gains that are exempted from tax.

8.2 Chargeable gains, chargeable assets and chargeable disposals

8.2.1 Chargeable gains

Chargeable gains are gains that arise as a result of disposal of chargeable assets. In line with the provisions of the Nigeria Tax Act, 2025, that repealed Capital Gains Tax Act, Chargeable gains are to be included as taxable income in the determination of the total profit of the company.

8.2.2 Chargeable assets

For the purposes of Chargeable gains, all forms of property shall be chargeable assets whether situated in Nigeria or not. Chargeable assets shall include:

- (a) any form of asset, shares, options, rights, debts, digital or virtual assets 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 coming to be owned without being acquired.

8.2.3 Chargeable disposal

There is a chargeable disposal of assets by a person where any sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets notwithstanding that no asset is acquired by the person paying the capital sum, and in particular, where the sum is:

- (a) derived by way of compensation for any loss of office or employment;
- (b) received under a policy of insurance and the risk of any kind of injury or damage, or the loss or depreciation of assets;
- (c) received in return for forfeiture or surrender of a right, or for refraining from exercising a right; and
- (d) received as consideration for use or exploitation of any asset.

A disposal of assets includes part disposal of assets and there is a part disposal of assets where an interest or right in or over the assets is created for another person by the disposal, and a part of the interest in the property which subsists before the disposal remains with the person making the disposal.

8.3 Consideration for assets disposed

- (1) For the purposes of Chargeable gains, the cost of acquisition shall be taken as the amount paid to acquire the assets while the consideration for the chargeable assets disposed shall be the sales proceeds. However, in certain circumstances, the market value of an asset may be taken as the consideration where the person acquires or disposes the assets:
 - (a) otherwise, than by way of a bargain made at arm's length;
 - (b) wholly or partly for a consideration that cannot be valued;
 - (c) as trustee for creditors of the person making the disposal; or
 - (d) upon devolution on death as a personal representative or legatee of a deceased
- (2) Where a person disposes of an asset by way of gift, other than asset acquired or disposed by devolution on death, the person acquiring the asset shall be deemed to have acquired the asset;
 - (a) for a consideration equal to the amount for which the asset was last disposed of by way of a bargain made at arm's length; or
 - (b) for a consideration equal to the market value of the asset on the date of disposal where the amount last disposed of by way of bargain made at arm's length cannot be ascertained.
- (3) Where an asset is acquired by a creditor in satisfaction of his debt or part of his debt
 - (a) 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
 - (b) Chargeable gains accruing to the creditor on disposal of the asset shall not exceed the Chargeable gains which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or part of his debt.

8.4 Compulsory acquisition of land

Land disposed to an authority exercising or having compulsory powers of acquisition shall not constitute Chargeable gains provided that:

- (a) the person had not acquired the land at a time when he knew or might reasonably have known that it was likely to be acquired by the authority; or
- (b) the person had not taken any steps by advertisement or otherwise to dispose of the land or to make his willingness to dispose of it known to the authority or others.

Authority exercising or having compulsory powers means, in relation to any disposal of land, an authority, a person or body of persons acquiring the land compulsorily under the Land Use Act or any other similar enactment or law of a country other than Nigeria, or who has or have been, or may be authorised to acquire it compulsorily for the purposes for which it is acquired, or for whom another authority, person or body of persons has or have been, or may be authorised to acquire it.

8.5 Date of acquisition or disposal

Any asset acquired or disposed of by a person chargeable to tax shall, be deemed to have been acquired or disposed of at the date at which there is an enforceable right to acquire or a binding duty to dispose of the asset or any right or interest in it, and in particular, where:

- (a) any contract is to be performed subject to any condition, the date of acquisition or disposal of the asset shall be the date the condition is satisfied;
- (b) consideration under the contract does not depend solely or mainly on the value of the asset at the time the condition is satisfied, the acquisition or disposal shall be treated as if the contract had never been conditional, in which case the date of the acquisition or disposal of the asset shall be the date of the contract; or
- (c) an option is conferred by virtue of any contract, the date of the acquisition or disposal of the asset shall be the date when the option is exercised.

8.6 Computation of Chargeable gains

In line with the provisions of the Nigeria Tax Act, 2025, Chargeable gains shall be computed as follows:

- (a) in the case of a disposal of an asset used for a trade, business, profession or vocation, for which capital allowance has been claimed, only the residue or tax written down value of that asset shall be deducted from the disposal proceeds; and
- (b) in the case of a disposal of an asset where capital allowance has not been claimed, the amount or value of the consideration, in money or money's worth incurred, wholly and exclusively for the acquisition of the asset shall be deducted from the disposal proceeds.

Besides, for the purposes of computation of Chargeable gains in either of the two scenarios above, any incidental cost incurred wholly and exclusively for the purpose of disposal of a chargeable asset is deductible from the disposal proceeds. Such

expenses include:

- i. cost of improvement on the asset for the purpose of enhancing the value of the assets in preparation for sale;
- ii. expenditure incurred in establishing, preserving and defending title to or a right over the asset;
- iii. cost of making the disposal such as fees and commissions paid for professional services of any surveyors, valuers, accountants, legal advisers as well as cost of advert to find a buyer; and
- iv. incidental cost of the acquisition of the asset such as stamp duties, conveyance fee and other cost of perfecting title as well as cost of advertisement to find a buyer.

8.7 Partial disposal

Where a chargeable asset is partly disposed, the acquisition cost of the assets, together with any expenditure wholly and exclusively incurred for the purpose of enhancing the value of the assets in case of asset on which capital allowance has not be claimed or the residue or the tax written down value in case of asset on which capital allowance has been claimed shall be apportioned between the disposed part and the undisposed part.

Essentially, the Chargeable gains on the part disposed off shall be computed as follows:

	N	N
Sales proceeds of part sold		xx
Less: cost of part sold		
<u>A</u>		
	x	C
A + B		(xx)
Chargeable gains		<u>xx</u>

Where,

A = Sales proceeds or market value of part sold

B = Market value of the unsold part, and

C = The cost of acquisition of the whole asset in case of asset on which capital allowance has not been claimed or residue/tax written down value in case of asset on which capital allowance has been claimed.

Illustration 8.1

Maryland Limited is a trading company that has been in operations for several years. The company acquired a plot of land for business expansion at the cost of N30,000,000

in August 2023. As a result of urgent need for funds for critical operational activities of the company, the management sold a portion of the landed property for ₦40,000,000 in June 2026. The market value of the unsold portion of the land is ₦35,000,000.

Required:

Assess and advise on the Chargeable gains and the year of assessment the Chargeable gains will be subjected to tax.

Suggested solution to illustration 8.1

	₦
Sales proceeds	40,000,000
Deduct: Cost of the portion of land sold: $A/(A+B) \times C$ $₦40,000,000/(₦40,000,000 + ₦35,000,000) \times ₦30,000,000$	(16,000,000)
Chargeable gains	24,000,000

The Chargeable gains on the portion of landed property disposed is ₦24,000,000. The Chargeable gains of ₦24,000,000 will be included in the determination of the total profit of the company and subjected to tax in 2027 year of assessment.

8.8 Consideration due after the time of disposal - Instalmental Chargeable gains

If the consideration or part thereof taken into account in the computation of Chargeable gains is payable in instalment over a period exceeding twelve months, the Chargeable gains accruing on disposal shall be deemed to be accruing in proportion in that year of assessment in which the disposal is made and in subsequent years of assessment until the final instalment is paid.

The accruing gains shall be deemed to have accrued at the last day in that year of assessment except in the case of cessation of a trade or business or death of the alienator, where the gains will be deemed to accrue on the date of cessation or death.

The Chargeable gains will be calculated as follows:

$$\frac{\text{Consideration received in the year}}{\text{Total consideration receivable}} \times \text{Total Chargeable gains}$$

It should be noted that where any part of the consideration so brought into account is subsequently shown to the satisfaction of the relevant tax authority to be irrecoverable, such adjustment, whether by way of discharge, or repayment of tax or otherwise, shall be made as required.

Steps to follow in computation of Chargeable gains tax by instalment

1. Compute the total Chargeable gains.
2. Identify the dates that each instalment is paid.
3. Identify the corresponding years of assessment that the dates of instalment fall into.

4. Compute the Chargeable gains for each instalment using the formula/relationship above.

8.9 Assets lost or destroyed

Where an asset is lost or destroyed, and a capital sum received by way of compensation for the loss or destruction is applied within three years of receipt in acquiring another asset in its replacement, the owner shall, where the compensation received together with the residual or scrap value is;

- (a) greater than the cost of the asset acquired in replacement of the lost or destroyed asset, be deemed to make a Chargeable gains; and
- (b) lower than the cost of the asset acquired in its replacement, be deemed for the purposes of capital allowance to have acquired an additional asset for an amount equal to the cost of that new asset, less the compensation together with the residual or scrap value.

Except for the additional asset deemed to have been acquired where the compensation received together with the residual value is lower than the cost of asset acquired in its replacement, allowance to be claimed on the new asset for the purposes of capital allowance computation shall be limited to the residue of the old asset, if any.

Illustration 8.2

An asset purchased by ABC Limited for ₦10million was destroyed by fire and insurance claim amounting to ₦7million was received as compensation. The residue of the asset was ₦1million and another asset worth ₦5million was acquired within three (3) years of receipt of insurance claim.

Required:

Compute the Chargeable gains of ABC Limited (if any).

Suggested solution to illustration 8.2

	₦'million
Insurance claim	7
Residual value	<u>1</u>
Total	8
Less cost of new asset acquired	<u>(5)</u>
Chargeable gains to be subject to tax	<u>3</u>

Capital allowance will be claimed on the residue of the old asset, which is ₦1million.

Illustration 8.9.2

An asset purchased by ABC Limited for ₦10million was destroyed by fire and insurance claim amounting to ₦7million was received as compensation. The residue of the asset was ₦1million and another asset worth ₦12million was acquired within three (3) years of receipt of insurance claim.

Required:

Compute the tax implication of the transaction on ABC Limited.

Suggested solution to illustration 8.9.2

	₦'million
Insurance claim	7
Residual value	<u>1</u>
Total	8
Less cost of new asset acquired	<u>(12)</u>
Additions on which capital allowance will be claimed	<u>4</u>
Capital allowance will also be claimed on the residue of the old asset, which is ₦1million.	

8.10 Bargains comprising two or more transactions

Where a single bargain comprises two or more transactions whereby assets are disposed of, those transactions shall be treated for the purposes of computing Chargeable 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.

Where an apportionment results in less consideration being attributed to the chargeable asset than that agreed or purported to be agreed, in the bargain, the separate considerations shall be the consideration for which those assets are disposed of.

8.11 Valuation at market value

For the purposes of computing chargeable gains, unless the context otherwise requires, market value, in relation to any asset, means the price which the asset might reasonably be expected to fetch on a sale conducted at arm's length, or in the open market.

In estimating the market value of any asset in the case of a disposal if the market value is not known, no reduction shall be taken into account for cash or bulk discount.

In determining the acquisition cost of any asset, where the actual consideration paid by the acquirer is less than the market value, the assets shall be deemed to have been acquired for the amount actually paid.

The implication of the above is that for chargeable gains computation and in the case of sales proceeds, the amount to be taken is the higher of the sales proceeds or the market value while in the case of acquisition cost, the amount to be taken is the lower of the market value or actual amount paid.

8.12 Location of assets

To subject gains on chargeable assets to tax in Nigeria, the assets must be located in Nigeria.

The Nigeria Tax Act, 2025 sets out clear rules for identifying the location of various asset types, as follows:

Immovable property: Rights/interests are situated where the property is located.

Tangible movable property: Rights/interests are situated where the movable property is located.

Debts: This is situated in Nigeria, where the creditor is resident in Nigeria or has a permanent establishment (PE) in Nigeria to which the debt relates.

Government-issued shares/securities: Located in the country or place where the issuing authority is situated.

Registered shares/securities: Located where they are registered or where the principal register is located, in the case of multiple registers.

Shares or interests in foreign entities: Deemed situated in Nigeria if over 50% of their value (in the 365 days before sale) is derived from:

- A change in ownership (direct/indirect) of a Nigerian entity, or
- Immovable property or other chargeable assets in Nigeria.

Shares in resident entities: Situated in Nigeria if:

- The entity is a Nigerian company, or
- The owner is a resident or has a PE in Nigeria to which the shares relate.

Ships or aircraft used in international traffic: Situated in Nigeria if the owner is resident in Nigeria or has a PE in Nigeria to which the ship or aircraft relates.

Interests/rights in Ships or Aircraft: Located in Nigeria if the person with the right is a Nigerian resident or has a PE in Nigeria.

Goodwill of a Business: Located where the business is carried on.

Patents, Trademarks, Designs: Located where registered, and in the case of multiple registrations, located where each register is situated.

Copyrights, Franchises, Rights and Licences: Situated in Nigeria if exercisable in Nigeria or where the rights derived from the assets can be exercised in Nigeria.

Judgment debts: Located where the judgment is recorded.

Incorporeal property, including digital assets: Located in Nigeria where the beneficial owner or controller is resident in Nigeria or has a PE to which the asset is connected.

8.13 Indirect transfer of ownership of companies or assets (Section 47, NTA, 2025)

Gain accruing to any person in respect of disposal of shares by a non-resident shall be a Chargeable gains where the disposal results into a change:

- (a) in the ownership structure or group membership of any Nigerian company; or
- (b) of ownership of, title in, or interest in any asset located in Nigeria.

8.14 Life assurance policies

With respect to any policy of assurance or contract for a deferred annuity on the life of any person, Chargeable gains shall not accrue on the disposal of an interest in, or the rights under any such policy of assurance or contract, except where the person making the disposal is not the initial beneficial owner and acquired the rights or interests for a consideration in money or money's worth.

However, the surrender of a policy of assurance or the rights under a contract for a deferred annuity shall constitute a disposal of the rights under the policy of assurance or contract for a deferred annuity, and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the higher of the market value and the disposal proceeds.

8.15 Rights under policies of insurance, other than life assurance policies

The rights of the insured under an insurance effected in the course of a capital redemption business or industrial assurance business shall constitute an asset which may yield a Chargeable gains upon disposal.

The rights under any other policy of insurance, whether the risks insured relate to property or not, shall not constitute an asset on the disposal of which a Chargeable gains may accrue, except as may be expressly provided:

- (a) "capital redemption business" means the business of effecting and carrying out contracts of insurance, whether effected by the issue of policies, bonds or endowment certificates or otherwise, whereby, in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future, excluding life or industrial assurance business;
- (b) "industrial assurance business" means the business of effecting

and carrying out contracts of insurance in connection with any industrial assurance whereby in return for one or more premiums paid to the insurer a sum or a series of sums is to become payable to the insured in the future; and
(c) "policy of insurance" does not include a policy of assurance on human life.

8.16 Personal injury

The sums not exceeding ₦50,000,000 obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation, including compensation for loss of office or employment, wrong or injury for libel, slander or enticement shall not be chargeable gains.

Where the sum exceeds ₦50,000,000, only the excess amount shall constitute a chargeable gains.

Any person who pays compensation for loss of office or employment to an individual is required, at the point of payment of such compensation, to deduct and remit the tax due to the relevant tax authority and tax so deducted shall be remitted within the time specified under the Pay-As-You-Earn or Deduction of Tax at Source Regulations in the Nigeria Tax Administration Act, 2025.

8.17 Principal private residences

The gains accruing to an individual are exempt from tax in respect of the disposal of, or an interest in a dwelling-house or part of such dwelling-house and land other than land used for commercial purposes, immediately adjoining the dwelling house up to a maximum of one acre. This exemption shall be enjoyed once in the lifetime of an individual.

However, where a person disposes of only a part of a dwelling-house or a house used partly as dwelling place and partly for carrying out a trade, business, profession or vocation, the consideration shall be apportioned and the gains on the part used for carrying out a trade, business, profession or vocation shall constitute Chargeable gains.

8.18 Personal chattels

A disposal of an asset which is tangible movable property being personal chattels of an individual shall not be a Chargeable gains if the total amount or value of the consideration for the disposal does not, in a period of assessment, exceed ₦5,000,000 or three times the annual national minimum wage, whichever is higher.

In case of partial disposal of tangible movable property being personal chattels, no Chargeable gains shall accrue if the addition of market value of the part that remains undisposed and the actual consideration of the part disposed does not exceed ₦5,000,000 or three times the annual national minimum wage, whichever is higher in a period of assessment.

The exemption for disposal of personal chattels that does not exceed ₦5,000,000 or three times the annual national minimum wage, whichever is higher is not applicable to a disposal of currency of any description.

8.19 Motor vehicles

The gains on disposal of motor vehicle used solely for private or non-profit purposes shall not constitute Chargeable gains. This exemption is limited to not more than two motor vehicles by an individual in any year of assessment. This implies that if an individual disposed more than two motor vehicles in a year of assessment, only the Chargeable gains from the first two disposed will be exempted from tax while the Chargeable gains from the others will be fully subjected to tax.

8.20 Gifts

Where a person disposes by way of a gift, an asset acquired by him by way of a gift or any other form of gift, not being an acquisition on a devolution on death, the gains accruing from the disposal shall not be chargeable gains.

An asset is acquired or disposed of by way of gift where no consideration is paid or received for the acquisition or disposal.

8.21 Assets held in trust for charities

Any property held in trust for (a) a religious or charitable institution of a public character; (b) any statutory or registered friendly society; (c) any co-operative society registered under the co-operative societies law of any State; or (d) any trade union registered under the Trade Unions Act, shall not be regarded as chargeable asset for the purposes of determination of Chargeable gains if the gain is not derived from the disposal of an asset acquired in connection with any trade or business carried on by the institution, society or trade union, and the gain is applied solely for the purpose of the institution, society or trade union.

However, where such property ceases to be held in trust for the institution, society or trade union; (a) the trustees shall be treated as if they had disposed of, and immediately re-acquired the property for a consideration equal to its market value, and any gain on the disposal shall be treated as not accruing to the institution, society or trade union; and (b) any gain accruing directly or indirectly on that disposal shall be treated as having accrued to the trustees and shall be Chargeable gains in the hand of trustees.

8.22 Chargeable gains exempted from tax

In line with the provisions of the Nigeria Tax Act, 2025, the following shall not constitute Chargeable gains and shall be exempted from tax:

- (a) Disposal of dwelling house - The gains accruing to an individual in respect of the disposal of, or an interest in a dwelling house or part of such dwelling house and land other than land used for commercial purposes, immediately adjoining the dwelling house up to a maximum of one acre. Where a dwelling-house is partly occupied as principal private residence and partly lent out, the Chargeable gains on disposal of the property shall be prorated accordingly.
- (b) Property held in trust - Disposal of any property held in trust for (a) a religious or charitable institution of a public character; (b) any statutory or registered friendly society; (c) any co-operative society registered under the co-operative societies law of any State; or (d) any trade union registered under the Trade Unions Act, provided the gain is not derived from the disposal of an asset acquired in connection with any trade or business carried on by the institution, society or trade union, and the gain is applied solely for the purpose of the institution, society or trade union.
- (c) Gifts - Assets acquired by way of gift and disposal in a similar manner shall not give rise to Chargeable gains
- (d) Motor vehicles - Disposal of motor vehicle used solely for private or non-profit purposes shall not constitute Chargeable gains. This exemption is limited to not more than two motor vehicles by an individual in any year of assessment.
- (e) Disposal of shares - Disposal of shares in any Nigerian company shall not be Chargeable gains where the:
 - (i) disposal proceeds, in aggregate, is less than ₦150,000,000 and the Chargeable gains does not exceed ₦10,000,000 in any 12 consecutive months,
 - (ii) shares are transferred between an approved borrower and a lender in a regulated securities lending transaction; or
 - (iii) proceeds from such disposal, notwithstanding the threshold of ₦150,000,000 and the Chargeable gains of ₦10,000,000 in any 12 consecutive months, are reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies.

Meanwhile, Chargeable gains shall be proportionately computed on the portion of the sales proceeds which are not reinvested.

- (f) Personal chattels - A gain accruing on a disposal of an asset which is tangible movable property being personal chattels of an individual shall not be a Chargeable gains if the total amount or value of the consideration for the disposal does

not, in a period of assessment, exceed ₦5,000,000 or three times the annual national minimum wage, whichever is higher.

- (g) Compensation for personal injury or loss of office - The sums not exceeding ₦50,000,000 received by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation, including compensation for loss of office or employment, wrong or injury for libel, slander or enticement shall not be Chargeable gains. Where the sum exceeds ₦50,000,000, only the excess amount shall constitute a Chargeable gains.
- (h) Life Assurance policies and Deferred Annuities - Any gain derived from the disposal of rights in a life assurance policy or deferred annuity contract will not be deemed chargeable, unless the disposer is not the original beneficial owner and acquired the rights for monetary consideration
- (i) Startup Investments - Gains arising from the disposal of assets by angel investors, venture capitalists, private equity funds, accelerators, or incubators in relation to a labelled startup are exempt, provided the assets have been held in Nigeria for a minimum of 24 months.
- (j) Compulsory acquisition of land - Land disposed to an authority exercising or having compulsory powers of acquisition shall not constitute Chargeable gains provided that:
 - (i) the person had not acquired the land at a time when he knew or might reasonably have known that it was likely to be acquired by the authority; or
 - (ii) the person had not taken any steps by advertisement or otherwise to dispose of the land or to make his willingness to dispose of it known to the authority or others.
- (k) Pension Funds and Assets - Gains accruing to pension funds and assets are exempt from income tax.
- (l) Awards for Valour - Gains from the disposal of a decoration awarded for valour or gallant conduct, where such decoration was acquired otherwise than for consideration in money or money's worth.
- (m) Retirement Benefits - Gains accruing to an individual from the disposal of investments held as part of any national provident fund or other retirement benefits schemes are exempt from income tax.

8.23 Chapter review

This chapter deals with the ascertainment of Chargeable gains to be included as taxable income for the purposes of companies income tax computation in line with the provisions of the Nigeria Tax Act, 2025.

Readers must have learnt what constitute chargeable assets and how Chargeable gains should be computed for assets that have enjoyed capital allowance and those assets that capital allowance have not been claimed on them.

The chapter also discussed Chargeable gains that are exempted from tax in line with the provisions of the Nigeria Tax Act, 2025.

8.24 Worked examples

8.23.1 Questions

1. Mobolaje Limited is a manufacturing company based in Agbara Industrial Estate. The company has been in business for several years manufacturing detergents and other ancillary household items. Due to business exigency, the following transactions took place in the company during the financial year ended December 31, 2027.
 - a. An oil melting plant purchased on January 1, 2026 for ~~N~~45,000,000 was disposed for ~~N~~55,000,000 on March 31, 2027.
 - b. A land purchased on March 4, 2026 for the purpose of warehouse construction was eventually sold on June 30, 2027. The acquisition cost of the land was ~~N~~25,000,000, while the sale proceed was ~~N~~42,000,000. The sum of ~~N~~1,250,000 was paid to Bukola Ventures for facilitating the disposal of the land.
 - c. As a result of the ongoing expansion of Lagos-Badagry expressway, the landed property that cost the company ~~N~~12,500,000 as at the time of purchase was compulsorily acquired by the Lagos State Government on May 5, 2027. The sum of ~~N~~30,000,000 was paid by the Lagos State Government as compensation to the company.

Required:

Compute the Chargeable gains to be subjected to tax including the relevant year of assessment.

2. Amoke Agro-allied Company Limited is a long standing company operating in agricultural value chain in Nigeria. The company sold its two landed properties in 2026. One of the land is situated on Lagos-Badagry expressway, Amuwo, Lagos and the other in Offa, Kwara State. The Lagos land was compulsorily acquired by the Lagos State Government in June 2026 in the course of the dualisation of the road. A compensation of ~~N~~47,000,000 was paid for the land which originally cost the company ~~N~~10,500,000. Fearing that the same predicament might befall the Offa land located on Offa-Ilorin road, the company quickly sold the land for ~~N~~55,000,000 on September 25,

2026. The original cost of the Offa land was ₦17,500,000. The firm of Omolara Ventures facilitated the disposal of the Offa land and ten percent (10%) of the sale proceed was paid to the firm.

Required:

Compute the Chargeable gains of the company to be subjected to tax for the relevant year of assessment in line with the provisions of the Nigeria Tax Act, 2025.

3. Chargeable gains are gains that arise as a result of disposal of chargeable assets. For the purposes of Chargeable gains, all forms of property shall be chargeable assets whether situated in Nigeria or not. Chargeable gains are to be included as taxable income of taxable persons in the determination of income tax payable except Chargeable gains that specifically exempted by the extant tax laws.

Required:

Advise on Chargeable gains that are exempted from tax in line with the provisions of the Nigeria Tax Act, 2025.

8.23.2 Solutions to questions

1 Mobolaje Limited

Computation of Chargeable gains for 2028 year of assessment

(a) Disposal of Melting Plant	₦	₦
Sales Proceeds		55,000,000
Less residual value (i.e. Cost less Capital allowance)		
Cost	45,000,000	
Capital allowance claimed in 2027 year of assessment (working)	<u>(9,000,000)</u>	
Residual value		<u>(36,000,000)</u>
Chargeable gains		<u>19,000,000</u>

(b) Disposal of Land	~~N~~	~~N~~
Sales Proceeds	42,000,000	
Deduct incidental cost of disposal	<u>(1,250,000)</u>	
Net Sales Proceeds		40,750,000
Deduct cost of land acquisition	-	(25,000,000)
Chargeable gains		15,750,000
(c) Compulsory acquisition of landed property		~~N~~
Compensation		30,000,000
Deduct acquisition cost		<u>(12,500,000)</u>
Chargeable gains (exempted from tax)		<u>17,500,000</u>

Total Chargeable gains to be subjected to tax in 2028 year of assessment is ~~N~~34,750,000 (that is, ~~N~~19,000,000 + ~~N~~15,750,000). Chargeable gains on the compulsory acquisition of landed property by the Lagos State Government is exempted from tax.

Working of capital allowance on Melting Plant	~~N~~
Cost of acquisition	<u>45,000,000</u>
Annual allowance rate (1 st Schedule of Nigeria Tax Act, 2025)	20%
2027 year of assessment annual allowance (20% of ~~N~~ 45,000,000)	<u>9,000,000</u>

(b) Amoke Agro allied company Limited

Computation of Chargeable gains for 2027 year of assessment

	Lagos Land	Offa Land
	N	N
Compensation /sales proceeds	47,000,000	55,000,000
Deduct: Sales expenses	0	(5,500,000)
Net compensation / sales proceeds	47,000,000	49,500,000
Deduct: Cost of acquisition	(10,500,000)	(17,500,000)
Chargeable gains	36,500,000	32,000,000
Chargeable gains to be subjected to tax	Nil	32,000,000

The Chargeable gains of Amoke Agro- allied Company Limited to be subjected to tax is ~~N~~32,000,000 on the disposal of Offa landed property. The Chargeable gains will be included as taxable income in the determination of total profit for companies income tax computation for the 2027 year of assessment.

The Chargeable gains from the compulsory acquisition of Lagos property is exempted from tax in line with the provisions of the Nigeria Tax Act, 2025.

3. In line with the provisions of the Nigeria Tax Act, 2025, the following shall not constitute Chargeable gains and shall be exempted from tax in the determination of income tax payable by taxable persons:
- (a) Disposal of dwelling house - The gains accruing to an individual in respect of the disposal of, or an interest in a dwelling house or part of such dwelling house and land other than land used for commercial purposes, immediately adjoining the dwelling house up to a maximum of one acre. Where a dwelling-house is partly occupied as principal private residence and partly lent out, the Chargeable gains on disposal of the property shall be prorated accordingly.
 - (b) Property held in trust - Disposal of any property held in trust for (a) a religious or charitable institution of a public character;(b) any statutory or registered friendly society;(c) any co-operative society registered under the co-operative societies law of any State; or (d) any trade union registered under the Trade Unions Act, provided the gain is not derived from the disposal of an asset acquired in connection with any trade or business carried on by the institution, society or trade union, and the gain is applied solely for the purpose of the institution, society or trade union.
 - (c) Gifts - Assets acquired by way of gift and disposal in a similar manner shall not give rise to Chargeable gains
 - (d) Motor vehicles - Disposal of motor vehicle used solely for private or non-profit purposes shall not constitute Chargeable gains. This exemption is limited to

not more than two motor vehicles by an individual in any year of assessment.

- (e) Disposal of shares - Disposal of shares in any Nigerian company shall not be Chargeable gains where the:
- (i) disposal proceeds, in aggregate, is less than ₦150,000,000 and the Chargeable gains does not exceed ₦10,000,000 in any 12 consecutive months,
 - (ii) shares are transferred between an approved borrower and a lender in a regulated securities lending transaction; or
 - (iii) proceeds from such disposal, notwithstanding the threshold of ₦150,000,000 and the Chargeable gains of ₦10,000,000 in any 12 consecutive months, are reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies.

Meanwhile, Chargeable gains shall be proportionately computed on the portion of the sales proceeds which are not reinvested.

- (f) Personal chattels - A gain accruing on a disposal of an asset which is tangible movable property being personal chattels of an individual shall not be a Chargeable gains if the total amount or value of the consideration for the disposal does not, in a period of assessment, exceed ₦5,000,000 or three times the annual national minimum wage, whichever is higher.
- (g) Compensation for personal injury or loss of office - The sums not exceeding ₦50,000,000 received by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation, including compensation for loss of office or employment, wrong or injury for libel, slander or enticement shall not be Chargeable gains. Where the sum exceeds ₦50,000,000, only the excess amount shall constitute a Chargeable gains.

(h) Life Assurance policies and Deferred Annuities - Any gain derived from the disposal of rights in a life assurance policy or deferred annuity contract will not be deemed chargeable, unless the disposer is not the original beneficial owner and acquired the rights for monetary consideration

(i) Startup Investments - Gains arising from the disposal of assets by angel investors, venture capitalists, private equity funds, accelerators, or incubators in relation to a labelled startup are exempt, provided the assets have been held in Nigeria for a minimum of 24 months.

(j) Compulsory acquisition of land - Land disposed to an authority exercising or having compulsory powers of acquisition shall not constitute Chargeable gains provided that:

- (i) the person had not acquired the land at a time when he knew or might reasonably have known that it was likely to be acquired by the authority; or
- (ii) the person had not taken any steps by advertisement or otherwise to dispose of the land or to make his willingness to dispose of it known to the authority or others.

(k) Pension Funds and Assets - Gains accruing to pension funds and assets are exempt from income tax.

(l) Awards for Valour - Gains from the disposal of a decoration awarded for valour or gallant conduct, where such decoration was acquired otherwise than for consideration in money or money's worth.

(m) Retirement Benefits - Gains accruing to an individual from the disposal of investments held as part of any national provident fund or other retirement benefits schemes are exempt from income tax.

ICAN 2026

TAXATION OF INVESTMENT INCOME

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9. Taxation of investment income

9.0 Learning objective

The objective of this chapter is to enhance readers' understanding of taxation of investment income in Nigeria.

9.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) understand the basis of assessment of investment income;
- (b) appreciate the treatment of dividend income in Nigeria;
- (c) understand the treatment of interest income in Nigeria;
- (d) know the treatment of royalty income in Nigeria;
- (e) ascertain the treatment of rental income in Nigeria;
- (f) understand taxation of real estate investment company;
- (g) understand the provisions of Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 on investment income; and
- (h) know how to compute the tax liability of persons/entities earning investment income.

9.2 Basis of assessment of investment income

Investment incomes are incomes received primarily from investment decisions. Investment decisions include decisions such as purchase of shares, purchase of property for letting purposes, placement of cash in fixed and other interest yielding accounts etc. The incomes that accrue as a result of the investment decisions are called investment incomes and they include dividend, interest, royalty, rent, etc.

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

Investment incomes are liable to withholding tax deduction as provided under the provisions of the Companies Income Tax Act, CAP C21, LFN, 2004 (as repealed) which clearly states that nothing shall be construed to exempt from deduction of tax at source, the payment made with respect to interest, rent, dividend by companies that are exempted from tax. This implies that entities that are exempted from tax are required to deduct withholding tax when payments such as interest, rent, dividend and royalty are paid just like other entities that are not exempted from tax.

The provision of section 51 of Nigeria Tax Administration Act, 2025 also states that where any payment is made to a person, the person making the payment shall, at the date when payment is made or otherwise settled, deduct the tax at the rate prescribed in the Deduction of Tax at Source (Withholding) Regulations, 2024. The payment referred to under section 51 of Nigeria Tax Administration Act, 2025 include investment incomes such as dividend, interest, rent and royalty.

Deduction of Tax at Source (Withholding) Regulations, 2024 also provides that tax should be deducted at source on eligible transactions and the obligation to deduct tax at source shall arise at the earlier of when payment is made, or the amount due is otherwise settled and in the case of payment due between related parties, deduction shall be made at the time of payment or when the liability is recognised whichever is earlier.

9.3 Dividend income

9.3.1 Definition of dividend

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

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

These are dividends:

- (i) by a Nigerian company and satisfied by the issue of shares of the company paying the dividend (bonus shares); or
- (ii) 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;

In addition, prior to the commencement date of the Finance Act, 2019, section 60 of the Petroleum Profits Tax Act exempt from tax dividends paid out of any profits chargeable to tax under the provisions of the Petroleum Profits Tax Act. This exemption was removed by the Finance Act, 2019.

9.3.2 Payment of dividend by a Nigerian company to a Nigerian company

The income from a dividend distributed by a Nigerian company, shall be deemed to be derived from Nigeria, and shall be the gross amount of that dividend before the deduction of any tax which the company is required to deduct on payment thereof under the provisions of any law in force in Nigeria at the relevant time imposing taxation on the profits of companies. Dividends received from a Nigerian company are to be regarded as franked investment income (FII) because the withholding tax deducted on such dividends is treated as the final tax.

Dividend derived by a company from another company incorporated in Nigeria is exempted from tax, 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, and
- (b) 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.

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

9.3.3 Payment of dividend by a Nigerian company to a Non-Nigerian company

Dividend income paid by a Nigerian company to a non-Nigerian company shall be exempted from tax. The amount of the withholding tax deducted in connection with such dividend due to a non-resident company shall be the final tax on those payments, that is, no further tax is payable by non-resident company of any dividend income.

Dividend income derived by a company from a country outside Nigeria and brought into Nigeria through government approved channels is exempted from tax.

“Government approved channels”, means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act;

The compensating payments, which qualify as dividends under section 9 (1) (c) of Companies Income Tax Act Cap C21 LFN 2004 (as amended) received by a lender from its approved agent or a borrower in a regulated securities lending transaction, are deemed to be franked investment income and shall not be subjected to further tax in the hands of the lender.

9.3.4 Excess dividend tax

Prior to the commencement of the Finance Act, 2019, section 19 of the Companies Income Tax Act, provides that where a company either (a) does not have a total profit or (b) the dividend declared and distributed to the shareholders exceeds the total profit, the dividend declared shall be treated as the total profit of the company and subjected to tax in the hand of the company accordingly.

This is the position where a company has generated enough capital allowance to match the assessable profit. It could also be that the company has recorded a loss. This will result in no tax payable because there will be no total profit. If the company then declare dividend, the dividend paid automatically become the total profit chargeable to tax at the ruling corporate income tax rate.

Illustration 9.1

A company with a total profit of ₦200,000,000 for 2019 assessment year, paid ₦280,000,000 dividends to its shareholders in respect of the 2018 financial statements which formed the basis for the assessment. Determine how much the company will pay as tax?

Suggested solution to illustration 9.1

The company will pay tax of ₦84,000,000. (30% of ₦280,000,000 and not ₦60,000,000 (30% of ₦200,000,000). This is what is referred to as excess dividend tax.

9.3.5 Provisions of Finance Act, 2019 on excess dividend tax

Prior to commencement of Finance Act, 2019, companies were charged to tax at 30% on their dividend distributions where such dividends exceed the total profits for the year as illustrated above notwithstanding that profits being distributed may have been taxed in prior years, exempt from tax, or taxed under a different tax law. This particularly affects holding companies on dividends received from their subsidiaries thereby making Nigeria unattractive as a headquarters or group holding company location. The Finance Act, 2019 introduced changes to limit the application of the tax only to untaxed profits that are not exempt from tax.

The implication of this amendment by Finance Act, 2019 is that the following no longer counts towards determination of excess dividend tax:

- (a) retained earnings on which adequate tax had previously been paid under Companies Income Tax Act (CITA), Petroleum Profits Tax Act (PPTA) or the Capital Gains Tax Act (CGTA);
- (b) exempt profits;
- (c) franked investment income;
- (d) dividend by a real estate investment companies (REICO) out of rental and dividend income;
- (e) the year to which the profits relate is also now irrelevant; and
- (f) the possibility of a company paying excess dividend tax is now limited.

9.3.6 Provisions of Finance Act, 2019 on Interim Dividend Paid by Companies

Prior to commencement of Finance Act, 2019, companies that paid dividend before filing its annual corporate tax returns shall be subjected to company's income tax at the rate of 30% of the dividend paid and such tax shall be paid to the Federal Inland Revenue Service. The tax paid based on dividend paid, shall be considered as deposit towards tax due from the company.

With implementation of Finance Act, 2019, tax on interim dividend paid to shareholders of a company is no longer applicable.

9.3.7 Franked Investment Income

Dividend received by a company after deduction of withholding tax at source by a paying company is regarded as franked investment income of the company receiving the dividend. Such income is not subject to further tax in the hands of the recipient company as the withholding tax deducted at source is the final tax.

The dividend will be excluded from the total profits of a company receiving the dividend before the computation of the company's income tax liability.

Where dividend received (i.e. franked investment income) is distributed by the recipient company, it has a right to set off the withholding tax paid on the dividend received from the withholding tax payable on the redistributed dividend. This provision helps to prevent double taxation.

9.3.8 Provisions of Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 on dividend income

Nigeria Tax Act, 2025 defines Nigerian dividends to include;

(a) dividend distributed by a Nigerian company and shall be the gross amount of that dividend before any deduction; and

(b) any amount of the undistributed profit of a Nigerian company, which is treated as distributed under the provisions of any law in Nigeria.

Also provided by the Nigeria Tax Act, 2025 on dividend income are:

- i. the income from a dividend distributed by a Nigerian company is deemed to arise on the day on which payment of that dividend becomes due;
- ii. in accounting for the dividend, a company shall include dividend income in its profits, gross of any tax paid or deducted at source;
- iii. dividend received by a Nigerian company by way of shares of the paying company shall not be included in its profits chargeable to tax under the Nigeria Tax Act, 2025; and
- iv. dividend received by a Nigerian company by way of shares of the paying company shall not be subjected to withholding tax deduction at source.

Provisions of section 51 of the Nigeria Tax Administration Act, 2025 on dividend income provides that:

- i. withholding tax deducted on dividend paid a non-resident recipient and paid over to the relevant tax authority shall be the final tax due from a non-resident recipient of the payment.
- ii. dividend distributed by a Nigerian company and received by a person after deduction of the tax prescribed under deduction of tax at source (withholding) regulations, 2024 shall be regarded as franked investment income of the person receiving the dividend and shall not be charged to further tax.
- iii. where a dividend which has been treated as franked investment income is redistributed and tax is to be accounted for on the gross amount of the distribution in accordance with Deduction of Tax at Source (Withholding) Regulations, 2024, the company may set off the amount deducted at source which it has itself suffered on the same income.

9.3.9 Certain undistributed profits may be treated as distributed

Section 10 of the Nigeria Tax Act, 2025 provides that:

- (a) where a Nigerian company controlled by not more than five individuals has not distributed to its shareholders as dividend, profits made in any period for which accounts have been made up by such company, the Service may direct that the proportion of the profits of the company, which could have been distributed without detriment to the company's business, be construed as distributed;
- (b) the gross amount of profits construed as distributed shall constitute a taxable income in the hand of individual shareholders of the company in proportion to their shareholdings in the ordinary capital of the company on the day of the deemed distribution;
- (c) any direction by the Service to the company shall be made in writing and be served on the company, and shall specify the:
 - i. day to be taken for the purposes of profits so deemed to be distributed;
 - ii. gross amount of those profits so deemed to be distributed;
 - iii. rate applied for the deduction at source, being the rate prescribed by Nigeria Tax Administration Act 2025; and
 - iv. net amount after the deduction at source.

- (d) for the purposes of exercising the power to direct a company to distribute its profits, the Service may give notice to any company, which it has reason to believe is controlled by not more than five individuals, requiring it to supply, within such time as contained in such notice, full particulars of its shareholders;
- (e) in the case of a limited liability partnership, all the profits of the partnership shall be deemed as distributed, and taxable income, proportionately, in the hands of the respective partners;
- (f) any direction by the Service to the company with respect to the profits of any accounting period of a company shall be made not later than three years after the receipt by the Service of the duly audited accounts of the company for that period; and
- (g) a company in respect of which a direction is made to distribute its profits shall have a right of appeal in accordance with the provisions of the Nigeria Tax Administration Act, 2025.

9.3.10 Provisions of Nigeria Tax Act, 2025 on dividend tax - substitution of dividend for total profit

Section 9 of the Nigeria Tax Act, 2025 provides that:

- (a) where a Nigerian company declares dividend out of profits on which no tax is payable due to:
 - (i) no total profits, or
 - (ii) total profits which are less than the amount of dividend which it declared, whether or not the recipient of the dividend is a Nigerian company, the company paying the dividend shall be charged to tax at the rate of 30% as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.
- (b) dividend tax provisions shall not apply to:
 - (i) dividends declared out of the retained earnings of a company, to the extent that the profits or gains included in the retained earnings have been taxed under the provisions of the Nigeria Tax Act, 2025;
 - (ii) dividends declared out of profits or gains that are exempt from income tax by the Nigeria Tax Act, 2025;
 - (iii) franked investment income as provided under the Nigeria Tax Act, 2025; and
 - (iv) distributions made by a real estate investment company to its shareholders from rental income and dividend income received on behalf of those shareholders, whether such dividends are paid out of profits of the year in which the dividend is declared or out of profits of previous reporting periods.

9.4 Interest income

Interest income is revenue generated from interest-bearing assets, such as savings accounts, bonds, and loans. Put in another way, interest income is earned by a creditor, investor, or lender as compensation for providing financing to a borrower or issuer.

In line with the provisions of the Companies Income Tax Act (as repealed), interest income is chargeable to tax. The Companies Income Tax Act defines interest to include compensating payments received by a borrower from its approved agent or a lender in a Regulated Securities Lending Transaction provided that the underlying transaction giving rise to the compensating payment is a receipt of interest by a lender on the collateral it received from its approved agent or a borrower in a Regulated Securities Exchange Transaction.

Also, in line with the provisions of the Companies Income Tax Act (as repealed), interest chargeable to tax in Nigeria shall be deemed to be derived from Nigeria if:

- (a) there is a liability to payment of the interest by a Nigerian company or a company in

Nigeria regardless of where or in what form the payment is made; or

(b) the interest accrues to a foreign company or person from a Nigerian company or a company in Nigeria regardless of whichever way the interest may have accrued

In line with section 4 of the Nigeria Tax Act, 2025 interest income is chargeable to tax and it is deemed to accrue in Nigeria where the liability to its payment falls upon a resident of Nigeria or Nigerian permanent establishment of a non-resident person regardless of where or in what form the interest is paid.

The Nigeria Tax Act, 2025 also defines interest to include:

- (i) penal interests and any payment similar to interest, income from any government or corporate securities, bonds or debentures, premiums or prizes attaching to such securities, bonds or debentures, discounts, fees, premium, share of profit in non-interest finance arrangements, finance cost element in a finance lease, or foreign exchange differences arising in relation to securities, any payment in relation to derivatives used in hedging securities, or any other payment of similar nature,
- (ii) in respect of debts, includes return on discounted papers, income from debt claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits or foreign exchange differences arising in relation to a debt; and
- (iii) in respect of regulated securities lending transactions, includes compensating payments received by a borrower from its approved agent or a lender, provided that the underlying transaction giving rise to the compensating payment is a receipt of interest by a lender on the collateral it received from its approved agent or a borrower.

9.4.1 Interest exempted from tax

In line with the provisions of the Companies Income Tax Act, the following interest incomes are exempted from tax:

- (a) Interest on foreign loan in line with Third Schedule of the Companies Income Tax Act;
- (b) Interest accruing to a person on foreign currency domiciliary account;
- (c) With effect from January 1, 1996, 100% of certain foreign incomes are exempted from tax provided that such incomes are repatriated into Nigeria in convertible currency and paid into a domiciliary account in a bank approved by government. Income falling into this category include interest earned from abroad and brought into Nigeria by a Nigeria resident;
- (d) Interest accruing to a person who is not resident in Nigeria as specified below:
 - (i) the interest on a loan charged on the public revenue of the Federation and raised in the United Kingdom;
 - (ii) the interest on a bond issued by the Government of the Federation to secure repayment of loan raised from the International Bank for Reconstruction and Development under the authority of the Railway Loan (International Bank) Act;
 - (iii) the interest on any money borrowed by the Government of the Federation or of a State on terms which include the exemption of interest from tax in the hands of a non- resident person;
 - (iv) where the Minister of Finance so consents, the interest on any moneys borrowed outside Nigeria by a corporation established by a law in Nigeria upon terms which include the exemption of such interest from tax in the hands of any non-resident person; and

- (v) the interest on deposit accounts, provided the deposit into the account are transfers wholly made up of foreign currencies (funds) to Nigeria on or after 1st January 1990 through Government approved channels and the depositor does not become non-resident after making the transfer while in Nigeria.
- (e) Interest on loans – Agricultural trade and others Interest on loan granted by bank for primary agricultural production shall be exempted from tax if at least twelve months moratorium is allowed and the rate of interest is not more than the base lending rate of the bank at the time the loan was granted, refinanced or otherwise restructured.

Interest on any loan granted by a bank on or after January 1, 1997 to a company engaged in:

- i. agricultural trade or business (now limited to primary agricultural production- Finance Act, 2020). Reduction in the moratorium period to qualify the interest on loan for tax exemption from 18 months to 12 months and the rate of interest restricted to the base lending rate at the time the loan was granted, refinanced or restructured (Finance Act, 2020); or
- ii. the fabrication of any local plant and machinery; or
- iii. as working capital for any cottage industry established by the company under the Family Economic Advancement Programme (FEAP), shall be exempted from tax, provided:
 - the moratorium is not less than twelve months; and
 - the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise restructured.” Thus, the provisions relating to the loans granted to agricultural trade or business on or after January 1, 1991, are extended to the trade or fabrication of local plant and machinery as well as Family Economic Advancement Programme (FEAP) cottage industry with effect from January 1, 1997.

Primary agricultural production is defined as:

- (i) primary crop production comprising the production of raw crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop products;
 - (ii) primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock products;
 - (iii) primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and samplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber products; and
 - (iv) primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate or final processing of any other manufactured or derivative fish products.
- (f) interest 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 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act.

9.4.2 Provisions of Finance Act, 2019 on exemptions of Interest on foreign loans

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

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

9.4.3 Provisions of Nigeria Tax Act, 2025 on interest exempted from tax

The Nigeria Tax Act, 2025 repealed the Companies Income Tax Act. Therefore, effective January 1, 2026, the following interest shall be exempted from tax in line with the provisions of section 162 of the Nigeria Tax Act, 2025 on income tax exemption.

- (a) compensating payments, which qualify as interest received by an approved agent from a borrower or lender on behalf of a lender or borrower in a Regulated Securities Lending Transaction; and
- (b) interest derived from outside Nigeria and brought into Nigeria through approved channels.

9.4.4 Authorised 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.

As provided under the Companies and Allied Matters Act 2004 (as amended):

Authorised unit trust means in respect of a year of assessment, a unit trust scheme that is authorised by the Securities and Exchange Commission under section 125 of the Investment and Securities Act to carry on the business of dealing in a unit trust scheme;

Unit trust scheme means 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 means 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;

A trustee means 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.

Income arising to the trustees

In respect of the income arising to the trustees of an authorised unit trust, the following shall 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 there-from 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.

9.5 Royalty

9.5.1 Definition of royalty

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

9.5.2 Income chargeable

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

9.5.3 Royalty exempted from tax

Royalty earned from abroad and brought into Nigeria through government approved channels shall be exempt from tax. Government approved channels means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act.

9.5.4 Provisions of Nigeria Tax Act, 2025 on royalty

In line with the provisions of Nigeria Tax Act, 2025, royalties arising from a right granted for the use, exploitation or occupation of any property is chargeable to tax and royalty is defined to include payments of any kind received or receivable, paid or payable as a consideration for the use of, or the right to use or exploit any property.

The Nigeria Tax Act, 2025 also exempt from tax, royalty derived from outside Nigeria and brought into Nigeria through approved channels.

9.6 Rental income

9.6.1 Definition of rental income

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

9.6.2 Rent received in advance

If rent is received in advance, it will be spread over the period of the rent (provided the period is not more than 5 years). However, if rent received in advance covering a period that is more than 5 years, it will be spread for 5 years. Thus, for tax purposes, the gains or profit arising from rent of a property is ascertained by deducting only those expenses that were directly incurred for the purpose of earning the income.

9.6.3 Rental income exempted from tax

The following rental income are exempted from tax in line with the provisions of Companies Income Tax Act (as repealed);

- (a) Rental income 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 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act.
- (b) The rental income received by a real estate investment company on behalf of its shareholders provided that:
 - (i) a minimum of 75% of the rental income is distributed; and
 - (ii) such distribution is made within 12 months of the end of the financial year in which the rental income was earned.

9.6.4 Provisions of Nigeria Tax Act, 2025 on royalty

In line with the provisions of Nigeria Tax Act, 2025, rent arising from a right granted for the use of any property is chargeable to tax and rent is defines to include payments of any kind received or receivable, paid or payable as a consideration for the use of or the right to use any property.

The Nigeria Tax Act, 2025 also exempt from tax, rent derived from outside Nigeria and brought into Nigeria through approved channels.

9.6.4 Allowable rental expenses

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

- (a) tenement rates or land use charge;
- (b) cost of collecting rent, for example, fees paid to a caretaker, estate agent, legal representative, etc.;
- (c) cost of advertising for tenants;
- (d) any expenses incurred for repairs and maintenance of the building;
- (e) bad debt incurred;
- (f) interest on money borrowed and employed in acquiring or renovating the property;
- (g) commission paid to agent or caretaker;
- (h) insurance premium paid on the property; and
- (i) water rate.

9.6.5 Disallowable rental expenses

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

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

9.7 Real Estate Investment Companies (REICOs) Income – Finance Act, 2019

With Finance Act, 2019, the following sections of CITA have been amended to remove existing bottlenecks hindering the operations of real estate investment companies (REICOs):

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

In view of the foregoing amendments, REICO shall be liable to income tax:

- (a) on management fees and other income earned when less than 75% of Income is distributed to Shareholders and when dividend distribution is not made within 12 months; and
- (b) dividend to shareholders is liable to 10% WHT deduction by REICO.

9.7.1 Provisions of Nigeria Tax Act, 2025 on real estate investment company

The Nigeria Tax Act, 2025 defines real estate investment company as a company duly approved by the Securities and Exchange Commission to operate as a real estate investment scheme in Nigeria.

With respect to ascertainment of profit or loss of a company under section 20 of Nigeria Tax Act, 2025, dividends or mandatory distributions made by a real estate investment company duly approved by the Securities and Exchange Commission to its shareholders shall be allowed for deduction.

In addition, as contained in section 9 of the Nigeria Tax Act, 2025, dividend tax is not applicable to distributions made by a real estate investment company to its shareholders from rental income and dividend income received on behalf of those shareholders, whether such dividends are paid out of profits of the year in which the dividend is declared or out of profits of previous reporting periods.

As also provided under section 162 of Nigeria Tax Act, 2025, dividend or rental income received by a real estate investment company on behalf of its shareholders, where not less than 75% of the dividend or rental income is distributed within 12 months after the end of the financial year in which the dividend or rental income was earned is exempted from tax with the following exceptions:

- (i) the shareholder shall not be exempted from tax on the dividend or rental income received from a real estate investment company;
- (ii) the real estate investment company shall not be exempted from tax on management fee, profits or any other income earned for and on its own account; and
- (iii) the real estate investment company shall not be exempted from tax on dividend or rental income if it

does not meet the conditions relating to distribution of not less than 75% of the dividend or rental income is distributed within 12 months after the end of the financial year in which the dividend or rental income was earned.

Illustration 9.2

ABC Real Estate Investment Company Limited is a Real Estate Investment Company (REIC) under a Real Estate Investment Scheme (REIS) and makes up its account to 31st December each year.

The following information has been extracted from the books of the company for 2020 year of assessment:

	N'000
Total Profits	300,000
Dividend and rental income received under REIS	280,000
Total dividend distributed	500,000
REIS dividend (included in the total dividend distributed)	240,000

The REIS dividend and rental income were received on 18th October 2019 and included in the dividend distributed for accounting year 2019, which was paid on 15th April 2020.

Required:

Assess and advise on applicability of dividend tax to the dividend distributed by the company in 2020 year of assessment.

Suggested solution to illustration 9.2

86% of the REIS dividend and rental income was distributed (i.e. $240,000,000/280,000,000 \times 100$) and the distribution was done within six months.

Since the two conditions for qualifications for exemption from dividend tax have been met, then the REIS distribution shall be deducted from the dividend distribution during the period for the purpose of dividend tax. As such, the dividend payment for the purpose of dividend tax is $\text{N}500,000,000 - \text{N}240,000,000 = \text{N}260,000,000$.

Since the dividend distributed for the purpose of dividend tax ($\text{N}260,000,000$) is lower than the total profit of the company ($\text{N}300,000,000$), the tax liability of the company shall be computed on the total profits and not on the basis of dividend (i.e. the dividend paid shall not constitute the tax base for the purpose of computing the tax liability of the company).

Note: Where the two conditions are not met, the distribution shall be included for tax under dividend tax.

9.8 Provisions of Nigeria Tax Administration Act, 2025 on withholding tax on investment income

Investment incomes such as dividend, interest, royalty and rent are liable to withholding tax deduction and section 51 of Nigeria Tax Administration Act, 2025 provides that where any payment is made to a person, the person making the payment shall, at the date when payment is made or otherwise settled, deduct the tax at the rate prescribed in Deduction of Tax at Source (Withholding) Regulations, 2024.

In the case of dividend, interest, rent, royalty, directors' fee and payment to entertainers and sports persons, the tax, when paid over to the relevant tax authority, shall be the final tax due from a non-resident recipient of the payment. Interest on short term securities and corporate bonds earned by an individual after deduction of tax at source, shall not be charged to further tax.

9.9 Chapter review

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

Readers must have known those investment incomes chargeable/exempted to/from Nigerian tax, and how the Finance Acts, 2019 and 2020 affected the treatment of investment income (dividends, interests, rents and royalties) for tax purposes in Nigeria. Taxation of Real Estate Investment Company is also covered in this chapter.

Besides, readers must have learnt the relevant provisions of Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 as it relates to investment incomes.

9.10 Worked examples

9.10.1 Questions

1. In the pursuit of sustainable economic development, the agricultural sector plays a pivotal role, particularly in economies where primary agricultural production forms the backbone of rural livelihoods and food security. Recognizing this importance, financial institutions, especially banks, have developed various loan and advance schemes tailored to support companies engaged in primary agricultural activities.

Required:

Explain the incentives associated with loans and advances granted by banks to companies engaged in primary agricultural production.

- 2(a) Rental income is a significant source of earnings for many individuals and entities in Nigeria, and its treatment under tax law has important implications for both taxpayers and the government. One area of particular interest is the handling of rental income received in advance, payments made by tenants before the actual rental period begins.

Required:

Discuss the provisions of the tax law in respect of rental income received in advance.

- (b) Rental income is a common source of revenue for property owners, and its taxation is governed by specific provisions under Nigerian tax law. In computing the gains or profits derived from rental income, the law recognizes that certain expenses are incurred in the process of generating this income. To ensure fair taxation and encourage accurate reporting, the tax framework allows for the deduction of specific expenses that are deemed necessary, reasonable, and directly related to the production of rental income. These deductible expenses play a crucial role in determining the net taxable income and ultimately influence the tax liability of the property owner.

Required:

Explain **FIVE** (5) examples of expenses that can be deducted when computing rental income.

3. Mr. Emeka Godwin completed the construction of his building, a two-wing duplex located in Abuja, on December 31, 2020. He rented out both flats with effect from January 1, 2021, through an estate agent and received rent for two years. He made available the following details of his income and expenses for the relevant period:

	2021	2022
	N'000	N'000
Rent received (Gross)	7,000	7,000
Expenses:		
Repairs and maintenance	440	900
Water rate	164	210
Agent's commission	700	700
Professional charges	200	300
Insurance	104	104
Caretaker's wages	36	44
Tenement rate	50	64

Additional information:

- (i) Capital allowances agreed with the relevant tax authority for 2022 and 2023 tax years were N960,000 and N240,000, respectively.
- (ii) Repairs and maintenance comprised:

Depreciation	N200,000	N170,000
Repairs of tenant's bathroom	0	N360,000
Repairs of Emeka's residence	N240,000	N370,000
- (iii) Tenement rate includes tenement rate of N10,000 and N40,000 paid on the private residence of Mr. Emeka for 2021 and 2022.

Required:

Calculate and advise on the amount of rental income assessable to tax for the relevant tax years.

4. Chike & Sons Limited is a company owned by the members of Chike family. Its issued share capital of 10,000,000 ordinary shares of ₦1 each are held by:

Sunday Chike	4,000,000 shares
Samuel Chike	2,000,000 shares
Joy Chike	1,000,000 shares
Mabel Chike	3,000,000 shares

Additional information:

- (i) For the year ended December 31, 2022, the company made a net profit before tax of ₦26,500,000. The company has not paid dividend since it was established 8 years ago.
- (ii) The Federal Inland Revenue Service is of the opinion that the non-payment of dividend by the company was with a view to reducing the tax payable by its shareholders. In exercise of the powers conferred on it by the Companies Income Tax Act, the FIRS has directed that ₦8,000,000 of the profit be treated as having been distributed as dividend.

Required:

Calculate and advise on the amounts deemed as income in the hands of the shareholders.

5. In 2024 Bada Ltd received a gross dividend of ₦5,000,000 from Bawa Ltd. for the accounting year ended December 31, 2024, Bada Ltd made a net profit before tax of ₦25,000,000 including the gross dividend from Bawa Ltd. The dividend was received less 10% withholding tax deducted at source.

Required:

Calculate and advise on the income tax liability of Bada Ltd. on the assumption that:

- (a) the company did not pay any dividend to its shareholders during the year;
 - (b) the company pays a gross dividend of ₦5,000,000 to its shareholders during the year; and
 - (c) the company pays a gross dividend of ₦15,000,000 to its shareholders during the year.
 - (d) The company pay a gross dividend of ₦2,750,000 to its shareholders during the year.
6. Where a Nigerian company controlled by not more than five individuals has not distributed to its shareholders as dividend, profits made in any period by such company, the relevant tax authority may direct that the proportion of the profits of the company, which could have been distributed without detriment to the company's business, be construed as distributed.

Required:

Explain the provisions of Nigeria Tax Act, 2025 on undistributed profits that may be treated as distributed.

9.10.2 Suggested solutions to questions

1. Interest on loans granted by banks for primary agricultural production shall be exempted from tax, if twelve months moratorium is allowed and the rate of interest is not more than the base lending rate of the bank at the time the loan was granted, refinanced or otherwise restructured.

In addition to the above, small and medium-sized companies engaged in primary agricultural production shall be granted:

- a) pioneer status for an initial period of four (4) years and an additional period of two (2) years, subject to satisfactory performance; and
- b) a reduction in import duty on tractors from 35% to 5%.

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

Primary agricultural production is defined as:

- (a) primary crop production comprising the production of raw crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop products;
- (b) primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock products;
- (c) primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and samplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber products; and
- (d) primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate or final processing of any other manufactured or derivative fish products.

- 2(a) **Rent received in advance:** If rent is received in advance, it will be spread over the period of the rent (provided the period is not more than 5 years). However, if rent received in advance covering a period, that is more than 5 years, it will be spread for 5 years. Thus, for tax purposes, the gains or profit arising from rent of a property is ascertained by deducting only those expenses that were directly incurred for the purpose of earning the income.

(b) Allowable rental expenses

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

- i. tenement rates or land use charge;
- ii. cost of collecting rent for example, fees paid to a caretaker, estate agent, legal representative, etc.;
- iii. cost of advertising for tenants;
- iv. any expenses incurred for repairs and maintenance of the building;
- v. bad debt incurred;
- vi. interest on money borrowed and employed in acquiring or renovating the property;
- vii. commission paid to agent or caretaker;
- viii. insurance premium paid on the property; and
- ix. water rate.

3.

Mr. Emeka
Computation of rental income
For the relevant assessable years

	2022		2023	
	N	N	N	N
Rent received		7,000,000		7,000,000
Less: Allowable expenses:				
Repairs and maintenance:				
Repairs of tenant's bathroom	-		360,000	
Water rate	164,000		210,000	
Agent's commission	700,000		700,000	
Professional charges	200,000		300,000	
Insurance	104,000		104,000	
Caretaker's wages	36,000		44,000	
Tenement rate	<u>40,000</u>	<u>(1,244,000)</u>	<u>24,000</u>	<u>(1,742,000)</u>
Assessable rent		5,756,000		5,258,000
Less: Capital allowances		<u>(960,000)</u>		<u>(240,000)</u>
Chargeable rent		<u>4,796,000</u>		<u>5,018,000</u>

4.

Chike & Sons Limited
Computation of amount deemed as income
In the hand of shareholders

	Deemed		Dividend
			N
Williams Nelson	<u>4,000,000</u>		
	10,000,000	X N8,000,000	3,200,000
Samuel Nelson	<u>2,000,000</u>		
	10,000,000	X N8,000,000	1,600,000
Tamara Nelson	<u>1,000,000</u>		
	10,000,000	X N8,000,000	800,000
Malia Nelson	<u>3,000,000</u>		
	10,000,000	X N8,000,000	2,400,000

5.

Bada Ltd.
Computation of income tax liability
For 2025 assessment year

(a) Bada Ltd paid on dividend to its shareholders

	N'000
Net profit before tax	
(including gross dividend received)	25,000
Less gross dividend received	<u>5,000</u>
Taxable profit	<u>20,000</u>
Income tax payable on profit (30% x ~~N~~ 20,000,000)	<u>6,000</u>

Notes

Since the dividend received by Bada Ltd has not been redistributed, it cannot set off the withholding tax suffered against its tax liability. In other words, Bada Ltd has not been able to recoup the withholding tax of ~~N~~500,000 due to non-distribution of dividend received. However, the gross dividend will be treated as franked investment income that is exempted from tax.

(b) Bada Ltd redistributed the whole dividend received

	N'000
Net profit before tax (including gross dividend received)	25,000
Less gross dividend received	<u>5,000</u>
Taxable profit	<u>20,000</u>
Income tax payable on profit (30% x ~~N~~ 20,000)	6,000
Add withholding tax on dividend paid (10% x ~~N~~ 5,000)	500
Less WHT on dividend received (10% x ~~N~~ 5,000)	<u>500</u>
	<u>0</u>
Total tax payable	<u>6,000</u>

Notes

The withholding tax suffered on the dividend received by Bada Ltd has been used to offset the withholding tax due on the dividend redistributed by the company. Thus, Bada Ltd does not need to pay withholding tax in cash to the tax authority on the dividend redistributed.

(c) Bada Ltd paid a dividend of ₦15,000,000 to its shareholders

	~~₦~~ '000
Net profit before tax	
(including gross dividend received)	25,000
Less gross dividend received	<u>5,000</u>
Taxable profit	<u>20,000</u>
Income tax payable on profit (30% x 20,000)	6,000
Add WHT on dividend paid (10% x 15,000)	1,500
Less WHT on dividend received (10% x 5,000)	<u>(500)</u>
	<u>1,000</u>
Total tax payable	<u>7,000</u>

Notes

The withholding tax suffered of ₦500,000 suffered by Bada Ltd on dividend received has been set off against the withholding tax of ₦1,500,000 due on the dividend paid by the company. Bada Ltd will be required to pay only the balance of withholding tax, which is, ₦1,000,000 to the tax authority.

(d) Bada Ltd redistributed part of the dividend received

	₦'000
Net profit before tax	
(including gross dividend received)	25,000
Less gross dividend received	<u>5,000</u>
Taxable profit	<u>20,000</u>
Income tax payable on profit (30% x ₦20,000)	6,000
Add WHT on dividend paid (10% x ₦2,750)	275
Less WHT on dividend received (10% x ₦5,000)	<u>500</u>
Balance of WHT on dividend received	<u>(225)</u>
	<u>0</u>
Total tax payable	<u>6,000</u>

Notes

Bada Ltd has been able to recover only ₦275,000 out of the ₦500,000 withholding tax suffered because the withholding tax suffered on dividend received is more than the withholding tax deducted from dividend paid. Based on the provisions of CITA 2007, it is possible for the company to claim a refund of the balance of withholding tax on dividend received (₦225,000) or carry forward and set off against future withholding tax on dividend paid by the company.

6. With respect to certain undistributed profits that may be treated as distributed, section 10 of the Nigeria Tax Act, 2025 provides that:
- where a Nigerian company controlled by not more than five individuals has not distributed to its shareholders as dividend, profits made in any period for which accounts have been made up by such company, the Service may direct that the proportion of the profits of the company, which could have been distributed without detriment to the company's business, be construed as

distributed;

- b. the gross amount of profits construed as distributed shall constitute a taxable income in the hand of individual shareholders of the company in proportion to their shareholdings in the ordinary capital of the company on the day of the deemed distribution;
- c. any direction by the Service to the company shall be made in writing and be served on the company, and shall specify the:
 - i. the day to be taken for the purposes of profits so deemed to be distributed;
 - ii. the gross amount of those profits so deemed to be distributed;
 - iii. the rate applied for the deduction at source, being the rate prescribed by Nigeria Tax Administration Act 2025; and
 - iv. the net amount after the deduction at source.
- d. for the purpose of exercising the power to direct a company to distribute its profits, the Service may give notice to any company, which it has reason to believe is controlled by not more than five individuals, requiring it to supply, within such time as contained in such notice, full particulars of its shareholders;
- e. in the case of a limited liability partnership, all the profits of the partnership shall be deemed as distributed, and taxable income, proportionately, in the hands of the respective partners;
- f. any direction by the Service to the company with respect to the profits of any accounting period of a company shall be made not later than three years after the receipt by the Service of the duly audited accounts of the company for that period; and
- g. a company in respect of which a direction is made to distribute its profits shall have a right of appeal in accordance with the provisions of the Nigeria Tax Administration Act, 2025.

TAX INCENTIVES

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10 Tax Incentives

10.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the basic concepts and application of taxation incentives.

10.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) understand profits or gains of companies that are exempted from tax;
- (b) understand income of individuals that are exempted from tax;
- (c) know the meaning of economic development tax incentives;
- (d) understand what constitutes priority sector, priority company or business and priority products or services;
- (e) understand the eligibility for economic development incentive certificate;
- (f) understand the application and approval processes for economic development incentive certificate;
- (g) know the terms of economic development incentive certificate;
- (h) understand the process of addition of product to the economic development incentive certificate;
- (i) understand the tax implications of economic development incentive certificate;
- (j) know the meaning of production day and qualifying capital expenditure;
- (k) understand cancellation of economic development incentive certificate;
- (l) understand economic development tax credit;
- (m) understand economic development incentive period;
- (n) understand the transition arrangement with respect to incentive granted to a company under the Industrial Development (Income Tax Relief) Act; and
- (o) understand the tax implications of operations in the free trade zones.

10.2 Provisions of Nigeria Tax Act, 2025 on income tax exemptions

The Nigeria Tax Act, 2025 provides that tax shall be imposed on (a) the profits or gains of any company or enterprise; (b) income of any individual or family; and (c) income arising, accruing or due to a trustee, or an estate.

However, part one (1) of chapter 8 of Nigeria Tax Act, 2025 on income tax exemption made provisions for the following to be exempted from tax:

- (a) the profits accruing to, or gains from disposal of assets of any person being;
 - (i) a statutory or registered friendly society, where the profits or gains are not derived from a trade or business carried on by such society;
 - (ii) a co-operative society registered under any enactment or law relating to co-operative societies, not being profits or gains from any trade or business carried on by that society;

- (iii) in educational, religious or charitable activities of a public character where the profits or gains are not derived from a trade or business carried on by such person;
 - (iv) a trade union registered under the Trade Unions Act where the profits or gains are not derived from a trade or business carried on by such trade union;
 - (v) a Federal, State or Local Government in Nigeria, their Ministries, Departments and Agencies and other public institutions, other than profits or gains derived from trade or business or any instrumentality established for the purpose of trade or business; and
 - (vi) a government purchasing authority established by an enactment and empowered to acquire any commodity for export or redistribution.;
- (b) dividend distributed by authorised collective investment scheme;
- (c) dividend or rental income received by a real estate investment company on behalf of its shareholders, where not less than 75% of the dividend or rental income is distributed within 12 months after the end of the financial year in which the dividend or rental income was earned is exempted from tax with the following exceptions:
- (i) the shareholder shall not be exempted from tax on the dividend or rental income received from a real estate investment company;
 - (ii) the real estate investment company shall not be exempted from tax on management fee, profits or any other income earned for and on its own account; and
 - (iii) the real estate investment company shall not be exempted from tax on dividend or rental income, if it does not meet the conditions relating to distribution of not less than 75% of the dividend or rental income is distributed within 12 months after the end of the financial year in which the dividend or rental income was earned;
- (d) compensating payments, which qualify as dividends received by a lender from its approved agent or a borrower in a Regulated Securities Lending Transaction;
- (e) compensating payments, which qualify as dividends or interest received by an approved agent from a borrower or lender on behalf of a lender or borrower in a Regulated Securities Lending Transaction;
- (f) consular fees received on behalf of a foreign State, or by a consular officer on behalf of the State, and the employment income of such officer, other than income in respect of any trade, business, profession or vocation carried on by the officer or in respect of any other employment exercised by him in Nigeria, provided that this exemption shall not apply to the income of an employee engaged in domestic duties, or where the officer or employee ordinarily resides in Nigeria and is not a national of the foreign State;
- (g) an income in respect of which tax is remitted or exempt under the provisions of the Diplomatic Immunities and Privileges Act or of any enactment, order or notice continued in force or effected by that Act;
- (h) pension funds and assets created under the Pension Reform Act;
- (i) pension, gratuity or any retirement benefits granted in accordance with the Pension Reform Act;
- (j) wound and disability pensions granted to members of the armed forces or of any recognised national defence organisation, or to a person injured as a result of enemy action;

- (k) a sum received by way of death gratuities or as consolidated compensation for death or injuries
- (l) redundancy lump sum payment and other compensation of capital nature for loss of employment that is not more than ₦50,000,000;
- (m) gains accruing from the disposal of assets by an angel investor, venture capitalists, private equity fund, accelerators or incubators with respect to a labelled startup provided the assets have been held in Nigeria for a minimum of 24 months;
- (n) income earned from bonds issued by a State or the Federal Government of Nigeria;
- (o) emoluments of any person serving as other rank and other personnel serving in combat zones, hazardous areas or in designated operations, provided that where any other income accrues to the person, not being income by way of personal emoluments, that income shall be liable to tax;
- (p) income generated by companies engaged in agricultural businesses including crop production (growing of perennial and non-perennial crops), livestock (raising and breeding of animals in ranches and farms, livestock processing), aquaculture, forestry (plantation of rubber and acacia trees), dairy (manufacture of dairy products, processing of cocoa) for the first five years upon commencement of business;
- (q) dividend received from investments in wholly export-oriented business;
- (r) profits of a company engaged in sporting activities;
- (s) dividend, interest, rent or royalty derived from outside Nigeria and brought into Nigeria through approved channels;
- (t) income of a person from an employment where such person earns gross income of national minimum wage or less from such employment;
- (u) wages and salaries of military officers.

As also provided by the Nigeria Tax Act, 2025, Chargeable gains are to be included in the total profit of the company and taxable income of individual to determine their income tax. However, the following shall not constitute Chargeable gains and shall be exempted from tax:

- (i) gains accruing to pension funds and assets approved under the Pension Reform Act;
- (ii) gains accruing to an individual from disposal of investment held as part of any national provident fund or other retirement benefits schemes established under the provisions of any Act or enactment for employees throughout Nigeria; and
- (iii) gains on the disposal of a decoration, awarded for valour or gallant conduct which a person acquires otherwise than for consideration in money or money's worth.

Besides, the Nigeria Tax Act, 2025 provides for additional incentives for companies with respect to deduction of 50% in the relevant years of assessment in respect of costs incurred in any two calendar years from 2023 to 2025 on;

- (i) wage awards, salary increases, transportation allowance or transport subsidy granted to a low-income worker, which bring the gross monthly remuneration of the worker up to an amount not exceeding ₦100,000 provided that any additional award or salary increase to an employee earning above ₦100,000 as

- (ii) monthly salary shall not qualify for the additional deduction; and salaries of any new employee constituting a net increase in the average number of new employees hired in 2023 and 2024 calendar years over and above the average net employment in the three preceding years, provided that such new employees are not involuntarily disengaged within a period of three years post-employment. The net employment is defined to mean the total number of persons employed less the total number of persons disengaged during the calendar year, whether such disengagement is voluntary or not.

10.3 Priority sectors and economic development tax incentives

The Nigeria Tax Act, 2025 introduces the economic development tax incentive which replaces the long-standing pioneer status incentive. The economic development tax incentive establishes a more targeted and investment-linked structure that ties tax reliefs directly to verifiable capital expenditure and performance in the priority sectors. This marks a paradigm shift from blanket tax holidays to a credit-based model.

Priority sectors

Priority sectors are sectors that have great potential to contribute to the economic growth and development of Nigeria, but has not been operating on a scale to actualise its potentials.

Priority industries are industries that operate in priority sectors that engaged in any trade or business of any kind specified in the tenth schedule to the Nigeria Tax Act, 2025. Priority companies are companies that are issued an economic development incentive certificate for engaging in priority business which involves the production and sale of priority product or products. Priority products are goods and services of any kind specified in the tenth schedule to the Nigeria Tax Act, 2025.

List of priority sectors – Tenth Schedule to the Nigeria Tax Act, 2025

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
1		Manufacture of starches and starch products.	Starches from rice, maize, potatoes, wheat cassava; Wet corn milling; Glucose, glucose syrup, maltose, insulin; Gluten.	₦500m	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
2	Aquaculture	Marine and Freshwater fishing and all forms of aquaculture.	All fish, shellfish and all aquatic species	₦500m	20 years
		Aquaculture processing	Fish processing and preservation	₦500m	20 years
3		Manufacture of tea products.	Blending of tea.	₦500m	20 years
4	Refining of Crude Oil and gas.	Manufacture of refined petroleum products.	Oil-based lubricating oils/grease: hydraulic/engine oil, gear oil, low power oil, brake fluid; Motor fuel: gasoline, kerosene, diesel; Fuel: Light, medium and heavy fuel oil, refinery gases (hydrogen, methane, ethane, propane, butane); Aviation fuel; Products for road covering: asphalt.	₦100b	20 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
5	Manufacture of Electrical Equipment and Electronics.	Manufacture of electric motors, generators, transformers and electricity distribution and control apparatus.	Distribution transformers; Power generators; Transmission and distribution regulators; Electric motors, power circuit breaker, surge suppressors (for distribution level voltage); Control panels for electric power distribution; Electrical relays; Ducts for electrical switchboard apparatus, electric fuses, power switching equipment.	₦20b	20 years
6		Manufacture of batteries and accumulators.	Primary cells and primary batteries; Electric accumulators; Lead acid batteries; NiCad batteries; NiMH batteries Lithium batteries; Dry cell batteries; Wet cell batteries	₦20b	20 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
7		Manufacture of wiring and electrical lighting equipment	Manufacture of discharge, incandescent, fluorescent, ultra-violet, infra-red bulbs Electric wires; Fibre optic cables; Insulated wire and cables made of steel, copper and aluminium	₦10b	12 years
8		Manufacture of Domestic appliances	Refrigerators, freezers, ovens, cookers, dishwashers, washing and drying machine, vacuum cleaners, floor polisher, blenders, juicers, electric shavers electric toothbrush, tin openers, micro-wave, toasters, coffee makers, air conditioners	₦5b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
9		Manufacture of electronic components.	Electrical capacitors, resistors, condensers. Carbon and graphite electrodes; welding electrodes; Diodes, transistors, light emitting diodes; Inverters, rectifying apparatus, fuel cells, photovoltaic modules, regulated and unregulated power supplies, solar home systems; Uninterrupted power supplies, surge protectors.	₦5b	15 years
10	Manufacture of Electrical Equipment and Electronics	Manufacture of irradiation, electromedical and electrotherapeutic equipment	Irradiation apparatus and tubes, CT Scanners, PET scanners, magnetic resonance imaging (MRI) equipment, medical ultrasound equipment, electrocardiographs, electromedical endoscopic equipment, medical laser equipment, pacemakers, hearing aids	₦20b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
11	Electricity and gas supply.	Electric power generation, transmission and distribution.	Operation of generation facilities that produce electric energy, including thermal, nuclear, hydroelectric, gas turbine, and renewable; Operation of transmission systems that convey electricity from generation facility to distribution systems; Operation of distribution systems (that is, consisting of lines, poles, meters and wiring) that convey electric power received from generation facility or the transmission system to the final consumer.	₦100b	20 years
12	Electricity and gas supply.	Production of gas, including gas utilisation (down-stream operations).	Production of gaseous fuels with a specified calorific value, by purification, blending and other processes from gases of various types, including natural gas; transportation, distribution and supply of gaseous fuels	₦100b Separate Power from gas	20 years
13	Renewable Energy		Production and manufacture of renewable energy equipment and apparatus	₦100b	20 years
14	Mining of Coal	Mining and processing of coal	Coal	₦10b	20 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
15	Mining of metal ores.	Mining and processing of lead zinc, iron ore and gold.	Lead, zinc, iron ore and gold.	₦10b	20 years
16	Quarrying and Mining of other Minerals.	Quarrying of limestone and mining of barite, bitumen and bentonite.	Limestone, barite, bitumen, and bentonite.	₦5b	20 years
17	Mining of lithium, rare earth	Mining of lithium, rare earth	Lithium, rare earth.	₦10b	20 years
18		Manufacture of medical and dental equipment and supplies.	Surgical drapes and sterile string and tissue; Surgical Instruments including disposables; Dental fillings and cements, dental wax and other dental plaster preparations; Bone reconstruction cements Dental laboratory furnaces; Laboratory ultrasonic cleaning machinery; Laboratory sterilisers; Distilling apparatus, centrifuges; Medical, surgical, dental or veterinary furniture (operating tables, examining tables, hospital beds, dentists chair); Bone plates and screws, syringes, needles, catheters, cannulae; Dental instruments; Orthopaedic and prosthetic devices; Medical thermometers.	₦5b	20 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
19		Construction of Hospitals	Tertiary hospitals; Specialist hospitals	₦5b	20 years
20	Motion picture, video and television programme production, distribution and exhibition.	Production and post-production of digital content for motion picture, videos, television programmes, commercials, distribution and exhibition.	Digital movies, animation, videos, television programmes, commercials; Online distribution; Exhibition.	₦5b	15 years
21	Music production	Music production, distribution, publishing, manufacture of musical equipment, instruments and		₦250m	20 years
22		Building and operation of utility projects.	Long-distance pipelines, communication and power lines; power plants; Waterways, harbour and river works, ports; Dams; Refineries; Petrochemical plants;	₦200b	20 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
23	Manufacture of chemical and pharma - ceutical products.	Manufacture of basic chemicals, fertilisers and nitrogen compounds.	Organic and inorganic basic chemicals. Associated nitrogen products: nitric and sulphonitric acids, ammonia, ammonium chloride, ammonium carbonate, nitrites and nitrates of potassium. Polyethylene terephthalate, Amorphous-Polyethylene Terephthalate.	₦20b	15 years
24		Manufacture of pesticides and agro-chemicals.	Insecticides, rodenticides, fungicides herbicides.	₦5b	15 years
25		Manufacture of pharmaceuticals and medical chemicals.	Medicinal active substances to be used for their pharmacological properties in the manufacture of medicaments: antibiotics, basic vitamins, salicylic and o-acetylsalicylic acids; Medicaments - antisera and other blood functions, vaccines; Processing of blood; Medical diagnostic preparations; Radioactive in-vivo diagnostic substances; Biotech pharmaceuticals; Medical impregnated wadding, gauze, bandages, dressing.	₦2b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
26	Manufacture of non-metallic products	Manufacture of glass and glass products.	Flat glass (toughened or laminated, wired, coloured or tinted); Laboratory, hygienic or pharmaceutical glassware	N2b	15 years
27	Manufacture of non-metallic products	Manufacture of refractory products	Refractory mortars, concretes; Refractory ceramic goods: refractory bricks, blocks tiles, heat insulating ceramic goods; Laboratory wares: crucibles, nozzles, tubes, pipes, retorts, muffles; Refractory articles containing	N5b	15 years
28		Manufacture of lime, plaster.	Quicklime, slaked lime and hydraulic lime; Plasters of calcined gypsum; Calcined dolomite; Powdered and pre-mixed mortar;	N2b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
29	Manufacture of basic Metals, Iron and Steel.	Manufacture of basic iron and steel.	Ferro-alloys, ferrous products by direct reduction of iron and other spongy ferrous products, iron of exceptional purity, granular iron and iron powder, steel in ingots and other primary forms semi-finished products of steel, hot- rolled and cold-rolled flat rolled products of steel, steel bars and rods and solid and open sections of steel, wires of steel, sheet piling, railway track materials, seamless and welded tubes and pipes of steel, tube fittings of steel; flat sheets; angle bar. Operation of blast furnaces, steel converters, rolling and finishing mills/ foundries.	₦5b	15 years
30		Manufacture of other non- ferrous metals.	Aluminium; aluminium alloys; Lead, zinc, tin, copper, chrome, manganese, nickel from ores or oxides; Lead, zinc, tin, copper, chrome, manganese, nickel from electrolytic refining; Lead, zinc, tin, copper, chrome, manganese, nickel alloys; mattes of nickel; uranium; uranium from pitch-blende or other ores.	₦5b	12 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
31	Manufacture of fabricated metal products excluding machinery and equipment.	Manufacture of tanks, reservoirs, containers of metal, nails and other fabricated metals.	Metal containers for compressed or liquefied gas, silos and similar containers of metal for storage or manufacturing use, boilers and radiators.	N5b	12 years
32	Manufacture of motor vehicles and components and other transport equipment	Manufacture of motor vehicles and components.	Passenger cars, buses, vans, coaches, truck, tractors; fire engines; armoured vehicle; Moto vehicle engines, chassis, bodies, out fittings; Parts and accessories for motor vehicles: brakes, batteries, gearbox, axles, road wheels, suspension shock absorbers, radiators, silencers, exhaust pipes, catalytic converters, clutches, steering wheels, steering columns, steering boxes, safety belts, airbags, doors, bumpers, car seats, alternators, spark plugs, ignition wiring harnesses, power window and door systems, voltage regulators.	N50b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
33		Manufacture of motorcycles, tricycles and components.	Motorcycles, mopeds and cycles fitted with an auxiliary engine; Engines, parts and accessories for motorcycles; Motorised and non-motorised	₦20b	12 years
34		Building of ships, boats and floating structures for transportation.	Commercial vessels (passenger vessels, ferry boats, cargo ships, tankers, tugs), warships, fishing boats and fish-processing factory vessels; Sail boats, motor boats.	₦5b	15 years
35		Manufacture of aircraft and components.	Aeroplane for the transport of goods or passengers, helicopters; Drones and UAD; Parts and accessories of aircraft; fuselages, wings, doors, control surfaces, landing gears, fuel tanks, nacelles, air screws, helicopter rotors and propelled rotor blades, aircraft motors and engines, Part of turbo jets and turboprops, aircraft seat; conversion of aircraft and aircraft engines	₦50b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
36		Manufacture of railway locomotives and rolling stock	Electric, diesel, steam and other rail locomotives; Self-propelled/non- self-propelled railway coaches, vans, trucks, maintenance/service vehicles and Wagons Specialised parts of railway locomotives; mechanical and electromechanical signalling, safety and	₦10b	20 years
37	Maintenance, repair and overhaul.	Maintenance, repair and overhaul aircrafts.	Repair, maintenance and overhaul of aircraft and aircraft engines.	₦10b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
38	Transportation	Rail, Land Pipeline and water transportation	Passenger rail transport: inter and intra urban service. Freight rail transportation: mainline rail network and short-line freight rail. Freight transport by road: stock haulage; refrigerated; Transportation via pipelines: gases, liquids, slurry and other commodities. harbour operation and other auxiliary activities such as docking, pilotage, vessel salvage. Inland passenger water transportation: transport of passenger via rivers, canals, lakes and other inland waterways including inside harbours and ports.	N5b	15 years
39		Manufacture of power-driven hand tools.	Circular or reciprocating saws, drills and hammer drills, hand held power sanders, pneumatic nailers, buffers, routers, grinders, staplers, pneumatic rivet guns, planers, shears and nibblers, impact wrenches, power actuated nailers.	N5b	10 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
40		Manufacture of general-purpose machinery.	Industrial refrigerating or freezing equipment, industrial air conditioning machines, non-domestic fans; Packaging and wrapping machinery; Fire extinguishers	₦10b	10 years
41	Other Manufacturing	Manufacture of agricultural and forestry machinery.	Ploughs, harvesters, threshers, planters, tractors used in agriculture and forestry, mowers, manure spreader, seeder, harrows, sorter, milking machines, spraying machines for agricultural use, poultry-keeping machinery, bee keeping machinery, equipment for preparing fodder, machines for cleaning, sorting or	₦10b	15 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
42		Manufacture of metal-forming machinery and machine tools	Machine tools for working metals and other materials (wood, bone, stone, hard rubber, hard plastics, cold glass); Machine tools for turning, drilling, milling, shaping, planing, boring, grinding; Stamping or pressing machine tools; Punch presses, hydraulic presses, hydraulic brakes, drop hammers, forging machines; Draw-benches, thread rollers or machines for working wires; Stationary machines for nailing, stapling, gluing; Stationary rotary or rotary percussion drills, filing machines, riveters, sheet metal cutters; Presses for the manufacture of particle board; Electroplating machinery.	N5b	10 years
43		Manufacture of machinery for metallurgy	Machines and equipment for handling hot metals (converters, ingot moulds, ladles, casting machines); Metal-rolling mills and	N5b	10 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
44		Manufacture of machinery for food and beverage processing	Agricultural dryers; Machinery for dairy industry, grain milling industry, bakery industry; Presses, crushers for fruit juices; Machines and equipment to process diverse foods; Machines for extraction	₦5b	10 years
45	Other Manufacturing	Manufacture of machinery for paper and paperboard production	Machinery for making pulp; Paper and paperboard making machines; Dryers for wood, paper, paper pulp, paper or	₦5b	10 years
46	Waste management	Waste treatment, disposal and material recovery	Conversion of waste to useable materials; Treatment of organic waste for disposal; Operation of facilities for treatment of hazardous waste; Treatment and disposal of toxic live or dead animals or contaminated waste; Processing of metal and non-metal waste and scrap and other articles into secondary raw materials, involving a mechanical or chemical	₦2b	12 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
47	Manufacture of textiles and Leather.	Preparation, spinning of textile fibres, weaving of textile and manufacture of made-up textiles.	Yarn or thread for weaving or sewing; Broad woven textiles, cotton-type, woollen-type, worsted-type, silk-type fabrics including from synthetic yarns; Knitted and crocheted fabrics-pile and terry fabrics, net and window furnishing type fabrics; Twine, cordage, rope and cables of textile fibres; Products of rope or netting: fishing net, insecticide treated nets; Synthetic filament tow, staple	₦2b	12 years
48	Manufacture of sportswear		Manufacture of sportswear, sports apparels.	₦500m	20 years
49	Manufacture of Leather Production	Manufacture of leather products	Footwear, boxes, wallets, belt, shirts, trousers, bags etc. Leather-chamois dressed, parchment dressed, patent or metallised, composition leather.	₦2b	12 years

S/N	Sub-sector	Economic Development Incentive Status	Priority Product/Service	Threshold	Sunset
50	Manufacture of pulp, paper and paper products	Manufacture of pulp and paper Manufacture of household and personal hygiene paper products	Bleached, semi-bleached or unbleached paper pulp manufactured by mechanical, chemical or semi- chemical processes; Cotton-linters pulp; Removal of ink and pulp from waste paper; Paper and paperboard for further industrial processing; Creped or crinkled paper. Wall	₦1b	10 years
51	Business process outsourcing.	Setting up of Regional/Global shared services centres in Nigeria for the provisions and management of technical services.	Shared services centres	₦2b	10 years

Note that "Sunset" in the context of the above tenth schedule to the Nigeria Tax Act, 2025 means the period counting from the date of commencement of the Nigeria Tax Act, 2025 which is January 1, 2026 after which a sector, industry or activity shall cease to be eligible for the economic development incentive subject to the five years maximum period of economic development incentive from the production day and five years maximum period after the end of the priority period within which unutilised tax credit may be utilised.

10.4 Eligibility for economic development incentive certificate

Economic development incentive certificate could be granted to any sector;

- (a) that is not operating on a scale suitable to the economic requirement of Nigeria, or there are favourable prospects of further development;
- (b) that is expedient in the public interest to encourage the development or establishment of the sector in Nigeria for the purpose of:
 - (i) generating employment;
 - (ii) attracting foreign direct investment inflow;
 - (iii) economic diversification; or

- (iv) simulating the growth of some sectors in certain localities.

To be granted economic development incentive certificate, an application may be made by a company incorporated in Nigeria, companies granted exemption from incorporation or by promoters of a company which is yet to be incorporated.

An application for the issuance of an economic development incentive certificate by a company shall be considered where the qualifying capital expenditure to be incurred by the company on or before production day, if the application is approved, is not below the amount specified in the tenth schedule to the Nigeria Tax Act, 2025 as discussed above.

10.5 Application for economic development incentive certificate

Every application for economic development incentive certificate shall be addressed to the Secretary of the Nigerian Investment Promotion Commission (NIPC) and the application shall;

- (a) show a commitment of, or the ability to commit, the minimum capital required to invest in the specified priority sector listed in the tenth schedule to the Nigeria Tax Act, 2025;
- (b) state whether the company is, or the proposed company when incorporated shall be, a company that the ultimate parent entity is a resident company or non-resident company;
- (c) give particulars of the assets on which qualifying capital expenditure is incurred or to be incurred by the company, including the source and cost or estimated cost;
 - (i) on or before production day; and
 - (ii) during a period of three years following the production day;
- (d) specify the place in which the assets, in respect of which qualifying expenditure was incurred or to be incurred by the company or proposed company, is situated or to be situated;
- (e) state the date or probable date of production day of the company or proposed company;
- (f) specify any product, service, and by-product, not being a priority product, being produced or proposed to be produced by the company or proposed company, 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;
- (g) give particulars of the loan and share capital, or the proposed loan and share capital of the company, or proposed company, including the amount and date of each issued share or proposed issue, and the source from which the capital is to be or has been raised;
- (h) in the case of a company already incorporated, provide the details of the

ownership structure of the company and the nationality of each director of the company; and

- (i) in the case of a proposed company, provide the name, Tax ID, address, and nationality of each promoter of the company and the proposed ownership structure.
- (j) contain a declaration signed by the applicant that all the information contained in the application is true, and an undertaking to produce proof, if required.
- (k) be accompanied by a non-refundable fee of 0.1% of the qualifying capital expenditure incurred or to be incurred, subject to a maximum of ₦5,000,000 and no further fee shall be payable to the NIPC in respect of the application.

On receipt of the application by the NIPC, the NIPC shall recommend the application to the Minister responsible for industry, trade and investment for approval or otherwise, including the projected tax expenditure impact report in its recommendation.

The Minister for Industry, Trade and Investment, acting on the recommendation of the NIPC, may recommend the application to the President for approval. An economic development incentive certificate shall be issued to a company upon the approval of the President.

The NIPC shall submit an annual report of the list of sectors and companies that have been issued economic development incentive certificate to the Minister of Industry, Trade and Investment who shall, not later than 30 days, present a copy of the report to the President and the National Economic Council.

10.6 Approval of application for economic development incentive certificate

- (a) A company whose application for economic development incentive has been approved shall be issued an economic development incentive certificate.
- (b) Where a sector is removed from the tenth schedule to the Nigeria Tax Act, 2025:
 - (i) economic development incentive certificate shall not be issued to a company in relation to that sector with respect to any pending application; and
 - (ii) a company issued an economic development incentive certificate before the removal shall exhaust its unexpired incentive period only.

10.7 Terms of economic development incentive certificate

- (a) Every economic development incentive certificate shall specify:
 - (i) conditions of the certificate; and
 - (ii) any permissible by-product that may be produced by the company in addition to the priority product and the proportion of the permissible by-product in relation to the priority product, either in quantity or in value or both.
- (b) Where an application for economic development incentive certificate for a proposed company has been approved, its promoters shall incorporate the company, not later than three months after the date of notification of the

- approval.
- (c) An economic development incentive certificate to be issued to a proposed company shall be issued only after the company has been incorporated and the certificate shall be effective from the company's production day.
 - (d) For an existing company, the NIPC shall, not later than 30 days after the approval of the President, issue the certificate and communicate it to the applicant.
 - (e) Where a company to which economic development incentive status has been issued:
 - (i) acquires another company to which an economic development incentive certificate has been issued under economic development tax incentives or its equivalent under the Industrial Development (Income Tax Relief) Act, the incentive status of both companies shall cease on the expiry date indicated on the economic development incentive certificate of the subsisting company;
 - (ii) takes over the assets and business of any company which is not a company with an economic development incentive status, such acquisition of asset and business of that company shall be subjected to the application for economic development incentive certificate and addition of product to the economic development incentive certificate processes;
 - (iii) is acquired by a company with no economic development incentive status, the economic development incentive status of the acquired company shall not be transferred to the acquiring company, except the acquiring company applies for economic development incentive certificate and is approved and issued;
 - (iv) merges with one or more companies that have been issued economic development incentive certificate or its equivalent;
 - the incentive status of the merging companies shall cease on the date of the merger;
 - the emerging company from the merger may apply for economic development incentive status; and
 - the expiration date of the economic development incentive certificate to be granted to the emerging company shall not be longer than the later date on the economic development incentive certificate of the merging companies.

10.8 Addition of product to the economic development incentive certificate

- (a) A priority company may, at any time during its incentive period, make an application in writing to the Executive Secretary of the NIPC for its economic development incentive certificate to be amended to add another product to the priority product or products specified in the certificate.

- (b) An application shall specify the additional priority product and the reasons for the application.
- (c) An economic development incentive certificate may be extended for an additional period of five years and no more, on the condition that the priority company invests 100% of its profits during the incentive period for expansion of the same product or products.

10.9 Application of economic development incentive certificate

- (a) Where an economic development incentive certificate is issued to a company and tax is imposed on the income, profits or gains of the company after the effective date of the certificate, appropriate adjustments shall be made to give effect to the economic development tax credit given to the company.
- (b) No economic development incentive certificate shall be issued with a retroactive date.

10.10 Production day and qualifying capital expenditure

- (a) A company issued an economic development incentive certificate shall, not later than one month after its production day, apply to the Industrial Inspectorate Department of Federal Ministry of Industry, Trade and Investment, to certify its production day.
- (b) The Industrial Inspectorate Department shall within one month of certifying the production day, notify the NIPC and the Nigeria Revenue Service of the production day of the company.
- (c) Not later than one month after the production day of the company has been determined and certified, or within such extended time as the Nigeria Revenue Service may allow, the company shall make an application in writing to the Nigeria Revenue Service to certify the amount of the qualifying capital expenditure incurred by the company prior to production day and the company shall supply full particulars of the capital expenditure so incurred.
- (d) In determining the amount of qualifying capital expenditure incurred by the company prior to its production day, any sum derived directly or indirectly by that company from disposal, made before the production day, of any asset on which qualifying capital expenditure has been incurred, shall be deducted from the amount of the qualifying capital expenditure.
- (e) Where the disposal of asset referred to above is by way of a bargain not made at arm's length or to a connected person, the Nigeria Revenue Service shall consider the asset disposed of at its market value in a comparable transaction conducted at arm's length.
- (f) The Industrial Inspectorate Department shall issue a certificate within 14 days after inspection of the assets, to the company certifying the amount of qualifying capital expenditure incurred by the company prior to the production day and during the priority period. The Industrial Inspectorate Department may

charge a non-refundable fee of 0.1% of the qualifying capital expenditure incurred or to be incurred, subject to a maximum of N5,000,000 and no further fee shall be payable to the Industrial Inspectorate Department in respect of the certification.

- (g) (7) The provisions of Nigeria Tax Administration Act, 2025 which relate to objections and appeals shall apply to any certificate issued by the Nigeria Revenue Service, as if such certificate were a notice of assessment given under the provisions of the Nigeria Tax Administration Act, 2025
- (h) Where the amount of the qualifying capital expenditure incurred by the company prior to production day has been determined and certified by the Nigeria Revenue Service, the Nigeria Revenue Service shall notify the NIPC of the amount.
- (i) Where a certificate issued by the Nigeria Revenue Service certifies that the company has on or before production day incurred qualifying capital expenditure lower than the amount specified in the tenth schedule to the Nigeria Tax Act, 2025, the Nigeria Revenue Service shall discountenance such economic development incentive certificate and notify the NIPC accordingly
- (j) Production day means in relation to a company:
 - (i) providing services, the date in which the company is ready to provide such priority service on a commercial scale; and
 - (ii) engaged in manufacturing, processing, mining, agricultural or any other priority industry, the date in which the company begins to produce the priority product in commercial quantities.

10.11 Cancellation of economic development incentive certificate

- (a) The NIPC shall cancel an economic development incentive certificate under the following circumstances:
 - (i) on the application of the priority company concerned;
 - (ii) on the cessation of the priority business or the company being liquidated or wound up; or
 - (iii) where the priority company fails to commence production 12 months after the proposed production day.
- (b) In addition, the Minister for Industry, Trade and Investment may, on the recommendation of the NIPC, suspend the economic development incentive certificate issued to a company and require the priority company to, not later than three months, remedy a non-compliance and furnish the details of compliance where:
 - (i) any of the conditions for the grant of economic development incentive certificate was not met; or
 - (ii) the Minister for Industry, Trade and Investment is of the opinion that a priority company has contravened any provision of economic development tax incentive or has failed to fulfil any estimate or proposal made in its application for an economic development incentive certificate or any conditions contained in its certificate.

- (c) Where a priority company fails to remedy the non-compliance or furnish the details of the compliance within three months, the Minister for Industry, Trade and Investment shall, on the recommendation of the NIPC, recommend to the President, the cancellation of the economic development incentive certificate.
- (d) The President may, on the recommendation of the Minister for Industry, Trade and Investment, approve the cancellation of the economic development incentive certificate of the company, and any benefit that has accrued to the priority company from the economic development incentive status may be withdrawn.
- (e) The effective date of cancellation of an economic development incentive certificate of a priority company shall be where the:
 - (i) company has operated for a period less than one year after the production day, the production date as if the economic development incentive certificate was not granted at all. For instance, if the date of granting an economic development incentive is January 1, 2026 and date of cancellation is November 30, 2026, the effective date of cancellation in this case shall be January 1, 2026.
 - (ii) company has operated for a period more than one year after the production day, the date of the last anniversary of the production day. For instance, if the date of granting an economic development incentive is January 1, 2026 and date of cancellation is November 30, 2029, the effective date of cancellation in this case shall be January 1, 2029; or
 - (iii) cancellation is as a result of failure to meet any of the conditions for the grant of economic development incentive certificate, the production day.
- (f) Where the economic development incentive certificate of a company is suspended or cancelled, or where benefits that accrued to the company is withdrawn, the NIPC shall give notice of the cancellation or withdrawal to the Nigeria Revenue Service and the company concerned, specifying the effective date of cancellation or suspension of the certificate.

10.12 Information

The NIPC, Federal Ministry of Industry Trade and Investment or the Nigeria Revenue Service may require a priority company to provide information on;

- (i) the local production costs and factory prices of the products of the company;
- (ii) the relative cost, including freight and insurance, of imported products equivalent or similar to the priority products produced by the company; or
- (iii) any other matter as may be required under the economic development tax incentives.

10.13 Publication of economic development incentive certificate

The NIPC shall cause to be published in the Federal Government Gazette:

- (a) the name of any company to which an economic development incentive certificate has been issued and the priority sector or product to which the certificate relates;

- (b) the name of any company whose economic development incentive certificate has been cancelled and the effective date of the cancellation; and
- (c) any restriction of the incentive period of a company granted an economic development incentive status.

10.14 Economic development tax credit

- (a) The economic development tax credit at the rate of 5% per annum for a period of 5 years shall apply to each eligible Qualifying Capital Expenditure acquired within 5 years effective from the production date.
- (b) The economic development tax credit may be utilised to offset the tax payable of any year of assessment during the priority period, except the additional tax payable relating to minimum effective tax rate of 15% for applicable company.
- (c) A company having unutilised tax credit or eligible QCE on which 5% per annum tax credit is yet to be claimed for 5 years, after the end of the priority period, may within 5 years thereafter carry forward such unutilised tax credit and any amount remaining unutilised shall lapse.

10.15 Economic development incentive period

The incentive period of a priority company shall commence on the production day of the company, and shall be for a period of five years unless extended for an additional period of five years and no more.

10.16 Books and records for priority products

- (a) Where a priority company carries on a non-priority business, the company shall maintain separate records of income and books of account for each business.
- (b) The records of each business certified by an auditor, shall be sufficient to enable the determination of the turnover, income or profits of each class of business.
- (c) Where, in the opinion of the Nigeria Revenue Service, the company has not complied with the provision of separate records to be kept, all the income of the company shall be deemed non-priority and economic development tax credit shall not be granted

10.17 Returns of profits

- (a) All the relevant provisions relating to imposition of tax on income, profits or gains under the Nigeria Tax Act, 2025 and provisions relating to returns, assessment and payments under the Nigeria Tax Administration Act, 2025 including the filing of returns, shall apply to a company granted economic development incentive status during the priority period.
- (b) The company shall provide evidence of compliance with the minimum qualifying criteria specified in sections 168 and 169, and the tenth schedule to the Nigeria Tax Act, 2025, accompanied with the annual income tax returns

10.18 Cancellation or discountenance of economic development tax credit

- (a) The Nigeria Revenue Service may, not later than six years after the cancellation of an economic development incentive certificate, withdraw or discountenance an economic development tax credit granted under the economic development tax incentive, except in the case of fraud where there is no limit to the time for the withdrawal of the economic development tax credit.
- (b) Where an economic development tax credit is withdrawn or discountenanced the Nigeria Revenue Service shall, within the time prescribed under the Nigeria Tax Administration Act, issue notice of additional assessment to the company.

10.19 Provisions for plantation industry

- (a) For the purposes of imposition of tax on income, profits or gains, the trade of a company which operates a plantation to which an economic development incentive certificate has been issued shall be deemed to have commenced on the date when the planting first reaches commercial production.
- (b) Expenditure incurred on the maintenance of a planted area up to the date when the planting first reaches commercial production is deemed to have brought an asset into existence, and the expenditure shall be qualifying plantation expenditure on the date the business commenced, for the purposes of capital allowances computation.

10.20 Exclusion from other reliefs and transition arrangements

- (a) Any company granted economic development tax credit, shall not benefit from a similar tax incentive under the Nigeria Tax Act, 2025 or any other law.
- (b) Any company granted an incentive under the Industrial Development (Income Tax Relief) Act shall continue to enjoy the reliefs applicable under the Industrial Development (Income Tax Relief) Act for the unexpired period as at the commencement of Nigeria Tax Act, 2025 which is January 1, 2026.
- (c) Where a company has been granted an economic development incentive under the Nigeria Tax Act, 2025 prior to the applicable sunset for the sector or activity, the company shall continue to enjoy the reliefs applicable under the economic development tax incentive for the unexpired period.

10.21 Meaning of Minister, relevant authority, and sunset

- (a) Minister means the Minister responsible for industry, trade and investment.
- (b) Relevant authority means the Industrial Inspectorate Department of the Federal Ministry of Industry, Trade and Investment.
- (c) Sunset in the context of the above tenth schedule to the Nigeria Tax Act, 2025 means the period counting from the date of commencement of the Nigeria Tax Act, 2025 which is January 1, 2026 after which a sector, industry or activity shall cease to be eligible for the economic development incentive, subject to the five years maximum period of economic development incentive from the production

day and five years maximum period after the end of the priority period within which unutilised tax credit may be utilised.

10.22 Tax implications of operations in the free trade zones

Export processing zone entity means an approved and licensed enterprise under the Nigeria Export Processing Zones Act Cap. N107, Laws of the Federation of Nigeria, 2004 while export free zone entity means an approved and licensed enterprise under Oil and Gas Free Zones Authority Act Cap. O5, Laws of the Federation of Nigeria, 2004

Licensed entities in export processing and export free zones shall be required to provide evidence of export proceeds, either in cash inflow or imported raw materials or equipment, as a condition to claim the tax incentives applicable to them.

The following are the tax implications of operations in the export processing or free trade zones in line with the provisions of the Nigeria Tax Act, 2025:

- (a) Where a trade or business is carried on by an approved enterprise in an export processing or free trade zone, the profits of such an export processing or free trade zone entity are fully exempt from tax, where;
 - (i) its total sales arise from the export of goods or services, or serve as inputs into goods or services exclusively for export;
 - (ii) not more than 25% of its sales arise from the sale of goods or services to the customs territory in Nigeria; and
 - (iii) the goods and services are sold to persons engaged in upstream, midstream or downstream petroleum or gas operations.
- (b) Where, in a year of assessment, more than 25% of the sales of an export processing zone entity arise from the sale of goods or services in the customs territory, tax shall accrue in Nigeria on the profits of the entity in respect of its total sales to the custom territory.
- (c) Notwithstanding the current provisions to the fact that tax shall accrue on the profits of the entity in respect of its total sales to the custom territory, if more than 25% of the sales of an export processing zone entity arise from the sale of goods or services in the customs territory, the profits of an export processing zone entity shall be fully subject to tax effective from January 1, 2028, in respect of its sales to the customs territory in Nigeria, regardless of the percentage of the sales.
- (d) In addition, the profits of an approved enterprise in an export processing or free trade zone that is liable to the minimum effective tax rate of 15% are not exempt from tax.

- (e) Besides, despite the fact that export processing or export free zone entity is exempted from tax, such entity shall comply with all relevant provisions of the Nigeria Tax Administration, Act 2025, including those requiring:
 - (i) registration;
 - (ii) filing of tax returns; and
 - (iii) deduction of tax at source.
- (f) Where an entity in a zone contracts out manufacturing services or any of its approved activity within the zone to a related or connected resident company that is not an entity in the zones, all incomes derived from the sale by the entity in the zone, of the goods produced shall be treated as the incomes of the related or connected resident company, except the Nigeria Revenue Service is satisfied that the transaction provided was conducted as arm's length.
- (g) Where a resident company, which is not an entity in the zones, provides services other than manufacturing services to a related or connected entity in the zones, the provisions of the Transfer Pricing Regulations shall apply to the transaction.
- (h) Services rendered to an export processing or export free zone entity by a person in the custom territory or services consumed by a free zone entity within the custom territory shall be chargeable to applicable taxes.

10.23 Chapter Review

In this chapter, the provisions of the Nigeria Tax Act, 2025 on income tax exemptions have been discussed. Also, covered in this chapter is economic development tax incentives that are applicable to the priority sectors.

Readers must have learnt the application and approval processes for economic development incentive certificate and the tax implications of the certificate, when obtained. Also, discussed in the chapter is the implication of the relief granted under economic development tax credit and under similar tax incentives, as well as the transition arrangements for the relief granted under Industrial Development (Income Tax Relief) Act.

The tax implication of operations in the free trade zones is also discussed in this chapter.

10.24 Worked examples

10.24.1 Questions

1. New Era Manufacturing Co. Ltd. was established in January 2023 and commenced manufacturing of electrical equipment and electronics on July 1, in the same year.

The adjusted profits of the company are as stated below:

		₦	
Period to	September 30, 2024	1,200,000	Loss
Year ended	September 30, 2025	3,000,000	Profit
Year ended	September 30, 2026	5,500,000	Profit

Capital allowances for the relevant years of assessment were computed and agreed with the Nigeria Revenue Service as follows:

	₦
2024 Year of assessment	1,500,000
2025 Year of assessment	1,200,000
2026 Year of assessment	1,400,000
2027 Year of assessment	1,100,000

Having reviewed the tenth schedule to the Nigeria Tax Act, 2025 and observed that its company's business falls within the purview of the priority sector, the company applied to the Nigerian Investment Promotion Commission (NIPC) for economic development incentive certificate. However, the application was not approved and it was communicated to the company.

Required:

Compute the tax liabilities of the company for all the relevant years.

2. Princess Nigeria Limited was incorporated on January 1, 2020. It was granted a pioneer certificate under Industrial Development (Income Tax Relief) Act on April 1, 2020, as the production day. Its audited financial statements revealed the following:

Accumulated losses as at March 31, 2023 - ₦500,000

Tax Year	Capital Allowance
	₦
2025	2,300,000
2026	200,000
2027	500,000

The net profit for the years ended March 31, 2024, 2025 and 2026 were ₦250,000, ₦500,000 and ₦750,000, respectively after charging depreciation of ₦1,750,000, ₦2,000,000 and ₦750,000 for the respective years. Extension of initial pioneer period under Industrial Development (Income Tax Relief) Act was never sought for.

On January 1, 2026, the company diversified its business activities to enable it enjoy huge opportunities provided by the Nigeria Tax Act, 2025 with specific reference to economic development tax incentive. Consequently, the sum of ₦20,000,000,000 was incurred on qualifying capital expenditure on February 12, 2026. Having satisfied all the requirements, economic development incentive certificate was issued to the company with effective date of July 1, 2026.

Required:

Compute the tax liabilities of the company for the relevant years of assessment bearing in mind the economic development incentive certificate issued to the company.

3. The ongoing tax reform in Nigeria has been described as a welcome development by the stakeholders within and outside Nigeria. One of the pivotal aspect of the reform is the introduction of economic development tax incentive, which replaces the long-standing pioneer status incentive. The economic development tax incentive establishes a more targeted and investment-linked structure that ties tax reliefs directly to verifiable capital expenditure and performance in the priority sectors. To qualify for the economic development tax credit under the economic development tax incentive, a company must obtain economic development incentive certificate.

Required:

Discuss the processes involved in issuance of economic development incentive certificate.

4. Mr. Okonkwo who studied in the Netherlands and had been working there for over 30 years finally returned to Nigeria in 2024.

One of the driving forces for his decision to return to Nigeria was the ongoing fiscal policy and tax reform in Nigeria, embarked upon by the current Federal Government of Nigeria.

Early 2025, he approached the Corporate Affairs Commission and registered Okonkwo Nigeria Limited.

Mr. Okonkwo was so excited about some of the provisions of the ongoing reforms, especially as it relates to tax matters. He read on several platforms that there are four (4) Tax Reform Acts and there is a chapter in one the Tax Reform Acts that dwells on income tax exemption.

Required:

Discuss the income tax exemption applicable to both individual and corporate entity in line with the provisions of the Nigeria Tax Act, 2025.

10.24.2 Suggested solutions to questions

1. New Era Manufacturing Co. Ltd. Income tax computation

Date of commencement of business – July 1, 2023 Commencement provisions:

Assessment Year	Basis period
2024	1/07/ 23 to 30/9/ 23
2025	1/10/ 23 to 30/9/ 24
-2026	1/10/ 24 to 30/9/ 25
2027	1/10/ 25 to 30/9/- 26

	₦	₦
2024 Year of Assessment		
Loss $3/15 \times 1,200,000$		<u>(240,000)</u>
Therefore, 2024 Assessment		
Capital allowance unutilised c/f	<u>1,500,000</u>	NIL
2025 Year of Assessment		
Loss $12/15 \times 1,200,000$		<u>(960,000)</u>
Therefore, 2025 Assessment		
Capital allowances:		NIL

For year	1,200,000
Brought forward	<u>1,500,000</u>
Carried forward	<u>2,700,000</u>

2026 Year of Assessment 3,000,000

Capital allowances

For year 1,400,000

Brought forward 2,700,000

3,100,000

Relieved 3,000,000 3,000,000

100,000

Carried forward

Therefore, 2026 Year of Assessment NIL

2027 Year of Assessment

5,500,000

Capital allowances

For year

1,100,000

Brought forward

100,000

1,200,000

Amount that can be relieved (1,200,000)

1,200,000

Taxable profit 4,300,000

Tax liability @ 30% 1,290,000

2.

Princess Nigeria Limited

Computation of tax liabilities

For all the relevant assessment years

	₦	₦
2025 assessment year		
Assessable profit (01/04/ 23 – 31/03/ 24)		
(~~₦~~ 250,000 + ~~₦~~ 1,750,000)		2,000,000
Less Balance on Section 17 Account		<u>500,000</u>
		1,500,000
Less capital allowance	2,300,000	
Relieved	<u>1,500,000</u>	<u>1,500,000</u>
Capital allowance carried forward	<u>800,000</u>	
Total profit		<u>Nil</u>
Tertiary education tax (3% of ~~₦~~ 2,000,000)		<u>60,000</u>
2026 assessment year		
Assessable profit (01/04/ 24 – 31/03/ 25)		
(~~₦~~ 500,000 + ~~₦~~ 2,000,000)		2,500,000
Less capital allowance brought forward	800,000	
Capital allowance for the year	<u>200,000</u>	
Relieved	<u>1,000,000</u>	<u>1,000,000</u>
Taxable Profit		<u>1,500,000</u>
Tax payable @ 30%		<u>450,000</u>
Education Tax (3% of ~~₦~~ 2,500,000)		<u>75,000</u>
2027 assessment year		
Assessable Profit (01/04/-25– 31/03/-26)		
(750,000 + 750,000)		1,500,000
Less capital allowance		<u>500,000</u>
Taxable Profit		<u>1,000,000</u>
Tax payable @ 30%		<u>300,000</u>

Education Tax (3% of ₦1,500,000)

45,000

3. The following are the processes involved in issuance of economic development incentive certificate

An application for economic development incentive certificate must be addressed to the Secretary of the Nigerian Investment Promotion Commission (NIPC) and the application shall;

- (a) show a commitment of, or the ability to commit, the minimum capital required to invest in the specified priority sector listed in the tenth schedule to the Nigeria Tax Act, 2025;
- (b) state whether the company is, or the proposed company when incorporated shall be, a company that the ultimate parent entity is a resident company or non-resident company;
- (c) give particulars of the assets on which qualifying capital expenditure is incurred or to be incurred by the company, including the source and cost or estimated cost;
 - (i) on or before production day; and
 - (ii) during a period of three years following the production day;
- (d) specify the place in which the assets, in respect of which qualifying expenditure was incurred or to be incurred by the company or proposed company, is situated or to be situated;
- (e) state the date or probable date of production day of the company or proposed company;
- (f) specify any product, service, and by-product, not being a priority product, being produced or proposed to be produced by the company or proposed company, 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;
- (g) give particulars of the loan and share capital, or the proposed loan and share capital of the company, or proposed company, including the amount and date of each issued shares or proposed issue, and the source from which the capital is to be or has been raised
- (h) in the case of a company already incorporated, provide the details of the ownership structure of the company and the nationality of each director of the company; and
- (i) in the case of a proposed company, provide the name, Tax ID, address, and nationality of each promoter of the company and the proposed ownership structure.
- (j) contain a declaration signed by the applicant that all the information contained in the application is true, and an undertaking to produce proof, if required.

- (k) be accompanied by a non-refundable fee of 0.1% of the qualifying capital expenditure incurred or to be incurred, subject to a maximum of ₦5,000,000 and no further fee shall be payable to the NIPC in respect of the application.

On receipt of the application by the NIPC, the NIPC shall recommend the application to the Minister responsible for industry, trade and investment for approval or otherwise, including the projected tax expenditure impact report in its recommendation.

The Minister for industry, trade and investment, acting on the recommendation of the NIPC, may recommend the application to the President for approval. An economic development incentive certificate shall be issued to a company upon the approval of the President.

4. Part one (1) of chapter 8 of Nigeria Tax Act, 2025 exempt the following income in the hand of individual from tax:
 - (a) pension, gratuity or any retirement benefits granted in accordance with the Pension Reform Act;
 - (b) wound and disability pensions granted to members of the armed forces or of any recognised national defence organisation, or to a person injured as a result of enemy action;
 - (c) a sum received by way of death gratuities or as consolidated compensation for death or injuries
 - (d) redundancy lump sum payment and other compensation of capital nature for loss of employment that is not more than ₦50,000,000;
 - (e) income earned from bonds issued by a State or the Federal Government of Nigeria;
 - (f) emoluments of any person serving as other rank and other personnel serving in combat zones, hazardous areas or in designated operations, provided that where any other income accrues to the person, not being income by way of personal emoluments, that income shall be liable to tax
 - (g) dividend received from investments in wholly export-oriented business;
 - (h) dividend, interest, rent or royalty derived from outside Nigeria and brought into Nigeria through approved channels;
 - (i) income of a person from an employment where such person earns gross income of national minimum wage or less from such employment;
 - (j) wages and salaries of military officers;
 - (k) Chargeable gains from disposal of investment held as part of any national provident fund or other retirement benefits schemes established under the provisions of any Act or enactment for employees throughout Nigeria; and

- (l) Chargeable gains on the disposal of a decoration, awarded for valour or gallant conduct which a person acquires otherwise than for consideration in money or money's worth.

In addition to small company that earns gross turnover of ₦100,000,000 or less per annum with total fixed assets not exceeding ₦250,000,000 that is exempted from tax under the Nigeria Tax Act, 2025, part one of chapter 8 of the Nigeria Tax Act, 2025 exempt the following profits or gains of any company from tax;

- (a) the profits accruing to, or gains from disposal of assets of any person being;
 - (i) a statutory or registered friendly society, where the profits or gains are not derived from a trade or business carried on by such society,
 - (ii) a co-operative society registered under any enactment or law relating to co-operative societies, not being profits or gains from any trade or business carried on by that society,
 - (iii) engaged in educational, religious or charitable activities of a public character where the profits or gains are not derived from a trade or business carried on by such person,
 - (iv) a trade union registered under the Trade Unions Act where the profits or gains are not derived from a trade or business carried on by such trade union,
 - (v) a Federal, State or Local Government in Nigeria, their Ministries, Departments and Agencies and other public institutions, other than profits or gains derived from trade or business or any instrumentality established for the purpose of trade or business, and
 - (vi) a government purchasing authority established by an enactment and empowered to acquire any commodity for export or redistribution
- (b) dividend distributed by authorised collective investment scheme;
- (c) dividend or rental income received by a real estate investment company on behalf of its shareholders, where not less than 75% of the dividend or rental income is distributed within 12 months after the end of the financial year in which the dividend or rental income was earned is exempted from tax with the following exceptions:
 - (i) the shareholder shall not be exempted from tax on the dividend or rental income received from a real estate investment company;
 - (ii) the real estate investment company shall not be exempted from tax on management fee, profits or any other income earned for and on its own account; and

- (iii) the real estate investment company shall not be exempted from tax on dividend or rental income if it does not meet the conditions relating to distribution of not less than 75% of the dividend or rental income is distributed within 12 months after the end of the financial year in which the dividend or rental income was earned;
- (d) compensating payments, which qualify as dividends received by a lender from its approved agent or a borrower in a Regulated Securities Lending Transaction;
- (e) compensating payments, which qualify as dividends or interest received by an approved agent from a borrower or lender on behalf of a lender or borrower in a Regulated Securities Lending Transaction;
- (f) consular fees received on behalf of a foreign State, or by a consular officer on behalf of the State, and the employment income of such officer, other than income in respect of any trade, business, profession or vocation carried on by the officer or in respect of any other employment exercised by him in Nigeria provided that this exemption shall not apply to the income of an employee engaged in domestic duties, or where the officer or employee ordinarily resides in Nigeria and is not a national of the foreign State;
- (g) an income in respect of which tax is remitted or exempt under the provisions of the Diplomatic Immunities and Privileges Act or of any enactment, order or notice continued in force or effected by that Act
- (h) pension funds and assets created under the Pension Reform Act;
- (i) gains accruing from the disposal of assets by an angel investor, venture capitalists, private equity fund, accelerators or incubators with respect to a labelled startup provided the assets have been held in Nigeria for a minimum of 24 months;
- (j) income generated by companies engaged in agricultural businesses including crop production (growing of perennial and non-perennial crops) , livestock (raising and breeding of animals in ranches and farms, livestock processing), aquaculture, forestry (plantation of rubber and acacia trees), dairy (manufacture of dairy products, processing of cocoa) for the first five years upon commencement of business
- (k) profits of a company engaged in sporting activities
- (l) Chargeable gains accruing to pension funds and assets approved under the Pension Reform
- (m) deduction of 50% in the relevant years of assessment in respect of costs incurred in any two calendar years from 2023 to 2025 on;

- (i) wage awards, salary increases, transportation allowance or transport subsidy granted to a low-income worker, which bring the gross monthly remuneration of the worker up to an amount not exceeding ₦100,000 provided that any additional award or salary increase to an employee earning above ₦100,000 as monthly salary shall not qualify for the additional deduction; and
- (ii) salaries of any new employee constituting a net increase in the average number of new employees hired in 2023 and 2024 calendar years over and above the average net employment in the three preceding years, provided that such new employees are not involuntarily disengaged within a period of three years post-employment. The net employment is defined to mean the total number of persons employed less the total number of persons disengaged during the calendar year, whether such disengagement is voluntary or not

ASSESSABLE PROFIT AND TOTAL PROFIT

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11 Assessable Profit and Total Profit

11.0 Learning objective

The objective of this chapter is to enhance readers' understanding of computations of assessable profit and total profit, companies income tax and development levy.

11.1 Learning outcomes

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

- a) compute assessable profit;
- b) know the relevance of assessable profit in the determination of total profit;
- c) know how to capture Chargeable gains, loss relief and capital allowance in the computation of companies income tax;
- d) know the companies income tax rates introduced by the Nigeria Tax Act, 2025;
- e) compute total profit;
- f) compute companies income tax;
- g) understand the provisions of the Nigeria Tax Act, 2025 on minimum effective tax rate and top up tax;
- h) know the basis of development levy computation and distribution of revenue accruing from the levy;
- i) know other bases of computing companies income tax; and
- j) know offences and penalties of general application to companies introduced by the Nigeria Tax Administration Act, 2025

11.2 Assessable Profit

Assessable profit is determined by taking the net profit or loss made by the company during the basis period, plus disallowable expenses and taxable income not reported, less allowable expenses not reported and non-taxable income reported.

Illustration 11.2

Danladi Nigeria Limited has been in business for many years. The following information were extracted from its books for the year ended December 31, 2026

	₦'000
Profit for the year ended December 31, 2026	256,000
Included in the expenses charged before arriving at the profit for year are:	
Salaries and wages	25,000
Depreciation of property, plant and equipment	15,450
Rent of office premises	20,000
Penalties for late filing of 2025 year of assessment tax returns	255
Incidental cost of disposal on land disposed during the year	1,500
Unrealised foreign exchange loss	11,250
Also included in other income for the year ended December 31, 2026 are:	
Interest earned on Federal Government Bonds	12,500
Dividend received from authorised collective investment scheme	3,000

Required:

Compute the assessable profit for the relevant year of assessment .

Suggested solution to illustration 11.2

Danladi Nigeria Limited

Computation of Assessable profit for 2027 year of assessment

	₦'000	₦'000
Profit for the year		256,000
Add back disallowable expenses:		
Depreciation of property, plant and equipment	15,450	
Penalties for late filing of 2025 year of assessment tax returns	255	
Incidental cost of disposal on land disposed during the year	1,500	
Unrealised foreign exchange loss	11,250	<u>28,455</u>
		284,455
Deduct non-taxable income		
Interest earned on Federal Government Bonds	(12,500)	
Dividend received from authorised collective investment scheme	(3,000)	<u>(15,500)</u>
Assessable profit		268,955

11.3 Chargeable gains

Chargeable gains are gains that arises as a result of disposal of chargeable assets. In line with the provisions of the Nigeria Tax Act, 2025, that repealed Capital Gains Tax Act, 2004 (as amended), Chargeable gains are to be included as taxable income in the determination of the total profit of the company for companies income tax computation.

11.4 Total Profit

The total profits of a company for any year of assessment, shall be the amount of its total assessable profits from all sources, including Chargeable gains on disposal of chargeable assets, less the amount of any loss incurred from the same trade or business, and any capital allowance.

11.5 Rates of tax for companies

In line with the provisions of the Nigeria Tax Act, 2025, effective January 1, 2026, the rates of tax on the total profits of every company for each year of assessment shall be 0% for small company and 30% for any other company.

Small company is a business that earns gross turnover of ₦100,000,000 or less per annum with total non-current (fixed) assets not exceeding ₦250,000,000.

Other company is a business that earns more than gross turnover of ₦100,000,000 per annum or with total fixed assets exceeding ₦250,000,000.

It is also provided in the Nigeria Tax Act, 2025 that the rate of 30% for any other company shall be reduced to 25% effective from a date as may be determined in an order issued by the President on the advice of the National Economic Council.

11.6 Format for computation of companies income tax and development levy

	₦	₦
Net profit /(loss) before tax		XX/(XX)
Add back disallowed expenses:		
Depreciation of fixed assets	XXX	

	N	N
Private or domestic expenses	XXX	
Penalties and fines	XXX	
Taxes paid on behalf of another person	XXX	
Excess interest on related party loan	XXX	
Donations not in line with section 163 of NTA	XXX	
Provision for lease liability	XXX	
Expenses for which VAT or import duties is due but not paid	XXX	XXXX
Deduct non-taxable income:		
Dividend	XXX	
Unrealised foreign exchange gains	XXX	
Income generated from investment in bonds (FGN or State)	XXX	
Payment of lease liability	XXX	(XXXX)
Assessable profit /(loss)		XX/(XX)
Chargeable gains		XXX
		XXXX
Deduct loss relief:		
Unrelieved loss brought forward	XX	
Relieved	(XX)	(XX)
Unrelieved loss carried forward	Nil	
		XXXX
	N	N
Deduct: Capital allowance		
Capital allowance brought forward	XXX	
Capital allowance for the year	XXX	
Total capital allowance	XXX	
Capital allowance claimed/absorbed	(XXX)	(XXX)
Unutilised capital allowance carried forward	XXX	
Total profit		XXXX
Income tax liability @ 30% of total profit (A)		XXXX
Development levy @ 4% of assessable profit (B)		XXXX
Total tax payable (A) + (B)		XXXX

11.7 Minimum effective tax rate

In line with the provisions of section 57 of the Nigeria Tax Act, 2025, where, in any year of assessment, the effective tax rate of a company is less than 15%, such company shall recompute and pay an additional tax that makes its effective tax rate equal to 15%.

The effective tax rate is defined to mean covered taxes as percentage of net come. Covered taxes for a company that is not an oil and gas upstream entity means companies income tax, development levy and priority

sector tax credit while net income is the profit before tax as reported in the audited financial statements, excluding franked investment income and unrealised gains or losses.

11.7.1 Applicability of minimum effective tax rate

The minimum effective tax rate of 15% is not applicable to all companies in Nigeria. The minimum effective tax rate of 15% shall apply to the following companies:

- (a) a company that is a constituent entity of a multinational entity group, with aggregate group turnover of at least £750 million or its equivalent; and
- (b) any other company with an aggregate turnover of ₦50,000,000,000 and above in the financial year.

In addition, the minimum effective tax rate of 15% is not applicable to an approved enterprise operating in a free zone with respect to its approved activities. This implies that for an approved enterprise operating in a free zone with respect to its approved activities, minimum tax of 15% will not be applicable, even if it has an aggregate turnover of ₦50,000,000,000 and above in the financial year. The minimum effective tax rate of 15% will only be applicable to an approved enterprise operating in a free zone with respect to its sales within the customs territory or if it qualifies as a constituent entity of a multinational entity group, with aggregate group turnover of at least £750 million or its equivalent.

Format for computation of effective tax rate

	₦	₦
Income tax liability @ 30% of total profit (A)		XXXX
Development levy @ 4% of assessable profit (B)		XXXX
Total tax payable (A) + (B)		XXXX
Less priority sector tax credit (C)		(XX)
Taxes covered (D)		XXXX
Profit before tax as per audited accounts		XXX
Less: franked investment income	XX	
Less: unrealised gains or losses	XX	(XX)
Net income (E)		XXXX
Effective tax rate = (D/E) x100		X%
Minimum effective tax rate		15%
Top up rate		15% -X%

Illustration 11.1

Jagab Nigeria Limited is a Nigerian company that has been operating in Nigeria for several years. The following information was extracted from its records for the year ended December 31, 2026.

	₦'000
Turnover	65,000,000
Profit before tax	7,500,000
Dividend income included in the profit before tax	10,000
Unrealised gains included in the profit before tax	75,000
Computed companies income tax	780,000
Computed development levy	25,000

Additional information:

Jagab Nigeria Limited is not operating in industries classified as priority industries in Nigeria.

Required

Compute and advise on the adequacy of the computed companies income tax and development levy.

Suggested solution to illustration 11.1

	N'000	N'000
Income tax liability (A)		780,000
Development levy (B)		25,000
Taxes covered (C)		<u>805,000</u>
Profit before tax as per audited accounts		7,500,000
Less: franked investment income	10,000	
Less: unrealised gains or losses	<u>75,000</u>	<u>(85,000)</u>
Net income (D)		<u>7,415,000</u>
Effective tax rate = $(805,000/7,415,000) \times 100$		11%
Minimum effective tax rate		15%
Top up rate (15% - 11%)		4%
	N'000	N'000
Additional 4% top up tax (working)		<u>292,727</u>

Workings

	N'000
11% computed covered tax	805,000
Therefore, 15% will be $(805,000/11\%) \times 15\%$	<u>1,097,727</u>
Additional 4% top tax to be paid ($\text{N}1,097,727 - 805,000$)	<u>292,727</u>

Since the turnover of Jagab Nigeria Limited in 2027 year of assessment is N65 billion, minimum effective tax rate of 15% is applicable to it. The computed covered tax gave effective tax rate of 11%, therefore additional 4% top up tax rate has to be paid to make up for the required minimum effective tax rate of 15%.

11.8 Development levy

In line with the provisions of section 59 of the Nigeria Tax Act, 2025, a development levy of 4% shall be imposed on the assessable profits of all companies except small companies and non-resident companies. In addition, development levy of 4% is not applicable to the assessable profits computed for the purposes of hydrocarbon tax.

The Nigeria Revenue Service is charged with the responsibility of administering development levy and the amount collected by the Nigeria Revenue Service shall be paid into a special account created for that purpose.

Effective January 1, 2026, development levy replaces, the following taxes and levies:

- Tertiary education tax payable at 3% of assessable profit of companies;

- ii. National Information Technology Development (NITDA) levy charged at 1% of profit before tax of companies;
- iii. Nigeria Police Trust Fund Levy charged at 0.005% of net profit of companies; and
- iv. National Agency for Science and Engineering Infrastructure (NASENI) levy assessed at 0.25% of profit before tax of companies.

The revenue accruing from the development levy shall be distributed as follows;

- (a) Tertiary Education Trust Fund - 50%;
- (b) Nigerian Education Loan - 15%;
- (c) National Information Technology Development Fund - 8%;
- (d) National Agency for Science and Engineering Infrastructure - 8%;
- (e) National Board for Technological Incubation - 4%;
- (f) Defence and Security Infrastructure Fund -10%; and
- (g) National Cybersecurity Fund - 5%.

Every development levy beneficiary agency and fund listed above shall be required to prepare and submit its income and expenditure to the National Assembly for appropriation.

11.9 Dividend tax

Prior to Finance Act, 2019, companies are charged to tax at 30% on their dividend distributions, where such dividends exceed the taxable /total profits for the year, notwithstanding that profits being distributed may have been taxed in prior years, exempt from tax, or taxed under a different tax law. This particularly affects holding companies on dividends received from their subsidiaries thereby making Nigeria unattractive as a headquarters or group holding company location.

The Finance Act, 2019 introduced changes to limit the application of the dividend tax only to untaxed profits that are not exempt from tax.

The implication of the Finance Act, 2019 amendment is that the following no longer count towards determination of excess dividend tax:

- retained earnings on which adequate tax had previously been paid under any tax laws;
- exempt profits;
- franked investment income;
- dividend by Real Estate Investment Companies (REICO) out of rental and dividend Income;
- the year to which the profits relate is also now irrelevant; and
- the possibility of a company paying excess dividend tax is now remote.

The above provisions of the Finance Act, 2019 was also retained by the Nigeria Tax Act, 2025 which took effect from January 1, 2026. It is provided that where a Nigerian company declares dividend out of profits on which no tax is payable due to;

- (a) no total profits, or
- (b) total profits which are less than the amount of dividend which it declared, whether or not the recipient of the dividend is a Nigerian company, the company paying the dividend shall be charged to tax at the rate of 30% as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

Also, the Nigeria Tax Act, 2025 excludes the following from dividend tax:

- (a) dividends declared out of the retained earnings of a company, to the extent that the profits or gains included in the retained earnings have been previously taxed;
- (b) dividends declared out of profits or gains that are exempt from income tax by this Act;
- (c) franked investment income as provided in this Act; or

- (d) distributions made by a real estate investment company to its shareholders from rental income and dividend income received on behalf of those shareholders, whether such dividends are paid out of profits of the year in which the dividend is declared or out of profits of previous reporting periods.

Illustration 11.2

An extract from the financial statements of ABC Limited and XYZ Limited for the year ended December 31, 2026, revealed the following:

	ABC Limited	XYZ Limited
	₦	₦
Total profit/(loss) for the year	3,600,000	(1,200,000)
Retained earnings brought forward	4,800,000	2,000,000
Dividend declared in 2026 paid in 2027	4,200,000	750,000

Based on the financial information disclosed for the companies, the following are to be noted:

- (a) Out of the dividend of ₦4,200,000 paid by ABC Limited, only ₦600,000 can be regarded as having been paid out of retained earnings, hence only ₦3,600,000 shall be subject to the application of section 9 of the Nigeria Tax Act, 2025.
- (b) ₦750,000 paid by XYZ Limited was not paid from the current year's loss, hence this amount will not be subject to the application of section 9 of the Nigeria Tax Act, 2025.

11.10 Gross revenue/turnover tax

In line with the provisions of section 38 of the Nigeria Tax Administration Act, 2025, where a company produces either no assessable profit or an assessable profit which is less than expected from that company or the true amount of the assessable profit cannot be readily ascertained, the Nigeria Revenue Service may:

- (a) in the case of a resident company, assess and charge that resident company on such fair and reasonable percentage of the gross income from the trade or business as the Nigeria Revenue Service may determine; or
- (b) in the case of a non-resident, the profits shall be any amount resulting from applying the profit margin of the company to the turnover generated from Nigeria.

With respect to the non-resident company, the profit margin shall be the proportion of the earnings before interest and tax (EBIT) to income or revenue in the published audited financial statements of the company, and in the case of companies that are not required to publish financial statements, the profit margin as may be ascertained by the Nigeria Revenue Service from financial statements of comparative companies.

11.11 Offences and penalties of general application to companies

11.11.1 Failure to register for tax

Every taxable person shall register with the relevant tax authority and obtain a Taxpayer Identification for the purpose of compliance with tax obligations. A taxable person who fails or refuses to register for tax shall be liable to pay an administrative penalty of:

- (a) ₦50,000 in the first month in which the failure occurs; and
- (b) ₦25,000 for each subsequent month in which the failure continues.

In addition, a statutory body or company who awards a contract to an unregistered person, shall be liable to pay an administrative penalty of ₦5,000,000.

11.11.2 Failure to file tax returns

A taxable person who fails or refuses to file returns or knowingly files incomplete or inaccurate returns to the relevant tax authority shall be liable to pay an administrative penalty of;

- (a) ~~₦~~100,000.00 in the first month in which the failure occurs; and
- (b) ~~₦~~50,000.00 for each subsequent month in which the failure continues.

11.11.3 Failure to keep books

A taxable person who;

- (a) fails to keep accounts, books and records of business transactions and income, to allow for the correct ascertainment of tax and filing of returns to the relevant tax authority; or
- (b) upon request by the relevant tax authority, fails to provide any record or book shall be liable to pay an administrative penalty, in the case of:
 - (i) a person other than a company, ~~₦~~10,000.00, and
 - (ii) in the case of a company, ~~₦~~50,000.00.

11.11.4 Failure to grant access for the deployment of technology

A person who refuses to grant access to the relevant tax authority to deploy technology after 30 days of receipt of the notice is liable to an administrative penalty of ~~₦~~1,000,000.00 for the first day of default and ~~₦~~10,000.00 for each subsequent day of default.

11.11.5 Failure to use fiscalisation system

A taxable person that fails to process a taxable supply through the fiscalisation system is liable to an administrative penalty of ~~₦~~200,000 plus 100% of the tax due and an interest at the prevailing Central Bank of Nigeria Monetary Policy rate per annum.

11.11.6 Failure to deduct tax

A person who has an obligation to collect, deduct or withhold tax under the relevant tax laws, and fails to collect, deduct or withhold the tax due is liable to an administrative penalty of 40% of the amount not deducted.

11.11.7 Failure to make attribution

A person who is required to make attribution but fails to do so or having done so, fails to notify the relevant tax authority, is liable to pay an administrative penalty of ~~₦~~1,000,000.

11.11.8 Failure to remit tax deducted at source or self-account

A person, that deducts, collects or withholds any tax and fails to remit the amount deducted, collected or withheld by the 21st day of the month immediately succeeding the month in which the amount was deducted, collected or withheld, is liable to pay:

- (a) the amount deducted, collected or withheld but not remitted;
- (b) an administrative penalty of 10% per annum of the tax deducted, collected or withheld but not remitted; and
- (c) interest at the prevailing Central Bank of Nigeria monetary policy rate.

In addition, a person that is required to self-account for tax and fails to self-account for tax within the time prescribed by the Nigeria Tax Administration Act, 2025, is liable to pay:

- (a) the tax not self-accounted for;
- (b) an administrative penalty of 10% per annum of the amount not self-accounted for; and
- (c) interest at the prevailing Central Bank of Nigeria monetary policy rate.

On conviction, a person that fails to remit tax deducted at source or fails to self-account for tax shall be liable to a term of imprisonment not exceeding three years or a fine of not less than the principal amount due plus penalty of not more than 50% of the sum or both.

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11.11.9 Failure to attend to demands, request or notices

A person who:

- (a) fails to comply with the requirements of a notice served under the Nigeria Tax Administration Act, 2025 or any other tax law;
- (b) fails to attend or provide answers to a notice, summons or process served under the Nigeria Tax Administration Act, 2025 or any other tax law; or
- (c) having attended, fails to answer any question lawfully put to him, is liable to an administrative penalty of ₦100,000.00 in the first day of default and ₦10,000 for every subsequent day where the default continues.

In addition, a person who fails or refuses to supply information, documents, or records as demanded or requested for by an authorised officer relating to any tax issue under the Nigeria Tax Administration Act, 2025 or any other tax law within the time provided under the Nigeria Tax Administration Act, 2025 or any other tax law, is liable to an administrative penalty of ₦200,000 in the first day of default and ₦10,000 for each subsequent day where the refusal continues.

Besides, a person who fails or refuses to comply with obligations to submit information relating to a legal arrangement or other obligations as may be prescribed by notice, rules, regulations, guidelines, or circulars issued by the Service or any other relevant tax authority, is liable to an administrative penalty of ₦1,000,000 for the first day of default, in addition to ₦10,000.00 for each subsequent day in which the failure continues, or any other administrative penalty as may be specified in such notice, rules, regulations, guidelines, or circulars.

11.11.10 Failure of non-compliance by Virtual Asset Service Providers (VASP)

Any VASP who fails to comply with the provisions of the Nigeria Tax Administration Act, 2025 shall be liable to an administrative penalty of ₦10,000,000.00 in the first month of default, plus:

- (a) ₦1,000,000.00 for every subsequent month that the default continues; or
- (b) suspension or revocation of operating license by the Securities and Exchange Commission.

11.11.11 Failure to stamp

A person that fails to stamp dutiable instruments in accordance with the relevant provisions of the Nigeria Tax Act 2025, is liable to pay 10% of the unpaid duty and interest at the prevailing Central Bank of Nigeria Monetary Policy Rate.

11.11.12 Failure to disclose facts in a dutiable instrument

A person that fails, neglects or omits to fully disclose all the facts and circumstances relating to dutiable instrument or underpays any duty is liable, in addition to the payment of the duty due:

- (a) to an administrative penalty of ₦100,000; or
- (b) on conviction, to a fine of ₦50,000 or for a term of imprisonment not exceeding three years or both fine and imprisonment.

11.11.13 Failure to notify change of address

A taxable person who fails to notify the relevant tax authority of any change of address within 30 days of such change, gives a wrong address or fails to comply with the requirement for notification of permanent cessation of trade or business under the relevant tax laws shall be liable to administrative penalty of:

- (a) ₦100,000 for the first month in which the failure occurs; and
- (b) ₦50,000 for each subsequent month the failure continues.

11.11.14 Fraud in relation to stamps

A person who:

- (a) removes or causes to be removed from a document any revenue stamp, with intent that the stamp may be reused;
- (b) affixes to any other document the revenue stamp which has been removed, for the purpose of evading the payment of duty;
- (c) sells or offers for sale, any revenue stamp so removed; or
- (d) forges a stamp or any implement for denoting stamp duties, is liable on conviction to imprisonment for a term not exceeding three years or a fine not less than ₦2,000,000 or both fine and imprisonment.

11.11.15 Offence by authorised and unauthorised persons

A person, whether or not appointed for the administration of the Nigeria Tax Administration Act, 2025, any other tax law or employed in connection with the assessment and collection of a tax who:

- (a) demands or accepts any gratification from a taxable person in the performance of his functions under the Nigeria Tax Administration Act, 2025 or any other tax law;
- (b) withholds for his own use or otherwise any portion of the amount of tax collected;
- (c) renders a false return, whether orally or in writing, of the amount of tax collected or received by him;
- (d) defrauds any person, embezzles money or otherwise uses his position to deal wrongfully with the relevant tax authority;
- (e) steals or misuses the documents of the relevant tax authority; or
- (f) compromises on the assessment or collection of any tax, commits an offence and is liable on conviction to a fine equivalent to 200% of the sum in question or imprisonment for a term not exceeding three years or to both fine and imprisonment.

11.11.16 Inducement of an authorised officer

A person who attempts to induce, influence or entice an authorised officer in order to obtain any tax benefit in the course of duty commits an offence and is liable on conviction to:

- (a) in the case of an individual, a penalty of ₦500,000.00; and
- (b) in the case of a body corporate, a penalty of ₦2,000,000.00 or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment, in addition to paying the tax due

11.11.17 Use of weapon

A person who, in the commission of an offence under the Nigeria Tax Administration Act, 2025, is armed with any offensive weapon is liable on conviction to imprisonment for a term not exceeding five years.

A person who, while armed with an offensive weapon, causes injury to any officer or authorised officer of the relevant tax authority in the performance of any function or duty under the Nigeria Tax Administration Act, 2025, is liable on conviction to imprisonment for a term not exceeding 10 years.

11.11.18 Impersonation of an authorised officer

A person, not being an authorised officer, who assumes the name, designation or impersonates the character of an authorised officer, for any purpose under the Nigeria Tax Administration Act, 2025 or any other tax law, is liable on conviction to a fine not exceeding ₦1,000,000 or imprisonment for a term not exceeding three years or both.

11.11.19 Aiding and abetting commission of offence

An officer of the relevant tax authority or any other person who aids, abets, incites or induces the commission of any of the offences under the Nigeria Tax Administration Act, 2025 is liable on conviction to a fine of ₦1,000,000.00 or imprisonment for a term not exceeding three years or both the fine and imprisonment.

11.11.20 Obstruction

A person who:

- (a) obstructs, hinders, molests or assaults any person or authorised officer in the performance of any function or the exercise of any power under the Nigeria Tax Administration Act, 2025;
- (b) does anything which impedes or is intended to impede the carrying out of a search, seizure, removal or distraint;
- (c) rescues, damages or destroys anything liable to seizure, removal or distraint;
- (d) does anything intended to prevent the procuring or giving of evidence as to whether or not anything is liable to seizure, removal or distraint; or
- (e) prevents the arrest of any person by an authorised person duly engaged or acting or rescues any person so arrested is;
 - (i) liable to an administrative penalty of ₦1,000,000.00; or
 - (ii) on conviction to a fine not exceeding ₦1,000,000.00 or imprisonment for a term not exceeding three years or to both fine and imprisonment.

11.11.21 Unauthorised disclosure

Except as provided under the Nigeria Tax Administration Act, 2025, any other law or any enabling agreement or arrangement on exchange of information or as otherwise authorised by the Minister of Finance:

- (a) a member or former member of the Board of the relevant tax authority;
- (b) an employee or former employee of the tax authority; or
- (c) an agent or any person, who communicates or attempts to communicate taxpayer information or information considered confidential to any person other than to a person legally authorised to receive such information or misuses the information is liable on conviction to a fine not exceeding ₦1,000,000.00 or to imprisonment for a term not exceeding three years or both.

11.11.22 False claim of tax refund

A person that receives a refund of tax due to overpayment after an audit by the relevant tax authority through a false or fictitious claim, is in addition to the recovery of the amount so received, liable to a penalty of 50% of that amount, plus interest at the prevailing Central Bank of Nigeria Monetary Policy Rate.

In addition, the person could be prosecuted by the relevant tax authority in accordance with the relevant provisions of the Nigeria Tax Administration Act, 2025.

11.11.23 False or fictitious claim of value added tax refund

A person that receives a VAT refund through a false or fictitious claim, is in addition to the recovery of the amount so received, liable to a penalty of 100% of that amount, plus interest at prevailing the Central Bank of Nigeria Monetary Policy Rate.

11.11.24 Defaults in payment of mineral royalties

Where any mineral royalty due and payable under the Nigeria Tax Administration Act, 2025; remains unpaid for 30 days after the due date, it qualifies as debt and attracts a penalty:

- (a) 10% of the amount of the royalty payable which shall be added to the royalty due;
- (b) in the case of foreign currency transactions, the royalty due shall incur interest at the prevailing secured overnight financing rate (SOFR) or any other successor rate plus 10%; and

- (c) in case of Naira transactions, the royalty due shall incur interest at the prevailing Central Bank of Nigeria Monetary Policy Rate.

11.11.25 False declaration

A person that makes or signs, or causes to be made or signed, delivers or causes to be delivered to the relevant tax authority or any of its officers, any declaration, notice, certificate or other document being a document

or statement produced or made for any purpose of tax, which is untrue, is liable:

- (a) to an administrative penalty of ₦1,000,000 in addition to the payment of the tax undercharged or not charged in consequence of the false declaration, plus payment of the amount of tax unpaid or over payment made in respect of any repayment; or
- (b) on conviction to a fine of ₦1,000,000 or to imprisonment not exceeding three years or both in addition to payment of the amount of tax unpaid or over payment made in respect of any repayment.

In addition, a person that makes any statement in answer to any question or enquiry put to him by an officer which he is required to answer by or under the Nigeria Tax Administration Act, 2025; or any other law, being a document or statement produced or made for any purpose of tax, which is untrue, is liable:

- (i) to an administrative penalty of ₦1,000,000.00 in addition to the payment of the tax undercharged or not charged in consequence of false declaration, plus payment of the amount of tax unpaid or over-payment made in respect of any repayment; or
- (ii) upon conviction, to a fine of ₦1,000,000.00 or to imprisonment not exceeding three years or both in addition to payment of the amount of tax unpaid or over-payment made in respect of any repayment.

11.11.26 Counterfeiting documents

A person that:

- (a) counterfeits or falsifies any document which is required by or for the transaction of any business under the Nigeria Tax Administration Act, 2025 or any other relevant tax law;
- (b) knowingly accepts, receives or uses any document so counterfeited or falsified;
- (c) alters any such document after it is officially issued; or
- (d) counterfeits any seal, signature, initial or other mark of, or used by, any officer for the verification relating to tax, is liable to an administrative penalty of ₦1,000,000.00 and on conviction, to imprisonment not exceeding 3 years or fine of ₦1,000,000.00 or to both such fine and imprisonment.

11.11.27 Offence by body corporate

Where an offence under the Nigeria Tax Administration Act, 2025 is committed by a body corporate, firm, trust, association of individuals or any other legal arrangement:

- (a) a director, manager, secretary or other similar officer of the body corporate;
- (b) a partner or officer of the firm;
- (c) trustees, settlors, beneficiaries or any person involved in the management of the trust;
- (d) a person concerned in the management of the affairs of the association or legal arrangement; or
- (e) a person who acts or purports to act in any of the above capacities, is liable to be proceeded against and punished for the offence in like manner as if the person committed the offence, unless that person proves that the act or omission constituting the offence took place without the knowledge, consent or connivance of the person.

11.11.28 General penalty

Any person who contravenes the provisions of the Nigeria Tax Administration Act, 2025 for which no specific penalty was provided, commits an offence is liable as follows:

- (a) to an administrative penalty of ₦1,000,000; or
- (b) on conviction, to imprisonment for a term not exceeding three years or to a fine or both.

11.12 Chapter review

This chapter examines the concept of assessable profit and total profit for the purposes of computation of companies income tax and development levy. The classification of companies and applicable rates of tax introduced by the Nigeria Tax Act, 2025 was also addressed. In addition, minimum effective rate in line with the provisions of the Nigeria Tax Act, 2025 was discussed. Besides, other basis of assessing companies to companies income tax such as dividend tax and gross turnover tax are fully covered in this chapter.

The chapter also discussed offences and penalties of general application to companies in Nigeria in line with the provisions of the Nigeria Tax Administration Act, 2025.

11.13 Worked examples

11.13.1 Questions

- (1) Photon Nigeria Limited was incorporated on September 1, 2013 but commenced business in January 2015. The company manufactures soap detergent and its business fortune has improved significantly since commencement of operations due to quality of its products.

The Managing Partner of your firm of Tax Consultants was invited for a meeting by the Managing Director of Photon Nigeria Limited and during the meeting, the issue of improper tax advice obtained by the company in the past was one of the matters discussed. After the meeting, your Managing Partner debriefed you of the matters discussed at the meeting and provided the following information for the year ended December 31, 2027 as obtained from the Chief Finance Officer of Photon Nigeria Limited on the instruction of the Managing Director.

	₦'000
Revenue	75,000,000
Cost of Sales	<u>45,000,000</u>
Gross Profit	30,000,000
Other Income	<u>5,000,000</u>
	35,000,000
Administrative Expenses	<u>(25,550,000)</u>
Profit before tax	<u>9,450,000</u>

You are provided with the following additional information:

a. Other Income is made up of:	N'000
Interest on Federal Government bond	1,050,000
Unrealised foreign exchange gains	750,000
Dividend received from ABC Limited	2,500,000
Realised exchange gain	550,000
Rental Income from letting of idle warehouse space	150,000

b. Included in administrative expenses are the following:	N'000
Audit fees	120,000
Interest on loan from bank for business expansion	350,000
Depreciation	275,000
Salaries and wages	4,500,000
Printing and stationery	25,000
Other expenses	185,000

c. Further review of other expenses revealed that the following items were included:

	N'000
Donations to flood emergency intervention funds	20,000
Excess interest on related party loan	25,000
Realised foreign exchange loss	15,000
Additional income tax paid	5,500
Insurance premium on the company's company non-current assets	10,000
Penalties for late filing of tax returns	3,500
Fees paid to human resources consultants	12,500
IFRS impairment adjustments as approved by the external auditors	17,500
Stamp duty on increase in minimum share capital	2,500
Repairs and servicing of company vehicles	1,150
Employer pension contribution	25,600

d. Unrelieved loss brought forward from 2027 year of assessment was ~~N~~2,250,000,000

e. Unutilised capital allowance brought forward from 2027 year of assessment was ~~N~~485,000,000. As at end of 2027 year of assessment, the tax written down values of the following assets purchased in 2026 accounting year are:

	₦'000
Plant Expenditure	400,000
Furniture and Fittings	700,000
Motor Vehicle	600,000

During 2027 accounting year, Photon Nigeria Limited purchased the following assets

	₦'000
Four Plant equipment	3,000,000
Ten Motor Vehicles	750,000
25 Furniture and Fittings	200,000

- f. An intensive review of the company's records revealed that the following transactions occurred during the year ended December 31, 2027
 - (i) A plant purchased on January 1, 2026 for ₦450,000,000 was disposed for ₦550,000,000 on March 31, 2027.
 - (ii) A land purchased on February 2, 2026 for the purpose of construction of another factory store for locally sourced raw materials was eventually sold on May 31, 2027. The acquisition cost of the land was ₦125,000,000 while the sales proceeds was ₦420,000,000. The sum of ₦11,250,000 was paid to Johnson Ventures for facilitating the disposal of the land.
- g. It was discovered that the value added tax due on the payment to the human resources consultant fees was not paid.
- h. The sum of ₦350,000,000 was paid as dividend by Photon Nigeria Limited to its shareholders on its 2027 accounts.

You are informed by your Managing Partner that the Managing Director said that the Board of the company is considering getting the company listed on the Nigerian Exchange in the nearest future and the issue of tax compliance should be one of their targets to achieve this proposed milestone.

In view of the foregoing, as a Senior Manager in your firm, you are required to write a report to the Managing Director of Photon Nigeria Limited and your report should cover the following:

- i. The tax liabilities of Photon Nigeria Limited for the relevant year of assessment. All workings should be shown.
 - ii. The tax implication of the dividend paid by Photon Nigeria Limited in line with the provisions of Section 9 of the Nigeria Tax Act, 2025.
- (2) Peterside Nigeria Limited manufactures household utensils and baby products. The company which is located in Otta industrial estate, Ogun State, was incorporated on January 7, 2010 with an authorised share capital of ₦50,000,000 made up of 50,000,000 ordinary shares of ₦1.00 each. All the shares were fully allotted and paid for.

The fortunes of the company have been dwindling in the last three years due to high cost of imported raw materials, overheads, low patronage from customers and ever-increasing demands from the host communities on provision of social amenities. As a result of this unfavourable business climate, the board in one of its recent meetings decided to reduce the workforce. Two of the staff in the Finance Department who are chartered accountants were affected. A young promising first degree holder, with limited knowledge in taxation and fiscal policy, was subsequently appointed as Accountant to the company. In the last three years, the company has been facing challenges with the tax authorities on

issues that bother on tax compliance. The Managing Director was embarrassed last month when the tax officer informed him that proper books or records of accounts necessary for the correct determination of tax liabilities were not kept by the company. In addition, gaps were noticed in the information provided in the company's annual returns filed and several notices requesting for additional information and documents have been sent to the company by the Revenue Service which the company failed to provide. Your firm have been approached by the Managing Director to help in finding solution to these challenges, which the company is presently facing. The Managing Director provided your firm with some documents, which you may need in computing the company's tax liabilities for the year ended December 31, 2026.

The detailed statement of profit or loss for the year ended December 31, 2026 is shown below.

Revenue		<u>N 412,500,000</u>
Gross profit		248,199,800
Other income		
26,000,000		
Expenses:		
Directors' emoluments	7,200,000	
Staff salaries	60,800,000	
Motor vehicle expenses	960,000	
Insurance	725,000	
Unrealised foreign exchange loss	13,500,00	
Repairs and maintenance	12,485,000	
Fines and penalties	1,300,000	
Printing and stationery	310,500	
Transport and travelling	2,750,000	
Service charge paid to Bolaji Limited	15,328,000	
Postage and communication expenses	1,300,000	
Advertising	1,000,000	
Utilities – electricity, gas, water, etc	1,820,000	
Security charges	1,200,000	
Miscellaneous expenses	485,000	
Secretarial fees and expenses	120,000	
Legal fee	5,340,000	
Audit fee	5,500,000	
Interest on loan	17,250,000	
Bank charges and commissions	1,250,600	
Depreciation	<u>12,000,700</u>	
		<u>(162,624,800)</u>
Net profit for the year		<u>111,575,000</u>

You are provided with following information:

i.	Property, Plant and equipment (Cost)	N 160,900,000

The breakdown is as follows:

Description	Date of construction/purchase	Amount
		N
Industrial building	September 25, 2011	28,000,000
Non-Industrial building	August 15, 2011	20,200,000
Plant and machinery	November 19, 2019	42,500,000
Office furniture and fittings	July 30, 2026	23,700,000
Motor vehicles	May 21, 2026	46,500,000

ii.	All capital allowances in the past were fully utilised.	
iii.	Unrelieved loss at the end of 2026 year of assessment was	N25,250,000
iv.	The breakdown of repairs and maintenance is as follows:	

	N
Repairs of office furniture	155,000
Services of the equipment	330,000
Construction of new gate house	<u>12,000,000</u>
	<u>12,485,000</u>

v.	Advertising, consists of:	N
	Advertisement of the company's product on radio stations	825,000
	Advertisement on newspapers	70,000
	Advertisement on television	<u>105,000</u>
		<u>1,000,000</u>

vi.	Legal fee comprises of the following:	N
	Retainership	1,200,000
	Legal services rendered to the wife of managing director	225,000
	Cost of income tax appeal	3,415,000
	Cost of debt collection	<u>500,000</u>
		<u>5,340,000</u>

- vii. The details of other income is as follows:
- | | |
|---------------------------------|-------------------|
| | ₦ |
| Scrap sold to Bolaji Limited | 5,000,000 |
| Dividend income | 12,000,000 |
| Realised foreign exchange gains | <u>9,000,000</u> |
| | <u>26,000,000</u> |
- viii. Bolaji Limited is a related party company. ₦12,000,000 is the competitive price of the service charge paid to Bolaji Limited during the year under review. Also, the sum of ~~₦8,000,000~~ could have been realised if the scrap was sold to non-related entity.
- ix. During the year under review, the sum of ~~₦40,000,000~~ was received by the company from Ogun State Government as compensation for the compulsory acquisition of the landed property located at Otta industrial estate for road expansion. The acquisition cost of the land property was ~~₦15,000,000~~.

As newly engaged firm of Tax Consultants, you are required to:

- a. Compute the tax liabilities of Peterside Nigeria Limited for the relevant assessment year. Show all workings.
 - b. Advise the company on the penalties for not keeping proper books and failure to attend to demands, request or notices from Revenue Service in line with the provisions of Nigeria Tax Administration Act, 2025.
- (3) The ongoing fiscal policy and tax reform of the Federal Government of Nigeria has opened up several debate on paradigm shift in computations of corporate tax of limited liability companies in Nigeria.

There are anxieties from some quarters that capital gains tax that used to be paid at the rate 10% of the Chargeable gains will henceforth be paid at the rate 30% while some commentators argued that it is not absolutely correct to submit that chargeable gains will be taxed at 30%.

Some stakeholders also express fears on the extent of business expenses that will be allowed for tax purposes under the ongoing tax reforms which is likely to increase their tax exposures.

You are required to analyse and evaluate in line with the provisions of the Nigeria Tax Act, 2025:

- i. How chargeable gains should be computed and its implication on the companies income tax payable
- ii. Expenses that are specifically disallowed

11.13.2 Suggested solutions

- (1) KAK Tax Consultants
55, Jembe Road, Ikoyi, Lagos

May 22, 2028

The Managing Director
Photon Nigeria Limited
22, Benson Street, Ikorodu
Lagos State

Dear Sir,

2028 Year of Assessment Corporate Tax Computations

We refer to the meeting between you and our Managing Partner and the information obtained from your Chief Finance Officer with respect to the subject.

We wish to inform you that we have computed the tax liabilities of your company for 2028 year of assessment based on the records provided and in line with the provision of the Nigeria Tax Act, 2025. Provided below is the summary of the computed taxes:

Companies income tax based on normal assessment - ₦578,325,000
Development levy – ₦219,660,000

The addition of the companies income tax and development levy above gave ₦797,985,000 as total tax payable. However, as provided under section 57 of the Nigeria Tax Act, 2025, where, in any year of assessment, the effective tax rate of a company with aggregate annual turnover of ₦50,000,000,000 and above is less than 15%, such company is required to recompute and pay an additional tax that makes its effective tax rate equal 15%. The effective tax rate of your company as computed for 2028 year of assessment based on ₦797,985,000 total tax payable is 13% and since your company turnover for 2027 accounting year was ₦75,000,000,000, your company is liable to pay additional top-up tax at the rate of 2% to make your company effective tax rate equal 15%.

The additional top-up tax as computed is ₦132,015,000 and when this is added to ₦797,985,000, it brought the total tax liability to ₦930,000,000 and 15% effective tax rate.

In addition, we have computed the companies income tax payable based on dividend paid by your company and the tax due is ₦105,000,000.

Section 9 of the Nigeria Tax Act, 2025 provides that where a Nigerian company declares dividend out of profits on which no tax is payable due to;

(a) no total profits, or

(b) total profits which are less than the amount of dividend which it declared, whether or not the recipient of the dividend is a Nigerian company, the company paying the dividend shall be charged to tax at the rate of 30% as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

In 2028 year of assessment, the dividend paid by your company (i.e. ₦350,000,000) is less than the total profit of ₦1,927,750,00. Therefore, your company will pay companies income tax based on the normal computation that produced higher tax liability and not on dividend tax.

Attached herewith as appendix 1 are the detailed computations of the assessable profit, Chargeable gains, capital allowances, companies income tax , development levy, effective tax rate, additional top-up minimum tax and dividend tax for your records and ease of reference.

Please do not hesitate to contact the undersigned for further clarification on the subject.

We thank for the interest shown in our firm and look forward to good working relationship.

Yours faithfully,
For: KAK Tax Consultants

Ben Idahosa
Senior Manager
Appendix 1

Photon Nigeria Limited
Computation of tax liabilities for 2028 year of assessment

	N'000	N'000
Profit before tax		9,450,000
Add back disallowed expenses:		
Depreciation	275,000	
Excess interest on related party loan	25,000	
Additional income tax paid	5,500	
Penalties for late filing tax returns	3,500	
Fees paid to human resources consultants	12,500	
IFRS impairment adjustments as approved by the external auditors	17,500	
Stamp duty on increase in minimum share capital	2,500	341,500
		9,791,500
Deduct non-taxable income:		
Interest on Federal Government bond	1,050,000	
Unrealised foreign exchange gains	750,000	
Dividend received from ABC Limited	2,500,000	(4,300,000)
Assessable profit		5,491,500
Chargeable gains (workings 1)		473,750
		5,965,250
Deduct loss relief:		
Unrelieved loss brought forward	2,250,000	
Relieved	(2,250,000)	(2,250,000)
Unrelieved loss carried forward	Nil	
		3,715,250
Deduct: Capital allowances		
Capital allowance brought forward	485,000	
Capital allowance for the year (working 2)	1,302,500	
Total capital allowance available	1,787,500	
Capital allowance claimed/absorbed	(1,787,500)	(1,787,500)
Unutilised capital allowance carried forward	Nil	
Total profit		1,927,750
Income tax liability @ 30% of total profit (A)		578,325
Development levy @ 4% of assessable profit (B)		219,660
Total tax payable (A) + (B)		797,985

Computation of companies income tax based on Dividend Paid	N'000
Dividend Paid	<u>350,000</u>
Companies income tax @ 30%	105,000

Working 1

Computation of Chargeable gains for 2028 year of assessment

(a) Disposal of plant	N'000	N'000
Sales proceeds		550,000
Less residual value (i.e. cost less capital allowance)		
Cost	450,000	
Capital allowance claimed in 2027 year of assessment (working)	<u>(90,000)</u>	
Residual value		<u>(360,000)</u>
Chargeable gains		190,000
(a) Disposal of land	N'000	N'000
Sales proceeds	420,000	
Deduct incidental cost of disposal	<u>(11,250)</u>	
Net sales proceeds		408,750
Deduct cost of land acquisition		<u>(125,000)</u>
Chargeable gains		<u>283,750</u>
Total Chargeable gains for 2028 Year of assessment (190,000 + 283,750)		473,750

Working of capital allowance on Plant

Cost of acquisition	N'000
	<u>450,000</u>
Annual allowance rate (1 st Schedule of Nigeria Tax Act, 2025)	20%
2027 year of assessment annual allowance (20% x N450,000,000)	<u>90,000</u>

Working 2

Computations of Capital allowance for 2028 year of assessment

(A) Existing Assets				
Asset class	Plant expenditure	Furniture and fittings	Motor vehicle	Total
	N'000	N'000	N'000	N'000
Annual Allowance rate	20%	20%	25%	
Year of purchase	2026	2026	2026	
Total tax life	5 years	5 years	4 years	
Expired tax life	1 year	1 year	1 year	
Unexpired tax life	4 years	4 years	3 years	
Tax written down value (TWDV)	400,000	700,000	600,000	
Annual allowance (TWDV/Unexpired tax life)	<u>100,000</u>	<u>175,000</u>	<u>200,000</u>	475,000
TWDV carried forward to 2029 year of assessment	300,000	575,000	400,000	
Statistical notional amount to be retained for existing assets	5,000	8,750	8,000	
(B) New Assets				
Cost of acquisition	3,000,000	200,000	750,000	
Annual allowance (cost x annual allowance rate)	<u>600,000</u>	<u>40,000</u>	<u>187,500</u>	827,500
TWDV carried forward to 2029 year of assessment	2,400,000	160,000	562,500	
Statistical notional amount to be retained for new assets	30,000	2,000	7,500	

Total capital allowance for the year				1,302,500

Working 3: Computation of Effective tax rate and Minimum tax top-up

Determination of Covered taxes:		
	N'000	N'000
Income tax liability (A)		578,325
Development levy (B)		219,660
Taxes covered (C)		797,985
Determination of Net income:		
Profit before tax as per audited accounts		9,450,000
Less: franked investment income (Dividend)	2,500,00	
Less: unrealised gains	750,000	(3,250,000)
Net income (D)		6,200,000
Effective tax rate of Photon Nigeria Limited = (Covered taxes/ Net income) (797,985/6,200,000) x100		13%
Minimum effective tax rate		15%
Top up rate (15% - 13%)		2%
	N'000	N'000
Additional 2% top up tax (working 4)		132,015

Working 4: Computation of top up tax	N'000
13% computed covered tax	797,985
Therefore 15% will be (797,985/13%) x15%	930,000
Additional 4% top tax to be paid	132,015

2(a) Peterside Nigeria Limited
Computation of tax liabilities for 2027 year of assessment

	N	N
Profit before tax		111,575,000
Add back disallowed expenses:		
Construction of new gate	12,000,000	
Legal services rendered to the wife of managing director	225,000	
Cost of income tax appeal	3,415,000	
Sales of scrap to Bolaji Limited (Not at arm's length) (~~N8m- N5m~~)	3,000,000	
Service charge paid to Bolaji Limited (Not at arm's length) ~~N15,328,000 – N12,000,000~~	3,328,000	
Unrealised foreign exchange loss	13,500,000	
Fines and penalties	1,300,000	
Depreciation	12,000,700	48,768,700
		160,343,700
Deduct non-taxable income:		
Dividend income		(12,000,000)
Assessable profit		148,343,700
Chargeable gains (workings 1)		0
		148,343,700
Deduct loss relief:		
Unrelieved loss brought forward	25,250,000	

Relieved	(25,250,000)	(25,250,000)
Unrelieved loss carried forward	Nil	
		123,093,700
Deduct: Capital allowances		
Capital allowance brought forward	0	
Capital allowance for the year (working 2)	16,365,000	
Total capital allowance	16,365,000	
Capital allowance claimed/absorbed	(16,365,000)	(16,365,000)
Unutilised capital allowance carried forward	Nil	
Total profit		106,728,700
Income tax liability @ 30% of total profit (A)		32,018,610
Development levy @ 4% of assessable profit (B)		5,933,748
Total tax payable (A) + (B)		37,952,358

Working 1 – Computation of Chargeable gains

	₦
Compulsory acquisition of landed property	
Compensation	40,000,000
Deduct acquisition cost	(15,000,000)
Chargeable gains (exempted from tax)	25,000,000
Chargeable gains to be subjected to tax	Nil

Chargeable gains on the compulsory acquisition of landed property by the Ogun State Government is exempted from tax.

Working 2 – Computation of Capital allowances

Existing assets						
Asset class	Industrial building	Non-indust. building	Plant & machin.	Furniture and fittings	Motor vehicle	Total
	₦	₦	₦	₦	₦	₦
Annual Allowance rate	10%	10%	20%	20%	25%	
Year of purchase	2011	2011	2019			
Total tax life	10 years	10 years	5 Years			
Expired tax life	10 year	10 year	4 years			
Unexpired tax life	0 years	0 years	0 years			
Tax written down value (TWDV)	10	10	10			
Annual allowance (TWDV/Unexpired tax life)	0	0	0			
TWDV carried forward to 2028 year of	0	0	0			

assessment						
Statistical notional (1% of cost) amount to be retained for existing assets	280,000	202,000	425,000			
New assets						
Cost of acquisition	0	0	0	23,700,000	46,500,000	
Annual allowance (cost * annual allowance rate)	0			4,740,000	11,625,000	16,365,000
TWDV carried forward to 2028 year of assessment	0			18,960,000	34,875,000	
Statistical notional amount to be retained for new assets				237,000	465,000	
Total Capital allowance for the year						16,365,000

(b) In line with the provisions of section 102 of the Nigeria Tax Administration Act, 2025, every company is required to keep books and records to pave way for the correct determination of taxes due.

Where a company fails to keep accounts, books, and records of business transactions and income to allow for the correct ascertainment of tax and filing of returns to the Revenue Service or fails to provide any record upon request by the Revenue Service, the company shall be liable to pay an administrative penalty of ₦50,000

In addition, as contained in section 108 of the Nigeria Tax Administration Act, 2025, every company is required to attend to demands, request or notices from the Revenue Service. Any company who;

- (a) fails to comply with the requirements of a notice served by the Revenue Service; or
- (b) fails to attend or provide answers to a notice, summons or process served by the Revenue Service; or
- (c) having attended, fails to answer any question lawfully put to him, is liable to an administrative penalty of ₦100,000 in the first day of default and ₦10,000 for every subsequent day where the default continues.

In addition, a company who fails or refuses to supply information, documents, or records as demanded or requested for by an authorised officer relating to any tax issue, is liable to an administrative penalty of ₦200,000 in the first day of default and ₦10,000 for each subsequent day where the refusal continues.

Besides, a company who fails or refuses to comply with obligations to submit information relating to a legal arrangement or other obligations as may be prescribed by notice, rules, regulations, guidelines, or circulars issued by the Service or any other relevant tax authority, is liable to an administrative penalty of ₦1,000,000 for the first day of default, in addition to ₦10,000 for each subsequent day in which the failure continues, or any other administrative penalty as may be specified in such notice, rules, regulations, guidelines, or circulars.

(3)(i) Chargeable gains are gains that arose as a result of disposal of chargeable assets.

In line with the provisions of Nigeria Tax Act, 2025, Chargeable gains should be computed as follows:

(a) in the case of a disposal of an asset used for a trade, business, profession or vocation, for which capital allowance has been claimed, only the residue or tax written down value of that asset is deductible from the disposal proceeds.

(b) in the case of a disposal of an asset where capital allowance has not been claimed, the amount or value of the consideration, in money or money's worth incurred, wholly and exclusively for the acquisition of the asset shall be deducted from the disposal proceeds.

Besides, for the purposes of computation of Chargeable gains in either of the two scenarios above, any incidental cost incurred wholly and exclusively for the purpose of disposal of a chargeable asset is deductible from the disposal proceeds. Such expenses include:

- i. cost of improvement on the asset for the purpose enhancing the value of the assets in preparation for sale
- ii. expenditure incurred in establishing, preserving and defending title to or a right over the asset
- iii. cost of making the disposal such as fees and commissions paid for professional services of any surveyors, valuers, accountants, legal advisers as well as cost of advert to find a buyer
- iv. incidental cost of the acquisition of the asset such as stamp duties, conveyance fee and other cost of perfecting title as well as cost of advertisement to find a seller

Besides, in line with the provisions of the Nigeria Tax Act, 2025, Chargeable gains are to be included as taxable income in the determination of the total profit of the company. This implies that Chargeable gains should be added to the assessable profit or loss of the company before loss brought forward from prior assessment year is relieved and capital allowance will also be claimed to arrive at the total profit of the company that will be subjected to tax at 30%. Therefore, since Chargeable gains are meant to be included taxable income in the determination of total profit of the company and considering other reliefs like loss relief and capital allowances, the company may not be paying up to 30% effective tax rate on its Chargeable gains.

(ii) In line with the provisions of the Nigeria Tax Act, 2025, every expenses that are wholly and exclusively incurred to generate profit/income being subjected to tax is allowed for the purposes of computing the tax liabilities of the company.

However, certain expenses are specifically stated in the Nigeria Act, 2025 as disallowable. Such expenses include:

- (a) capital repaid or withdrawn from a trade, business, profession or vocation;
- (b) any expenditure of a capital nature;
- (c) domestic or private expense, or expenditure on assets not used for the purpose of trade, business, profession or vocation;
- (d) any sum recoverable under an insurance or contract of indemnity;
- (e) taxes on profit or incomes levied in Nigeria or elsewhere;
- (f) any payment to a savings, widows and orphans, pension, provident or other retirement benefit fund, society or scheme not approved under the Pension Reform Act or any similar enactment in Nigeria;
- (g) depreciation or impairment of any fixed asset, investment or an unrealised exchange difference on any item denominated in foreign currency;
- (h) any sum reserved out of profits;
- (i) any payment to a connected person that is not consistent with the Transfer Pricing Regulations issued by the Service;
- (j) any expense incurred in deriving an income that is exempt from income tax;
- (k) any expense allowable as a deduction in determining Chargeable gains;
- (l) penalty or fine imposed under any law;
- (m) any tax or penalty borne on behalf of another person;
- (n) any compensating payment made by a borrower, which qualifies as dividends to its approved agent or to a lender in a regulated securities lending transaction;
- (o) any compensating payment made by an approved agent, which qualifies as interest or dividends to a borrower or lender in a regulated securities lending transaction; or
- (p) any expense on which Value Added Tax is due but was not charged, or in the case of imported items, any expense on which the applicable import duty or levy was not paid.

TAXATION OF LEASES

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12 Taxation of Leases

12.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the basic principles and application of taxation of leases.

12.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- a) understand the basic concept of accounting for lease transactions;
- b) ascertain the various classifications of leases;
- c) know the various tax implications of lease transactions;
- d) understand the treatment of capital allowances under lease arrangements;
- e) understand the leasing as a separate line of business;
- f) ascertain the recognition, measurement, presentation and disclosure of leases by corporate entities;
- g) know the treatment of COVID-19- related rent concessions;
- h) understand the Interest rate benchmark reform;
- i) ascertain lessor's forgiveness of lease payments;
- j) understand lease term and useful life of leasehold improvements; and
- k) know lease liability in a sale and leaseback.

12.2 Concept of leases

Statement of Accounting Standards (SAS) 11 defines Lease as "a contractual agreement between an owner (The Lessor) and another party (The Lessee) which conveys to the lessee the right to use the leased asset for consideration usually periodic payments called rents". A lease can also be defined as an agreement wherein a lessor (owner) lets out an asset to a lessee in exchange for a consistent rental payment for an agreed period. It is an agreement where one party (the lessee) agrees to pay a specified rent for the use of a specific asset owned by another party (the lessor) for a fixed term. For accounting purposes, a lease can be a finance lease (being a lease that transfers substantially all the risks and rewards of ownership of an asset to the lessee) or an operating lease (being a lease that does not transfer substantially all the risks and rewards of ownership of an asset to the lessee).

International Financial Reporting Standard (IFRS) 16 brings about significant changes to both the income statement and statement of financial position of the lessee. It became effective 1 January 2019.

12.3 Accounting for lease transactions

The International Financial Reporting Standard (IFRS) 16 on accounting for leases recommends a single lease accounting model, requiring a lessee to recognise a Right-of-Use (ROU) asset and a lease liability for all leases unless the lease term is 12

months or less, or the asset has a low value. For accounting purposes, a lease can be classified as either a finance lease or an operating lease.

Upon lease commencement, a lessor shall recognise assets held under a finance lease as a receivable at an amount equal to the net investment in the lease. A lessor recognises finance income over the lease term of a finance lease, based on a pattern reflecting a constant periodic rate of return on the net investment. At the commencement date, a manufacturer or dealer lessor recognises selling profit or loss in accordance with its policy for outright sales to which IFRS 15 applies. A lessor recognises operating lease payments as income on a straight-line basis or, if more representative of the pattern in which benefit from use of the underlying asset is diminished, another systematic basis.

Basically, two types of lease exist for tax purpose. A lease is either a tax lease or a non tax lease. A tax lease is one which qualifies for tax purposes while the non tax lease is one which is considered to be a loan. Guidelines have been made to distinguish between these two types of leases. If a lease has features such as a purchase option that indicate ownership, it will be treated as a purchase or loan. Thus, it could be said that a finance lease under this circumstance would not qualify as a true lease, since the true intention of the parties is for the lessee to own the asset at the end of the transaction. Operating lease is regarded by the tax authorities as a true lease and would entitle the lessor to claim capital allowance, depreciation and the lessee, the rent expense.

12.4 **Classes of leases**

Lessors shall classify each lease as a finance lease or an operating lease. A lease is classified as a finance lease if it transfers substantially all the risks and rewards incidental to ownership of an underlying asset. Otherwise, a lease is classified as an operating lease.

12.4.1 **Finance Lease**

Finance Lease is a lease involving rental payment over an obligatory period sufficient in total to amortise the capital outlay of the lessor and give the lessor some benefits. For a lease to qualify as a finance lease, consideration is given to its effective life, the option to purchase the property and the estimated residual life of the property. Based on the above statement the taxpayers can distinguish between finance and operating leases which results in different tax implications.

A lease is typically classified as a finance lease for accounting purposes where the lease is considered to have transferred substantially all the risks and rewards incidental to ownership of the leased asset from the lessor to the lessee. Whether the risks and rewards have transferred such that the lease should be classified as a finance lease for

accounting purposes is a judgment made by a suitably qualified accountant based on the substance of the transaction (rather than the legal form of the arrangement).

Lease rental is made up of the interest and capital portions. The interest portion of the rental earned by the lessor, constitutes taxable income in the hand of the lessor and the capital portion is a repayment of initial investment and has no tax implication. Also, the lessor is not allowed to claim capital allowance on the leased assets. Only the lessee is allowed to make such claim. If the lessor makes such claim, it will be disallowed by the Nigeria Revenue Service (NRS). The basis for this, is that the lessee is regarded in substance as the owner of the asset since all risks and rewards of ownership are transferred to him.

A finance lease involves the lease of an asset, such as machinery, to a commercial customer under an arrangement which is non-cancellable or only cancellable on payment of a financial penalty. The lessor provides the funding for the equipment, but maintenance is done by the lessee. The lessee has an option to purchase the equipment. The equipment remains property of the lessor until the end of the agreement or when the asset is duly paid for by the lessee.

Examples of situations that individually or in combination would normally lead to a lease being classified as a finance lease are set out below:

- a) The lease transfers ownership of the asset to the lessee by the end of the lease term.
- b) The lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than fair value at the date the option becomes exercisable meaning that, at the inception of the lease, it is reasonably certain that the option will be exercised.
- c) The lease term is for a major part of the economic life of the asset, even if title is not transferred at the inception of the lease.
- d) At the inception of the lease, the present value of the minimum lease payments amounts to at least substantially all of the fair value of the leased asset.
- e) The leased assets are of a specialised nature such that only the lessee can use them without major modifications being made.

In summary, a finance lease is a lease in which risks and rewards of ownership are transferred to the lessee, who is under obligation to pay such costs as insurance, maintenance and similar charges on the asset in addition to periodic lease rentals. In most cases, a finance lease agreement is non-cancellable, and the Lessee has an option to buy the asset for a nominal amount at the expiration of the lease term. The agreement usually provides for the payment of periodic rentals to cover capital repayment and interest computed at specific rates.

Features of finance lease

- a) It is non-cancellable.
- b) Lease term covers substantially (80% or more) of the useful life of the asset; or net present value of the lease at inception, using the minimum lease payments and the implicit interest rates; or the lease has a purchase option which is likely to be exercised.
- c) The ownership risks and rewards are transferred to the lessee; and
- d) The lessee is under obligation to pay such cost as insurance, maintenance and similar charges on the asset.

Accounting treatment of finance leases

In accounting for a finance lease, both the lessor and the lessee will typically treat the transaction substantively as if it was the financed sale of the asset to a lessee (or the provision of finance to the lessee to allow them to purchase the asset) with the accounting profits arising from the transaction computed on that basis.

The lease rental payments receivable are treated as comprising both a capital repayment and an interest/ finance charge element with:

- a) the interest/finance charge element being recorded as income in the profit and loss account, and
- b) the capital element reducing the amount receivable in the statement of financial position.

Similarly, the lessee will not treat the finance lease as a simple rental arrangement in their accounts and will instead recognise:

- a) their right to use the leased asset as an asset on their statement of financial position, and
- b) their obligation to pay future lease rentals as a lease creditor.

The “**right of use**” asset is depreciated over the shorter of the lease term and the normal useful life of the actual asset. The lease payments made by the lessee will also be treated as comprising a capital and financing charge element with:

- a) the finance charge element recorded as an expense in the statement of comprehensive income, and
- b) the capital element reducing the lease creditor payable in the statement of financial position.

12.4.2 Operating lease

An operating lease for accounting purposes is a lease that has not been classified for accounting purposes as a finance lease. It is any other lease other than a finance lease. Under such an arrangement, the Lessor, while granting the Lessee the right to use the

leased property, retains ownership of the property, risks, obligations and benefits associated with ownership in addition to the lease rentals that he receives.

An operating lease is a contract under which the asset is not wholly amortized during the primary period of the lease, and where the lessor does not rely solely on the rentals during the primary period for their profits but looks for the recovery of the balance of their costs and for the rest of their profits from the sale or re-lease of the returned asset of the primary lease period

Features of an operating lease

- a) The risk and ownership of the asset remains with the lessor.
- b) The lease is for a shorter period than in a finance lease though the life span of the lease may not be known at the beginning.
- c) The lease may be cancelled or renewed as may become necessary.
- d) The lessor is under obligation to pay such cost as insurance, maintenance and similar charges on the asset.
- e) The lessee is not entitled to claim capital allowances since the lessor claims allowances in respect of the leased asset.
- f) The interest expense in the income statement is tax deductible. However, the depreciation charged for the right of use asset is not a tax-deductible expense.

Accounting treatment of operating leases

How an operating lease is treated for accounting purposes is dependent on the following factors:

- a) whether the accounts are being prepared by the lessor or the lessee, and
- b) the accounting standards used to prepare the financial statements.

The lessor will generally:

- a) record lease income as income in the profit or loss account on a straight-line basis (or some other systematic or rational basis for example, reducing balance), and
- b) depreciate the leased asset in accordance with accounting standards.

12.4.3 Other variants of finance lease

- a) **Leverage lease** is a three-party arrangement involving a lender (often a financial institution) in addition to the usual lessor or lessee. In most cases, the lender provides the greater part of the purchase price of the leased asset.

- b) **Sales-type lease** is one where the lessor transfers substantially all the ownership risks and benefits of the property to the lessee. At the inception of the lease, the fair value of the leased property is greater or less than its carrying amount in the books of the lessor resulting in a profit or loss to the lessor who is often a manufacturer or dealer.
- c) **Sub-leases** is a lease agreement that allows the lessee to sub-lease to a third party who becomes a sub-lessee. In such a case, the original lessee becomes the lessor and all or some of the rights or obligations under the original lease are transferred to the new lessee. According to Statement of Accounting Standards on leases, SAS 11, the accounting treatment of a sub-lease is not different from that accorded to a normal or original lease because there is a lessor and a lessee, respectively. The original lessee treats all the transactions pertaining to a sub-lease as a lessor while the sub-lessor treats them as a lessee accordingly. The initial lessee continues to account for the original lease as a lessee.
- d) **Sale and leaseback** is one in which the seller of the property leases it back from the buyer. This kind of arrangement is like borrowing money and pledging the fixed asset in question. A company which engages in this type of arrangement stands to enjoy the following benefits:
- i) the company realises money from the sale;
 - ii) the company may also make balancing allowances there from;
 - iii) the company enjoys capital allowances from the asset despite the disposal since it has been leased but this has to be finance lease to be so; and
 - iv) the instalmental payments being made by the company is tax deductible.
 - v) this arrangement can be used as a means of financing a company as well as tax savings.

12.5 Tax implications of lease transactions

12.5.1 Finance (capital) lease

a) Tax issues for the lessor

i) Companies income tax (CIT)

- The interest portion of the rent earned by the lessor constitutes taxable income in the hand of the lessor;
- Capital portion is a repayment of initial investment and has no tax implication;
- The lessor is not entitled to claim capital allowances on the leased assets; only the lessee is entitled to make such claims. (If the lessor makes any such claim for capital allowances, NRS will disallow it).

ii) Withholding tax (WHT)

Withholding tax is computed only on the interest portion of the total lease payment due from the lessee. The lessor will receive lease rent less 10% WHT. The credit note will be issued in the name of the lessor who can use it to offset its income tax liability for the relevant period.

iii) Value added tax (VAT)

Interest earned by the lessor on finance lease is a return on investment and is not liable to VAT.

iv) Capital gains tax (CGT):

If the asset is disposed at the expiration of the lease period, any capital gain realised would be subject to capital gains tax. The Nigeria Tax Act, 2025 repealed Capital Gains Tax Act. This implies that effective January 1, 2026, if the asset is disposed at the expiration of the lease period and the disposal lead to gains, the Chargeable gains shall be included as taxable income in the determination of the total profit of the company to be liable to companies income tax.

b) Tax Issues for the lessee

i) Companies income tax (CIT)

- The Interest portion of the periodic lease rent and other related expenses such as maintenance cost and insurance are deductible expenses for income tax purposes.
- The lessee is entitled to claim capital allowance on capital portion of the value of the leased assets.

ii) Withholding tax (WHT)

The lessee has a duty to withhold tax at 10% on the interest portion of the lease rental and to remit same to the relevant tax authority.

iii) Value Added tax (VAT)

The input tax incurred on purchase of the assets is to be capitalised with the cost of the asset. Effective January 1, 2026 the input tax incurred on the purchase of the assets shall not be capitalised and can be claimed as allowable input VAT against the output VAT in line with the provisions of the Nigeria Tax Act, 2025.

iv) Capital gains tax (CGT)

Capital gains tax will not be applicable to the lessee unless the gain arose from the sale of his interest in the lease. However, he will be liable to capital gains tax if the leased asset was sold by him after exercising the purchase option. The Nigeria Tax Act, 2025 repealed Capital Gains Tax Act. This implies that effective January 1, 2026, if the leased asset is disposed by the lessee after exercising

the purchase option and the disposal lead to gains, the Chargeable gains shall be included as taxable income in the determination of the total profit of the company to be liable to companies income tax.

12.5.2 Operating lease

a) Tax issues for the lessor

i) Companies income tax (CIT)

- The total lease rental received or receivable by the lessor is income and it is wholly taxable
- The lessor is entitled to claim capital allowance on the leased assets.

ii) Withholding tax (WHT)

Withholding tax computed on the total lease rental must be deducted from the sums due from the lessee. The withholding tax due is at 10% of the total rental income due on the lease.

iii) Value added tax (VAT)

The lease rental income is liable to VAT; the lessor is to include a 7.5% VAT charge on its invoice to the lessee.

b) Tax implication for the lessee

i) Companies income tax (CIT)

- The rental charges and other associated expenses are allowable deductions for tax purposes.
- Capital allowances can only be claimed by the lessor; capital allowances should not be claimed by the lessee on assets under operating lease.

ii) Withholding tax (WHT)

The lessee shall withhold tax at 10% from the rental payment to the lessor and remit same to the relevant tax authority.

iii) Value added tax (VAT)

VAT charged by the Lessor on the lease rental charge is not an input tax to the Lessee; it is to be charged to the profit or loss account. Effective January 1, 2026, the VAT charged by the Lessor on the lease rental charge can be claimed as allowable input VAT against the output VAT in line with the provisions of the Nigeria Tax Act, 2025.

12.5.3 Practical steps to manage tax impacts

- a) **Identify all leases:** Pull together a comprehensive lease inventory. This should include obvious long-term real estate leases and any equipment or vehicle leases that run beyond 12 months.
- b) **Review and classify for tax purposes:** Distinguish leases that qualify as true (operating) leases from those that count as non-tax (or finance) leases. This classification dictates whether the lease produces rental deductions or depreciation and interest.
- c) **Implement a tracking system:** Investing in lease management software can streamline how you capture key data points from initial entries to ongoing payments and automatically generate reconciliations between book and tax treatments.
- d) **Monitor and reconcile book-to-tax differences:** Maintain detailed schedules for changes in right-of-use assets, lease liabilities, deferred rent eliminations, and interest expense permutations. These schedules will feed into deferred tax calculations and assist in year-end (or interim) reviews.
- e) **Stay current with rules:** Tax law is dynamic, keep an eye on potential federal or state changes that could alter how various leases are treated. Also, remain alert to international standard changes if you have global footprints under IFRS 16.

12.6 Capital allowances under lease arrangements

12.6.1 Capital allowance under finance lease arrangement

Up till December 31, 2025, in the case of a finance lease, paragraph 18 (2) of the Second Schedule to Companies Income Tax Act, 2004 (as amended) provides that “where however an asset is acquired by any hirer or lessee under a finance lease contract the term of which provide for the transfer of ownership, risks and reward to the hirer or lessee, the provisions of this schedule shall in the same way as it applies to an asset acquired by any owner or lessor of an asset for the purpose of his trade or business, but shall so apply subject to the following modifications:

- a) 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 capital expenditure any interest or charges payable under the contract; and
- b) any reference in this subparagraph to any owner/lessor of any asset shall be construed as including a reference to a hirer or lessee under finance lease

contract and as excluding a reference to the person leasing the asset to the hirer or lessee under the contract.

Following from the foregoing provision, the claim for capital allowances under a finance lease arrangement can only be made by the lessee. The Act further states that the qualifying expenditure shall be limited to the total lease payments due from the lessee to the lessor; in effect interest charges payable by the lessee to the lessor is not a qualifying capital expenditure and does not qualify for capital allowances.

12.6.2 Capital allowance under operating lease arrangements

Paragraph 18(1b) of the second schedule to the Companies Income Tax Act provides that “where a company owning an asset 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 provision of this schedule shall apply as though the 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”. In essence, capital allowances can only be made by the lessor under an operating lease arrangement.

12.6.3 Provisions of Nigeria Tax Act, 2025 on application of capital allowance to assets acquired under hire-purchase or finance lease agreement

Part 1 of the first schedule to Nigeria Tax Act, 2025 provides that capital allowance shall be claimed on assets acquired under hire-purchase or finance lease agreement subject to the following modifications:

- (a) the qualifying capital expenditure in any basis period shall, in relation to any asset so acquired under hire purchase or finance lease be limited to the amount of the instalments paid by the hirer or lessee up to that basis period, excluding any interest paid under the agreement;
- (b) the owner of the asset shall be construed to be the hirer or lessee under the hire-purchase or finance lease agreement; and
- (c) the person letting the asset to the hirer or lessee under the agreement shall not be entitled to claim capital allowance that should be taken into consideration in the determination of total profit. This implies that the lessor cannot claim capital allowance on the leased assets.

With respect to operating and finance leases, it is also provided in part 1 of the Nigeria Tax Act, 2025 that;

- (i) where in a basis period, the owner of an asset leases the asset to another person under an operating lease arrangement, it will be construed that such expenditure was incurred for the purpose of a trade or business carried on by the owner or lessor. Therefore, the lessor will claim capital allowance on assets leased under

operating lease arrangement.

(ii) where an asset is acquired for use by a hirer or lessee under a hire purchase or finance lease contract for the purpose of a trade or business carried on by such hirer or lessee, the hirer or lessee shall be deemed to be the owner of the asset and shall claim capital allowance on such assets

12.7 Lease as a separate line of business

In Nigeria, leasing can be a lucrative business, providing individuals and companies with access to assets without the need for outright purchase. Leasing is a growing market in Nigeria. According to a report released by the Equipment Leasing Association of Nigeria (ELAN), the Nigerian Leasing industry recorded an increasing growth rate. Leasing business is important to the Nigerian economy because it increases capital investment and economic growth and enables businesses and even governments (at the local and national level), to acquire capital assets for production.

Leasing means the business of letting or sub-letting movable property on hire for the purpose of the use of such property by the hirer or any other person in any business whatsoever and where the lessor is the owner of the property regardless of whether the letting is with or without an option to purchase the property. This definition is encompassing of the business of rentals, operating leases, finance leases conditional sale and hire purchase. However, the above businesses are differentiated by the terms of contract as agreed between parties. A contract of rent is typically that of hire or letting of property for a short period of time and for all time from hours to a month and sometimes a longer period based on more frequently received rentals and the incidence of maintenance of the property lies with the hirer for the period of the rental.

12.7.1 Structure of leases in Nigeria

A lease arrangement may take the form of any of:

a) Finance lease

A financial lease is also known as a capital or full pay out lease. This is a contract involving payment over an obligatory period (known as the primary or basic period) of specific sums sufficient in total to amortise the capital outlay of the lessor. The lessee in finance lease arrangement usually has a choice after the expiration of the primary period of either purchasing the asset or extending the lease over a secondary period. It is similar to purchasing an asset with a loan and paying back the loan in instalments including the accrued interest. However, it differs from a hire purchase or conditional sale which from initiation of the contract, the hirer agrees to purchase the asset, and the owner merely transfers the asset at the end of the period after all instalments have been paid.

Features of finance lease

- (i) The lessee and lessor are obligated to the lease and cannot cancel it except by mutual consent before the expiration of its tenor.
- (ii) Finance lease usually last for a longer period. It is drawn in such a way as to cover substantially the economic life of the asset during which the lessee must fulfill the obligations of the lease.
- (iii) The total lease rentals in a finance lease are usually higher than the original value of the leased asset. This is to cover all attendant costs and expenses and the lessor's return on investment during the tenor of the lease. The salvage of the asset is extra profit to the lessor.
- (iv) Generally, the lessee is responsible for the maintenance of the asset.

b) Operating lease

An operating lease is a contract between a lessee and a lessor under the terms of which the lessor permits the use of an asset without transferring the ownership rights of the subject matter asset to the lessee. In an operating lease, the true value or cost of the asset is not fully paid up or written off by the rental payments made during the subsistence of the lease. This means that the asset is not entirely amortized during the lease period.

Operating lease is for a shorter period than the asset's economic life cycle, and after the first term has passed, the asset may be subsequently leased after the expiration of the lease period. It can be cancelled before the end of its tenor by either party and the lessor retain ownership, risks and benefits accruing to it. This may be differentiated from a contract for rent which is typically that of hire or letting of property for a short period of time and for all time from hours to a month and sometimes a longer period of time based on more frequently received rentals and the incidence of maintenance of the property lies with the hirer for the period of the rental.

In an operating lease, the asset is not entirely amortized during the primary period (if any) of the lease and in which the lessor seeks to recover the cost and profit from the sale of the returned asset at the end of the lease period rather than relying on rentals during that time.

The lessor is entitled to receive lease rentals for the lease period; the lease rental is determined by several factors and the base value of the asset. The lessor may also earn additional income through charges for added services such as asset maintenance, insurance and technical support that may be provided during the lease period by the lessor.

Features of operating lease

- i) The lessor bears the responsibility for servicing and maintaining the asset and these costs are included in the lease rental. It enables the lessor to keep a pool of qualified maintenance personnel for cost-effectively maintaining many assets.
- ii) The total lease rentals in an operating lease are typically lower than the cost of the asset.
- iii) The lessor or lessee can cancel the lease before the expiration of the primary lease period.
- iv) The lessor may provide extra services relating to the asset such as insurance, product warranties, replacements (i.e. replacing the leased asset with another pending major repair on the asset) and other technical and operational support.
- v) In a full-service operating lease, the lessor is directly affected by the state and efficiency of the asset. The lessor therefore has a great interest in ensuring the asset is kept in good condition.

12.7.2 Benefits of leasing

Running a business means making smart choices with resources. One of the most strategic decisions to consider by a company is leasing equipment instead of buying it. As a business owner, it's crucial to understand the benefits of leasing and how it can help save the business money, keep technology fresh, and make business more flexible. Some of the key benefits are outline below:

- a) **Cash flow preservation:** Leasing equipment offers a significant advantage of relieving the immediate financial pressure on business, freeing up cash for other critical investments, whether expanding product line, boosting marketing efforts, or covering unexpected expenses. Leasing enables the entity to spread out the equipment costs over time, helping it to maintain a healthy cash flow and ensure the stability of the business finances.
- b) **Tax and accounting advantages:** Leasing can offer significant tax benefits for business. Lease payments are typically treated as tax-deductible operating expenses, reducing the overall tax liability. Additionally, leased equipment does not appear as a capital asset on the statement of financial position, improving the financial ratios and attractiveness to investors and lenders.
- c) **Alternative to financing:** Securing financing can pose challenges, leasing provides a more accessible alternative, allowing the entity to acquire the required equipment to operate and grow the business without the barriers of traditional

financing options. With simplified approval processes and flexible payment terms, leasing streamlines the financing process.

- d) **Access to newer technology:** Keeping pace with technology is not just a necessity but a competitive advantage for businesses. However, investing in the latest equipment can be expensive. Leasing offers a financially efficient solution, enabling the entity to access the latest models as they become available.
- e) **Scalability and agility:** Leasing provides business with both scalability and flexibility by offering solution that adjusts to changing needs without the financial burden of purchasing expensive equipment outright. Whether the entity is experiencing rapid growth, expanding operations, or facing fluctuating demand, leasing enables efficient scaling. Additionally, it enhances business agility by allowing quick adaptation to market demands without the long-term commitment of ownership.

12.7.3 Regulatory framework of leasing business in Nigeria

In Nigeria, the regulatory framework for leases is influenced by international standards, including IFRS 16. The Financial Reporting Council of Nigeria (FRC) adopts these standards, which guide the accounting treatment for leases and leasehold improvements.

The regulatory laws are:

- (a) Equipment Leasing Act 2015;
- (b) Banks and Other Financial Institutions Act 2020; and
- (c) Central Bank of Nigeria (CBN) Revised Guidelines for Finance Companies in Nigeria 2014

The regulatory bodies are:

- (a) Equipment Leasing Regulatory Authority (ELRA);
- (b) Central Bank of Nigeria (CBN);
- (c) Banks and other Financial Institutions Act 2020 (BOFIA); and
- (d) The Nigerian Deposit Insurance Corporation (NDIC).

12.7.4 Licensing and registration regime

The business of Equipment Leasing is regulated by the provision of the Equipment Leasing Act 2015 (ELA) which seeks to regulate the business of equipment leasing in Nigeria such that the relationship between the lessor and the lessee and relationship with third parties is protected by the Equipment Leasing Regulatory Authority (ELRA) which was inaugurated on Friday, May 19, 2023 by the Minister of Finance, Budget and National Planning. In this regard, the ELA provides that an equipment lease agreement

shall irrespective of the value of the leased equipment, be registered with the ELRA not later than 14 days after the commencement of such lease agreement, or within three months for a lease agreement made before the Commencement of the ELA. Non-registration of a registrable lease agreement shall render the lease agreement invalid as between the parties to the agreement but shall render same unenforceable against any third party acting in good faith, for value without notice of the lease agreement.

Section 6 of the ELA provides that a person may only carry on the business of equipment leasing if:

- a) It is a limited liability company and the MEMART expressly provides that it will carry on the business of equipment leasing; and
- b) It has satisfied all requirements prescribed by the guidelines made from time to time by the ELRA.

The CBN regulates companies that carry on business in the form of finance leases. Whilst the CBN does not regulate operating leases, it is important to note that where a regulated business carries on both operating lease and finance lease business and there is no distinction in the lines of business, the CBN will regulate the lease business. Leasing companies that engage in finance leases are required to apply for a licence to carry on the business as a finance company regulated by the CBN and comply with the prudential/ regulatory requirements for Finance Companies as defined by the CBN.

12.7.5 Challenges

- a) **Regulatory:** Leasing companies in Nigeria must comply with regulatory requirements, which can be complex and time-consuming.
- b) **Risk management:** Leasing companies must manage risks associated with asset ownership, such as maintenance and obsolescence.
- c) **Funding:** Leasing companies require access to funding to purchase assets and provide leasing services.

12.8 Recognition, measurement, presentation, and disclosure of leases by corporate entities

IFRS 16 establishes the principles for the recognition, measurement, presentation and disclosure of leases, with the objective of ensuring that lessees and lessors provide relevant information that faithfully represents those transactions.

IFRS 16 Leases applies to all leases, including subleases, except for:

- a) leases to explore for or use minerals, oil, natural gas and similar non-regenerative resources;
- b) leases of biological assets held by a lessee (*Agriculture*);
- c) service concession arrangements (*Service Concession Arrangements*);
- d) licences of intellectual property granted by a lessor (see *Revenue from Contracts with Customers*); and
- e) rights held by a lessee under licensing agreements for items such as films, videos, plays, manuscripts, patents and copyrights within the scope of Intangible Assets.

A lessee can elect to apply IFRS 16 to leases of intangible assets, other than those items listed above.

12.8.1 Recognition and measurement

- i) **Lessee:** Recognises lease assets and liabilities on the statement of financial position, with the lease asset measured at the present value of the minimum lease payments or the fair value of the asset, whichever is lower.
- ii) **Lessor:** Records a finance lease as a receivable at an amount equal to the net investment in the lease.

12.8.2 Presentation

- i) **Lessee:** Presents lease assets and liabilities separately on the statement of financial position, with lease assets depreciated over the lease term or the asset's useful life, whichever is shorter.
- ii) **Lessor:** Presents assets held for operating leases according to their nature, with lease income recognised over the lease term.

12.8.3 Disclosure

The objective of IFRS 16's disclosures is for information to be provided in the notes that, together with information provided in the statement of financial position, statement of profit or loss and statement of cash flows, gives a basis for users to assess the effect that leases have. Paragraphs 52 to 60 of IFRS 16 set out detailed requirements for lessees to meet this objective and paragraphs 90 to 97 set out the detailed requirements for lessors.

- i. **Lessee:** Discloses information about lease assets, liabilities, and expenses, including the measurement policy applied to leases.
- ii. **Lessor:** Discloses information about lease income, assets held for operating leases, and lease receivables.

12.8.4 Recognition exemptions

Instead of applying the recognition requirements of IFRS 16 described above, a lessee may elect to account for lease payments as an expense on a straight-line basis over the lease term or another systematic basis for the following two types of leases:

- i) leases with a lease term of 12 months or less and containing no purchase options – this election is made by class of underlying asset; and
- ii) leases where the underlying asset has a low value when new (such as personal computers or small items of office furniture) – this election can be made on a lease-by-lease basis.

12.8.5 Compliance and impact

Compliance with IFRS 16 is crucial for credible financial reporting and corporate disclosure practices in Nigeria. The new standard has implications for financial ratios, such as leverage and returns on assets, and may affect lessors' business models.

12.9 Treatment of COVID-19-related rent concessions

The International Accounting Standards Board (IASB) issued amendments to IFRS 16 Leases in May 2020 to address COVID-19-related rent concessions. The pronouncement amended IFRS 16 Leases to provide lessees with an exemption from assessing whether a COVID-19-related rent concession is a lease modification. On issuance, the practical expedient was limited to rent concessions for which any reduction in lease payments affects only payments originally due on or before June 30, 2021.

To qualify for the practical expedient, the rent concession must meet the following conditions:

- a) the change in lease payments results in revised consideration that's substantially the same as or less than the original consideration;
- b) the reduction in lease payments affects only payments due on or before June 30, 2021; and
- c) there's no substantive change to other terms and conditions of the lease.

A lessee may elect not to assess whether a COVID-19-related rent concession is a lease modification. A lessee that applies the exemption accounts for COVID-19-related rent concessions as if they were not lease modifications.

12.10 Interest rate benchmark reform- Phase 2

The Interest Rate Benchmark Reform Phase 2, also known as IBOR reform, addresses changes in the basis for determining contractual cash flows of financial assets, financial liabilities, and lease liabilities. This reform is crucial in Nigeria, as it affects various financial instruments and contracts that reference interest rate benchmarks like the Nigerian Interbank Offered Rate (NIBOR).

A lessee accounts for modifications required by the Interbank Offered Rate (IBOR) reform (modifications required as a direct consequence of the IBOR reform and made on an economically equivalent basis) by updating the effective interest rate. All other modifications are accounted for using the applicable requirements.

12.10.1 Key aspects of Phase 2 reforms

- a) **Changes in Contractual Cash Flows:** The reform provides guidance on how to account for changes in the basis for determining contractual cash flows of financial assets and financial liabilities.
- b) **Practical expedients:** The International Financial Reporting Standards (IFRS) 16 amendments offer practical expedients for lessees and lessors to account for lease modifications resulting from IBOR reform.
- c) **Hedge accounting:** The reform also addresses the impact on hedge accounting, ensuring that changes in interest rate benchmarks do not result in the discontinuation of hedge relationships.
- d) **Financial assets and liabilities:** The reform affects the accounting treatment for financial assets and liabilities that reference interest rate benchmarks.
- e) **Lease liabilities:** The reform also impacts lease liabilities, requiring entities to account for changes in lease payments resulting from IBOR reform.

12.10.2 Implications for Nigerian Entities

- a) **Contractual changes:** Nigerian entities will need to review and potentially modify contracts that reference interest rate benchmarks.
- b) **Financial reporting:** Entities will need to apply the amended accounting standards, ensuring compliance with regulatory requirements.
- c) **Risk management:** Entities should assess the impact of IBOR reform on their risk management strategies and hedge accounting relationships.

12.11 Lessor's forgiveness of lease payments

12.11.1 The IFRS interpretations committee consideration

The IFRS Interpretations Committee (the Committee) considered how a lessor applies IFRS 9 and IFRS 16 in accounting for a particular rent concession. The rent concession in question is one in which the only change to the lease contract is the lessor's forgiveness of lease payments due from the lessee under that contract.

In the case considered, the rent concession changes the original terms and conditions of a lease contract classified by the lessor applying IFRS 16 as an operating lease. The lessor legally releases the lessee from its obligation to make specifically identified lease payments. No other changes are made to the lease contract, nor are there any other negotiations between the lessor and the lessee that might affect the accounting for the rent concession. Before the date the rent concession is granted, the lessor applies the expected credit loss model in IFRS 9 to the operating lease receivable.

A lessor's forgiveness of lease payments can have implications for both the lessor and the lessee from the following aspects:

- a) the lessor can apply the impairment requirements in IFRS 9 to the operating lease receivable. The lessor estimates expected credit losses on the operating lease receivable by measuring any credit loss to reflect 'all cash shortfalls, but before the rent concession is granted, the lessor would measure expected credit losses on the operating lease receivable by following IFRS 9:5, which would include the lessor considering its expectations of forgiving lease payments recognised as part of that receivable; and
- b) the lessor legally releases the lessee from its obligation to make specifically identified lease payments, some of which the lessor has recognised as an operating lease receivable. Therefore, on the date the rent concession is granted, the lessor remeasures expected credit losses on the operating lease receivable (and recognises any change to the expected credit loss allowance in profit or loss) and derecognises the operating lease receivable (and associated expected credit loss allowance).

Accounting treatment

Lessee: When a lessor forgives lease payments, the lessee may recognise the forgiveness as a gain in profit or loss. The gain would be measured as the amount of lease payments forgiven.

Lessor: The lessor would recognise the forgiveness as a loss in profit or loss, measured as the amount of lease payments forgiven.

Tax Implications

Lessee: The forgiveness of lease payments may have tax implications for the lessee. The lessee should consult with a tax professional to determine the tax treatment of the forgiveness.

Lessor: The lessor may be able to claim a tax deduction for the loss recognised due to the forgiveness of lease payments.

The amendment to IFRS 16, issued in September 2022, provides guidance on measuring lease liability in sale and leaseback transactions. How it impacts Nigerian entities are as follows:

- a) **Lease liability measurement:** Seller-lessees determine the lease liability by considering only the lease payments and not the sale proceeds. This ensures accurate measurement of lease liabilities arising from sale and leaseback transactions;
- b) **Variable lease payments:** The amendment may significantly affect subsequent measurement of lease liabilities with variable lease payments;
- c) **Effective date:** The amendment applies to annual reporting periods beginning on or after January 1, 2024, with earlier application permitted; and
- d) **Regulatory requirements:** Financial Reporting Council of Nigeria (FRC) regulates financial reporting in Nigeria and may provide guidance on the accounting treatment for lease payment forgiveness. Nigerian companies may follow International Financial Reporting Standards (IFRS), which provides guidance on accounting for lease modifications, including forgiveness of lease payments and accounting for lease liabilities in sale and leaseback transactions.

The following regulatory requirements should be adhered to by lease entities:

- i) they should understand the new requirements for measuring lease liabilities and recognise the impact on their financial statements;
- ii) they should ensure compliance with regulatory requirements and accounting standards when accounting for lease payment forgiveness;
- iii) they should consider the tax implications of lease payment forgiveness and plan accordingly; and
- iv) they should also review contractual agreements to determine the terms and conditions of lease payment forgiveness.

12.12 Lease term and useful life of leasehold improvements

- a) **Lease term:** The lease term is the non-cancellable period of a lease, plus any periods covered by an option to extend the lease if it's reasonably certain to be exercised. For cancellable or renewable leases, the lease term would include the initial non-cancellable period and any subsequent periods if the lessee has the option to extend and is reasonably certain to exercise that option.
- b) **Useful life of leasehold improvements:** The useful life of leasehold improvements is typically the shorter of the useful life of the improvements that is the period over which the improvements are expected to be used and the remaining lease term that is the period from the date the improvements are made until the end of the lease term.

When determining the lease term and useful life of leasehold improvements, the following factors should be considered:

- a) **Contractual terms:** Review the lease agreement to understand the terms and conditions, including any options to extend or terminate the lease.
- b) **Economic incentives:** Consider the economic incentives for the lessee to exercise options to extend the lease.
- c) **Asset usage:** Determine how the lessee will use the underlying asset and the leasehold improvements.

12.13 Lease liability in a sale and leaseback (IFRS 16 amended)

A sale and leaseback is a transaction in which the owner of an asset sells the asset and leases that asset back from the buyer for a period. The seller-lessee must determine if the transaction qualifies as a sale for which a gain (or loss) is recognised, or if the transaction is treated as a collateralised borrowing.

When originally issued, IFRS 16 included no specific subsequent measurement requirements for sale and leaseback transactions. Consequently, it was not always clear how to subsequently measure the liability arising from a leaseback, particularly where the payments for the lease include payments that do not meet the definition of 'lease payments' in IFRS 16, for example, where the payments include variable lease payments that do not depend on an index or a rate. As a result, in September 2022, the IASB issued Lease Liability in a Sale and Leaseback, which amends IFRS 16 to address the issue of subsequent measurement of the lease liability.

If an asset transfer satisfies IFRS 15's requirements to be accounted for as a sale the seller measures the right-of-use asset at the proportion of the previous carrying amount that relates to the right of use retained. Accordingly, the seller only recognises the amount of gain or loss that relates to the rights transferred to the buyer. If the fair value of the sale consideration does not equal the asset's fair value, or if the lease payments are not market rates, the sales proceeds are adjusted to fair value, either by accounting for prepayments or additional financing. A seller-lessee subsequently measures lease liabilities arising from a leaseback in a way that it does not recognise any amount of the gain or loss that relates to the right of use it retains.

The International Accounting Standards Board (IASB) issued amendments to IFRS 16 in September 2022, clarifying how seller-lessees account for sale and leaseback transactions. The key points are as follows:

- a) **lease liability measurement:** The amendment adds subsequent measurement requirements for sale and leaseback transactions, specifying how to determine the lease liability after the transaction.
- b) **accounting treatment:** Seller-lessees must account for the lease liability based on the lease payments and not the sale proceeds, ensuring accurate measurement.
- c) **effective date:** The amendment applies to annual reporting periods beginning on or after January 1, 2024, with earlier application permitted.

These amendments aim to provide clarity and consistency in accounting for sale and leaseback transactions, helping entities accurately reflect their financial positions. By

specifying how to measure lease liabilities in these transactions, the amendments support transparency and comparability in financial reporting.

Measurement

The lease liability is initially measured at the present value of the lease payments payable over the lease term, discounted at the rate implicit in the lease if that can be readily determined. If that rate cannot be readily determined, the lessee shall use their incremental borrowing rate. Variable lease payments that depend on an index or a rate are included in the initial measurement of the lease liability and are initially measured using the index or rate as at the commencement date. Amounts expected to be payable by the lessee under residual value guarantees are also included.

Variable lease payments that are not included in the measurement of the lease liability are recognised in profit or loss in the period in which the event or condition that triggers payment occurs, unless the costs are included in the carrying amount of another asset under another Standard.

The lease liability is subsequently re-measured to reflect changes in:

- a) the lease term (using a revised discount rate);
- b) the assessment of a purchase option (using a revised discount rate);
- c) the amounts expected to be payable under residual value guarantees (using an unchanged discount rate); or
- d) future lease payments resulting from a change in an index or a rate used to determine those payments (using an unchanged discount rate).

The re-measurements are treated as adjustments to the right-of-use asset. Lease modifications may also prompt re-measurement of the lease liability unless they are to be treated as separate leases.

The answer to the following questions will be a guide to proper measurement, presentation, disclosure and determination of transition and effective date to sale and leaseback transactions:

- a) how does a seller-lessee determine the proportion of the right-of-use asset retained at the sale and leaseback transaction date?
- b) how does a seller-lessee determine the lease liability at the sale and leaseback transaction date?
- c) how does a seller-lessee subsequently measure the right-of-use asset and lease liability in a sale and leaseback transaction?
- d) does an entity have to estimate expected variable lease payments?
- e) how does the seller-lessee account for a partial or full termination of the leaseback?

- f) how does the seller-lessee measure 'revised lease payments' for the leaseback under the amendments, on a re-measurement/modification date?

Presentation and disclosure

- a) How is the lease liability presented in the statement of financial position?
- b) Are additional disclosures required in the financial statements?

Transition and effective date

- a) When are the amendments effective?
- b) How are the amendments applied generally?
- c) How are the amendments applied where an entity applied IFRS 16 in its first set of IFRS financial statements?
- d) Should an entity present a third statement of financial position when adopting the amendments?

Accounting treatment

The accounting for sale and leaseback transactions under IFRS 16, 'Leases', depends on whether the transfer of the asset qualifies as a sale in accordance with IFRS 15, 'Revenue from contracts with customers'. A sale and leaseback qualifies as a sale if the buyer-lessor obtains control of the underlying asset. Where the transfer of the asset qualifies as a sale, the seller-lessee also recognises the leaseback by recognizing a lease liability, reflecting the payment terms of the leaseback and a right-of-use asset for the right of use retained.

The gain or loss that the seller-lessee recognises at the date of the transaction is a consequence of its measurement of the right-of-use asset arising from the leaseback. Because the right of use that the seller-lessee retains is not remeasured as a result of the transaction (it is measured as a proportion of the property, plant and equipment's previous carrying amount), the amount of the gain or loss recognised relates only to the rights transferred to the buyer-lessor. Applying paragraph 53(i) of IFRS 16, the seller-lessee discloses gains or losses arising from sale and leaseback transactions.

IFRS 16 requires a seller-lessee to account for a right-of-use asset arising from a sale and leaseback in this manner to reflect that, from an economic standpoint, the seller-lessee has sold only its interest in the value of the underlying asset at the end of the leaseback – it has retained its right to use the asset for the duration of the leaseback. The seller-lessee had already obtained that right to use the asset at the time when it purchased the asset, since the right of use is an embedded part of the rights that an entity obtains when it purchases, for example, an item of PP&E. Recognizing only the amount of the gain or loss that relates to the rights transferred to the buyer-lessor – and thus not recognising the amount of the gain or loss that relates to the rights retained by the seller-lessee – appropriately reflects the economics of a sale and leaseback transaction.

12.14 Chapter review

In this chapter, the concept of lease is well explained. The treatments for the various classifications of leases have been covered with regards to its tax implications. Finance and operating leases were properly discussed taken IFRS 16 and other relevant tax laws into consideration.

12.15 Worked examples

12.15.1 Questions

- 1(a). FFF Limited leased manufacturing equipment from GGG Leasing Limited. The total lease sum is ₦15,000,000; but the fair market value is ₦10,000,000. The equipment has an economic life of 5 years, The lease term is 4 years with an option to buy the equipment lease for ₦100,000 by the lessee. The lease is not cancellable, and the lessee is responsible for maintenance, insurance and upkeep of the equipment.

Required:

Explain with supporting reasons the type of lease as described by the above statement.

- (b) MAN Haulage Company Limited leased a truck from Auto Motors Limited. The cost of the truck is ₦15,000,000 and monthly lease payment is ₦300,000 payable at the beginning of each month. The lessor is responsible for repairs, maintenance and registration of the vehicle while the lessee takes care of fuelling, lubrication, tyres replacements. The expected useful life of the truck is 10 years. The lease term is 2 years in the first instance, and it is renewable subject to agreement by the two parties; either party can also opt out of the arrangement after 3 months' notice.

Required:

Explain with supporting reasons the type of lease as described by the above statement.

2. Discuss the practical steps to be followed so as to effectively manage tax impacts of a leased asset.

3. An entity (seller-lessee) sells a building to another entity (buyer-lessor) for cash of ₦18,000,000 (the fair value of the building at the date of sale). Immediately before the transaction, the building was carried at a cost of ₦10,000,000. At the same time, the seller-lessee enters into a contract with the buyer-lessor for the right to use the building for an initial period of five years and the economic useful life of the building is 20 years.

Lease payments (which are at market rates), payable annually, comprise fixed payments and variable payments that do not depend on an index or a rate. The terms and conditions of the transaction are such that the transfer of the building by the seller-lessee satisfies the requirements of IFRS 15 to be accounted for as a sale of the building. Accordingly, the seller-lessee accounts for the transaction as a sale and leaseback.

Required:

- (a) Determine the proportion of the right of use retained.
- (b) Ascertain the present value of the expected residual value of the asset at the end of the leaseback.
- (c) Compute the gain on rights transferred.

4. XYZ Nigeria Limited is a manufacturing company which has incurred an assessable loss of ~~₦~~18,000,000 at the end of the financial year December 31, 2023. In addition to the above, the company has leased out some under-utilised factory machinery. The net profit made from this leasing business is ~~₦~~4,000,000.

On June 2, 2023, XYZ sold one of its buildings which had been acquired in January, 2023 at a cost of ~~₦~~500,000,000 for ~~₦~~560,000,000 to ABC Ltd. On the same day, XYZ leased back the building under the following terms:

- (i) On finance lease terms for 3 years non-cancellable.
- (ii) the lease rental is ~~₦~~20,000,000 (inclusive of interest) payable December 31, each year.
- (iii) Interest payments of ~~₦~~4,500,000 ~~₦~~4,000,000 and ~~₦~~3,000,000 are to be made by XYZ for the years 2023, 2024 and 2025 respectively.
- (iv) The lessee has the option to purchase the building for ~~₦~~650,000,000 at the expiration of the lease term.

Required:

- (a) Compute the tax payable and the loss carried forward by XYZ Nigeria Limited for the year ended December 31, 2023.
- (b) Compute the withholding tax to be deducted by the lessee from the total lease rental due to the lessor for years 2023 – 2025.
- (c) Determine the VAT expected to be charged by the lessor on the transaction he made with the lessee.

- (d) Explain if the lessee is entitled to claim input tax paid.
 - (e) Determine the capital gains tax due from the lessor if the lessee exercises the option of purchasing the building on the expiration of the lease term.
 - (f) Explain if the lessee is liable to capital gains tax in this circumstance.
 - (g) Explain if the lessor is entitled to claim capital allowance and if yes, explain the basis for this.
 - (h) Explain if the lessee is entitled to claim capital allowances and if yes, explain the basis for this.
5. Discuss the:
- (a) Tax implications for a lessor in a finance lease.
 - (b) Tax implications for a lessee in a finance lease.
 - (c) Tax implications for a lessor in an operating lease.
 - (d) Tax implications for a lessee in an operating lease
6. Differentiate between finance lease and operating lease in a tabular form.

12.15.2 Suggested solutions to questions

- 1(a) In accordance with the provisions of SAS 11 and IFRS 16, this is a **finance lease**. This is so because the lease is not cancellable, the lease term is 80% of the useful life of the assets, the lease agreement contains a purchase option, and the lessor would have recovered substantial part of his investment and possibly made a reasonable return thereof.
- (b) According to the provisions of SAS 11 and IFRS 16, this is an **operating lease**. The lease has a cancellable provision. The lessee can only be sure of using the asset for 2 years out of the expected life span of 10 years. The lessor takes responsibility for day-to-day upkeep and maintenance of the truck and furthermore, the lease does not provide for any purchase option.
2. The practical steps to effectively manage tax impacts of a leased asset are as follows:
- a) **Identify all leases:** Pull together a comprehensive lease inventory. This should include obvious long-term real estate leases and any equipment or vehicle leases that run beyond 12 months.

- b) **Review and classify for tax purposes:** Distinguish leases that qualify as true (operating) leases from those that count as non-tax (or finance) leases. This classification dictates whether the lease produces rental deductions or depreciation and interest.
 - c) **Implement a tracking system:** Investing in lease management software can streamline how you capture key data points from initial entries to ongoing payments and automatically generate reconciliations between book and tax treatments.
 - d) **Monitor and reconcile book-to-tax differences:** Maintain detailed schedules for changes in right-of-use assets, lease liabilities, deferred rent eliminations, and interest expense permutations. These schedules will feed into deferred tax calculations and assist in year-end (or interim) reviews.
 - e) **Stay Current with Rules:** Tax law is fluid. Keep an eye on potential Federal or State changes that could alter how various leases are treated. Also, remain alert to international standard changes if you have global footprints under IFRS 16.
- 3 (a) Applying paragraph 100(a) of IFRS 16, the seller-lessee is required to determine the proportion of the building transferred to the buyer-lessor that relates to the right of use that it retains. Paragraph 100 (a) does not prescribe a particular method for determining that proportion. The seller lessee could determine this proportion by comparing, for example, the present value of expected payments for the lease (including those that are variable) with the fair value of the building at the date of the transaction.
- Assume that the seller-lessee estimates the expected payments over the lease term, and it discounts those expected payments using the incremental borrowing rate (since the rate implicit in the lease cannot be readily determined), resulting in a present value of the expected payments for the lease of ₦4,500,000.
- In this example, the proportion of the building that relates to the right of use retained is 25%, calculated as ₦4,500,000 (that is, the present value of expected payments for the lease) divided by ₦18,000,000 (that is, the fair value of the building).
- (b) The present value of the expected residual value of the asset at the end of the leaseback is ₦13,500,000 and the fair value of the asset at the date of the transaction is ₦18,000,000, the value of the rights retained by the seller-lessee is ₦4,500,000 (₦18,000,000 – ₦13,500,000), and the proportion of the building that

relates to the right of use retained is 25%, calculated as ~~₦4,500,000~~ divided by ~~₦18,000,000~~.

- (c) The gain on rights transferred is calculated as follows:

Cash	<u>₦18,000,000</u>
Right-of-use asset:	
(~~₦10,000,000~~ × 25%)	~~₦2,500,000~~
Building	~~₦10,000,000~~
Lease liability	~~₦4,500,000~~
Gain on rights transferred:	
(~~₦18,000,000~~ – ~~₦10,000,000~~) × 75%	~~₦6,000,000~~

4(a)

XYZ Nigeria Limited

Computation of tax payable

For the year ended December 31, 2023

	₦'000
Loss from manufacturing activities	18,000
Profit from leasing activities	4,000
Tax payable (30% of ~~₦4,000,000~~)	1,200
Loss carried forward	18,000

Based on the above, XYZ Nigeria Limited is required to disclose the profit from each line of business and separately subject the profit of ~~₦4,000,000~~ which arose from the leasing business to tax. The loss of ~~₦18,000,000~~ will be available to be carried forward for relief in subsequent years.

- (b) **Computation of WHT to be deducted by Lessee (XYZ)**

	2023	2024	2025
	₦'000	₦'000	₦'000
Interest	4,500	4,000	3,000
WHT @ 10%	450	400	300

(Note: Under a finance lease arrangement, withholding tax (WHT) is computed on only the interest portion of the lease rental)

(c) Determination of VAT chargeable by lessor (ABC Ltd)

This is a finance lease. The lease rental receivable by the lessor is a return on investment; VAT is therefore not applicable.

(d) Whether lessee is entitled to claim input Tax

The lessee is not expected to claim input tax. He is expected to have capitalized the any VAT paid on acquisition of the asset with the actual cost of the assets. This is in line with the provisions on the tax laws prior to the Nigeria Tax Act, 2025

(e) The capital gains tax liability of the Lessor:

10% of (~~N~~650,000,000 – ~~N~~560,000,000) = ~~N~~9,000,000

(f) The lessee's Capital Gains Tax Liability is:

10% x (~~N~~560,000,000 – ~~N~~500,000,000) = ~~N~~6,000,000

(g) This is a finance lease arrangement. The lessor is not entitled to claim capital allowances.

(h) It is the lessee that has the right to claim capital allowances under a finance lease arrangement.

5 (a) The tax implications for a lessor in a finance lease are as follows:

(i) **Interest portion:** The interest portion of the rental earned by the lessor is taxable income.

(ii) **Capital portion:** The capital portion is a repayment of the initial investment and has no tax implication.

(iii) **Withholding tax (WHT):** Computed only on the interest portion of the total lease payment due from the lessee, at 10%.

(iv) **Value added tax (VAT):** Not imposed on interest earned by the lessor.

(v) **Capital gains tax (CGT):** Imposed on any capital gains realised if an asset is disposed of at the expiration of the lease period.

(b) The tax implications for a lessee in a finance lease are as follows:

i) **Interest portion:** The interest portion of the periodic lease rental and other related expenses are deductible for income tax purposes.

ii) **Capital allowance:** The lessee is entitled to claim capital allowance on the capital portion of the value of the leased assets.

iii) **Withholding tax (WHT):** Withheld by the lessee at 10% on the interest portion of the lease rental and remitted to the Federal Inland Revenue Service (FIRS).

iv) **Value added tax (VAT):** Input tax on the purchase of the asset can be capitalized with the cost of the asset. This is in line with the provisions on the tax laws prior to the Nigeria Tax Act, 2025

(c) The tax implications for a lessor in an operating lease are as follows:

i) **Total lease rental:** The total lease rental received or receivable by the lessor is income and wholly taxable.

ii) **Capital allowance:** The lessor is entitled to claim capital allowance on the leased assets.

iii) **Withholding tax (WHT):** Computed on the total lease rental, at 10%.

iv) **Value added tax (VAT):** Imposed on the lease rental income, at 7.5%.

(d) The tax implications for a lessee in an operating lease

i. **Rental charges:** Allowable deductions for tax purposes.

ii. **Withholding tax (WHT):** Withheld by the lessee at 10% of the rental payment and remitted to the FIRS.

iii. **Value added tax (VAT):** Charged by the lessor on the lease rental is not an input tax to the lessee. This is in line with the provisions on the tax laws prior to the Nigeria Tax Act, 2025

6. Differentiation between finance lease and operating lease

S/N Finance lease

1 It is non-cancellable

2 Lease term covers substantially (80% or more) of the useful life of the asset, or net present value of the lease at inception.

3 The ownership risks and rewards are transferred to the

Operating lease

The lease may be cancelled or renewed as may become necessary.

Lease term does not cover a significant useful life of the asset, or net present value of the lease at inception.

The risk and ownership of the asset remains with the lessor.

lessee.

4	The lessee is under obligation to pay such cost as insurance, maintenance and similar charges on the asset.	The lessor is under obligation to pay such cost as insurance, maintenance and similar charges on the asset.
5	The lessee is entitled to claim capital allowances of the leased asset. The lessor is not entitled to claim capital allowances.	The lessee is not entitled to claim capital allowances. The lessor is entitled to claim capital allowances of the leased asset.
6	The interest expense in the income statement is not tax deductible.	The interest expense in the income statement is tax deductible.
7	The lessee has the option to purchase the asset at a price which is expected to be sufficiently lower than fair value at the date of exercising the option.	The lessee does not have the option to purchase the asset.
8	The lease is for a long period of time than in an operating lease.	The lease is for a shorter period of time than in a finance lease.

NON-RESIDENT TAXATION

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13 Non-resident taxation

13.0 Learning objective

The learning objective of this chapter is to enhance readers' understanding of non-resident taxation in Nigeria.

13.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) identify what constitutes taxable income of non-residents;
- (b) apply relevant provisions of the Nigerian tax laws in ascertaining the assessments of non-residents;
- (c) determine non-residents tax liability in Nigeria; and understand the procedure for payment of relevant tax; and
- (d) understand the amendment introduced by the Nigeria Tax Act, 2025 to taxation of non-residents in Nigeria.

13.2 Chargeability to tax – resident individuals

The concept of residence determines the extent to which the income of a taxpayer is liable to tax under a tax jurisdiction. In Nigeria, a resident person (individual or company) is assessable to tax on the global income.

This implies that the taxpayer is liable to tax on the income or profits **“accruing in, derived from, brought into, or received in Nigeria.”** It also determines the scope of deductions that may be allowed for the purpose of computing an individual's chargeable income.

For income tax purposes, a person may be resident, non-resident or possess dual residence.

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

- (a) is domiciled in Nigeria;
- (b) has a permanent place available for his domestic use; or
- (c) serves as a diplomat or diplomatic agent in Nigeria for another country.

13.2.1 Resident individual and liability to tax

- (a) The profit of a trade, profession or vocation is liable to tax in Nigeria regardless of the period for which such a trade, profession or vocation has been carried on.
- (b) Employment income is liable to tax on the basis of residence or where the employment income is sourced.

13.2.2 Non-resident individual

A non-resident individual is defined as an individual that, in any year of assessment:

- (a) is not domiciled in Nigeria;
- (b) has no permanent place available for his domestic use in Nigeria;
- (c) has no place of habitual abode in Nigeria;
- (d) has no substantial economic and immediate family ties in Nigeria;
- (e) sojourns in Nigeria for a period or periods amounting to an aggregate of less than 183 days in a 12-month period inclusive of annual leave or temporary period of absence; and
- (f) is not serving as a diplomatic or diplomat agent of Nigeria in another country.

A non-resident individual becomes liable to tax from the day he commences to carry on a trade, business, vocation, or profession in Nigeria. However, he is liable to tax in respect of employment income when he becomes resident, except if the income is sourced from Nigeria by virtue of being borne by a Nigerian employer.

A non-resident individual shall be liable to tax in Nigeria to the following extent:

- (a) In case of earned income, profits or gains from trade, business, profession and vocation carried on in or derived from Nigeria, are chargeable to tax in accordance with the provisions of the Nigeria Tax Act, 2025;
- (b) Gains derived by a non-resident person from disposal of chargeable assets are taxable in Nigeria where the gains relate to:
 - (i) a trade, business, profession or vocation carried on by the non-resident person in Nigeria;
 - (ii) any asset located in Nigeria; or
 - (iii) any asset deemed to be located in Nigeria under the Nigeria Tax Act, 2025.
- (c) In the case of unearned income like dividend, rent, interest and royalties, they would be liable to tax in Nigeria in the hands of a non-resident to the extent of such income received in or brought into Nigeria; and
- (d) In the case of employment income, a non-resident will become liable to tax when he becomes resident in Nigeria regardless of where the employment duties are performed. In addition, employment incomes are liable to tax if the activities or duties for the employment are wholly or partly carried on in Nigeria. However, where the duties of employment are paid in Nigeria and there is evidence that such salary has not been subjected to tax outside Nigeria, the tax shall be payable in Nigeria.
- (e) Any amount deducted at source in accordance with Section 51 of the Nigeria Tax Administration Act, 2025 from the payment made for services furnished from outside Nigeria to a Nigerian resident or a Nigerian permanent establishment of a non-

resident person shall be the final tax on that payment unless the person has a permanent establishment or significant economic presence in Nigeria to which the payment is attributable.

13.3 Resident and non-resident companies

13.3.1 Resident companies

A company is resident in Nigeria under the extant law, if it is incorporated or registered in Nigeria. Under the old provision, residence was being determined by place of management or control. This means that a company can be resident in Nigeria by incorporation and resident in UK if it is managed and controlled in UK. This is known as international dual residence.

13.3.2 Non-resident companies

This is a company or corporation that is not registered or incorporated in Nigeria, but which derives income or profits from Nigeria. It is to be mentioned here, for the sake of emphasis, that exemption from incorporation does not confer exemption from payment of tax on any company. Every company, resident or non-resident, is liable to tax in Nigeria, if its income is chargeable to tax under the provisions of the Nigeria Tax Act, 2025.

The following are the circumstances under which a non-resident company will be liable to tax in Nigeria:

- (a) Income derived through a permanent establishment;
- (b) Income derived in Nigeria through a dependent agent;
- (c) Income derived from supervisory activity that lasts more than three months;
- (d) Income derived in Nigeria from a turn-key project;
- (e) Income derived by non-resident company from professional consultancy, management and technical services rendered in Nigeria.
- (f) income derived by a non-resident company from investment such as dividend, interest, rent and royalties. The withholding tax deducted from these incomes is taken as the final tax; and
- (g) Income derived from a contract awarded to a Nigerian company, but sub-contracted to a non-resident company.

13.4 Dual residence

An individual or company may have dual or multiple residence status.

13.4.1 Dual residence of local individuals

Ordinarily, a resident individual is subject to tax in Nigeria in the State where the individual normally resides. In the case where such an individual has two or more places of residence in Nigeria for income purposes, he is subject to tax in the state where he has the “**principal place of residence**”. The term “**principal place of residence**” means, for an individual with:

- (a) pension as the only source of earned income, his usual residence constitutes the principal place of residence;
- (b) sources of earned income other than pension, the place nearest to his usual place of work; and
- (c) sources of unearned income, his usual residence.

Where the determination of the principal place of residence leads to dispute between two or more tax authorities, the Joint Tax Board determines the tax jurisdiction. In practice, the determining factor is the source of earned income.

13.4.2 Dual residence of a local company

The constitutional arrangement in Nigeria vests the taxation of all companies in the Federal Government. This does not allow for the dual residence of companies locally. All companies wherever located in Nigeria are under Federal tax jurisdiction. Therefore, the problem of local dual residence of companies does not arise.

13.4.3 International dual residence

The definition of the term “residence” differs from one country to the other. For instance, in Nigeria, the length of stay to qualify a taxpayer as a resident is reckoned within a 12-month period. In some countries, this is reckoned within an assessment year - allowing for a qualifying period of stay to split over two years of assessment. In some other countries (for example, the USA), citizens are regarded as resident in the home country whatever the length of stay abroad. This creates the problem of dual residence for the individual who is regarded as resident in more than one country. For example, he is regarded as resident at the same time in country A where nationality is the basis of residence, in country B where he has stayed for more than 183 days in a 12-month period and, may be, in his home country where he is away for less than 183 days in that assessment year.

A company may also have the problem of dual residence. For instance, the definition of the residence of a company in Nigeria is the place of incorporation. In some other countries, the relevant criterion may be the “place of management” or the “place of residence of the directors”. In this instance, the Nigerian tax authority would treat

the company as resident in Nigeria based on the place of incorporation while the tax authority of the other country would regard the same company as resident in that other country on the basis of “place of management”.

The Nigerian tax treaties (where applicable) govern the treatment of such cases and affected companies can claim tax credit for the Nigerian tax in their home countries to avoid double taxation.

13.5 Branches and the parent company

The tax laws of some countries regard a branch as resident, for tax purposes, in the same country as the parent company and therefore exempt the income of branches from tax. There is no such provision in the Nigerian tax law. A Nigerian branch of a foreign company is treated as a corporate entity under the law of the land and any income or profit derived by it from Nigeria is taxable here. The two conditions where a branch may not be so treated are:

- (a) If the branch is used solely for storage or display of goods or merchandise; and
- (b) If the branch is used solely for the collection of information.

13.6 Subsidiaries and the parent company

A subsidiary is expected to be incorporated in Nigeria to operate as a separate legal entity from the parent. The foreign equity-participation may be 100% but such equity-ownership or the control will not affect the residence status in Nigeria once the company incorporates. However, the claim to the contrary by the other country may raise all the problems of dual residence.

Article 4 of the Nigerian model double taxation agreement spells out the mode of resolving the problem of dual residence between Nigeria and a treaty-country.

The agreement provides for the criterion of “place of incorporation” as basis of resolving dual residence. Where this fails, the question is to be resolved by “mutual agreement”.

13.7 Comparison of overseas branch with overseas subsidiary

13.7.1 Overseas branch

For tax purposes, the profit of an overseas branch of a Nigerian company is deemed to be derived in Nigeria and is therefore fully liable to tax in Nigeria. Note that any foreign tax suffered is allowable as a deduction in determining the overseas profit. Also, assets in use in such a branch are eligible for capital allowances claim in Nigeria. Losses incurred from such a branch can be set off against profit in Nigeria provided the losses were incurred from the same source.

Double taxation relief is available for any foreign tax suffered either based on bilateral agreement or based on tax relief available under the commonwealth.

13.7.2 Overseas subsidiary

For tax purposes, the profit of an overseas subsidiary is not deemed to be derived in Nigeria and will therefore not be liable to tax in Nigeria. It is only dividend received from such overseas subsidiary that will be considered for Nigeria tax purposes. Also, technical and management fees paid to the Nigerian company by the overseas subsidiary will be subjected to tax in Nigeria. Note that capital allowances will not be claimable on the assets of the overseas subsidiary. Loss can also not be relieved since there is no group taxation in the Nigerian tax law.

13.8 Treatment of expenses

The Nigerian tax laws do not discriminate between residents and non-residents in the allowance of expenses for the purpose of determining the taxable income. All expenses proved to be incurred to produce the income are allowable as deductions. Rent, interest, royalties, management fees, head office expenses and similar expenses are deductible if proved that they are “wholly, exclusively, necessarily and reasonably” incurred for the purpose of the trade or business.

13.9 Profits or income “deemed to be derived from Nigeria”

Under the old law, the liability to the Nigerian tax on the income from a trade or business of a non-resident company or individual in Nigeria was restricted to that portion of the income attributable to the operations performed in Nigeria. This definition has been found to be inadequate in view of the growing complexities in commercial operations in Nigeria. The government is in favour of encouraging foreign investment and has therefore decided to state in clear and specific terms which activities of a non-resident company and individual would attract Nigerian tax and to what extent. Various amendments to the tax laws have attempted to define what constitutes the deemed profit or income from a trade or business carried on in Nigeria.

For companies, answers to the following questions will determine whether an income is deemed to be derived from Nigeria:

- (a) does the company have a permanent establishment in Nigeria?
- (b) does the company operate in Nigeria through a dependent agent authorised to conclude contracts?
- (c) is the company executing a turnkey project in Nigeria? or
- (d) is the operation between the company and its Nigerian subsidiary at arm's length?

These specific circumstances will be treated in turns.

13.9.1 Permanent establishment of business

A non-resident company is deemed to have a permanent establishment in Nigeria where the company:

- (i) has a place in Nigeria through which its business is wholly or partly carried on or at its disposal for the purposes of its business;
- (ii) operates a trade or business through a Nigerian company or on behalf of some other persons controlled by it, or which have a controlling interest in it;
- (iii) maintains a stock of goods or merchandise in Nigeria from which deliveries are made by a person on its behalf;
- (iv) solely or together with any other entity, execute a project in Nigeria involving surveys, designs, deliveries, building, construction, assembly or installation, commissioning or decommissioning or any supervisory activity in connection with those activities, irrespective of any split or number of entities that performed any of the activities of the project and whether or not only part of the project was carried out in or outside Nigeria; or
- (v) renders service in Nigeria through third parties e.g. employees, agents or subcontractors.

13.9.2 Operation of a dependent agent

A non-resident company can have two types of agents in Nigeria – an independent agent or a dependent agent. An agent is regarded as possessing independent status when he acts on behalf of a non-resident company in the ordinary course of his business. The status may however change if he devotes his activities wholly or almost wholly on behalf of the company.

Where a dependent agent makes an isolated sale of goods on behalf of a principal that may not necessarily constitute the income from such an operation, the deemed profit is not liable to Nigerian tax. However, where the facts show that the sale of goods on behalf of the principal or of any company associated to it by the agent is on a regular pattern, this arrangement will conform with the intention of the term “habitually”.

13.9.3 Profits on a turnkey project

A turnkey project is defined as a “single contract involving survey, deliveries, installation or construction.” The profit on a turnkey project is liable to tax in Nigeria. Such a profit should not be split between the so-called “Nigerian source” and “offshore” profits but taxed wholly in Nigeria.

13.9.4 Transactions not at arm's length

The legislation allows the Board to make appropriate adjustment to the profits of Nigerian companies where the following circumstances prevail:

- (a) where there is a controlling interest in the Nigerian company;
- (b) the presence of a control of a Nigerian company may be exercised directly or indirectly by a parent company or any other company associated to it;
- (c) the imposition of conditions in the financial and commercial relationship by the controlling interest;
- (d) the conditions imposed must be different from what would obtain between independent parties or in an open market situation;
- (e) such relationship and conditions lead to the transfer of goods and services at prices not at arm's length; and
- (f) consequently, the profits declared for the Nigerian tax are understated. The 'imposition of conditions' or control and influence as mentioned above can move in various appearances like over- invoice of goods and services, packaging of the terms of payment of interest on loans, frivolous charges for management fees, royalty, patent and rent, convenient shifting of profits between companies or in the allocation of expenses, all with the objective of minimising, avoiding or evading the Nigerian tax.

When the conditions analysed above hold, the profit deemed to be derived from Nigeria shall be as determined by the Board. In such circumstances, the Board will carry out comparative cost and price to establish the true market prices and make necessary adjustments to determine the true profit for tax purposes.

13.9.5 "Sales' outlet"

The law has excluded:

- (a) facilities used solely for storage of goods or merchandise"; and
- (b) facilities used solely for the collection of information" from the facilities that would constitute a fixed base. The use of the word "solely" in the law implies that facilities used exclusively as a representative office would be exempted. Where, however, a facility is so exempted, but, qualifies as a "sales' outlet" it will be treated as a fixed base for the non-resident company. The profit arising from such a sales outlet is taxable.

13.9.6 Employment income

Residence is the basis of taxing employment income in Nigeria. When the taxpayer is regarded as resident in Nigeria, his employment income is liable to Nigerian tax. The other conditions are as per paragraph below.

For employment income not to be liable to Nigerian tax, three conditions must hold viz:

- (c) The employee must be resident for less than 6 months in any 12-month period;
- (d) The employer of the person must not be resident in Nigeria; and
- (e) Income of the person must be taxable in another country that has a double tax treaty with Nigeria.

13.10 Provisions of Nigeria Tax Act, 2025 on Taxation of non-resident companies in Nigeria

The Nigeria Tax Act, 2025, introduces major reforms that expand the Nigerian tax net for foreign companies, redefine taxable presence, and tighten compliance obligations. These changes significantly affect how non-resident companies in Nigeria operating digitally or physically in Nigeria are taxed.

The Act redefined permanent establishment (PE) rules to capture more foreign businesses such as inclusion of digital and remote activities and stronger rules for dependent agents. It also expands the scope of significant economic presence (SEP) to include digital services provided to Nigerian users, remote consulting, technical or professional services and online platforms earning revenue from Nigeria.

13.11 Updated compliance obligation for non-resident companies

- (a) It is mandatory for non-resident companies to register with the relevant tax authorities in Nigeria.
- (b) Non-resident companies must file tax returns even when tax is withheld at source.
- (c) It must maintain Nigerian-specific accounting records.
- (d) Nigerian tax representative must be appointed in certain cases.

13.11.1 Nigerian dividends received by non-resident persons

In accordance with S.19 (1) of the NTA 2025, there shall be no further tax charged in respect of any dividend received by a non-resident from a Nigerian company other than tax deducted at source under the Nigerian Tax Administration Act, 2025.

Also, in accordance with Section 19 (2) of the Nigerian Tax Administration Act, 2025, non-resident or the Nigerian company paying the dividend shall have no right to repayment of tax deduction at source under Section 51 of the NTAA 2025.

13.11.2 Deduction at source

(a) Where any payment is made to a person, the person making the payment shall, at the date when payment is made or otherwise settled, deduct the tax at the rate prescribed in regulations relating to deduction of tax at source.

(b) In the case of dividend, interest, rent, royalty, directors' fee and payment to entertainers and sportspersons, the tax, when paid over to the relevant tax authority, shall be the final tax due from a non-resident recipient of the payment.

(c) Dividend distributed by a Nigerian company and received by a person after deduction of the tax prescribed in this section and regulations relating to deduction of tax at source, shall be regarded as franked investment income of the person receiving the dividend and shall not be charged to further tax.

(d) Where a franked investment income is redistributed and tax is to be accounted for on the gross amount of the distribution in accordance with regulations relating to deduction of tax at source, the company may set off the amount deducted at source which it has itself suffered on the same income.

(e) Interest on short term securities and corporate bonds earned by an individual after deduction of tax at source, shall not be charged to further tax.

(f) Income tax chargeable on an employee whether or not the assessment has been made, shall be deducted from any emolument payable, or from any payment made on account of the emolument, by the employer to the employee.

(g) In arriving at the amount of income tax to be deducted from any payment of or on account of the emolument to an employee, the employer shall ensure that the aggregate amount of all the deductions made during a year of assessment shall equal the income tax chargeable on the employee in respect of its emoluments for that year; and

(h) Notwithstanding subsections (a) to (f) of this section, a non-resident company that provides technical, consulting, professional or management services to a labelled startup shall be subjected to a 5% deduction on income derived from the provision of such services, which shall be the final tax to be paid by such non-resident company.

13.12 Chapter review

In this chapter, the detailed provisions concerning the taxable income of non-residents both individuals and companies are discussed. It also addressed the dual residence of individuals, local and international companies.

13.13 Worked examples

13.13.1 Questions

1. Norish Home Inc, a parent company based in the Netherlands has a representative branch in Nigeria for the display of its products. It was later discovered that sales were regularly conducted from the stock held for the display.

Required:

Explain the status of the branch for tax purposes.

2. Taxation is a world-wide concept that cuts across all the nations of the world. For meaningful progress to be made, a nation is expected to trade with others to earn the needed fund for development. Such activities are usually conducted by individuals and companies.

A group of foreign investors is interested in investing in Nigeria, having noted with passion a submission made by a researcher on the investment opportunities available in your country. Specifically, they desire preliminary information on non-resident individuals liable to Nigerian income tax and classification of resident and non-resident companies.

Your line manager requested for your input on the matters at stake to assist him to finalise discussion with the foreign investors.

Required:

Advise your manager on the relevant salient points required.

3. Rogers Incorporated of New Jersey, USA has R&A Nigeria Limited as its subsidiary in Nigeria. In 2025, the Federal Government of Nigeria awarded a contract to the foreign company for the construction of an Export Processing Zone located in the Southeast of Nigeria for the sum of \$1.2 million. It decided for the sake of convenience to execute the contract through R&A Nigeria Limited.

The following are the expenses incurred for the execution of the contract.

	₦
Materials and other inputs	334,957,750
Hire of dredger	186,553,750
Foreign experts costs	156,785,500
Personnel costs	157,689,250
Other administrative costs	115,546,750

Additional information:

- (i) A similar dredger is available for hire Limited at ₦178 million at Bomil.
- (ii) The cost of foreign experts in carrying out similar assignments in the other zones has been established to be an average of ₦120.50 million.
- (iii) Included in other administrative costs are management fees of ₦45 million. It was proved to have been wholly incurred for the Nigerian contract.
- (iv) Capital allowance was agreed at ₦74,221,750.
- (v) The exchange rate is assumed to be ₦900 per \$1

Required:

Compute the tax payable by the company for the relevant tax year.

4. The Nigeria Tax Act, 2025, identifies three tests for determining whether the profits of a non-resident company from any trade or business shall be deemed to be derived from or accrue in Nigeria.

These tests are:

- (a) The "Source of Income" Test
- (b) The "Fixed Base / Permanent Establishment" Test
- (c) The "Significant Economic Presence (SEP)" Test

Required:

Explain the key tests stated above in the taxation of non-residents.

5. (a) To what extent are non-resident individuals liable to Nigerian income tax?

(b) Use the following figures for 2026 tax year to illustrate your answer and state how Mr. Bolawole Bala's tax liability is assessed:

	₦
Foreign earnings	1,800,000
Dividend received from Nigerian companies (net)	650,000
Directors' fees received from a Nigerian company	3,000,000

13.13.2 Suggested solutions to questions

1. With the activity of the branch restricted solely to the display of the parent's products in Nigeria, the branch will retain the status of a representative office and will not be held liable to Nigerian tax. However, with the sales activity of the branch, the status of the branch has changed to a sales' outlet, and this will turn it into the parent's fixed base in Nigeria and therefore become taxable on profits arising from the sales.
2. Non-resident individuals are liable to tax in Nigeria to the extent that the income is derived from, accruing in, brought into or received in Nigeria. Simply put, this means that if an individual derives income from earning on a trade or business in Nigeria, aside from the business carried on in the other parts of the world, the income chargeable to tax in Nigeria is limited only to those incomes derived from the Nigerian operations.

In a similar manner, if an individual derives investment income from outside Nigeria but is not repatriated into Nigeria, no tax liability will arise in the hands of such a non-resident. The investment income is only charged to Nigerian tax if it is brought into Nigeria.

- (a) **Resident company:** A company is deemed to be resident in Nigeria if it is incorporated or registered in Nigeria.
- (b) **Non-Resident company:** A company is said to be a non-resident if such company is not registered or incorporated in Nigeria but derives income or profit from Nigeria.

3.

Rogers Incorporated
Computation of tax payable
For 2026 assessment year

	₦	₦
Turnover (\$1.2 million x ₦900)		1,080,000,000
Deduct:		
Materials and other inputs	334,957,750	
Hire of dredger	<u>178,000,000</u>	<u>(512,957,750)</u>
		567,042,250
Personnel costs	157,689,250	
Cost of foreign experts	120,500,000	
Other administrative costs	<u>115,546,750</u>	<u>(393,736,000)</u>
Assessable profit		173,306,250
Capital allowance	74,221,750	
C/A relieved	<u>(74,221,750)</u>	<u>(74,221,750)</u>
	NIL	
Total profit		<u>99,084,500</u>
Tax payable @ 30% of total profit		<u>29,725,350</u>
Development levy @ 4% of assessable profit		<u>6,932,250</u>

4. **The key tests in the taxation of non-residents**

(a) **The "Source of Income" Test**

Non-resident companies are subject to tax in Nigeria if their profits originate from activities within Nigeria, no matter where the contract is signed or payment is made.

Main indicators:

- (i) Profits come from activities carried out in Nigeria.
- (ii) Goods or services are provided to customers in Nigeria.
- (iii) Income has a clear link to Nigeria, even if some operations happen offshore.

This guideline is found in the NTA 2025 under sections about "Income, profits or gains chargeable to tax" and "Non-resident persons."

(b) **The "Permanent Establishment" Test**

If a non-resident company has a permanent establishment (PE) in Nigeria, it becomes taxable there.

What counts as a permanent establishment:

- (i) A branch office
- (ii) Construction or installation projects
- (iii) A dependent agent who regularly finalises contracts
- (iv) Any place for management or a workshop

Once there is a permanent establishment, only the profits connected to it are taxed in Nigeria.

The NTA 2025 maintains the established PE rules for non-resident persons.

(c) **The "Significant Economic Presence (SEP)" Test**

A non-resident company may be taxed in Nigeria for having significant economic presence, even without being physically present, particularly for digital, technical, or remote services.

SEP applies if:

- (i) The company delivers digital services to users in Nigeria.
- (ii) It earns income from technical, management, consultancy, or professional services delivered remotely.
- (iii) It has ongoing engagement with the Nigerian market.

SEP ensures that companies offering digital or service-based products cannot avoid taxation simply by operating from outside Nigeria.

The NTA 2025 broadens what counts as income (like interest, royalties, or digital assets) and tightens anti-avoidance measures to reinforce SEP-based taxation.

- 5 (a) Non-resident individuals are liable to Nigerian income tax to the extent of their income derived from accruing in, brought into or received in Nigeria.

"Where an individual outside Nigeria carries on a trade or business of which only part of the operations are carried out in Nigeria, the gains or profits of the trade or business shall be deemed to be derived from Nigeria to the extent to which such gains or profits are not attributable to that part of the operations carried on outside Nigeria".

This means that the trading profits of a non-resident individual liable to Nigerian Income Tax is the part derived from a trade or business carried on in Nigeria. Also, as regards gains or profit from any employment, the duties of which are mainly performed outside Nigeria shall be deemed to be derived from Nigeria to the extent that those duties are performed in Nigeria. A non-resident individual shall be liable to tax on employment income unless all the specified conditions for exemption are met.

However, with effect from 1996, the following incomes shall be exempted from tax provided they are brought into Nigeria in convertible currency and paid into a domiciliary account in a bank approved by government. The incomes include temporary guest, lecturer, teacher, nurse, doctor, dividend, rent, interest, incomes of a sportsman, author, playwright, musician, etc.

Also, in accordance with S. 19 (1) of the NTA, 2025, there shall be no further tax charged in respect of any dividend received from a Nigerian company other than tax deducted at source under Nigerian Tax Administration Act, 2025.

(b)

Mr. Bolawole Bala
Computation of income tax payable
for 2026 year of assessment

	N
Earned income	
Directors' fees	3,000,000
Unearned income	
Dividends (Gross ~~N~~ 650,000 x 100/90)	<u>722,222</u>
Total income	3,722,222
 Less: Relief	
Rent allowance	---
 Chargeable income	3,722,222
Less: Dividend treated as franked investment income	<u>(722,222)</u>
Taxable income	<u>3,000,000</u>
Apply tax table	
First N800,000 at 0%	-
Next N2,200,000 at 15%	330,000
Next N9,000,000 at 18%	-
Next N13,000,000 at 21%	-
Next N25,000,000 at 23% and	-
Above N50,000,000 at 25%	-
Total	<u>330,000</u>

Tutorial notes

- (i) A non-resident individual is not entitled to rent allowance.
- (ii) Foreign earnings are not liable to Nigerian income tax.
- (iii) Dividend is treated as franked investment income and therefore, exempted from tax.

TAXATION OF DIGITAL ECONOMY

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14 Taxation of Digital Economy

14.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the basic concepts and application of taxation of the digital economy in Nigeria.

14.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) understand what digital economy means;
- (b) differentiate between digital economy and traditional economy;
- (c) appreciate the problems associated with taxing digital economy;
- (d) understand the gaps between existing tax legislation in Nigeria and digital economy;
- (e) evaluate measures put in place by other countries to tackle the problem associated with taxing digital economy;
- (f) ascertain what could be done in Nigeria to block tax revenue leakages associated with digital economy

14.2 Concept of digital economy

Digital economy is the worldwide network of economic activities, commercial transactions and professional interactions that are enabled by information and communications technologies (ICT). Also, digital economy refers to an economy that is based on digital computing technologies, that is conducting business through markets based on the internet and the world wide web. The digital economy is also sometimes called the internet economy, New Economy, or web economy. Increasingly, the digital economy is intertwined with the traditional economy, making a clear delineation harder. The digital economy is increasingly becoming the economy itself. International borders are closing in and distance is no longer a barrier to sealing business deals.

The essential elements of the digital economy include:

- (a) digitalisation and intensive use of information and communication technologies (ICT);
- (b) codification of knowledge;
- (c) transformation of information into commodities; and
- (d) new ways of organising work and production.

14.3 Taxation of digital economy in Nigeria

The rapid growth in information and communications technology (ICT) in Nigeria has brought with it boundless opportunities and changes in the way we do business. Today, a significant number of transactions in Nigeria (sale and purchase of goods and services) are consummated using mobile devices and online payment platforms. This is broadly referred to as electronic commerce (e-commerce).

The e-commerce story in Nigeria started during the early part of the 21st century and its development has steadily been on the rise. This has been re-echoed by the Central Bank of Nigeria's implementation of the cashless policy with one of its aims being to encourage more electronic-based transactions (payments for goods, services, transfers, etc.).

Taxation of digital transactions has become a herculean task for tax authorities all over the world because digital transactions require little or no physical presence of the parties to which income accrues, in the jurisdiction of the consumer. Taxation of digital economy are characterised by the following features:

- (a) the general rule for taxing income of foreign enterprises in a given jurisdiction is by establishing that the entity is physically present or has a permanent establishment in such a country;
- (b) profits derived from foreign jurisdictions might end up not being taxed in the jurisdiction of the consumer where money was parted with;
- (c) it is usually challenging to determine whether tax on cross border transactions should be paid to the jurisdiction where value is created or consumed;
- (d) Nigeria seems not to have made significant progress in the taxation of digital transactions although myriads of digitalised transactions are carried on a daily basis in Nigeria;
- (e) the Nigerian tax authorities are working towards ensuring digitalization of the tax collection process; and
- (f) the digitalisation has not been extended to cover effective monitoring and collection of taxes from digital transactions.

Pursuant to Section 35 (1) of Nigeria Tax Act, 2025 disposal of digital assets for capital gains tax purposes occurs where any capital sum is derived from a sale, lease, transfer, assignment, compulsory acquisition, or other disposition of such digital assets,

While definitions regarding the scope of 'digital assets' are divergent, there appears to be some consensus on the point that 'digital assets' include but not limited to Traditional digital files, Blockchain-based assets, for example, cryptocurrencies, and Non-fungible Tokens ("NFTs"), virtual property and digital contents and accounts like social media profiles, websites, and other online contents that hold value.

It should be noted that:

- (a) "any other electronic or wireless apparatus" is defined to include digital or related activities carried on through satellite; and
- (b) "services of a technical nature" means specialised services, such as advertising, training or provision of personnel other than those involved in the provision of professional, management and consultancy services.

14.4 Challenges of taxing digital goods and services and ways of mitigating against them

14.4.1 Challenges of taxing digital goods and services

From the provisions of the Act, the disposal of digital assets situated within or outside Nigeria by a taxable person in the country, in line with the provisions of NTA 2025 attracts 30% companies income tax. The challenges are enumerated below:

- (a) challenges due to digital cross-border nature and the difficulty in determining the appropriate jurisdiction for taxation purposes. This has created loopholes that are exploited by digital businesses, leading to concerns about tax evasion and profit shifting;
- (b) the difficulty associated with the fair market valuation of digital assets for tax purposes, this is because the worth of most digital assets is derived from the context in which they are used, rather than from an independent free market value;
- (c) valuation of a digital asset is central to the computation of the tax payable upon its disposal, this attributed to the question how Chargeable gains on digital assets should be calculated in terms of deduction of expenses and other statutory allowances for tax purposes;
- (d) taxpayers and relevant tax authorities alike may expect to have very sharp disputes arising from these issues in the implementation of digital assets taxation in Nigeria;
- (e) the difficulty encountered by the relevant tax authorities in tracking digital asset transactions for tax compliance and enforcement purposes giving the current restrictions put in place on cryptocurrencies by the Central Bank of Nigeria ("CBN");
- (f) the existence of the various profitable business models in digital services that derive income from countries without creating palpable physical presence;
- (g) the inability of the tax authority to adequately capture the quantum of attendant direct and indirect taxes payable on e-commerce transaction has left leakages in the tax system;
- (h) the failure of the applicable rules for corporate taxation to effectively capture the realities of a modern economy in our world of fast-paced digital transactions;
- (i) non-resident companies are taxed in Nigeria based on profits derived from Nigeria, raising the controversial question as to whether a foreign company is liable to pay income tax in Nigeria;
- (j) some transactions may elude the tax authorities' radar and the transactions will not be liable to value added tax (VAT) if the transactions are not deemed to have taken place in Nigeria; and

- (k) the non-compliance of the NRS requirement on the Nigerian companies to withhold tax on all payments made to non-resident persons regardless of the non-establishment of the tax presence given that such non-resident persons may not be liable to Nigerian tax under Nigerian tax laws.

14.4.2 Ways of mitigating against the challenges

- (a) The Nigeria Revenue Service (NRS) is making efforts to ensure that income arising from e-commerce is subjected to Nigerian tax. These efforts should be enhanced to yield positive results in the aspect of direct taxes as it is already yielding in the aspect of indirect taxes.
- (b) The NRS should assess some foreign mobile application transport operators to income tax in Nigeria on the basis that the income for services they provide is derived from Nigeria.
- (c) There should be a strategic partnership between Nigeria Revenue Service (NRS) with institutions that provide platforms to consummate digital transactions to ensure that the objective of minimising and reducing tax leakages from the digital economy is achieved at a faster pace.
- (d) The NRS should require Nigerian companies to withhold tax on all payments made to non-resident persons regardless of the non-establishment of the tax presence so as to ensure that companies, particularly digital companies, do not escape tax in Nigeria.
- (e) The NRS should ensure that VAT is deducted and accounted for on cross border payments for transactions between foreign companies and Nigerian companies in reliance on the Federal High Court (FHC) judgment in the case between Vodacom Business Nigeria Limited v FIRS, where the FHC ruled in favour of the NRS and held that the Nigerian company was required to account for the VAT on such transactions regardless of the fact that the supplier/foreign company did not perform the services in Nigeria.

14.5 Challenges of taxing digital economy – OECD and EU experience

It is important to note that the tax challenges arising from digital transactions are not peculiar to Nigeria.

In 2015, the OECD created a framework to tackle international tax avoidance arising from base erosion and profit shifting (BEPS). One of the Actions for the BEPS Project is to address the tax challenges of the digital economy. In March 2018, the OECD, in its interim report titled “Tax challenges arising from digitalisation”, described the typical characteristics of digitalised business models to include a wide digital footprint with limited or no physical presence, heavy reliance on intangible assets and high importance of data and user participation.

The EU succinctly explains the challenges arising from taxation in the digital economy as being a disconnect or mismatch between where value is created and where the taxes are paid. Due to the resultant revenue loss arising from these challenges, various jurisdictions and international associations have sought various means to tackle these challenges to ensure that the taxes are paid in the jurisdictions where income is derived.

14.6 Legal / administrative framework for taxing digital transactions

The Nigeria Tax Act, (NTA) 2025 widens the scope of digital transactions in Nigeria. In accordance with section 17(9) (b) of NTA 2025, a non-resident person shall, subject to any regulations that may be issued by the Minister to that effect, have a significant economic presence in Nigeria where the person transmits, emits or sends by itself or through other person, signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments, supply of user-data, search engines, digital content services, online gaming, cloud computing, online teaching service, and profit can be attributable to such activity.

14.7 Global trends in digital taxation

The BEPS Action 1 work has evolved over the last 5 years into what is now known as Pillars 1 and 2. While Pillar 1 focuses on the allocation of taxing rights, Pillar 2 deals with global anti-base erosion mechanism (global minimum tax). It is expected that BEPS Action 1 will be finalised by the end of this year when a consensus approach will be agreed upon among the over 130 countries (including Nigeria) involved in the negotiations.

One of the main challenges discussed under Pillar 1 work programme is the administration of taxing right. The work programme recommended developing a collection mechanism for withholding tax, new reporting obligations and information dissemination to the tax authorities, and modalities for addressing technical and practical issues that may arise in determining and reporting the location of sales.

However, there is no clear provision in the Order that addresses any of these issues as it affects the implementation of SEP in Nigeria. It is unclear how the Order is to be administered particularly as self-assessment may not be the appropriate means of efficient administration for businesses not used to or not aware of tax obligations in Nigeria.

It is remarkable that the Federal Government has taken unilateral action to address the taxation of the digital economy in its quest for widening its tax net. Paragraph 3 of the Order has also evinced the intention of the Government that this is an interim measure which will be overridden by a consensus approach to taxation of the digital economy at the end of the current round of OECD negotiations. Before then, it is hoped that the FIRS will issue an information circular that will clarify some of the issues highlighted above.

14.8 Tackling the challenges associated with taxation of digital economy: other jurisdiction experience

14.8.1 OECD recommended proposals

The Organisation of Economic Cooperation and Development (OECD) have offered certain recommendations to address incidences of non-taxation of income arising from digital transactions. These include:

- (a) the introduction of a digital service tax (DST) and the concept of a virtual permanent establishment (VPE) to help determine the incidence of permanent establishment for tax purposes;
- (b) the OECD's interim report on the implications of digitalisation for taxation offers general guidance for Member Countries. The OECD is also committed to issuing an update and reaching a consensus-based solution by 2019 and 2020, respectively;
- (c) following the report, OECD members have agreed to undertake a coherent and concurrent review of the "nexus" and "profit allocation" rules. The "nexus" and "profit allocation" rules are fundamental concepts relating to the allocation of taxing rights between jurisdictions and the determination of the relevant share of multinational enterprises' profits that will be subject to taxation in each jurisdiction. However, there are presently divergent views amongst the OECD member countries on the issue; and
- (d) the Interim Report also discusses an interim measure in the form of an excise tax on the supply of certain e-services within a given jurisdiction that would apply to the gross consideration paid for the supply of such e-services. However, there is still no consensus by Member Countries on the need for this measure.

14.8.2 EU recommended proposals

The European Union (EU) have offered certain recommendations to address incidences of non-taxation of income arising from digital transactions. These include:

- (a) in March 2018, the European Commission (the Commission) proposed new rules to ensure that digital business activities are taxed in a fair and growth-friendly manner in the EU;
- (b) that member states apply an interim tax called digital service tax (DST) which

covers the main digital activities that currently escape tax in the EU. The DST is an interim tax which is to be levied at 3% on the gross revenue of businesses derived from the following service categories:

- (i) online placement of advertisement;
 - (ii) sale of collected user data and other digital services; and
 - (iii) provision of digital platform to facilitate interactions between users.
- (c) the DST will be collected by the Member Countries where the users are located and will only apply to companies that have annual total revenue of over £750 million and an annual total revenue of over £50 million from digital activities in the EU. The DST will apply as from 1 January 2020 until a final taxation model is adopted;
- (d) to reform corporate tax rules by introducing the concept of a “taxable digital presence” or a Virtual Permanent Establishment (VPE) to ensure that profits are registered and taxed where businesses have significant interaction with users through digital channels. A VPE is designed to introduce a taxable nexus for digital businesses operating within the EU with little or no physical presence. The digital platform will be deemed to have a “taxable digital presence” or a VPE in a member state if it fulfils one of the following criteria:
- (i) it exceeds a threshold of £7 million in annual revenues from a member state; or
 - (ii) it has more than 100,000 users in a member state in a taxable year; or
 - (iii) over 3000 business contracts for digital services are created between the company and business users in a member state in a taxable year.
- (d) ultimately, it is hoped that the concept of the VPE will secure a real link between where digital profits are made and where they are taxed.

14.8.3 United Kingdom (UK) recommended proposals

The UK’s digital economy is estimated to have attracted over £28 billion in investments over the past 5 years which is reported to be more than any other European country. As a result, discussions around the taxation of the UK’s digital economy are ongoing. In March 2018, the UK government published a Position Paper titled “Corporate Tax and the Digital Economy”. In the Paper, the UK government opined that the current misalignment between where digital businesses are taxed and where they create value threatens to undermine the fairness, sustainability and the public acceptability of the corporate tax system. The UK government also holds the view that the preferred and most sustainable solution to this challenge is a reform of international corporate tax framework to reflect the value of user participation.

The Position Paper does not set out any conclusions but, however, states that there is need to consider interim measures such as revenue-based taxes on a multilateral basis.

On this issue, the UK government intends to work closely with the EU and other international partners.

14.8.4 India recommended proposals

Following the OECD BEPS Action 1 which seeks to address the challenges that arise from the taxation of the digital economy, India enacted the Finance Act in 2016. This Act introduced an equalization levy which is a surtax of 6% on payments to foreign companies for online advertising services when such companies do not hold a permanent establishment in India. Furthermore, the lower house of the Indian Parliament passed a Finance Bill in March 2018. This Bill seeks to subject businesses that have a “significant economic presence” in India to Indian Tax notwithstanding that such businesses may not have any physical presence in India. The Bill defines significant economic presence to mean:

- (a) transaction in respect of any goods, services or property carried out by a non-resident in India including provision of download of data or software in India, if the aggregate payments arising from such transaction or transactions during the previous year exceeds such amounts as may be prescribed; or
- (b) systematic and continuous soliciting of business activities or engaging in interaction with such number of users, as may be prescribed, through digital means; or

14.9 Tackling the challenges associated with taxation of digital economy in Nigeria

Digital economy is growing rapidly in Nigeria just as it is happening all over the world, therefore, there is need for urgent actions in Nigeria to block tax revenue leakages associated with existing gaps in taxing digital economy. Such actions include:

(a) Review of the scope of “permanent establishment” under section 17(3)(a) of NTA 2025

Although Nigeria, just like India, is neither a member of the OECD nor the EU, it is important that the scope of “permanent establishment” under Section 17(3)(a) of NTA be expanded as is presently being proposed in India to ensure that the Nigerian digital economy is effectively captured for tax purposes. The introduction of a digital permanent establishment in Nigeria will certainly increase the tax base, thereby sharing the collective tax burden of taxpayers while ensuring an increase in government revenue.

(b) Adoption of creative approach through innovative tax legislation

It has become expedient for the Nigerian tax authorities to explore a more creative approach to ensure taxation of the digital economy. Nigeria will need to borrow a leaf from other nations who have taken bold steps to tackle the non-taxation of the

digital economy to plug revenue leakages through innovative tax legislation rather than seeking to extend the interpretation of obsolete legislations that are not sufficient to bring cross border digital transactions into the tax net. Given the peculiarities and innovations of the digital economy, it will be most appropriate for the Nigerian Government to enact a legislation to adequately cater for the taxation of the digital economy rather than trying to make it fit into existing tax laws.

(c) Automation tax administration

Presently, NRS has adopted the ITAS, an electronic filing platform as an indication of its seriousness to implement the aspirations lucidly expressed in the National Tax Policy (NTP) regarding the automation of the tax system. The NTP expects that “all processes starting from registration of taxpayers, filing of returns, audits and investigations, payment of taxes including correspondence with taxpayers will become automated. Where there are gaps in current tax laws or where the laws do not support the use of such systems, necessary amendments shall be made to ensure that the use of the systems are in line with the law”.

The implication of this for the digital economy is two-fold. On one hand, full (or substantial automation) of the tax processes or system increases the degree of exposure of tax officers, administrators, taxpayers and other stakeholders in the use and mastery of those processes. On the other hand, it enhances the prospects of positioning the tax system and its electronic platforms for a robust and seamless interface with diverse payment platforms which can facilitate tracking of electronic transactions liable to tax in Nigeria.

Whilst it is tempting to assume the time is not ripe enough to mobilise resources to confront tax leakages from the digital economy (probably because there is evidence that NRS is yet to maximize tax revenue from the registered taxpayers in the non-digital business front), the more reasonable course is to seek to deal with the tax leakages from the digital business simultaneously. The increasing number of business transactions that are consummated over digital platforms show that this is the way of the short to medium term future of business interactions.

(d) Data handling

Another critical success factor in a digital economy is data handling. Elsewhere data is treated with something akin to reverence but Nigeria’s data gathering and storage processes are still not fully integrated. This will require huge investments including for data protection as the recent ransomware “WannaCry” threat showed.

(e) Strategic partnership with digital economy service providers

The NRS should form “a strategic partnership with institutions which provide platforms to consummate digital transactions in Nigeria. This would ensure that the objective of minimising and reducing tax leakages especially from the digital economy is achieved at a faster pace.

(f) Ratification of multilateral Conventions

Ratification of multilateral conventions on tax related treaties to end profit shifting and tax evasion by multinational companies. The benefits are that the convention will swiftly modify existing bilateral tax treaties to implement tax treaty related matters in a cost-efficient manner, instead of individual negotiations and amendment of the treaty. The treaty will address abuse of tax laws, raise government tax revenue, promote transparency and check illicit financial flows.

(a) Capacity development

There is need for capacity development for tax administrators so they can implement a seamless interface with the different payment systems available in Nigeria.

14.10 Chapter review

This chapter explains what digital economy means and differentiates it from traditional economy. The chapter also dwells on the challenges associated with taxation of digital economy in Nigeria and some other jurisdictions. Measures that could be adopted to block revenue leakages associated with gaps in taxing digital economy in Nigeria were also discussed in this chapter.

Readers must have learnt what constitute significant economic presence (SEP) for foreign entity carrying on business of digital and other services in Nigeria in line with-the provision of Nigeria Tax Act 2025.

14.11 Worked examples

14.11.1 Questions

1. The Organisation of Economic Cooperation and Development (OECD) offered certain recommendations to address incidences of non-taxation of income arising from digital transactions.

Required:

Discuss the challenges associated with taxing digital economy in Nigeria.

2. The Federal Government of Nigeria has published the Companies Income Tax (Significant Economic Presence) Order, 2020 ("the Order") in its Official Gazette No. 21, Vol 107 of February 10, 2020. The Order, commenced on February 3, 2020.

The Order provides guidance on the definition of significant economic presence (SEP) in relation to taxable income derived by any company other than a Nigerian company ("foreign company") in Nigeria, based on Section 13(2)(c) and (e) of CITA.

Required:

Explain what would constitute significant economic presence for a foreign entity engaged in the following businesses in Nigeria as stipulated by the Companies Income Tax (Significant Economic Presence) Order, 2020:

- (a) Digital services
- (b) Technical, professional, management and consultancy services

3. The Order issued by the Minister of Finance provides guidance on the definition of significant economic presence (SEP) in relation to taxable income derived by any company other than a Nigerian company ("foreign company") in Nigeria.

Required

Explain the features of this Order.

4. The rapid growth in information and communication technology in Nigeria has brought with it boundless opportunities and changes in the way business activities are done. A significant number of transactions in Nigeria, in recent times, are consummated using mobile devices and online payments. In the same vein, the online platforms (mostly operated by international private entities), are perceived by various governments in developing countries (Nigeria inclusive) as means of undermining the economic interest of their host countries through non-payment of taxes in spite of their significant economic presence.

In the light of the above, the Nigeria Tax Act, 2025 provides for the treatment of digital and other services' providers in relation to significant economic presence of a foreign entity. This was also followed up with the issuance of Companies Income Tax (Significant Economic Presence) Order 2020 by the Federal Government of Nigeria.

You have been contacted by a foreign online outfit with interest in mobile networking and consultancy, Washishi Incorporation, California, USA, through its official partner in Nigeria Abioro Partners, to explain issues on significant economic presence of a foreign entity, deemed to be operating in Nigeria.

Required:

As a tax consultant to Washishi Incorporation, you are to draft a report explaining the underlisted areas:

- (a) The objectives of the relevant provisions of Nigeria Tax Act 2025 and Companies Income Tax (Significant Economic Presence) Order 2020 in respect to significant economic presence of a foreign entity
- (b) Conditions for the determination of significant economic presence for digital activities
- (c) Determination of significant economic presence for technical and consultancy services
- (d) Activities exempted from significant economic presence in Nigeria
- (e) The tax implications of the Order 2020 on activities of Washishi Incorporation.

14.11.2 Suggested solutions to questions

1. The rapid growth in information and communications technology (ICT) in Nigeria has brought with it boundless opportunities and changes in the way we do business. Today, a significant number of transactions in Nigeria (sale and purchase of goods and services) are consummated using mobile devices and online payment platforms. This is broadly referred to as electronic commerce (e-commerce).

The e-commerce story in Nigeria started during the early part of the 21st century and its development has steadily been on the rise. This has been re-echoed by the Central Bank of Nigeria's recent implementation of the cashless policy with one of its aims being to encourage more electronic-based transactions (payments for goods, services, transfers, etc.).

Whilst there are numerous benefits of e-commerce, the paradigm shift from a physical to an 'invisible' business framework comes with its challenges. One of these challenges is tracking transactions especially for the purposes of taxation.

The drive towards growing non-oil tax revenue (through fiscal optimisation) and eliminating leakages are not mutually exclusive objectives. Thus, the process of diversifying the revenue base of the economy can only be further complemented by the choices the Federation makes to arrest revenue leakages from the digital economy.

The inability to adequately capture the quantum of attendant direct and indirect taxes payable on e-commerce transaction has left leakages in the tax system. Whilst this is by no means a problem created or condoned by Nigeria Revenue Service (NRS), there is little doubt that a strategic partnership with institutions which provide platforms to consummate such transactions would ensure that the objective of minimising and reducing tax leakages especially from the digital economy is achieved at a faster pace.

In addition, the applicable rules for corporate taxation have failed to effectively capture the realities of a modern economy in our world of fast-paced digital transactions. There are also various profitable business models in digital services that derive income from countries without creating palpable physical presence.

Given that non-resident companies are taxed in Nigeria based on profits derived from Nigeria, the question as to whether a foreign company is liable to pay income tax in Nigeria is usually controversial.

Where a software company provides online data to a user in Nigeria for a fee and provides same to five million other users in Nigeria without being physically present in Nigeria in any form, it may be difficult to conclude that such a company is liable to Companies Income Tax in Nigeria, although the company may be seen to have derived income from Nigeria. Moreover, such transactions may elude the tax authorities' radar and the transactions will not be liable to value added tax (VAT) if the transactions are not deemed to have taken place in Nigeria.

The Nigeria Revenue Service (NRS) is, however, making efforts to ensure that income arising from e-commerce is subjected to Nigerian tax. These efforts seem to have yielded some results in the aspect of indirect taxes as opposed to direct tax. In recent times, the FIRS has made attempts to assess some foreign mobile application transport operators to income tax in Nigeria on the basis that the income for services they provide is derived from Nigeria.

To ensure that companies, particularly digital companies, do not escape tax in Nigeria, the NRS has often required Nigerian companies to withhold tax on all payments made to non-resident persons regardless of the non-establishment of the tax presence specified. This requirement has encountered resistance from taxpayers given that such non-resident persons may not be liable to Nigerian tax under Nigerian tax laws.

In some cases, the NRS seems to have succeeded in ensuring that VAT is deducted and accounted for on cross border payments for transactions between foreign companies and Nigerian companies.

The Federal High Court (FHC) judgment in the case between Vodacom Business Nigeria Limited v NRS, the FHC ruled in favour of the NRS and held that the Nigerian company was required to account for the VAT on such transactions regardless of the fact that the supplier/foreign company did not perform the services in Nigeria. According to the FHC, the services are not expressly exempt from VAT and are thus liable to Nigerian VAT.

2. According to Organisation for Economic Cooperation and Development (OECD), a non-resident company is said to have significant economic presence (SEP) when it has “a purposeful and sustained interaction with the jurisdiction via digital technology and their automated means...”

(a) Determination of SEP for digital activities

The Companies Income Tax (Significant Economic Presence) Order, 2020 (“the order”) provides that a foreign company carrying on the business of digital services shall have a SEP in Nigeria in any accounting year, where it:

- (i) derives ₦25 million annual gross turnover or its equivalent in other currencies from any or combination of the following digital activities:
 - streaming or downloading services of digital contents, including but not limited to movies, videos, music, applications, games and e-books to any person in Nigeria; or
 - transmission of data collected about Nigerian users which has been generated from such users’ activities on a digital interface including website or mobile applications; or
 - provision of goods or services other than those under subparagraph 5 of the Order, directly or indirectly through a digital platform to Nigeria; or
 - provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria.
- (ii) Uses a Nigerian domain name (i.e., .ng) or registers a website address in Nigeria; or
- (iii) Has a purposeful and sustained interaction with persons in Nigeria by customising its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian

currency or providing options for billing or payment in Nigerian currency.

(b) Determination of SEP for technical, professional, management and consultancy services

The Companies Income Tax (Significant Economic Presence) Order, 2020 ("the order") provides that a foreign company providing technical, professional, management or consultancy services shall have a SEP in Nigeria in any accounting year where it earns any income or receives any payment from a person resident in Nigeria, or a fixed base or agent of a foreign company in Nigeria.

3. The Order provides guidance on the definition of significant economic presence (SEP) in relation to taxable income derived by any company other than a Nigerian company ("foreign company") in Nigeria, based on the provisions of NTA 2025..

The Order also stipulates a ₦25 million turnover threshold for a foreign company deriving income in Nigeria through digital means for the purpose of SEP. Further, foreign companies involved in the provision of technical, professional, management or consultancy services shall be deemed to have SEP in Nigeria where such companies receive any payment from a person resident in Nigeria or a fixed base or agent of a foreign company in Nigeria. The issuance of the Order is significant to the operation of the provisions in the Nigeria Tax Act.

The summarised features of the SEP Order are as follows:

- (a) Nigeria has joined other countries that have taken unilateral action to tax the digital economy.
- (b) it has made it clear that a physical presence will no longer be required for certain categories of remote services to be taxable.
- (c) non-resident companies must therefore assess how the rules affect them and take steps to comply where necessary.
- (d) the Nigerian resident companies that transact with the affected non-residents must assess how the rules affect them and take steps to comply where necessary.
- (e) to improve compliance and reduce uncertainty for taxpayers, the NRS is encouraged to introduce simplified registration and compliance processes for affected NRCs.
- (f) the basis by which profits will be attributed to the SEPs of the NRCs should be clearly provided by NRS.

4.

Okokomako Tax Consultants
Kokobilo Road, Asaba City

July 20, 2027

Washishi Incorporation
California
USA.

Attention: The Principal Partner

Abioro Partners
Sabon-Yewa Avenue
Kaduna

Dear Sir,

RE: Significant Economic Presence of a Foreign Entity

We refer to our discussion on July 16, 2027, in respect of the above subject matter and our subsequent engagement as a tax consultant to Washishi Incorporation, USA. Having concluded the assignment, we are pleased to present our report for further necessary action by the management of Washishi Incorporation.

(a) The objectives of the provisions of Nigeria Tax Act 2025

- (i) The Act introduced the concept of significant economic presence to expand the scope of Nigerian tax on foreign companies deriving income from their activities in Nigeria which were hitherto not captured in the tax net.
- (ii) Consequently, the Companies Income Tax (Significant Economic Presence) Order 2020 was issued by the Federal Government of Nigeria.
- (iii) The Order provides clarification on what constitutes a significant economic presence for foreign companies doing business, or providing services to customers in Nigeria.

(b) Conditions for determination of significant economic presence for digital activities

The Order provides that a foreign company shall have a significant economic presence in Nigeria in any accounting year, where it:

- (i) derives ~~N~~25million annual gross turnover or its equivalent in other currencies from any or combination of the following digital activities:
- (ii) streaming or downloading services of digital contents, including but not limited to movies, videos, music, applications, games and e- books to any person in Nigeria; or
- (iii) transmission of data collected about Nigerian users which has been generated from such users activities on a digital interface including website or mobile applications; or
- (iv) provision of goods or services other than those under sub-paragraph 5 of the Order, directly or indirectly through a digital platform to Nigeria; or
- (v) provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria; or
- (vi) uses a Nigerian domain name (that is, .ng) or registers a website address in Nigeria; or
- (vii) has a purposeful and sustained interaction with persons in Nigeria by customising its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency.

(c) Determination of significant economic presence for technical and consultancy services

The Order provides that a foreign company providing technical, professional, management or consultancy services shall have a significant economic presence in Nigeria in any accounting year where:

- (i) it earns any income; or
- (ii) receives any payment from a person resident in Nigeria; or
- (iii) it has a fixed base or agent of a foreign company in Nigeria.

(d) Activities exempted from significant economic presence in Nigeria

The Order exempts the activities of the following foreign companies from constituting a significant economic presence in Nigeria:

- (i) any foreign company under a multilateral agreement and consensus arrangement to address tax challenges arising from the digitalisation of the economy who will be treated under such agreement or arrangement; or
- (ii) any foreign company making any payment, where the payment, is made:
 - to an employee under a contract of employment; or

- for teaching in an educational institution or for teaching by an educational institution; or
- by a foreign fixed base of a Nigerian company.

(e) The tax implications of the Order 2020 on the activities of Washishi Incorporation

- (i) The current status of Washishi Incorporation is within the ambit of the Order 2020. The implication is that profit derived by the company from Nigerian operation will be assessable to tax in Nigeria.
- (ii) Maintenance of proper books of accounts that will be relevant for assessment of the company to Nigerian taxes.
- (iii) For the company to enjoy from numerous tax available to companies incorporated in Nigeria, the company should have a fixed base or better still be fully incorporated as a Nigerian company.
- (iv) Failure by the company to comply with the Order 2020 may result to severe sanctions from the Nigerian government. This can cause disruption in operations of the company within the Nigerian space.

We have commented on areas deemed necessary, nevertheless, please do not hesitate to contact us if there is any aspect of the report that needs further clarification.

Yours faithfully,

For: OKOKOMAKO TAX CONSULTANTS

L.I.S. Sarah
Senior Partner

TAX TREATIES

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15 Tax Treaties

15.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the basic concepts and operations of tax treaties in Nigeria.

15.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) understand the meaning of tax treaty;
- (b) understand the concept of double taxation relief prior to the introduction of NTA, 2025;
- (c) know the double taxation relief available to a company where there is no double taxation agreement prior to the introduction of NTA, 2025;
- (d) understand the double taxation relief available to a company where there is double taxation agreement prior to the introduction of NTA, 2025;
- (e) understand the nature and treatment of tax reliefs available to non-residents in accordance with the Nigeria Tax Administration Act, 2025;
- (f) Identify the substance in a typical double taxation agreement between two countries using the agreement between Nigeria and United Kingdom as a model;
- (g) understand the conflicts resolution between DTA's and the Nigerian tax laws; and
- (h) understand the role of Vienna convention in applying and interpreting tax treaties.

15.2 Unilateral reliefs

This is the relief granted to mitigate the effects of international double taxation based on domestic legislation rather than the provisions of a tax treaty. This relief is usually provided to taxpayers by home country irrespective of the any double taxation agreement with the country concerned and the relief usually exists because bilateral agreements might not be sufficient to meet all the cases. For instance, unilateral relief may be available against country A tax to a person resident in country A for foreign tax charged on income arising in a foreign country.

15.3 Double taxation agreement

A tax treaty or double taxation agreement is a formal bilateral agreement made by two countries to resolve issues involving double taxation of taxpayers' income, capital, estate and wealth between the two countries. For a double taxation agreement to be binding on Nigeria, it must not only be signed by the appropriate tax authority, it must also be approved by the Federal Executive Council and then ratified by both chambers of the Nigerian National Assembly.

Double taxation is a process where the same income is taxed in two different jurisdictions. This often occurs when a taxpayer is required to pay tax on the same

income in the country where it is earned and again in their country of residence. To mitigate this financial burden, Nigeria has established Double Taxation Relief (DTR) mechanisms through laws, treaties, and agreements with other nations.

- a) Nigeria has signed double taxation agreements (DTAs) with multiple countries to regulate the taxation of income derived from residents of either country.
- b) These agreements provide tax credits, exemptions, or reduced rates of tax.
- c) The relief is reciprocal, meaning both countries agree to tax specific types of income in a way that prevents double taxation.

Features of a double taxation relief agreement

- (a) The names of the two countries involved in the agreements would be stated together with the definition of residence and person affected.
- (b) The rates of tax applicable in the countries would be stated with a caveat that the rates may be changed without notice.
- (c) The transactions on which double taxation relief is applicable. This will usually include business profit, fees, capital gains tax, etc.
- (d) The arrangement for the exchange of information between the two tax authorities so as to minimize the incidences of tax evasion.
- (e) The appeal procedures in the event of a dispute.
- (f) The available diplomatic privileges for the taxpayers.
- (g) The date of coming into force of the agreement and the possible termination date.
- (h) Connected businesses including enterprises in the two countries under common control or where one has control over the other.
- (i) The distinction in industrial and commercial profits especially for enterprises engaged in business partly in Nigeria and partly in other countries.
- (j) The profits exempted from tax.
- (k) The methods by which the effect of double taxation is eliminated.

15.3.1 Double taxation agreement with United Kingdom

After the termination of all double taxation agreements between foreign countries and Nigeria, one of the earliest agreements that was signed was 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. The withholding tax applicable in Nigeria is reduced to 7.5%;
- (e) interest arising in one 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 board 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); and
- (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).

15.3.2 Foreign incomes exempted from Nigerian tax

With effect from January 1, 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.

15.4 Multilateral treaties

A multilateral treaty is a written agreement between three or more sovereign states establishing the rights and obligations between the parties. They often result in international conference or gathering of nations done under the auspices of international organisations.

Also, multilateral treaties are single agreement between many countries. It allows a country to make concurrent changes to all or some of the double taxation agreements (DTAs) that it has with other countries. Countries that do a lot of trade with one another usually sign agreements for the avoidance of double taxation.

Example is a multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting. This treaty, usually referred to as the Multilateral Instrument (MLI), was drafted by the OECD to facilitate the implementation of the recommendations made by the OECD's BEPS Project to combat base erosion and profit-shifting by modifying the application of existing bilateral tax treaties. It also includes provisions to combat treaty abuse and improve dispute resolution mechanisms.

15.5 Tax treaty and double taxation relief

A tax treaty is a formal bilateral agreement made by two countries to resolve issues involving double taxation of taxpayers' income, capital, estate and wealth between the two countries. For a double taxation agreement to be binding on Nigeria, it must not only be signed by the appropriate tax authority, but it must also be approved by the Federal Executive Council and then ratified by both chambers of the Nigerian National Assembly. 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 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.

The tax payable in the foreign country is referred to as Commonwealth Income Tax. This is defined in Section 44(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 44.

15.6 Commonwealth income tax relief

15.5.1 Where there is no double taxation agreement)

For mere academic purpose, prior to the introduction of the NTA, 2025, commonwealth income tax relief is given in a situation that a company which has paid or is liable to pay

tax in Nigeria for any year of assessment on any part of its profits has also paid or is liable to pay Commonwealth income tax for that year in respect of the same part of its profit. The relief is used to reduce the tax paid or payable in Nigeria on the part of the company's profits which is liable to tax in Nigeria and in any country within the Commonwealth or in the Republic of Ireland.

Any claim for Commonwealth income tax relief for any year of assessment must be made not later than six years after the end of that year.

For example, if a company wishes to claim the relief in respect of profits earned in 2014 which were subjected to tax in 2015 year of assessment, the claim must be made on or before December 31, 2021. If the claim is admitted, the amount of tax to be relieved will be deducted from the tax paid for that year of claim or set against the tax which the company is liable to pay for that year of claim.

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 12% and 35% against the Nigerian rate of 30%, the relief available against tax on the foreign incomes received by a Nigerian company shall be 12% and 15%, respectively.

15.6.2 Non-Nigerian companies

For academic purpose, prior to the introduction of the NTA, 2025, the relief available to a non-Nigerian company are:

- (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 28% 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, 14% that is half of Commonwealth rate – since the Commonwealth rate of 28% does not exceed the Nigerian rate of 30%; and
- (b) for the second company, 5% that is the difference between the Nigerian rate (30%) and half of the Commonwealth rate ($50\% \times \frac{1}{2} = 25\%$) – since the Commonwealth rate of 50% is higher than the Nigerian rate of 30%.

It is not certain how this provision of Section 44(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.

It is pertinent to 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.

15.6.3 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 as contained in Sections 45 and 46 of CITA”. As stated above, the position has been changed by the provisions of NTAA 2025.

The points to note are:

- (a) the provisions of section 44 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; and
- (i) a taxpayer may not be granted treaty benefits if:
 - i. it is discovered that its residency of one of the treaty countries was principally for the purpose of accessing the treaty benefits; and
 - ii. a principal purpose of the arrangement of a transaction or business is to take advantage of the treaty.

15.7 Benefits of double taxation agreement

Double taxation relief plays a vital role in the international taxation system, ensuring that individuals and businesses are not burdened by paying taxes on the same income or

gains twice. Understanding the mechanism, types, and advantages of double taxation relief empowers individuals and businesses to optimise their financial resources while ensuring compliance with relevant tax laws.

Double taxation relief offers several benefits to individuals, businesses, and the Nigerian economy, including:

- a) **encourages foreign investment:** Investors are more willing to invest in Nigeria, knowing that they will not be taxed twice on their income;
- b) **prevents tax evasion:** DTAs establish clear guidelines on which country has the right to tax certain incomes, reducing tax evasion and disputes;
- c) **promotes economic growth:** Businesses can operate across borders without the burden of excessive taxation, leading to increased trade and economic development;
- d) **enhances international relations:** Bilateral and multilateral tax agreements strengthen Nigeria's diplomatic and economic ties with other countries;
- e) avoidance of double taxation;
- f) clarification of taxing rights of each contracting state; and
- g) lowering of compliance cost.

15.8 Resolution of conflicts between double taxation agreements (DTA) and Nigerian tax laws

Where a resident of a contracting state considers that the action of one or both contracting States result or will result from him in taxation not in accordance with this agreement, with the competent of the contracting state of which he is resident, then:

- (a) the competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to resolve the case by mutual agreement with the competent authority of the other contracting state, with a view to the avoidance of taxation not in accordance with the agreement;
- (b) the competent authorities of the contracting state shall endeavour to resolve by mutual agreement any difficulties or doubt arising as to the interpretation or application of the agreement; and
- (c) the competent authorities of the contracting state may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

15.9 Dispute resolution mechanism

It is hardly possible to ignore the effect of double taxation in the era of globalisation. Therefore, countries sign bilateral double tax treaties (DTTs) to avoid or mitigate double taxation in cross border economic activity.

DTTs are signed between two countries to allocate tax jurisdiction between them and to avoid tax disputes between the taxpayer and the country concerned. Nonetheless, tax disputes crop up since such treaties may be open to interpretation at the time of implementation. Hence, DTTs contain tax dispute resolution mechanism.

The widely recognised dispute resolution mechanisms are:

a) The mutual agreement procedure (MAP)

This is a kind of negotiation between the two contracting States. This procedure enables the contracting parties to apply the substantive provisions contained in bilateral tax treaties which allocate taxing rights between contracting states. The power to administer MAP is entrusted to the competent authorities. These authorities are the organs normally responsible for the administration of the tax treaties.

The role of the competent authorities under the MAP is to “endeavour to resolve” by mutual agreement difficulties or doubts emanating from the application of the treaties. With a view to ensuring the proper functioning of the tax authorities, the taxpayers have been given right to request the competent authority to adjust their tax liabilities in accordance with the tax treaty when they (the taxpayers) believe that they are not taxed in accordance with the substantive rules of the treaty.

b) Arbitration of international tax dispute

This is the use of compulsory arbitration to settle international tax disputes. It allows the taxpayer to initiate an arbitration process if the MAP fails after two years from the date of its commencement. It is to be noted that the taxpayer is allowed to invoke arbitration only when the competent authority has initiated a MAP and the tax dispute has not been resolved by the negotiation of the competent authorities.

15.10 Nigerian double taxation agreements (DTA)

15.10.1 Permanent establishment (PE)

This means a fixed place of business through which the business of an enterprise is wholly or partly carried on in Nigeria. It also includes any other form of taxable presence of a foreign enterprise in Nigeria. The fixed base of a foreign company is the place from where it carries on its business or trade in Nigeria. The fixed base must be easily identifiable and must possess some degree of permanence. A fixed base will include:

- a) facilities such as a factory, an office, a branch, a mine or an oil well;
- b) activities such as building, construction, assembly or installation; and
- c) furnishing of services in connection with the activities above.

It is important to note that the following cannot be considered as a fixed base of a foreign company:

- a) Facilities used solely for storage or display of goods or merchandise;
- b) Facilities used solely for the collection of information.

For an individual, the profit of an individual carrying on a trade or business in Nigeria through a fixed base shall be the profit attributable to that fixed base specifically:

- a) if the business is through a dependent agent, the profit attributable to that agent;
- b) if the business involves turnkey projects, the profit from that contract; and
- c) if the business is through related parties, the profit determined on arm's length principle by the relevant tax authority.

15.10.2 Active double taxation agreement

The former FIRS circular highlights that Nigeria has operational DTAs with 16 countries namely: Canada, Pakistan, Belgium, France, Romania, Netherlands, United Kingdom, China, South Africa, Italy (airline and shipping only), Philippines, Czech Republic, Slovakia, Singapore, Sweden and Spain.

Tabular presentation of list of countries having double taxation agreement with Nigeria:

S/N	Countries	DTA type	Date of entry into force	Effective date
1	Canada	Full DTA	Nov 16, 1999	Jan 1, 2000
2	Pakistan	Full DTA	Mar 7, 1990	Jan 1, 1991
3	Belgium	Full DTA	Jan 1, 1990	Jan 1, 1991
4	France	Full DTA	May 2, 1991	Jan 1, 1992
5	Romania	Full DTA	Apr 18, 1993	Jan 1, 1994
6	Netherlands	Full DTA	Dec 9, 1992	Jan 1, 1993
7	United Kingdom	Full DTA	Jan 1, 1988	Jan 1, 1989

S/N	Countries	DTA type	Date of entry into force	Effective date
8	China	Full DTA	Mar 21, 2009	Jan 1, 2010
9	South Africa	Full DTA	Jul 5, 2008	Jan 1, 2009
10	Italy	Air & Shipping Transport Agreement Only	February 22, 1977	Jan 1, 1978
11	Philippines	Full DTA	Aug 18, 2013	Jan 1, 2014
12	Czech Republic	Full DTA	Dec 2, 1990	Jan 1, 1991
13	Slovakia	Full DTA	Dec 2, 1990	Jan 1, 1991
14	Sweden	Full DTA	December 7, 2014	January 1, 2015
15	Spain	Full DTA	June 5, 2015	January 1, 2016
16	Singapore	Full DTA	November 1, 2018	January 1, 2019

However, future circulars of the Nigeria Revenue Service (NRS) will clarify the position of the DTA's.

15.10.3 Date of entry into force of the DTA

The agreement becomes an enforceable law in both states because it has fulfilled necessary domestication procedures. This is provided for in Article 28 (1) of the DTAs states that: "each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force thirty days after the date of receipt of the latter of these notifications".

15.10.4 Effective date or date of application of the agreement

Both clauses are often used interchangeably. However, it is the date citizens of both Contracting States start benefiting from the agreement as provided for in article 28 (2) (a) (i)(ii) of the DTAs. Technically, the effective date of the agreement is the first day of the fiscal year following the date of entry into force of the agreement.

15.10.5 Taxation of business profits and income from immovable properties

a) Business profits

- (i) The profits of an enterprise of a contracting State shall be taxable only in that state unless the enterprise carries on business in the other contracting state through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profit of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.
- (ii) Subject to provisions of paragraph (3) of this article where an enterprise of a contracting state carries on business in the other contracting state through a

permanent establishment situated therein, there shall in each contracting state be attributed to that permanent establishment the profit which it might be expected to make if it is a distinct and separate enterprise engaged in the same or activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

- (iii) In the determination of the profit of a permanent establishment there shall be allowed as deductions expenses shown to have been incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deductions shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its offices by way of royalties, fees or other similar payment in return for use of or other rights, or by way of commission, for specific services performed or for management, or, except in the case of banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profit of a permanent establishment, for amount charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payment in return for the use of patents or other rights, or by way of commission for specific services performed or for management or except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
- (iv) No profits shall be attributed to a permanent establishment by the reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise. Provided that where that permanent establishment is also used as a sales outlet for the goods or merchandise so purchased the profit on such sales may be attributed to that permanent establishment.
- (v) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of that Article shall not be affected by the provisions of this Article.
- (vi) A company resident in a country with no double taxation agreement with Nigeria will suffer withholding tax deduction at the rate of 10% of the value of revenue from a dividend, interest, and royalties while those from double taxation treaty will suffer withholding tax deduction on similar income only at reduced rate of 7.5%.

b) Immovable properties

- i) Income derived by a resident of a contracting state from immovable property (including income from agriculture or forestry) situated in the other contracting state may be taxed in that other state.

- ii) The term “immovable property” shall have the meaning which it has under the law of the contracting state in which the property in question is situated. the term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law landed property apply, usufruct of immovable property and right to variable or fixed payments as consideration for the working of or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.
- iii) The provisions of paragraphs (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
- iv) The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

15.10.6 Taxation of Investments Income

a) Dividends

- i. Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.
- ii. However, such dividends may also be taxed in the Contracting State of which the company paying the dividend is a resident according to the law of that State, but where the recipient of the dividend is subject to tax thereon in the other Contracting State, the tax so charged shall not exceed:
 - 12½ per cent of the gross amount of the dividend if the recipient is a company which controls directly or indirectly at least ten percent of the voting power in the company paying the dividend; and
 - fifteen per cent of the gross amount of the dividend in all other cases.
- iii. The term “dividends” as used in this Article means income from shares, or any other item (other than interest relieved from tax under the provisions of Article 11 of this Agreement) which, Under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a Company.
- iv. The provisions of paragraphs (1) and (2) of the Article shall not apply where the beneficial owner of the dividends, being a resident of one of the Contracting State, has in the other Contracting State a permanent establishment, or performs in that other State independent personal services from a fixed base situated therein, and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case the provisions of Article 7 or 14, as the case may be, shall apply.

- v. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other state may not impose any tax on the dividends paid by the company and beneficially owned by persons who are not residents of the other state, or subject to the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.
 - vi. The provisions of this Article shall not apply if the right giving rise to the dividends was created or assigned mainly for the purpose of taking advantage of this Article and not for bonafide commercial reasons.
- b) Interest
- i. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
 - ii. However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State, but where such interest is paid to a resident of the other Contracting State who is subject to tax there in respect thereof, the tax so charged shall not exceed 12 ½ per cent of the gross amount of the interest.
 - iii. Notwithstanding the provisions of paragraph (2) of this article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a local authority.
 - iv. The provisions of paragraphs (1) and (2) of this article shall not apply if the beneficial owner of the interest, being a resident of contracting state, has in the other contracting state in which the interest arises a permanent establishment situated therein, or perform in that other state independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest paid is effectively connected with that permanent establishment or fixed base. in such a case the provisions of article 7 or article 14as the case may be, shall apply.
 - v. Interest shall be deemed to arise in a contracting state when the payer is that state itself a political sub-division, a local authority or a resident of that state. where, however the person paying the interest, whether he is a resident of a contracting state or not has in contracting state permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, then such interest shall be deemed to arise in the state in which the permanent establishment or fixed base is situated.
 - vi. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the

amount of the interest paid exceeds, for whatever reason the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provision of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

- vii. The term interest” as used in this article means income from debt claims of every kind, whether “secured by mortgage and whether carrying a right to participate in the debtor’s profits and in particular, income from government securities and income from bonds or debentures.
- viii. The provisions of this article shall not apply if the debt-claim giving rise to the interest was created mainly for the purpose of taking of this article and not for bona-fide commercial reasons.

15.11 The role of Vienna Convention in application and interpretation of tax treaties

The Vienna Convention plays the following roles in the application and interpretation of tax treaties:

- (a) it codifies the rules of treaty interpretation, including tax treaties with its objective to bind the judiciary through a set of rules, it generated a uniform approach to treaty interpretation;
- (b) it establishes comprehensive, operational guidelines, rules, and procedures for how treaties are drafted, defined, amended, and interpreted;
- (c) it establishes that every treaty in force is binding upon the parties to it and must be performed by them in good faith such that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty;
- (d) it provides a framework for interpreting and applying tax treaties, promoting consistency and predictability in international taxation; and
- (e) It follows the Vienna Convention on the Law of Treaties (VCLT’s) principles in ensuring that tax treaties are applied fairly and in accordance with their intended purpose.

The Vienna Convention on the Law of Treaties (VCLT) plays a significant role in the application and interpretation of tax treaties. Some of the roles are stated below:

Interpretation of tax treaties

- a) **General rule:** The VCLT provides general rules for interpreting treaties, including tax treaties. Article 31(1) state that treaties should be interpreted in good faith, in accordance with the ordinary meaning of the terms, and in the context of the treaty.

- b) **Context and purpose:** The VCLT emphasizes considering the context and purpose of the treaty when interpreting its provisions.

Application of tax treaties

- a) **Binding nature:** The VCLT confirms that treaties are binding on the parties that have ratified them. Tax treaties, therefore, are binding on the contracting states.
- b) **Good faith:** The principle of good faith is essential in the application of tax treaties. States should act in a manner that is consistent with the treaty's purpose and provisions.

Dispute resolution

- a) **Interpretation disputes:** The VCLT provides mechanisms for resolving disputes related to treaty interpretation, including negotiation, mediation, and arbitration.
- b) **Mutual Agreement Procedure (MAP):** Tax treaties often include MAP provisions, which allow competent authorities to resolve disputes through mutual agreement.

15.12 Unilateral relief of double taxation

There has been a great departure in relations to double taxation relief from what used to be in the past, to what is stated in the NTA, 2025. Section 120 (1) of the NTA, 2025 states that where, in any year of assessment, any part of the income or profit of a resident of Nigeria, derived from outside Nigeria, has been charged to tax in the source country, and that income or profit is also chargeable to tax in Nigeria, the tax paid outside Nigeria may be allowed as a credit against the tax payable in Nigeria.

- (a) The credit to be allowed in subsection 120 (1) above shall be the lower of the:
 - (i) Nigerian tax, other than taxes under chapter three of the NTA, attributable to the foreign income or profit; and
 - (ii) amount of tax paid in the source country.
- (b) The Nigerian tax mentioned in 15.12.1 (a) above attributable to the foreign income or profit shall be the proportion of the foreign income to total income, multiplied by the Nigerian tax.

15.12.3 Double taxation agreement

As stated in Section 121 (1) of the Act:

- (a) where the Government of the Federal Republic of Nigeria enters into an agreement with a treaty partner for the purpose of providing

relief from double taxation in relation to tax imposed under this Act, the agreement shall have effect upon ratification or domestication by the National Assembly;

(b) relief from double taxation shall be in respect of income tax paid under the laws of a treaty partner against income taxes imposed under this Act;

(c) where an agreement has taken effect, any obligation as to secrecy in Nigeria Tax Administration Act, 2025 or any other law in Nigeria shall not prevent the disclosure of any information required to be disclosed under the agreement to an authorised officer of a treaty partner;

(d) the Minister may make rules for implementing the provisions of any agreement under this section;

(e) for the purposes of providing relief in Nigeria from double taxation, all extant double taxation agreements are deemed to have been made under the provisions of this section and shall apply throughout Nigeria with effect from January 1 of the year immediately following the date the agreement entered into force;

(f) the agreement in subsection (1) of this section shall be for the purpose of elimination of double taxation, without creating opportunities for non-taxation or reduced taxation through tax evasion, avoidance or other forms of abuse, including treaty-shopping arrangements aimed at obtaining reliefs provided in the agreement for the indirect benefit of residents of any other country or territory that is not part of the agreement;

(g) for the purposes of the agreement referred to in subsection (1) of this section, a non-resident may benefit under the agreement where the person is a resident of the relevant treaty partner and the beneficial owner of the income for which the benefit is being claimed; and

(h) nothing in this section shall be construed to allow a relief in respect of an additional tax paid for the relevant tax year under this Act or the domestic legislation of a treaty partner in conformity with the global minimum tax rules as it relates to a permanent establishment situated in the treaty partner.

15.13 Method of calculating relief to be allowed for double taxation

(a) The relief from double taxation under an agreement referred to in section 121 of the Act shall be granted in accordance with the provisions of section 122 and relevant provisions of Nigeria Tax Administration Act, 2025

(b) The foreign tax paid to a treaty partner in accordance with the agreement, and in respect of income or profits chargeable to income tax in Nigeria may be allowed as a credit against tax payable under this Act.

(c) The Nigerian tax payable in respect of the income or profit which has been charged to tax by a treaty partner shall be reduced by the amount of the credit admissible under the terms of the agreement, provided that credit shall not be allowed to a person who was not a resident of Nigeria during the relevant year of assessment.

(d) Without prejudice to the provisions of subsection (3) of the Act as stated in (c) above, the credit to be allowed shall be the lower of the:

(i) Nigerian tax attributable to the foreign income or profits; and

(ii) the amount of tax paid to the treaty partner.

(e) The Nigerian tax under subsection 15.13.4 (a) attributable to the foreign income or profits shall be the proportion of the foreign income to total income, multiplied by the Nigerian tax.

(f) In computing the amount of chargeable income or assessable profits, the following shall apply:

(a) deduction shall not be allowed in respect of a foreign tax, whether in respect of the same or any other profits; and

(b) where profits or income chargeable depends on the amount received in Nigeria, the amount shall be increased by the appropriate amount of the foreign tax in respect of the profits.

(g) Any claim for credit shall be made not later than two years after the end of the year of assessment, and 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.

(h) Where the amount of any credit given under the agreement is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable in Nigeria or elsewhere, nothing in this Act or Nigeria Tax Administration Act, 2025 limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise.

Notwithstanding (h) above, the assessment or claim shall be made not later than two years from the time when such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any of credit is due.

(i) Where, in accordance with any provision of the agreement, income derived by a resident of Nigeria is exempt from tax under this Act, the exempt income shall be taken into account in determining the rate of tax applicable on the remaining income of such resident.

(j) Explanatory notes for purpose of this chapter:

"foreign tax" means any tax paid to a treaty partner and covered by an agreement with the treaty partner;

"foreign profit" means a profit liable to tax under this Act and to a treaty partner;

"foreign income" means an income liable to tax under this Act and to a treaty partner;

"Nigerian tax" means income tax chargeable under this Act;

"total income" means the income or profits of a Nigerian resident including the foreign income; and

"treaty partner" means a country with which Nigeria has an agreement for the relief of double taxation.

15.14 Chapter review

This chapter discusses tax treaties and the concept of double taxation relief, especially where there is no double taxation agreement among countries and where there is a double taxation agreement in place.

The chapter also explained the double taxation relief under the former CITA and NTA, 2025.

The chapter also discusses some of the countries that have double taxation agreements with Nigeria and applicable withholding tax rates for transactions between a Nigerian company and a company based in countries that have double taxation agreements with Nigeria.

The readers must have learnt available mechanism for resolving issues that may arise under double taxation treaty and the significant role played by Vienna Convention in the application and interpretation of tax treaties.

15.15 Worked examples

15.15.1 Questions

1. Solomon Daura & Co. is a firm of Architects with an office in Amuwo, Lagos. In 2025, the operations of the company were extended to Ghana, which is a commonwealth country. The partners of Solomon Daura & Co has requested for your advice on the reliefs available to the company on its commonwealth income

brought into Nigeria.

Required:

As the firm's tax consultant, you are required to educate the Directors on the methods of calculating double taxation relief as provided for in S. 121 of the Nigerian Tax Administration Act, 2025.

2. A double taxation arrangement (DTA) is a bilateral agreement between two countries designed to prevent individuals and businesses from being taxed twice on the same income. These treaties promote cross-border trade and investment by clarifying tax obligations, reducing tax barriers, and providing mechanisms for resolving disputes. DTAs typically allocate taxing rights between the contracting states and offer relief through tax exemptions, credits, or reduced rates, ensuring fair and efficient taxation for taxpayers operating internationally.

Required:

Discuss the tax implications of the following:

- a) Business profits not arising through a permanent establishment
 - b) Profits or gains arising from the operation of ships and aircrafts
 - c) Interest arising in one country and paid to a resident of the other country
 - d) Dividends derived by one company which is resident in one country from a company resident in another country
 - e) Director's fees and other similar payments derived by a resident of a country in his capacity as a director of a company which is a resident of the other country
3. Okorie International Limited runs a pharmacy practice in Nigeria and Ghana. The company's operating results for the year ended December 31, 2025, are as follows:

	~~N~~
Income from Nigeria	150,000,000
Income from Ghana	<u>122,000,000</u>
Total Income	272,000,000
Less Expenses	<u>(140,000,000)</u>
Net profit	<u>132,000,000</u>

Other relevant information:

- (a) Foreign tax suffered (Ghana) N18,500,000
- (b) Nigeria companies 30%

Assume the company is a wholly owned Nigerian company.

Required:

Compute the tax credit to be allowed against the foreign tax paid in Ghana.

15.13.2 Suggested solutions to questions

1. Method of calculating relief to be allowed for double taxation
 - (a) The relief from double taxation under an agreement referred to in section 121 of the Act shall be granted in accordance with the provisions of section 122 and relevant provisions of Nigeria Tax Administration Act, 2025
 - (b) The foreign tax paid to a treaty partner in accordance with the agreement, and in respect of income or profits chargeable to income tax in Nigeria may be allowed as a credit against tax payable under this Act.
 - (c) The Nigerian tax payable in respect of the income or profit which has been charged to tax by a treaty partner shall be reduced by the amount of the credit admissible under the terms of the agreement, provided that credit shall not be allowed to a person who was not a resident of Nigeria during the relevant year of assessment.
 - (d) Without prejudice to the provisions of subsection (3) of the Act as stated in 15.13.3 above, the credit to be allowed in subsection 15.13.2 above shall be the lower of the:
 - (i) Nigerian tax attributable to the foreign income or profits; and
 - (ii) the amount of tax paid to the treaty partner.
 - (e) The Nigerian tax under subsection 15.13.4 (a) attributable to the foreign income or profits shall be the proportion of the foreign income to total income, multiplied by the Nigerian tax.
 - (f) In computing the amount of chargeable income or assessable profits, the following shall apply:
 - (i) deduction shall not be allowed in respect of a foreign tax, whether in respect of the same or any other profits; and
 - (ii) where profits or income chargeable depends on the amount received in Nigeria, the amount shall be increased by the appropriate amount of the foreign tax in respect of the profits.

- (g) Any claim for credit shall be made not later than two years after the end of the year of assessment, and 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.
- (h) Where the amount of any credit given under the agreement is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable in Nigeria or elsewhere, nothing in this Act or Nigeria Tax Administration Act, 2025 limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise.
- (i) Notwithstanding subsection 15.13.8, the assessment or claim shall be made not later than two years from the time when such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any credit is due.
- (j) Where, in accordance with any provision of the agreement, income derived by a resident of Nigeria is exempt from tax under this Act, the exempt income shall be taken into account in determining the rate of tax applicable on the remaining income of such resident.

2. Tax implications of the following:

- (a) 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).
- (b) 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).
- (c) Interest arising in one 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).
- (d) Dividends derived by one company which is resident in one 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 recipients a company controlling at least 10 per cent in all other cases

(Article 10).

- (e) Directors' fees and other similar payments derived by a resident of a country, in his capacity as a director of a company which is a resident of the other country, may be taxed in that other country (Article 16).

ICAN 2026

3.

Okorie International Limited

Computation of allowable tax credit on foreign tax

For 2026 assessment year

Computation of Nigerian tax liability

Profit before tax = N132,000,000

Nigerian companies income tax liability

$$= 30\% \text{ of N132,000,000} = \mathbf{N39,600,000}$$

Computation of foreign income tax credit (section 120 of NTA, 2025)

Foreign income = N122,000,000

Total income = N272,000,000

Nigerian tax attributable to the foreign income

$$= \frac{\text{Foreign income}}{\text{Total income}} \times \text{Nigerian income tax liability}$$

$$= \frac{\text{N122,000,000}}{\text{N272,000,000}} \times \text{N39,600,000}$$
$$= \mathbf{N17,761,765}$$

Allowable tax credit in line with the provisions of section 120(2) of NTA, 2025 is the lower of the Nigerian tax attributable to the foreign income and the amount of foreign tax paid.

Nigerian tax attributable to the foreign income = N17,761,765

Actual foreign tax paid in Ghana = N18,500,000

Therefore, the allowable foreign tax credit is restricted to the lower of the two amounts = **N17,761,765**

TRANSFER PRICING

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16 Transfer Pricing

16.0 Learning objective

The objective of this chapter is to enhance readers' understanding of matters relating to the transfer pricing methodology and related items in Nigeria

16.1 Learning outcomes

After studying this chapter, readers should be able to:

- a) understand the provisions of Income Tax (Transfer Pricing) Regulations 2018 that revoked the Income Tax (Transfer Pricing) Regulations No 1, 2012;
- b) apply the various laws on the assessment of companies;
- c) identify related parties and transactions and their effects on total profits and assessments;
- d) identify and treat appropriately transferred goods and services between Multinational companies;
- e) describe some transfer pricing guidelines and methods by OECD;
- f) understand the transfer pricing documentation process;
- g) know the differences between transfer pricing policy and transfer pricing compliance document;
- h) know the contents of transfer pricing declaration and disclosure forms as prescribed by the Nigeria Revenue Service;
- i) know the timing for filing of transfer pricing returns; and
- j) know the administrative penalty applicable to taxable persons that failed to comply with transfer pricing regulation.

16.2 Introduction to transfer pricing

16.2.1 Transfer price/pricing

Transfer price is the price charged for goods or services supplied or transferred by one sub-unit of an organisation to another sub-units or members of a group buying and selling the product (negotiated transfer price).

The rule for transfer pricing implementation in Nigeria is governed by The Income Tax (Transfer Pricing) Regulations 2018 which replaced the Income Tax (Transfer Pricing) Regulations No.1, 2012. This implies that although transfer pricing is not new in Nigeria but the laws regulating it were first put together in 2012.

From the foregoing, transfer pricing refers to the prices at which the following are transferred between connectable taxable persons:

- a) tangible goods (raw materials, spare parts, finished goods, etc);
- b) services (marketing, legal, accounting, insurance, management services, training, etc); and

- c) intangibles (trademarks, patents, copyright, etc)

16.2.2 Legal framework for transfer pricing

Transfer pricing in Nigeria is regulated by the existing tax laws which are as follows:

(a) Primary Legislation

The primary legislation relating to transfer pricing regulation in Nigeria includes the repealed Companies Income Tax Act (CITA), 2004, as amended, Section 22 and the repealed Federal Inland revenue Services (Establishment) Act, 2007, Section 17. However, **Nigeria Tax Act, 2025** integrates CITA provisions, upholds the arm's length principle, and broadens the scope of transfer pricing regulations effective from January 1, 2026.

(b) Subsidiary Regulations

- (i) **Income Tax (Transfer Pricing) Regulations 2018:** Main transfer pricing rules is applicable to connected persons and transactions equal to or exceeding ₦300 million annually. Mandatory transfer pricing documentation includes TP Declaration Form, TP Disclosure Form, and Country-by-Country Reporting (CbCR) for multinational enterprises (MNEs).
- (ii) **Income Tax (Country-by-Country Reporting) Regulations 2018:** Requires annual CbC reports to FIRS for MNE groups with revenue of at least €750 million.
- (iii) **Income Tax (Common Reporting Standard) Regulations 2019:** Provides for the automatic exchange of financial account information.

16.2.3 The significance of transfer pricing

Transfer prices at which goods and services are transferred between entities are significant for both taxpayers and tax authorities. This is so because they impact on the income and expenses as well as taxable profits of related companies in different tax jurisdictions in which the enterprise and multinationals operate. Transfer pricing mechanism is usually adopted by many companies to boost their head office profits which may be at the disadvantage of subsidiaries or associated companies which operate in other countries with different tax jurisdictions.

16.2.4 Tax convention models on transfer pricing

Advice on transfer pricing based on Organisation for Economic Cooperation and Development (OECD) guidelines

The challenge for developing and transitioning countries in the development of transfer pricing legislation is in essence the same as for OECD countries: protecting their tax base while not creating double taxation or uncertainties that could hamper foreign direct investment and cross-border trade. The adoption of transfer pricing legislation embodying the arm's length principle can be instrumental in achieving this dual objective.

The suggested approach is based on the arm's length principle underlying Article 9 of the OECD Model Tax Convention on Income and on Capital ("the OECD Model") as that principle is elaborated in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations ("the OECD Transfer Pricing Guidelines").

Dozens of countries around the world have implemented transfer pricing laws, and virtually all of them are based on the arm's length principle. With regard to transfer pricing of goods, technology, trademarks and services between associated enterprises and the methodologies which may be applied for determining correct prices where transfers have been on other than arm's length terms, the Contracting States will follow the OECD principles which are set out in the OECD Transfer Pricing Guidelines. These conclusions represent internationally agreed principles, and the Group of Experts recommends that the Guidelines should be followed for the application of the arm's length principle which underlies the article.

Alignment of domestic transfer pricing rules with the internationally accepted principles set forth in the OECD Transfer Pricing Guidelines can:

- a) provide countries with the tools they need to fight artificial shifting of profits out of their jurisdiction by multinational enterprises ("MNEs");
- b) provide MNEs with some certainty of treatment in the country concerned;
- c) reduce the risk of economic double taxation;
- d) provide a level playing field between countries, which is less likely to distort the pattern of international trade and investment; and
- e) provide a level playing field between MNEs and independent enterprises doing business within a country

16.2.5 Advice on transfer pricing based on United Nations (UN) guidelines

The UN Model Tax Convention Article 9(1) states that, where:

- i) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- ii) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of these conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly".

In other words, the transactions between two related parties must be based on the arm's length principle (ALP). The term arm's length principle itself is not a term specifically used in Article 9, but is well accepted by countries as encapsulating the approach taken in Article 9,14 with some differing interpretations as to what this means in practice. The principle laid out above in the UN Model has also been reiterated in the OECD Model Tax Convention and the OECD Guidelines as supplemented and amended.

Thus, the arm's length principle is the accepted guiding principle in establishing an acceptable transfer price under Article 9 of the UN Model. The arm's length principle by itself is not new; it has its origins in contract law to arrange an equitable agreement that will stand up to legal scrutiny, even though the parties involved may have shared interest.

16.2.6 Advice on transfer pricing base on Pacific Association of Tax Administrator (PATA)

Pacific Association of Tax Administrator (PATA) members which include Australia, Canada, Japan and the United States have endeavoured to develop a set of principles and document guidelines pursuant to which multinational taxpayers may create and maintain a single package of transfer-pricing records and documentation (hereinafter the "PATA documentation package") in order to satisfy the transfer-pricing documentation requirements of all PATA members. By providing a uniform transfer-pricing documentation package, PATA's goal is to facilitate the efficient preparation and maintenance of transfer-pricing documentation thereby enabling the timely production of such information upon request by tax auditors.

This PATA Documentation Package is not intended to impose legal requirements greater than those imposed under the local laws of a PATA member. In this regard, it should be noted that each PATA member has different legal systems, statutes, regulations and administrative approaches with respect to transfer pricing. The PATA members, after reviewing their respective domestic laws regarding transfer pricing and documentation of controlled transactions, agree that a multinational enterprise ("MNE") will satisfy each PATA member's documentation provisions by complying with all of the principles contained in this PATA Documentation Package, and will thus avoid the imposition of the PATA members' transfer pricing documentation-related penalties with respect to the documented transactions. However, satisfaction of the principles of this PATA Documentation Package does not preclude PATA member tax administrations from making transfer pricing adjustments.

16.3 Justifications for the application of transfer pricing regulations by multinational and developing countries

Transfer pricing has become a topical issue in world of taxation in recent years and regulations have increased due to two important reasons.

The first is the issue of prevention of fiscal evasion. In the absence of regulations, multinational companies have the tendencies of using transfer pricing to shift profit from one tax jurisdiction to another. The motivation for this is usually to reduce the global tax burden of the group. Profit is usually shifted from jurisdictions with high tax rate to areas where no or little tax is payable. Governments world over are

protecting their tax base and making paradigm shift to tax revenue especially with the dwindling revenue from other sources.

The second most important reason is to avoid economic double taxation which occurs where transfer pricing adjustment is done in one tax jurisdiction without a corresponding adjustment in the other tax jurisdiction.

Abusive transfer pricing practices are considered to pose major risk to the direct tax base of many countries and developing countries are particularly vulnerable because corporate tax tends to account for a larger share of their revenue. Therefore, developing countries need to develop appropriate transfer pricing regulations that will protect their tax base and raise additional revenue while maintaining favourable investment climate and take into consideration investor confidence.

16.4 Administrative framework and procedures for conducting transfer pricing

In Nigeria, the administrative framework and procedures for conducting transfer pricing are established by the Nigeria Revenue Service (NRS) and are guided by the following:

16.4.1 Laws and regulations

The Nigeria Revenue Service (Establishment) Act, 2025 repeals the FIRS Act, 2007 and establishes the Nigeria Revenue Service (NRS) to replace FIRS.

Key details:

Effective date: The NRS Act was signed June 26, 2025 and takes effect on January 1, 2026.

New name: FIRS is now the Nigeria Revenue Service (NRS).

Expanded mandate: NRS has broader powers than FIRS. It will collect both tax and non-tax revenues, including revenues previously collected by the Nigeria Customs Service, Nigerian Ports Authority (NPA), Nigerian Maritime Administration and Safety Agency (NIMASA), and Nigerian Upstream Petroleum Regulatory Commission (NUPRC).

Transition ongoing: FIRS is already restructuring. "Coordinating Directors" are being replaced with "Executive Directors" and departments are being redesigned to align with the new law.

The Income Tax (Transfer Pricing) Regulations, 2018 is still in force, it will now be administered by NRS from January 1, 2026. It should also be noted that FIRS (Establishment) Act, 2007 is repealed. All powers, actions, proceedings, rights, obligations, and contracts of FIRS are transferred to NRS and remain valid. So existing assessments, audits, and transfer pricing cases continue under NRS.

16.4.2 Administrative framework for conducting transfer pricing

- a) **The Nigeria Revenue Service (NRS):** The NRS is responsible for administering transfer pricing regulations in Nigeria.
- b) **The Transfer Pricing Unit:** The NRS has a dedicated Transfer Pricing Unit responsible for reviewing transfer pricing documentation and conducting audits.
- c) **The tax Tribunals:** Tax tribunals are established to hear appeals against NRS decisions on transfer pricing matters.

16.4.3 Procedures for conducting transfer pricing

- a) **Filing of transfer pricing returns:** Taxpayers are required to file transfer pricing returns with the NRS providing information on related party transactions;
- b) **Submission of transfer pricing documentation:** Taxpayers are required to submit transfer pricing documentation to the NRS, providing detailed information on related-party transactions and transfer pricing methodologies;
- c) **Audit and examination:** The NRS conducts audits and examinations to review transfer pricing documentation and ensure compliance with transfer pricing regulations; and
- d) **Adjustments and penalties:** The NRS may adjust transfer prices and impose penalties for non-compliance with transfer pricing regulations.

16.4.4 Guidelines and circulars

- a) **The NRS Transfer Pricing Guidelines:** The NRS issues guidelines to provide clarity on transfer pricing regulations and procedures;
- b) **The Circulars and Public Notices:** The NRS issues circulars and public notices to provide updates on transfer pricing regulations and procedures.

16.5 Benchmarking databases and technology in the transfer pricing analysis

Benchmarking databases and technology play a crucial role in transfer pricing analysis, enabling companies to determine arm's length prices for controlled transactions.

- a) **Benchmarking databases provide access to financial and operational data from various sources, including:**
 - i publicly traded companies: Financial statements, annual reports, and other publicly available data;

- ii. private companies: Data from private companies, often obtained through surveys or contributions from participating companies; and
- iii. industry reports: Reports from market research firms, industry associations, and other organisations.

Some popular benchmarking databases include:

- i. Royalty source: Provides royalty rate data for intellectual property transactions;
- ii. Bloomberg BNA: Offers a range of transfer pricing databases, including the Royalty Rate Database and the Transfer Pricing Database;
- iii. Thomson Reuters: Provides access to various benchmarking databases, including the Transfer Pricing Database and the Royalty Rate Database; and
- iv. KPMG's Transfer Pricing Database: A comprehensive database of financial and operational data for benchmarking purposes.

b) Technology used in benchmarking

Advanced technologies are used to analyse and process large datasets, enabling efficient and accurate benchmarking:

- i. Data analytics software: Tools like Excel, Python, R, and SQL are used for data manipulation, analysis, and visualisation.
- ii. Machine learning algorithms: Techniques like regression analysis, clustering, and decision trees are applied to identify patterns and relationships in the data.
- iii. Data visualisation tools: Software like Tableau, Power BI, or D3.js helps to create interactive and dynamic visualizations of the data.
- iv. Cloud-based platforms: Cloud-based solutions, such as Amazon Web Services (AWS) or Microsoft Azure, provide scalable infrastructure for data storage, processing, and analysis.

c) Benefits of benchmarking databases and technology

The use of benchmarking databases and technology in transfer pricing analysis offers several benefits:

- i. improved accuracy: Access to comprehensive and reliable data enables more accurate benchmarking and transfer pricing analysis;
- ii. increased efficiency: Automation and advanced analytics streamline the benchmarking process, reducing the time and resources required;
- iii. enhanced transparency: The use of benchmarking databases and technology provides a clear and transparent framework for transfer

- pricing analysis;
- iv. better risk management: By leveraging benchmarking data and technology, companies can proactively identify and mitigate transfer pricing risks.

By leveraging benchmarking databases and technology, companies can ensure more accurate and efficient transfer pricing analysis, reducing the risk of non-compliance and potential disputes with tax authorities.

16.6 Nigerian Transfer Pricing Regulations

16.6.1 Objectives

The objectives of the Regulations are to:

- a. ensure that Nigeria can tax on an appropriate taxable basis corresponding to the economic activities deployed by taxable persons in Nigeria, including in their transactions and dealings with related persons;
- b. provide the Nigerian authorities with the tools to fight tax evasion through over or under pricing of controlled transactions between related persons;
- c. reduce the risk of economic double taxation;
- d. provide a level playing field for both multinational enterprises and independent enterprises carrying on business in Nigeria; and
- e. provide taxable persons with certainty of transfer pricing treatment in Nigeria.

16.6.2 Scope

The regulations shall apply to transactions between connected taxable persons carried on in a manner not consistent with the arm's length principle and includes:

- a) sale and purchase of goods and services;
- b) sales, purchase or lease of tangible assets;
- c) transfer, purchase, licence or use of intangible assets;
- d) provision of services;
- e) lending or borrowing of money;
- f) manufacturing arrangements; and
- g) any transaction which may affect profit or loss, or any other matter incidental to, connected with, or pertaining to the transactions referred to in the regulation.

16.6.3 Commencement date

The commencement date for Income Tax Transfer Pricing Regulations No 1, 2012 was August 2, 2012, but taxpayers are expected to commence filing of transfer pricing returns from 2013 year of assessment. The commencement date for Income Tax Transfer Pricing Regulations, 2018 was March 12, 2018. Every

taxpayer is therefore expected to develop transfer pricing policy in regard to transfer pricing and control transaction, as well as treatment of transactions of permanent establishment (PE) and dispute resolution.

16.6.4 Connected taxable persons under NTA 2025 and Transfer Pricing Regulations 2018

The NTA, 2025 expands the definition of “connected persons” from the TP Regulations 2018 and now codifies it in primary law. It is used for transfer pricing, anti-avoidance, and related party rules. In section 202 of NTA 2025, Connected persons includes, in the case of:

- (a) Individuals: The individuals are married or are relatives;
- (b) A trustee in relation to a settlement: The trustee and the settlor, or the spouse or a relative of the settlor;
- (c) A partnership: A person is related to the person, or spouse or a close relative of the person with whom he is in partnership;
- (d) A company:
 - (i) A person is connected to a company of which he or his spouse or a close relative has control;
 - (ii) A company is connected to another company where the same person has control over both companies, or connected persons acting separately have control over the companies;
 - (iii) A company is connected to two or more persons who acting together or through a person acting on their directions exercise control over the company; and
 - (iv) Two companies are connected where one company participates directly or indirectly in the management, control or capital of the other company or the same persons participate directly or indirectly in the management, control or capital of a company and another company.
- (e) Other cases: Two persons are connected where:
 - (i) One may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of the other person;
 - (ii) Both persons may reasonably be expected to act in accordance with the directions, requests, suggestions, or wishes of a third person; or
 - (iii) One person has the practical ability to control the business decisions of another person.

Provided that two persons are not connected solely by virtue of the fact that one person is the employee or client of the other or both persons are employees or clients of a third person.

Special cases added by NTA 2025

- (a) Digital/e-commerce: Nigerian entity and foreign platform/related entity if they coordinate pricing or profit allocation.
- (b) SEP: Significant Economic Presence and its foreign principal are deemed connected.
- (c) Intangibles/Intellectual property (IP): Licensor and licensee where one controls use of IP and pricing.
- (d) Joint ventures (JV): Parties to a JV where one contributes greater than or equal to 25% of capital/assets.

These relationships can impact transfer pricing, and the Nigerian tax authorities may scrutinise transactions between connected taxable persons to ensure that they are conducted at arm's length.

Under the Transfer Pricing Regulations, 2018, connected taxable persons are individuals or entities that have a relationship with each other that can affect their transfer pricing. The Nigerian Transfer Pricing Regulations, 2018, defines connected taxable persons as:

- a) Connected persons include:
 - i. **Husband and wife:** A husband and wife are considered connected persons.
 - ii. **Relatives:** Relatives, such as parents, children, siblings, and grandparents, are considered connected persons.
 - iii. **Partners:** Partners in a partnership are considered connected persons.
 - iv. **Trustees and beneficiaries:** Trustees and beneficiaries of a trust are considered connected persons.
- b) Connected entities include:
 - i) **Subsidiaries:** A subsidiary and its parent company are considered connected entities.
 - ii) **Associated companies:** Companies that are associated with each other through common ownership or control are considered connected entities.
 - iii) **Joint ventures:** Parties to a joint venture are considered connected entities.
 - iv) **Entities under common control:** Entities that are under common control, such as entities controlled by the same individual or group, are considered connected entities.
- c) Other connected persons are:
 - i) **Agents and principals:** An agent and its principal are considered connected persons.
 - ii) **Employees and employers:** An employee and their employer are considered connected persons.

- iii) **Entities with significant influence:** Entities that have significant influence over each other's financial and operating policies are considered connected entities.

These relationships can impact transfer pricing, and the Nigerian tax authorities may scrutinize transactions between connected taxable persons to ensure that they are conducted at arm's length.

16.6.5 Transfer pricing methods and evaluation of taxpayer's - controlled transactions

Controlled transaction constitutes commercial or financial transaction between connected taxable persons.

Determination of appropriate market prices of products and services which will reflect arm's length transactions is usually difficult due to unavailability of similar products or services with which to be compared in the open market.

The Acts empower the tax authorities to set aside the prices charged in related parties' transactions if same are not made at arm's length to reduce tax avoidance.

The transfer pricing methods

The following transfer pricing methods can be applied to determine whether the result of a transaction or series of transactions are consistent with the arm's length principle. They are classified into two categories as follows:

- (a) Traditional transaction methods
- (b) The comparable uncontrolled price (CUP) method;
 - The resale price method;
 - The cost-plus method;
- (c) Transactional profit methods
 - The transactional net margin method; or
 - The transactional profit split method; and

Any other method which may be prescribed by regulations made by the service from time to time.

Comparable uncontrolled price method (CUPM)

CUPM compares the prices charged for transactions between associated enterprises (related parties) with prices charged for similar transactions between independent enterprises (unrelated parties) in comparable circumstances. Any difference between the two prices is an indication that the transactions between the associated enterprises are not made at arm's length. For example, Ben Ltd and Bella Ltd are members of the same group. If Ben Ltd sells a particular product to independent parties as well as to Bella Ltd under similar circumstances, the prices charged for Ben Ltd.'s sales to independent parties can be compared with prices charged for Ben Ltd.'s sales to Bella Ltd (internal comparable).

In the same vein, if an independent party Me Ltd sells to another independent party No Ltd. the same product sold by Xim Ltd., the prices charged by Me Ltd can also be used as the basis for comparison

(external comparable). The tax authority may reject the prices for transactions between Xim Ltd. and Yaw Ltd (associated enterprises) and adopt the prices for transactions between independent enterprises for tax purposes.

On the other hand, when applying the CUPM, it is important to note that prices for the same product may differ not necessarily because of being sold to associated or independent enterprises, but because the product is not sold under similar terms and circumstances in comparable quantities and markets. It is usual to make reasonable comparability adjustments for such differences.

Resale price method (RPM)

RPM starts with the determination of resale price to an independent enterprise of a product purchased from an associated enterprise and a gross margin is then deducted from this resale price.

Example:

Godwill Ltd and Tent Ltd. are related companies. Godwill Ltd transfers goods to Tent Ltd which Tent Ltd. sells to independent parties. Under the resale price method, the arm's length price of the product acquired by Tent Ltd. in a non-arm's length transaction is determined by reducing the price realised on the resale of the product by Tent Ltd to independent parties by an appropriate gross margin (resale price margin). Tent Ltd.'s gross margin may be determined by reference to the gross margin that Tent Ltd usually earns in comparable transactions with independent parties (internal comparable), or by reference to the gross margin earned by independent enterprises in comparable transactions (external comparable) within the industry.

Cost-plus method (CPM)

CPM relates gross profits to the cost of sales. It starts with the determination of the costs incurred by the supplier in a controlled transaction. An appropriate mark-up will be added to this cost to arrive at the correct transfer price.

Example:

D Ltd and G Ltd. are related companies. D Ltd. transferred 10,000 units of its product to G Ltd at ₦700 per unit. The direct costs incurred by D Ltd to produce the product amounted to ₦400 per unit. The arm's length mark-up earned by companies producing / selling similar product to independent parties is 45%. Therefore, the tax authority will recognise D Ltd's sales to G Ltd as 5,800,000 (i.e. 10,000 units x ₦400 x 145%) instead of ₦7,000,000 (i.e. 10,000 units x ₦700). If the method uses direct costs as in the example, then, the mark-up should cover indirect costs, overheads and profit.

Profit split method (PSM)

PSM starts with the determination of the combined profit that arises from a business transaction in which the associated enterprises are engaged. This profit is then shared among the associated enterprises in a manner that reflects the division of profit that would have been expected among independent enterprises. The combined profit or loss attributed to the transactions in which the

associated enterprises participated is allocated to the associated enterprises in proportion to their relevant contributions to that combined operating profit or loss.

Transactional net margin method (TNMM)

TNMM begins with the determination of the net profit margin that an enterprise earns from transactions with an associated enterprise is compared with the net profit margin earned in comparable transactions with an independent enterprise.

A suitable net margin may be established by reference to the net margin that the enterprise earns in comparable transactions with independent enterprises (internal comparable), or by reference to the net margin earned in comparable transactions by independent enterprises (external comparable). The transactional net margin method is applied in a manner similar to the cost plus and resale price methods. On the other hand, the transactional net margin examines the net profits in relation to an appropriate base (for example, costs, sales, assets) and not gross margin on resale or mark-up on costs.

16.6.6 Advance pricing agreements (APA)

- a) A connected person may request that the service enter into an advance pricing agreement (APA) to establish an appropriate set of criteria for determining whether the person has complied with the arm's length principle for certain future-controlled transactions undertaken by the person over a fixed period of time provided that such agreement shall be consistent with the requirements established by the regulation.
- b) A request for advance pricing agreements shall be accompanied by:
 - i) A description of the activities of the taxable person to be addressed by the advance pricing agreement, including:
 - a detailed description of the controlled transactions to be included within the scope of the advance pricing agreement;
 - an analysis of functions to be performed, assets to be employed and risks to be assumed by the parties to the covered transactions; and
 - the proposed duration of the advance pricing agreement;
 - ii) A proposal by the taxable person for the determination of the transfer prices for the transactions to be covered by the advance pricing agreement, including the following information:
 - an analysis of the comparability factors;
 - the selection of the most appropriate transfer pricing method to the circumstances of the controlled transactions; and
 - the critical assumptions as to future events under which the determination is proposed;
 - iii) The identification of any other country or countries that the person wishes to participate in the advance pricing agreement;
 - iv) Any other relevant information that the Service may require to complete its analysis of the advance pricing agreement request.
- c) The Service may accept, modify or reject a request made by a connected person after

considering documents/information that accompanied the request and the expected benefits from an advance pricing agreement.

d) The service may in addition to accept, modify or reject a request may specify the basis for acceptance, modification or rejection of a request.

e) The service may enter into an advance pricing agreement with a taxable person either alone or together with the competent authority of countries of the connected person.

Where the service approves or modifies a proposal, it may enter into an advance pricing agreement which shall provide, among other things, a confirmation to the connected person that no transfer pricing adjustment will be made to controlled transactions covered by the Agreement where the transactions are consistent with the terms of the Agreement.

f) An advance pricing agreement entered under this regulation shall apply to the controlled transactions for a period not exceeding three years.

g) The Service may terminate an advance pricing agreement by notice where:

- i. the connected person has failed to materially comply with fundamental terms of the Advance pricing agreement;
- ii. there has been a material breach of one or more of the critical assumptions underlying the advance pricing agreement;
- iii. there is a change in the tax law that is materially relevant to the Advance pricing agreement; or
- iv. the advance pricing agreement was entered into based on a misrepresentation, mistake or omission by the connected person.

h) A connected person may terminate an advance pricing agreement by a notice given to the Service where:

- i. there is a material change in the premise upon which the advance pricing request was made;
- ii. the advance pricing agreement is no longer relevant based on significant changes to the structure of the controlled transaction; or
- iii. there is a change in tax law applicable in the jurisdiction of the controlled transaction that is materially relevant to the Advance pricing agreement.

i) The Service shall treat as confidential any trade secret or other commercially sensitive information or documentation provided to the Service while negotiating or entering into an Advance pricing agreement.

j) Termination of an advance pricing agreement takes effect, in the case of:

- i. sub-regulation (8) (a) and (c) of this regulation, from the date specified by the Service in the notice of termination;
- ii. sub-regulation (8) (b) of this regulation, from the date the material breach occurred;
- iii. sub-regulation (8) (d) of this regulation, from the date the advance pricing agreement was entered into; and
- iv. sub-regulation (9) of this regulation, from the date specified in the notice of termination.

16.6.7 Functional analysis in transfer pricing

Functional analysis is a crucial step in the transfer pricing process, particularly when applying the Transactional Net Margin Method (TNMM) or the Comparable Profits Method (CPM).

Functional analysis is a detailed examination of the functions performed, risks assumed, and assets employed by each entity within a multinational enterprise (MNE) group. This analysis helps identify the economic activities, responsibilities, and contributions of each entity involved in controlled transactions.

The objectives of functional analysis are to:

- a) **identify functions:** Determine the specific functions performed by each entity, such as manufacturing, marketing, distribution, research and development (R&D), and management;
- b) **assess risks:** Evaluate the types and levels of risks assumed by each entity, including market risks, credit risks, operational risks, and financial risks;
- c) **determine assets:** Identify the assets employed by each entity, such as tangible assets (for example, property, plant, and equipment), intangible assets (for example, patents, trademarks), and financial assets;
- d) **analyse responsibilities:** Examine the responsibilities and decision-making authority of each entity, including strategic decisions, operational management, and financial control;

The steps involved in functional analysis are:

- a) **Gather information:** Collect relevant data and documents, such as organisational charts, job descriptions, financial statements, and contracts.
- b) **Identify controlled transactions:** Determine the controlled transactions between entities within the MNE group.
- c) **Analyse functions, risks, and assets:** Examine the functions performed, risks assumed, and assets employed by each entity involved in controlled transactions.
- d) **Evaluate comparability:** Assess the comparability of the functions, risks, and assets of each entity to those of independent companies.

Importance of functional analysis

Functional analysis is essential in transfer pricing as it:

- a) **Ensures accurate pricing:** Helps determine arm's length prices for controlled transactions.
- b) **Supports TNMM and CPM:** Provides critical input for these transfer pricing

methods.

- c) **Enhances transparency:** Facilitates understanding of the economic activities and contributions of each entity within the MNE group.
- d) **Reduces risk of disputes:** Helps mitigate potential transfer pricing disputes with tax authorities.

By conducting a thorough functional analysis, MNEs can ensure compliance with transfer pricing regulations, reduce the risk of disputes, and maintain accurate and transparent pricing practices.

16.6.8 Basic comparability factors in the process of benchmarking

- a) In the process of transfer pricing benchmarking, the following basic comparability factors are considered:
 - (i) **Functions**
 - Functions performed by the entities being compared (for example, manufacturing, marketing, distribution);
 - Degree of responsibility and decision-making authority.
 - (ii) **Contractual terms**
 - Terms and conditions of the controlled transaction (for example, payment terms, delivery terms);
 - Level of risk assumed by each party.
 - (iii) **Economic conditions**
 - Market conditions (for example, demand, competition, market size)
 - Economic indicators (for example, GDP, inflation rate, interest rates)
 - (iv) **Property or services**
 - Characteristics of the property or services being transferred (for example, quality, quantity, specifications)
 - Intangibles (for example, patents, trademarks, know-how)
 - (v) **Risks**
 - Level of risk assumed by each party (for example, market risk, credit risk, operational risk)
 - How risks are allocated between the parties
 - (vi) **Industry and market**
 - Industry characteristics (for example, growth rate, profitability, competitive

landscape)

- Market characteristics (for example, market size, demand, competition)

(vii) Geographic location

- Location of the entities being compared (for example, country, region, city)
- Local market conditions and economic indicators

(viii) Business strategies

- Business strategies employed by the entities being compared (for example, cost-plus, market-based, value-based)
- How business strategies impact pricing decisions

(ix) Tax and regulatory environment

- Tax laws and regulations applicable to the entities being compared
- Impact of tax and regulatory environment on pricing decisions

(x) Timing

- Timing of the controlled transaction (for example, date of sale, date of payment)
- How timing impacts pricing decisions

(b) Basic documentation requirements for transfer pricing benchmarking:

(i) Master file

- Overview of the multinational enterprise (MNE) group's business
- Description of the MNE group's organisational structure
- Financial and operational data for the MNE group

(ii) Local file

- Detailed information about the local entity's business operations
- Description of the local entity's functions, risks, and assets
- Financial and operational data for the local entity

(c) Benchmarking study

- i) Description of the benchmarking methodology used
- ii) Identification of the comparables used in the study
- iii) Analysis of the comparables' financial and operational data
- iv) Conclusion on the arm's length price or range

(d) Financial statements

- i) Audited financial statements for the local entity and the MNE group

- ii) Financial statements for the comparables used in the benchmarking study
- (e) Transfer pricing policy
 - i) Description of the MNE group's transfer pricing policy
 - ii) Explanation of the methodology used to determine arm's length prices
 - iii) documentation of the transfer pricing policy's implementation and review process.
- (f) Inter-company agreements
 - i) Copies of intercompany agreements, such as contracts and memoranda of understanding
 - ii) Description of the terms and conditions of the intercompany agreements
- (g) Country-by-Country Reporting (CbCR)
 - i) Documentation of the MNE group's CbCR, including:
 - ii) Revenue and profit/loss data
 - iii) Number of employees
 - iv) Tangible assets
 - v) Tax paid
- (h) Supporting documentation

Any additional documentation that supports the transfer pricing analysis, such as:

 - (i) market research reports;
 - (ii) industry studies; and
 - (iii) economic analyses.

16.7 Provisions of the Nigeria Tax Act, 2025 in respect of artificial transactions and transactions between related parties

Section 191(1) of NTA, 2025 provides that, where a relevant tax authority is of the opinion that a disposition is not given effect to, or that a transaction which reduces or may reduce the amount of tax payable, is artificial or fictitious, it may disregard any such disposition or transaction, or direct that such adjustments be made with respect to liability to tax as it considers appropriate, to counteract the deduction of liability to tax and issue an assessment or additional assessment accordingly.

Section 191(3)(b) further states that a transaction between connected persons shall be deemed to be artificial or fictitious if, in the opinion of the relevant tax authority, the transaction has not been made at arm's length.

Regarding transactions between related parties, section 192(1) of NTA 2025 states that a company involved in an arrangement with a related party shall:

- (a) ensure that the terms and conditions for which the arrangement is carried out is at arm's length; and
- (b) report the arrangement in the form and manner prescribed by the relevant tax authority.

However, where in the opinion of a relevant tax authority, a company has entered into an arrangement with a related party which is not at arm's length, section 192(2) provides that the relevant tax authority may effect necessary adjustments to bring the arrangement in conformity to arm's length terms as provided under the Transfer Pricing Regulations.

It is pertinent to note that under section 192(4), an "arrangement" includes any agreement understanding, scheme, financial or commercial relation, transaction or series of transactions.

"Arm's length terms and conditions" means such terms and conditions obtainable if the transactions or arrangement was between unrelated parties dealing in comparative circumstances.

16.8 Dispute resolution mechanisms

- a) Advance pricing agreements (APAs)
 - i) A prior agreement between the taxpayer and the tax authority on the transfer pricing methodology.
 - ii) Can be unilateral (with one tax authority) or multilateral (with multiple tax authorities).
- b) Mutual agreement procedures (MAPs)
 - i) A process for resolving transfer pricing disputes between two or more tax authorities.
 - ii) Aimed at avoiding double taxation and preventing fiscal evasion.
- c) Competent authority (CA) proceedings
 - i) A process for resolving transfer pricing disputes between tax authorities.
 - ii) Involves negotiations between the competent authorities of the countries involved.
- d) Arbitration

- i) A binding process for resolving transfer pricing disputes.
 - ii) Involves an independent third-party arbitrator or panel.
- e) Mediation
 - i) A non-binding process for resolving transfer pricing disputes.
 - ii) Involves a neutral third-party mediator who facilitates negotiations.
- f) Transfer Pricing Audits and Appeals
 - i) A process for resolving transfer pricing disputes through audits and appeals.
 - ii) Involves a review of the taxpayer's transfer pricing documentation and policies.
- g) International Arbitration Courts
 - i) Specialised courts that resolve international tax disputes, including transfer pricing disputes.
 - ii) Examples include the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA).
- h) Bilateral Advance Pricing Agreements (BAPAs)
 - i) A prior agreement between the taxpayer and two or more tax authorities on the transfer pricing methodology.
 - ii) Aimed at providing certainty and avoiding disputes.

Dispute resolution under the Nigerian Transfer Pricing Regulations

Based on the 2018 guidelines, a taxpayer who has any objection on assessment cannot approach the Decision Review Panel for a review of the assessment received from NRS.

Taxpayers are now expected to lodge their complains with the Head, NRS. Transfer Pricing Unit (TPU) within 30 days after the date of receipt of the assessment notice.

Effective March 12, 2018, the Head of TPU has the prerogative to decide whether or not to refer the taxpayer's objection to the Decision Review Panel.

16.9 Offences and penalties under Transfer Pricing Regulations 2018

- (a) A taxable person who contravenes any of the provisions of transfer pricing regulation with respect to filing of transfer pricing returns shall be liable to a penalty as prescribed in the relevant provision of the applicable tax law – NTA, 2025.
- (b) A taxable person who fails to make disclosures of controlled transactions shall be liable to penalty of:
 - i. ten million Naira or one percent of the value of controlled transaction not disclosed, whichever is higher; and
 - ii. ten thousand Naira for every day in which the failure continues.
- (c) Where a connected person makes an incorrect disclosure of transactions, an administrative penalty of ten million Naira or one percent of the value of controlled transactions incorrectly disclosed, whichever is higher shall apply.

16.10 Deductibility of payment for intangibles to non-resident companies

The deductibility of payments for intangibles to non-resident companies is a complex issue that depends on various factors, including the tax laws of the country where the payer is resident and the nature of the intangible asset. Here's a general overview:

a) General principle

In general, payments for intangibles, such as royalties, licensing fees, or technical service fees, are deductible expenses for tax purposes. However, the deductibility of these payments may be subject to certain conditions and limitations.

b) Conditions for deductibility

To be deductible, payments for intangibles to non-resident companies must typically meet the following conditions:

- i. Business purpose: The payment must be made for a legitimate business

purpose, such as acquiring a necessary technology or expertise.

- ii. Arm's length transaction: The payment must be made at arm's length, meaning that the terms and conditions of the transaction must be comparable to those that would be agreed upon between unrelated parties.
- iii. Documentation: The payer must maintain adequate documentation to support the payment, including records of the transaction, the terms and conditions of the agreement, and the benefits received.
- iv. Tax treaty requirements: If the payer and the recipient are resident in different countries, the payment may be subject to the provisions of a tax treaty between the two countries.

c) Limitations on deductibility

There are several limitations on the deductibility of payments for intangibles to non-resident companies:

- i. Withholding tax: The payer may be required to withhold tax on the payment, which can reduce the amount of the payment that is deductible.
- ii. Transfer pricing adjustments: If the payment is not made at arm's length, the tax authorities may adjust the payment to reflect the arm's length price, which can affect the deductibility of the payment.
- iii. Thin capitalisation rules: If the payer is thinly capitalised, the tax authorities may disallow the deduction for the payment or recharacterise it as a dividend or interest payment.
- iv. Anti-avoidance rules: Tax authorities may have anti-avoidance rules that target payments for intangibles to non-resident companies, which can limit or deny the deductibility of the payment.

d) Country-specific rules

The deductibility of payments for intangibles to non-resident companies can vary significantly depending on the country where the payer is resident. For example:

- i. United States: The US tax code has specific rules for the deductibility of payments for intangibles, including the requirement that the payment be made pursuant to a written agreement.
- ii. Canada: Canadian tax law requires that payments for intangibles be made at arm's length and that the payer maintain adequate documentation to support

the payment.

- iii. European Union: The EU has specific rules for the deductibility of payments for intangibles, including the requirement that the payment be made for a legitimate business purpose.

In conclusion, the deductibility of payments for intangibles to non-resident companies is a complex issue that depends on various factors, including the tax laws of the country where the payer is resident and the nature of the intangible asset. It is essential to consult with a tax professional to ensure compliance with the relevant tax laws and regulations.

16.11 Transfer pricing returns and due dates for filing

In Nigeria, the Nigeria Revenue Service (NRS) requires taxpayers to file various transfer pricing returns to demonstrate compliance with the country's transfer pricing regulations. Here are the types of transfer pricing returns and their filing due dates in Nigeria:

16.11.1 Types of transfer pricing returns

- i. Transfer pricing (TP) declaration form: A form that requires taxpayers to declare their related-party transactions and provide basic information about their transfer pricing policies.
- ii. Transfer pricing disclosure form: A form that requires taxpayers to provide detailed information about their related-party transactions, including the transfer pricing methodology used and the amounts involved.
- iii. Country-by-Country Reporting (CbCR) template: A template that requires taxpayers to provide a breakdown of their global revenue, profit, and taxes paid on a country-by-country basis.

16.11.2 Filing due dates

The filing due dates for transfer pricing returns in Nigeria are as follows:

- i. transfer pricing (TP) declaration form: Due on or before the June 30, of each year, covering the preceding calendar year;
- ii. transfer pricing disclosure form: Due on or before the September 30, of each year, covering the preceding calendar year; and
- iii. Country-by-Country Reporting (CbCR) Template: Due on or before the December 31, of each year, covering the preceding calendar year.

16.11.3 Additional requirements

Taxpayers in Nigeria are also required to:

- i. maintain transfer pricing documentation: Taxpayers must maintain contemporaneous transfer pricing documentation, including documentation on their transfer pricing policies, related-party transactions, and transfer pricing methodologies;
- ii. submit transfer pricing documentation upon request: Taxpayers must submit their transfer pricing documentation to the NRS upon request.

16.12 Other relevant documentations required

16.12.1 Documentation

Transfer Pricing documentation will include:

- (a) transfer pricing policy;
- (b) transfer pricing compliance report; and
- (c) transfer pricing returns i.e. TP declaration and disclosure forms.

16.12.2 Transfer pricing policy

A transfer pricing policy is a document that guides the conduct of related parties' transaction within a group of companies. There are two types of transfer pricing policy:

- (a) group transfer pricing policy; and
- (b) local transfer pricing policy.

16.12.3 Features of a transfer pricing policy

Features of a transfer pricing policy include:

- (a) typically, prospective in nature;
- (b) typically, not updated unless there are significant changes in Business;
- (c) provides a future view of likely intercompany transactions; and
- (d) provides guidance on pricing of the transactions and methodology.

16.12.4 Transfer pricing compliance report

The documentation retained by a connected person shall be adequate to enable the Service verify that the controlled transaction is consistent with the arm's length principle. The burden of proof that the conditions of the controlled transactions are consistent with the arm's length principle shall be that of the taxable person and the taxable person will be regarded as satisfying this burden of proof if it provides

documentation consistent with this regulation to support compliance with the arm's length principle of the taxable profits derived from its controlled transactions.

16.12.5 Transfer pricing declaration form to be submitted to the Nigeria Revenue Service

The Nigeria Revenue Service expects all taxpayers to develop appropriate transfer pricing policy and provide relevant information to be stated in transfer pricing declaration form that contain the following:

- (a) particulars of reporting company or entity;
- (b) particulars of immediate parent company;
- (c) particulars of directors of reporting company;
- (d) particulars of major shareholders of reporting company and related parties;
- (e) ownership, structure of reporting entity and related parties;
- (f) particulars of subsidiaries and other connected persons;
- (g) particulars of external auditors of reporting entity;
- (h) particulars of tax consultant of the reporting entity;
- (i) particulars of company secretary of the reporting entity;
- (j) particulars of the person making the declaration; and
- (k) declaration.

16.12.6 Transfer pricing disclosure form to be submitted to the Nigeria Revenue Service

The Nigeria Revenue Service expects all taxpayers to develop appropriate transfer pricing policy and provide relevant information to be stated in transfer pricing disclosure form that contain the following:

- (a) particulars of reporting company or entity;
- (b) income from controlled transactions;
- (c) costs of controlled transactions;
- (d) summary of controlled transactions with connected persons;
- (e) transfer pricing method and documentation;
- (f) basic financial information for reporting entity and the group;
- (g) particulars of the person making the disclosure; and
- (h) declaration.

16.13 Chapter review

This chapter discusses the unique process of transfer pricing. Readers can appreciate the source and reasons for the transfer pricing. In addition, parties involved, relevant basis for decisions, processes and procedures for transfer pricing are clearly stated.

Tax handling, offences and related penalties are highlighted. A good study of this chapter will reveal vividly, the usefulness of transfer pricing as a verifiable tool to curb tax evasion and aggressive avoidance by taxpayers.

16.14 Worked examples

16.14.1 Questions

1. Transfer pricing refers to the rules and methods for pricing transactions within and between enterprises under common ownership or control. It plays a critical role in international taxation, as it determines how profits are allocated across different jurisdictions. The goal of transfer pricing regulations is to ensure that transactions between related entities are conducted at arm's length.

Required:

- a) Explain "arm's length price".
 - b) Identify the items that constitute controlled transactions
 - c) Identify the contents of the declaration form and disclosure form that should be submitted to the Federal Inland Revenue Service.
2. Multinational companies (MNCs) play a pivotal role in Nigeria's economic landscape, contributing significantly to sectors, such as oil and gas, telecommunications, banking, manufacturing, and agriculture. Their operations have introduced advanced technologies, global best practices, and foreign direct investment, which have helped stimulate economic growth, create employment, and enhance infrastructure development.

However, the activities of MNCs are not without controversy. Concerns persist over environmental degradation, tax avoidance, and the marginalisation of local enterprises, raising questions about equitable development and corporate accountability.

Required:

Discuss any **three** areas in which the operations of multinational companies in Nigeria could constitute difficulties in the determination of their tax liabilities to the Nigerian government.

3. Transfer pricing documentation refers to the detailed records that multinational enterprises are required to maintain to demonstrate that their intercompany transactions are conducted at arm's length. This documentation is essential for ensuring compliance with local and international tax regulations, providing transparency to tax authorities, and mitigating the risk of audits and penalties.

Required:

- (a) Explain key features of a transfer pricing policy.
- (b) Explain any three key transfer pricing documentation.

4. In the context of transfer pricing, a 'connected person' refers to individuals or entities that have a direct or indirect relationship with a company, such that they can influence the terms and conditions of transactions between them.

Required:

Identify “connected persons” as described in the relevant provisions of the Nigeria Tax Act, 2025.

16.14.2 Suggested solutions to questions

- 1 (a) **Arm's length price:** This is the price charged for the transfer of goods, services or intangible property between connected taxable persons which corresponds to the price that would have been charged by independent persons under similar circumstance.

(b) **Items that constitute controlled transactions include:**

- Sale and purchase of goods and services;
- Sale, purchase or lease of tangible assets;
- Purchase, licence of intangibles;
- Provision of services;
- Lending and/or borrowing;
- Manufacturing arrangement; and
- Any other controlled transaction which may affect statement of comprehensive income such as management and technical services, etc.

(c) **Contents of a declaration form**

- i. Particulars of reporting company or entity
- ii. Particulars of immediate parent company
- iii. Particulars of directors of reporting company
- iv. Particulars of major shareholders of reporting company and related parties
- v. Ownership, structure of reporting entity and related parties
- vi. Particulars of subsidiaries and other connected persons
- vii. Particulars of external auditors of reporting entity
- viii. Particulars of tax consultant of the reporting entity
- ix. Particulars of company secretary of the reporting entity
- x. Particulars of the person making the declaration

Contents of a disclosure form

- i. Particulars of reporting company or entity
- ii. Income from controlled transactions
- iii. Costs of controlled transactions
- iv. Summary of controlled transactions with connected persons

- v. Transfer pricing method and documentation
 - vi. Basic financial information for reporting entity and the group
 - vii. Particulars of the person making the disclosure
2. The following are some of the areas which could constitute difficulties in the determination of tax liabilities of multinational companies' operations in Nigeria:
- (a) **Different pricing of goods/services at purchase cost** in a multinational group, one member of the group in one country may supply goods or services to another member in another country. The prices charged create sales revenue for the company selling the goods or services and purchase cost for the company buying the goods or services. These will eventually affect the profits of each company which are accountable to different tax jurisdictions.

Example:

A multinational company has its subsidiary in Nigeria and head office in United States of America (USA). The Nigerian subsidiary charges low prices (below open market prices) for goods supplied to the parent company in USA. On the other hand, the parent company overcharges the Nigerian subsidiary for services rendered to the subsidiary. Consequently, the Nigerian subsidiary records low profits and pays less tax to the Nigerian Government, while the parent company declares more profits and pays more tax to the tax authority in USA. In many cases the profit is shifted to another country with a lower tax rate or no tax for example, a tax haven.
 - (b) **Tax avoidance**

Transfer prices have serious tax implications and multinational transfer pricing can provide an avenue for tax avoidance.

Companies within the same group which are under different tax jurisdictions may decide to overprice or under-price inter-group transactions depending on what they want to achieve.
 - (c) **Custom duties and tariff manipulation**

Transfer prices will also affect customs duties paid on imports and exports. For example, if the transfer prices on imports into a country are lowered, the import duties and other tariffs on the imports will equally be reduced.
 - (d) **Dividends manipulation**

Multinational transfer prices may also be influenced by dividend considerations. Consider a situation that Nigeria puts a restriction on the amount that a company can pay out as dividend to parties outside the country. A parent company based in Germany may decide to overprice goods and services transferred to its subsidiary in Nigeria. In that way,

more funds leave the subsidiary company in Nigeria to Germany without appearing to violate the dividend restriction.

(e) Imposition of excessive charges

The parent company can also impose excessive charges (for example, royalties) on its foreign subsidiaries, associates, etc in respect of the provision of intangibles such as patents, licenses, trademarks, etc and use these avenues to extract profits to a tax haven or jurisdictions with favourable tax requirement.

Where the head office of the multinational or a member of the group incurs expenses which are for the benefits of all or many members of the group. The allocation of the joint costs to members of the group will certainly affect their profits and taxes.

In a global economy where multinational enterprises (MNEs) play a prominent role, governments need to ensure that the taxable profits of MNEs are not artificially shifted out of their jurisdiction and that the tax base reported by MNEs in their country reflects the economic activity undertaken therein. For taxpayers, it is essential to limit the risks of economic double taxation that may result from a dispute between two countries on the determination of the arm's length remuneration for their cross-border transactions with associated enterprises as expressed by OECD.

There are provisions in the Nigerian tax laws which give the relevant tax authority power to make appropriate adjustment to counteract the reduction or would be reduction in tax liability where transactions between connected persons or related parties are not made at arm's length and the tax authority feels that such transactions are made to reduce the tax liability.

3 (a) A transfer pricing policy is a document that guides the conduct of related parties' transaction within a group of companies. There are two types of transfer pricing policy:

- (i) Group transfer pricing policy; and
- (ii) Local transfer pricing policy.

Key features of a transfer pricing policy include:

- (i) typically prospective in nature;
- (ii) typically not updated unless there are significant changes in business;
- (iii) provides a future view of likely intercompany transactions; and
- (iv) provides guidance on pricing of the transactions and methodology.

(b) Transfer pricing documentations include:

- (i) transfer pricing policy;

- (ii) transfer pricing compliance report; and
 - (iii) transfer pricing returns, that is, transfer pricing declaration and disclosure form
4. Connected taxable persons include persons, individual, entities, companies, partnerships, joint ventures, trust or associations (collectively referred to as “Connected Taxable Persons”). The NTA, 2025 does not invent a brand-new definition. It largely carries forward the “connected taxable persons” concept from the Income Tax (Transfer Pricing) Regulations 2018, but expands its application.

The following persons will be regarded as connected taxable persons (that is, related parties) within the context of the Income Tax (Transfer Pricing), Regulations, 2018:

- (a) any entity dealing with a related party (associate, subsidiary, joint venture);
- (b) a member of a local group of companies;
- (c) members of a conglomerate;
- (d) multinationals;
- (e) an entity in a group located in the free zone;
- (f) a group entity that has a pioneer status;
- (g) intra company profits is taxable under different regimes, for example, tax-exempt export profits;
- (h) loss making entity within a profitable group; and
- (i) related parties subject to tax at different rates.

BASE EROSION AND PROFIT SHIFTING

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17 Base Erosion and Profit Shifting

17.0 Learning objective

The learning objective of this chapter is to enable readers understand the tax evading and avoiding process referred to as base erosion and profit shifting as well as the recommended ways to overcoming it.

17.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) differentiate between base erosion and profit shifting;
- (b) know the primary players in base erosion and profit shifting;
- (c) know base erosion and profit shifting techniques; and
- (d) understand actions against base erosion and profit shifting.

17.2 Introduction

17.2.1 Base erosion

Base erosion is the use of financial measures and tax planning to reduce the size of the company's taxable profits in a country. It is often achieved by structuring income to have more favourable tax treatment or by finding ways to write off certain expenditure against taxable income. This has the effect of reducing a company's tax payment below what it would otherwise has been.

17.2.2 Profit shifting

Profit shifting involves making payment to other group companies to move profit from high-tax jurisdictions to lower-tax regimes. This serves to increase the overall profits available to the group shareholders. Often, these intra-group payments take the form of royalties and interest payments, as these expenses can be deducted from pre-tax profits. Another issue with these types of payment is that some jurisdictions have lower tax rates on them when received as income by other persons.

Essentially, base erosion and profit shifting (BEPS) refers to corporate tax planning strategies used by multinationals to "shift" profits from higher-tax jurisdictions to lower-tax jurisdictions, thus "eroding" the "tax- base" of the higher-tax jurisdictions.

17.3 Primary players in base erosion and profit shifting

Multinational group of companies are best placed to take advantage of these tax avoidance tactics due to the following factors:

- (a) their international operations provide a ready-made network of companies through which group funds can flow;

- (b) they have capital to set up and maintain entities used for tax reduction purposes; and
- (c) their income tends to be large enough to support the cost of (i) taking advice on tax restructuring (ii) putting in place and maintaining the recommended tax structure and (iii) updating the structure with countries' changes in tax law.

17.4 Base erosion and profit shifting techniques

17.4.1 Base erosion and profit shifting could be achieved using any or combination of the following techniques:

- a) **Trademark and technology licensing/transfer pricing** – Managing the group's trademark, design and patent through an entity that applies a lower tax rate to intellectual property, then charging group companies royalties on the use of the brand.
- b) **Thin capitalisation** – By setting up subsidiaries with minimal share capital, group can use a financing arm to fund the new company's operation with debt. This large debt attracts interest, which has different treatment in some jurisdiction and can therefore reduce the group tax payment if structured correctly.
- c) **Hybrid mismatch arrangements** – Different tax rules between countries can sometimes give rise to unintended effects like "double non-taxation" which can be exploited by businesses to reduce their tax burden. This primarily applies to national treatment of certain instruments in such a way that they are treated in the paying country as tax deductible debt, but seen in the receiving country as tax exempt income.
- d) **Putting assets into entity without substance** – Some countries introduce preferential tax regimes as a way to compete for business. However, this is only useful if the business with substance begin to locate themselves in the country, otherwise, this form of tax competition simply erodes the tax base of the country where the activity takes place.

17.5 Contributory factors to base erosion and profit shifting

- a) **Digital economy:** Digital economy means that services can be delivered from anywhere while generating values and making sales everywhere. Taxation of digital transactions has become a herculean task for tax authorities all over the world because digital transactions require little or no physical presence of the parties to which income accrues, in the jurisdiction of the consumer. It is usually challenging to determine whether tax on cross border transactions should be paid to the jurisdiction where value is created or consumed.
- b) **International cooperation:** Since tax is levied domestically, it is difficult to determine what should be taxed where, and in what manner, without some form of international cooperation and exchange of information.

17.6 Actions against base erosion and profit shifting

Base erosion and profit shifting (BEPS) refers to tax avoidance strategies that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax locations. Under the inclusive framework, over 100 countries and jurisdictions are collaborating to implement the BEPS measures and tackle BEPS.

The Organisation for Economic Cooperation and Development (OECD)'s base erosion and profit shifting (BEPS) initiative seeks to close gaps in international taxation for companies that allegedly avoid taxation or reduce tax burden in their home country by engaging in tax inversions (moving operations) or by migrating intangibles to lower tax jurisdictions.

The OECD has issued 15 action items to address the main areas where they feel companies have been most aggressively accomplishing this shifting of profit. The action items are as follows:

- (a) **Address the tax challenges of the digital economy:** Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterisation of income derived from new business models, the application of related source rules, and how to ensure the effective collection of value added tax or goods and services tax with respect to the cross-border supply of digital goods and services.
- (b) **Neutralise the effects of hybrid mismatch arrangements:** Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (for example, double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. This may include:
 - (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual resident entities) are not used to obtain the benefits of treaties unduly;
 - (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payer;
 - (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules);
 - (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and
 - (v) where necessary, guidance on co-ordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be coordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping.
- (c) **Strengthen controlled foreign company (CFC) rules.** Develop recommendations regarding the design of controlled foreign company rules. This work will be coordinated with other work as necessary.
- (d) **Limit base erosion via interest deductions and other financial payments:** Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest

payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be coordinated with the work on hybrids and CFC rules.

- (e) **Counter harmful tax practices more effectively, considering transparency and substance:** Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate preferential tax regimes in the BEPS context. It will engage with non-OECD members based on the existing framework and consider revisions or additions to the existing framework.
- (f) **Prevent treaty abuse:** Develop model treaty provisions and recommendations regarding the design of domestic rules to prevent the granting of treaty benefits in inappropriate circumstances. Work will also be done to clarify that tax treaties are not intended to be used to generate double non-taxation and to identify the tax policy considerations that, in general, countries should consider before deciding to enter a tax treaty with another country. The work will be coordinated with the work on hybrids.
- (g) **Prevent the artificial avoidance of PE status:** Develop changes to the definition of PE to prevent the artificial avoidance of PE status in relation to BEPS, including using commissionaire arrangements and the specific activity exemptions. Work on these issues will also address related profit attribution issues.
- (h) **Assure that transfer pricing outcomes are in line with value creation – intangibles:** Develop rules to prevent BEPS by moving intangibles among group members. This will involve:
 - (i) adopting a broad and clearly delineated definition of intangibles;
 - (ii) ensuring that profits associated with the transfer and use of intangibles are appropriately allocated in accordance with (rather than divorced from) value creation;
 - (iii) developing transfer pricing rules or special measures for transfers of hard-to-value intangibles; and updating the guidance on cost contribution arrangements;
- (i) **Assure that transfer pricing outcomes are in line with value creation – risk and capital:** Develop rules to prevent BEPS by transferring risks among, or allocating excessive capital to, group members. This will involve adopting transfer pricing rules or special measures to ensure that inappropriate returns will not accrue to an entity solely because it has contractually assumed risks or has provided capital. The rules to be developed will also require alignment of returns with value creation. This work will be coordinated with the work on interest expense deductions and other financial payments.
- (j) **Assure that transfer pricing outcomes are in line with value creation – other high-risk transactions:** Develop rules to prevent BEPS by engaging in transactions which would not, or would only very rarely, occur between third parties. This will involve adopting transfer pricing rules or special measures to:

- (i) clarify the circumstances in which transactions can be recharacterised;
 - (ii) clarify the application of transfer pricing methods, in particular profit splits, in the context of global value chains; and
 - (iii) provide protection against common types of base eroding payments, such as management fees and head office expenses.
- (k) **Establish methodologies to collect and analyse data on BEPS and the actions to address it:** Develop recommendations regarding indicators of the scale and economic impact of BEPS and ensure that tools are available to monitor and evaluate the effectiveness and economic impact of the actions taken to address BEPS on an ongoing basis. This will involve developing an economic analysis of the scale and impact of BEPS (including spillover effects across countries) and actions to address it. The work will also involve assessing a range of existing data sources, identifying new types of data that should be collected, and developing methodologies based on both aggregate (for example, FDI and balance of payments data) and micro-level data (for example, from financial statements and tax returns), taking into consideration the need to respect taxpayer confidentiality and the administrative costs for tax administrations and businesses.
- (l) **Require taxpayers to disclose their aggressive tax planning arrangements:** Develop recommendations regarding the design of mandatory disclosure rules for aggressive or abusive transactions, arrangements, or structures, taking into consideration the administrative costs for tax administrations and businesses and drawing on experiences of the increasing number of countries that have such rules. The work will use a modular design allowing for maximum consistency but allowing for country specific needs and risks. One focus will be international tax schemes, where the work will explore using a wide definition of “tax benefit” to capture such transactions. The work will be coordinated with the work on co-operative compliance. It will also involve designing and putting in place enhanced models of information sharing for international tax schemes between tax administrations.
- (m) **Re-examine transfer pricing documentation:** Develop rules regarding transfer pricing documentation to enhance transparency for tax administration, taking into consideration the compliance costs for business. The rules to be developed will include a requirement that multinational enterprises (MNE's) provide all relevant governments with needed information on their global allocation of the income, economic activity and taxes paid among countries according to a common template.
- (n) **Make dispute resolution mechanisms more effective:** Develop solutions to address obstacles that prevent countries from solving treaty-related disputes under Mutual Agreement Procedure (MAP), including the absence of arbitration provisions in most treaties and the fact that access to MAP and arbitration may be denied in certain cases.
- (o) **Develop a multilateral instrument:** Analyse the tax and public international law issues related to the development of a multilateral instrument to enable jurisdictions that wish to do so to implement measures developed in the course of the work on BEPS and amend bilateral tax treaties. On the basis of this analysis, interested parties will develop a multilateral instrument designed to provide an innovative approach to international tax matters, reflecting the rapidly evolving nature of the global economy and the need to adapt quickly to this

evolution.

17.7 Country-by-country reporting regulations FIRS specific

17.7.1 Provision of country-by-country reporting (CbCr)

The former Federal Inland Revenue Service (FIRS) now the Nigeria Revenue Service (NRS) released the Income Tax (Country by Country Reporting) Regulations, 2018 (the Regulations) which was published in an official gazette dated 8 January 2018.

The objectives of the regulations are to provide tax authorities with information about Multinational Enterprises' (MNEs) global activities, profits, and taxes to better assess international tax avoidance risks; improve transparency in the tax practices of the MNEs; and prevent tax evasion or avoidance through base erosion and profit shifting.

Some of the key provisions of the regulations include the following:

- a) each ultimate parent entity (UPE) of an MNE Group having consolidated group revenue of ₦160 billion or above is required to file a Country-by-Country (CbC) report in a specified format with the new NRS on an annual basis, provided that such entity is resident in Nigeria for tax purposes. The CbC report should be filed not later than 12 months after the last day of the reporting accounting year of the MNE Group;
- b) a constituent entity which is not the UPE of an MNE Group that meets certain conditions will also be required to file a CbC report with the FIRS within the time specified;
- c) a constituent entity will not be required to file a CbC report if same has been filed through a surrogate parent entity in the format specified in the regulations;
- d) failure to submit the CbC report within the time stipulated would attract a penalty of ₦10,000,000 in the first instance and ₦1,000,000 for every month in which the default continues; and
- e) any constituent entity that is resident in Nigeria for tax purposes should notify the newly established NRS whether it is a UPE or surrogate parent entity. Where it is neither of the two, it should notify the NRS of the identity and tax residence of the reporting entity not later than the last day of the reporting accounting year of the MNE Group. Where a constituent entity fails to provide such notification, such entity will be liable to a penalty of ₦5,000,000 in the first instance and ₦10,000 for every day in which the default continues.

17.7.2 Applications of country-by-country reporting (CbCr)

The former Federal Inland Revenue Service (FIRS) now the Nigeria Revenue Service (NRS) issued its guidelines for Country-by-country (CbC) reporting in Nigeria ("the Guidelines") to supplement the Income Tax (CbC Reporting) Regulations, 2018 ("the CbC Regulations"). The guidelines are intended to provide guidance to the public, especially Multinational Enterprises (MNEs) operating in Nigeria, on the procedure for completing and filing CbC reports.

Part I of the guidelines provides a general background to the Organisation for Economic Cooperation and Development (OECD)'s base erosion and profit shifting project which introduced the CbC

reporting requirement for MNEs. It explicitly states that the OECD (2018) Guidance on the implementation of CbC reporting – BEPS Action 13 as may be updated from time to time (“OECD Guidance”) will be relied upon for any clarification or explanation that is not covered in the guidelines.

It further states that the guidelines will be applied in a manner consistent with the following documents, amongst others:

- (a) The Income Tax (Transfer Pricing) Regulations 2018;
- (b) the newly issued FIRS (now NRS) Guidelines for the Appropriate Use of Information contained in CbC reports, which essentially set out the NRS’ policy on how to avoid abuse of information contained in CbC reports; and
- (c) the OECD Guidance.

Parts II and III of the Guidelines provide definitions of terms used in the annual CbC reporting template, and instructions on the period to be covered by the template, the data to be used in populating it, and how each table in the CbCR template should be completed. These instructions are the same as those provided in the OECD Guidance.

Part IV of the guidelines stipulates how branches, permanent establishments, investment funds, partnerships and other entities would be treated for CbC reporting purposes. Of note in this part is the guidance that the consolidation rule in the International Financial Reporting Standards be adopted as the accounting basis for determining the existence and membership of a group which is required to file a CbC report in Nigeria.

The final part of the guidelines focuses on CbC filing obligations. Essentially, it specifies the CbC notification form with which every resident member of an MNE Group is required to submit yearly to the NRS pursuant to Regulation 6 of the CbC Regulations. It also clarifies issues bordering on CbC reporting threshold, determination of consolidated revenue, and merger, acquisition and demerger arrangements.

The release of the country-by-country regulations which is pursuant to OECD actions against base erosion and profit shifting (BEPS) project will usher the Nigeria transfer pricing (TP) regime into a post BEPS era associated with a significant level of transparency in the global tax affairs of MNEs doing business in Nigeria. Thus, taxpayers are likely to be subjected to increased scrutiny through audits and investigations that may result in significant rise in TP disputes. Therefore, MNEs in Nigeria should take proactive steps to mitigate transfer pricing (TP) risk exposures by conducting holistic review of their TP practices.

17.8 Provisions of Finance Act of 2023 on CbCR reporting

The Finance Act of 2023 introduces changes to the country's tax laws, including Country-by-Country Reporting (CbCR) regulations. The key updates are itemised below.

a) CbCR regulations

The Act revises CbCR regulations, aligning them with global standards and best practices. Key changes include:

- i. **expanded reporting requirements:** Multinational Enterprises (MNEs) must now report more detailed information on their operations, including revenue, profit, and tax payments;
- ii. **increased transparency:** The Act promotes transparency by requiring MNEs to disclose more information about their business operations and tax strategies; and
- iii. **improved compliance:** The revised regulations aim to enhance compliance with tax laws and regulations, reducing the risk of tax evasion and avoidance.

b) Impact on taxpayers

The changes introduced by the Finance Act 2023 may impact taxpayers in various ways. These include:

- i. **increased reporting burden:** MNEs may need to adapt their reporting processes to meet the new requirements;
- ii. **enhanced disclosure:** Taxpayers must be prepared to disclose more information about their business operations and tax strategies; and
- iii. **compliance risks:** Failure to comply with the revised regulations may result in penalties and reputational damage.

c) Key focus areas

The Finance Act 2023 focuses on five key areas:

- i. **tax equity reforms:** Aiming to promote fairness and equity in taxation;
- ii. **climate change/green growth:** Encouraging sustainable practices and reducing environmental impact;
- iii. **job creation/economic growth:** Fostering economic growth and job creation;
- iv. **reforming tax incentives:** Reviewing and updating tax incentives to promote investment; and
- v. **revenue generation/tax administration:** Enhancing tax administration and revenue generation.

17.9 Chapter review

This chapter defines base erosion and profit shifting. It also identifies the major users of these tax avoidance strategies and techniques usually adopted by group of companies. Besides this, the chapter identifies some of the actions against base erosion and profit shifting as suggested by OECD.

Readers must have learnt the provisions of the country-by-country regulations issued by the former Federal Inland Revenue Service (now the Nigeria Revenue Service).

17.10 Worked examples

17.10.1 Questions

1. Base erosion and profit shifting are advanced tax avoidance strategies usually adopted by multinational enterprises (MNEs).

Required:

Discuss any **FOUR** techniques that could be used to achieve these tax avoidance strategies by MNEs.

2. The Organisation for Economic Cooperation and Development (OECD) in its effort to address the problems associated with base erosion and profit shifting, has issued a paper on various actions against the menace of base erosion and profit shifting. Thin capitalisation is also a tool for perfecting tax avoidance.

Required:

Discuss base erosion and profit shifting, and thin capitalisation.

3. Base erosion and profit shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to artificially shift profits to low or no-tax jurisdictions. In response, the Organisation for Economic Co-operation and Development (OECD), in collaboration with the G20, launched the BEPS Project to develop a comprehensive set of measures aimed at curbing these practices.

The OECD's BEPS Action Plan, consisting of 15 action points, provides governments with tools to ensure that profits are taxed where economic activities generating the profits are performed and where value is created. These actions promote transparency, coherence, and substance in international tax systems, helping to restore trust in the global tax framework.

Required:

Discuss **TWO** actions against base erosion and profit shifting as suggested by the OECD.

17.10.2 Suggested solution to questions

1. The following are the techniques usually adopted by the multinational enterprises (MNEs) to achieve base erosion and profit shifting tax avoidance strategies:
 - (i) **Trademark and technology licensing/transfer pricing** — Managing the group's trademark, design and patent through an entity that applies a lower tax rate to intellectual property, then charging group companies royalties on the use of the brand.
 - (ii) **Thin capitalisation** – By setting up subsidiaries with minimal share capital, group can use a financing arm to fund the new company's operation with debt. This large debt attracts interest, which has different treatment in some jurisdiction and can therefore reduce

the group tax payment if structured correctly.

- (iii) **Hybrid mismatch arrangements** – Different tax rules between countries can sometimes give rise to unintended effects like “double non-taxation” which can be exploited by businesses to reduce their tax burden. This primarily applies to national treatment of certain instruments in such a way that they are treated in the paying country as tax deductible debt, but seen in the receiving country as tax exempt income.
- (iv) **Putting assets into entity without substance** – Some countries introduce preferential tax regimes as a way to compete for business. However, this is only useful if the business with substance begin to locate themselves in the country, otherwise, this form of tax competition simply erodes the tax base of the country where the activity take place.

2. Relevant discussion points are as stated below.

Base erosion

Base erosion is the use of financial measures and tax planning to reduce the size of the company's taxable profits in a country. It is often achieved by structuring income to have more favourable tax treatment or by finding ways to write off certain expenditure against taxable income. This has the effect of reducing a company's tax payment below what is would otherwise be expected to pay.

Profit shifting

Profit shifting involves making payment to other group companies in order to move profit from high-tax jurisdictions to lower-tax regimes. This serves to increase the overall profits available to the group shareholders. Often, this intra-group payments take the form of royalties and interest payments, as these expenses can be deducted from pre-tax profits. Another issue with these types of payment is that some jurisdictions have lower tax rates on them when received as income by other persons.

Thin capitalisation

This refers to intentional high gearing of a company for interest charges. Subsidiaries with minimal share capital are set up. A financing arm of the group is used to fund the new company's operation with debt. This large debt attracts interest, which has different treatment in some jurisdiction and can therefore reduce the group tax payment if structured correctly.

3. Actions against base erosion and profit shifting as suggested by the OECD

- (a) **Address the tax challenges of the digital economy** Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterisation of income derived from new business models, the application of related source rules, and how to ensure the effective collection of value added

tax/goods and services tax with respect to the cross-border supply of digital goods and services.

(b) Neutralise the effects of hybrid mismatch arrangements

Develop model treaty provisions and recommendations regarding the design of domestic rules to neutralise the effect (for example, double non-taxation, double deduction, long-term deferral) of hybrid instruments and entities. This may include:

- (i) changes to the OECD Model Tax Convention to ensure that hybrid instruments and entities (as well as dual resident entities) are not used to obtain the benefits of treaties unduly;
- (ii) domestic law provisions that prevent exemption or non-recognition for payments that are deductible by the payer;
- (iii) domestic law provisions that deny a deduction for a payment that is not includible in income by the recipient (and is not subject to taxation under controlled foreign company (CFC) or similar rules); and
- (iv) domestic law provisions that deny a deduction for a payment that is also deductible in another jurisdiction; and where necessary, guidance on coordination or tie-breaker rules if more than one country seeks to apply such rules to a transaction or structure. Special attention should be given to the interaction between possible changes to domestic law and the provisions of the OECD Model Tax Convention. This work will be coordinated with the work on interest expense deduction limitations, the work on CFC rules, and the work on treaty shopping.

(c) Limit base erosion via interest deductions and other financial payments

Develop recommendations regarding best practices in the design of rules to prevent base erosion through the use of interest expense, for example through the use of related-party and third-party debt to achieve excessive interest deductions or to finance the production of exempt or deferred income, and other financial payments that are economically equivalent to interest payments. The work will evaluate the effectiveness of different types of limitations. In connection with and in support of the foregoing work, transfer pricing guidance will also be developed regarding the pricing of related party financial transactions, including financial and performance guarantees, derivatives (including internal derivatives used in intra-bank dealings), and captive and other insurance arrangements. The work will be coordinated with the work on hybrids and CFC rules.

(d) Counter harmful tax practices more effectively, taking into account transparency and substance

Revamp the work on harmful tax practices with a priority on improving transparency, including compulsory spontaneous exchange on rulings related to preferential regimes, and on requiring substantial activity for any preferential regime. It will take a holistic approach to evaluate

preferential tax regimes in the BEPS context. It will engage with non- OECD members on the basis of the existing framework and consider revisions or additions to the existing framework.

(e) Address the tax challenges of the digital economy

Identify the main difficulties that the digital economy poses for the application of existing international tax rules and develop detailed options to address these difficulties, taking a holistic approach and considering both direct and indirect taxation. Issues to be examined include, but are not limited to, the ability of a company to have a significant digital presence in the economy of another country without being liable to taxation due to the lack of nexus under current international rules, the attribution of value created from the generation of marketable location-relevant data through the use of digital products and services, the characterisation of income derived from new business models, the application of related source rules, and how to ensure the effective collection of value a tax or goods and services tax with respect to the cross-border supply of digital goods and services.

REGIONAL INTEGRATION AND TRADE BLOCS

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18 Regional Integration and Trade Blocs

18.0 Learning objective

The learning objective of this chapter is to appreciate the relevance and importance of regional integration and trade blocs as basis for economic development.

18.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) differentiate between regional integration and trade blocs;
- (b) understand the objectives of regional integration;
- (c) know the types of regional economic integration;
- (d) know the benefits of regional integration and trade blocs; and
- (e) know the disadvantages of regional integration and trade blocs.

18.2 Economic Community of West Africa State (ECOWAS)

18.2.1 Formation

Economic Community of West Africa State (ECOWAS) is a regional body created on May 25th, 1975, during its first conference in Lagos, where its treaty was signed. The idea of having a united West African body was first proposed by the then Nigerian Head of State, General Yakubu Gowon. His idea was to collectively achieve a self-sufficiency through integration of the sixteen West African countries into an economic block with a single market controlled around an economic and monetary union. The community started with 5 members. Later on, Cape Verde joined in 1976, but Mauritania withdrew its membership in December 2000. In 2024, the Sahel States of Burkina Faso, Mali and Niger also left ECOWAS. At the moment, the commission has 12 members namely Benin, Ghana, Nigeria, Cote d'Ivoire (Ivory Coast), Sierra Leone, Liberia, Guinea Bissau, Senegal, Togo, Guinea, Gambia, and Cape Verde. The main objective of ECOWAS is to promote co-operation and integration to create an economic and monetary union for encouraging economic growth and development in West Africa, through:

- (a) the suppression of customs duties and equivalent taxes;
- (b) the establishment of a common external tariff;
- (c) the harmonisation of economic and financial policies; and
- (d) the creation of a monetary zone.

18.2.2 Fiscal policy

The economic landscape of most West African countries is marked by structural fiscal deficits, which coexist alongside rising public debt, resulting from a dependence on external aid. The latter being debt, disguised as financial assistance. This trend has always raised doubts amongst economists and development practitioners about the sustainability of public financing and the capability of West African economies to grow in the medium term, despite optimism on the matter. The situation is particularly

worrying, given the underlying fiscal challenges, due to the importance of the informal sector in the region, persistent tax evasion, weak tax institutions and poorly coordinated and harmonised regional tax and fiscal policy rules.

West Africa has also been growing its Gross Domestic Products (GDP) but unfortunately, in many cases, those nominal increases have meant little to the well-being and the livelihoods of its citizens. Most people continue to live below poverty line and soaring unemployment rates have revived the debate on the importance of fiscal policy in the context of non-existent endogenous monetary policies. Considering the importance of sound public policy in contemporary developing economies, understanding fiscal policy as an important determinant of the cyclical dynamics of macroeconomic aggregates can make a valuable contribution to the design of stabilization and structural economic transformation agenda within the West African Region. Given the importance of regional dynamics of integration that support economic transformation, there is plenty analysis on fiscal stimulus in developed countries, while less research and analysis is dedicated to the cyclical behaviour of fiscal policy rules in the context of regional economic integration within the ECOWAS.

ECOWAS has developed macroeconomic convergence criteria for member states including fiscal policy and recently adopted and implemented the common external tariff (CET). However, it has no internal coordinated common fiscal rules to support economic integration efforts and to mobilise adequate domestic resources to finance its regional and national development plans. In addition, weak tax systems combined with high and inefficient public spending are marked by institutional corruption and have substantially contributed to increasing public debt. In the 2000s, most member countries benefited from the Highly Indebted Poor Countries (HIPC) initiative but despite this, public debt continues to increase in the region and remains a big challenge to macroeconomic stability, sustainable inclusive economic growth and poverty alleviation. Moreover, divisive tax and fiscal policy negatively affects the development of regional economic projects, stifling local private sector and employment.

18.2.3 ECOWAS common external tariffs

Common external tariff (CET) is a key feature of a Customs Union. CET is the application of the same customs duties, import quotas and preferences by a group of countries in a customs union. The said import duties, quotas and preferences are applicable to goods entering the region of the customs union irrespective of the country of first entry of the goods.

The ECOWAS Common External Tariff is one of the principal instruments for harmonising ECOWAS member states and strengthening its Common Market. To establish an economic union, the community is to ensure, in stages, among other means, the establishment of a common market through “the adoption of a common external tariff and a common trade policy vis-à-vis third countries...” To this end, the ECOWAS Authority of Heads of State and Government established an ECOWAS Customs necessitating the formulation of a common external tariff with a common nomenclature so that customs procedures are transparent, readily followed and delays at borders decreased, is a key stone in achieving this union. In January 2006 in Niamey, The Authority of Heads of State and Government of ECOWAS adopted a decision establishing the ECOWAS-CET which draws on the basic UEMOA CET composed of four tariff bands, or rates of customs duty. Below is a table depicting the four tariff bands:

Category	Percentage of duties	Goods description
0	0%	Essential social goods
1	5%	Goods of primary necessity, raw materials and specific inputs.
2	10%	Intermediate goods.
3	20%	Final consumption goods.

The ECOWAS tariff nomenclature has been migrated from 2007 to the 2012 version (HS2012) introduced by the World Customs Organisation (WCO).

On October 25, 2013, ECOWAS member states adopted the ECOWAS Common External Tariff with the 5-tariff band structure below:

Category	Percentage of duties	Goods description
0	0	Essential social goods.
1	5%	Goods of primary necessity, raw goods and capital goods.
2	10%	Intermediate goods and inputs
3	20%	Final consumption goods or finished goods
4	35%	Specific goods for economic development

The CET has the following accompanying trade defense measures namely:

- (a) safeguard measures;
- (b) anti-dumping measures;
- (c) anti-subsidy and countervailing measures; and
- (d) supplementary protection measures.

18.3 African Continental Free Trade Area (AfCFTA)

18.3.1 Objectives of the African Continental Free Trade Area (AfCFTA) Agreement

The AfCFTA Agreement aims to create a single, unified market for goods and services across the African continent, promoting economic integration, boosting intra-African trade, and enhancing Africa's global competitiveness. With 55 countries in its fold, AfCFTA is the largest free trade area in the world.

The key objectives are to:

- (a) **Create a single market:** Establish a single, unified market for goods and services, facilitating the movement of goods, services, and people across the continent.
- (b) **Boost intra-African trade:** Increase intra-African trade by reducing and eliminating tariffs, non-tariff barriers, and other trade restrictions.
- (c) **Enhance competitiveness:** Enhance Africa's global competitiveness by creating a more favourable business environment, improving infrastructure, and promoting investment.
- (d) **Promote economic integration:** Promote economic integration by creating a more cohesive and coordinated economic space, facilitating the free movement of goods, services, and people.
- (e) **Foster sustainable development:** Foster sustainable development by promoting economic growth, reducing poverty, and improving living standards.

18.3.2 Operations of the AfCFTA agreement

The AfCFTA Agreement is governed by several key instruments and institutions:

- (a) **Protocols:** The Agreement includes several protocols, such as the Protocol on Trade in Goods, the Protocol on Trade in Services, and the Protocol on Rules and Procedures for Dispute Settlement.
- (b) **Operational instruments:** The Agreement also includes several operational instruments, such as the Rules of Origin, the Tariff Concessions, and the Continental Online Tool for monitoring Non- Tariff Barriers.
- (c) **Institutional framework:** The Agreement establishes an institutional framework, including the Assembly, the Council of Ministers, the Committee of Senior Trade Officials, and the Technical Committees.
- (d) **Dispute settlement:** The Agreement establishes a dispute settlement mechanism to resolve trade disputes between member states.

18.3.3 Challenges in implementing the AfCFTA agreement

Despite its potential, the AfCFTA Agreement faces several challenges, such as:

- (a) **Tariff revenue losses:** Concerns about significant revenue losses and uneven distribution of costs and benefits.
- (b) **Adjustment costs:** Short-term structural changes, such as labor and capital relocation, may incur costs.
- (c) **Competitive pressures:** Increased competition may lead to market consolidation, potentially harming smaller firms.

- (d) **Implementation:** Effective implementation requires coordination among member states, addressing infrastructure gaps, and building institutional capacity.
- (e) **Non-tariff barriers:** Non-tariff barriers, such as bureaucratic procedures and regulatory requirements, may hinder trade.
- (f) **Infrastructure challenges:** Infrastructure challenges, such as inadequate transportation networks and energy supply, may hinder trade.
- (g) **Institutional capacity:** Weak institutional capacity, including inadequate human and financial resources, may hinder effective implementation.

18.4 Regional trading blocs in Africa in comparison to:

18.4.1 European Union (EU)

European Union (EU), international organisation comprising 27 European countries and governing common economic, social, and security policies. The EU's members are Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden. The United Kingdom, which had been a founding member of the EU, left the organisation in 2020.

The goals of the European Union are:

- (a) promote peace, its values and the well-being of its citizens;
- (b) sustainable development based on balanced economic growth and price stability, a highly competitive market economy with full employment and social progress, and environmental protection;
- (c) combat social exclusion and discrimination;
- (d) promote scientific and technological progress;
- (e) enhance economic, social and territorial cohesion and solidarity among EU countries;
- (f) respect its rich cultural and linguistic diversity; and
- (g) establish an economic and monetary union whose currency is the euro.

18.4.2 North American Free Trade Agreement (NAFTA)

In January 1994, the United States, Mexico and Canada entered into the North American Free Trade Agreement (NAFTA), creating the largest free trade area and richest market in the world.

The North American Free Trade Agreement (NAFTA) was implemented to promote trade between the U.S., Canada, and Mexico.

The following are some of the key goals of NAFTA:

- (a) more free trade resulting in greater choices in goods and services;
- (b) lower prices and improved quality products;
- (c) stronger health and safety standards;

- (d) improved economic stability in the U.S. marketplace; and
- (e) a marketplace that is increasingly driven more by supply and demand than by barriers to commerce.

18.5 Benefits of regional economic integration and trade blocs

The benefits derivable from regional economic integration and trade blocs agreements include the following:

- (a) **Trade creation:** These agreements create more opportunities for countries to trade with one another by removing the barriers to trade and investment. Due to a reduction or removal of tariffs, cooperation results in cheaper prices for consumers in the bloc countries. Studies indicate that regional economic integration significantly contributes to the relatively high growth rates in the less developed countries.
- (b) **Employment opportunities:** By removing restrictions on labour movement, economic integration can help expand job opportunities.
- (c) **Consensus and cooperation:** Member nations may find it easier to agree with smaller numbers of countries. Regional understanding and similarities may also facilitate closer political cooperation.
- (d) **Impetus for private sector planning and investment:** Regional economic integration can serve a useful economic purpose beyond the direct gains from trade liberalisation, by reducing uncertainties and improving credibility and thus making it easier for the private sector to plan and invest. Indeed, reducing uncertainty may be vital for realising gains from liberalisation. Whether economies benefit from a particular regional trade agreement depends on the scope and coverage of its provisions, the nature of the enforcement mechanism and the circumstances in which the agreement can be modified.

18.6 Disadvantages of regional economic integration and trade blocs

Creation of regional economic integration and trade blocs agreements may result in the following disadvantages:

- (a) **Trade diversion:** The flip side to trade creation is trade diversion. Member countries may trade more with each other than with non-member nations. This may mean increased trade with a less efficient or more expensive producer because it is in a member country. In this sense, inefficient companies can be protected inadvertently with the bloc agreement acting as a trade barrier. In essence, regional agreements have formed new trade barriers with countries outside of the trading bloc.
- (b) **Employment shifts and reductions:** Countries may move production to cheaper labour markets in member countries. Similarly, workers may move to gain access to better jobs and wages. Sudden shifts in employment can distort the resources of member countries.
- (c) **Loss of national sovereignty:** With each new round of discussions and agreements within a regional bloc, nations may find that they have to give up more of their political and economic rights.

18.7 Other regional trading blocs

18.7.1 Regional integration

This is a process in which neighbouring states enter into an agreement to upgrade cooperation through common institutions and rules. The objectives of the agreement could range from economic to political to environmental, although it has typically taken the form of a political economy initiative where commercial interests are the focus for achieving broader socio-political and security objectives, as defined by national governments. Regional integration has been organised either via supranational institutional structures or through inter - governmental decision-making, or a combination of both.

Past efforts at regional integration have often focused on removing barriers to free trade in the region, increasing the free movement of people, labour, goods, and capital across national borders, reducing the possibility of regional armed conflict (for example, through confidence and security-building measures), and adopting cohesive regional stances on policy issues, such as the environment, climate change and migration.

18.7.2 Trade blocs

A trade bloc is basically a free-trade zone, or near-free-trade zone, formed by one or more tax, tariff, and trade agreements between two or more countries. Some trading blocs have resulted in agreements that have been more substantive than others in creating economic cooperation. Of course, there are pros and cons for creating regional agreements. In the past decade, there has been an increase in the trading blocs with more than one hundred agreements in place and more in discussion.

18.8 Objectives of regional integration

Regional integration is the joining of individual states within a region into a larger whole. The degree of integration depends upon the willingness and commitment of independent sovereign states to share their sovereignty. Regional integration initiatives should fulfil at least the following eight important objectives:

- (a) the strengthening of trade integration in the region;
- (b) the creation of an appropriate enabling environment for private sector development;
- (c) the development of infrastructure programmes in support of economic growth and regional integration;
- (d) the development of strong public sector institutions and good governance;
- (e) the reduction of social exclusion and the development of an inclusive civil society
- (f) contribution to peace and security in the region;
- (g) the building of environment programmes at the regional level; and
- (h) the strengthening of the region's interaction with other regions of the world.

18.9 Regional economic integration

Regional economic integration has enabled countries to focus on issues that are relevant to their stage of development as well as encourage trade between neighbours. The following are four main types of regional economic integration:

(a) Free trade area

This is the most basic form of economic cooperation. Member countries remove all barriers to trade between themselves but are free to independently determine trade policies with non - member nations. An example is the North American Free Trade Agreement (NAFTA).

(b) Customs union

This type provides for economic cooperation as in a free-trade zone. Barriers to trade are removed between member countries. The primary difference from the free trade area is that members agree to treat trade with non - member countries in a similar manner. The Gulf Cooperation Council (GCC) for the Arab States of the Gulf and the Economic Community of West African States (ECOWAS) are examples.

(c) Common market

This type allows for the creation of economically integrated markets between member countries. Trade barriers are removed, as are any restrictions on the movement of labour and capital between member countries. Like customs unions, there is a common trade policy for trade with non - member nations. The primary advantage to workers is that they no longer need a visa or work permit to work in another member country of a common market. An example is the Common Market for Eastern and Southern Africa (COMESA).

(d) Economic union

This type is created when countries enter into an economic agreement to remove barriers to trade and adopt common economic policies. An example is the European Union (EU).

18.10 Chapter review

This chapter distinguishes between regional integration and trade blocs. The chapter also dwells on objectives of regional integration and various forms of regional economic integration and trade blocs. The advantages and demerits of establishing common trading platforms were also highlighted.

18.11 Worked examples

18.11.1 Questions

1. Larry Limited based in Lagos, is a manufacturing company that has been producing household utensils successfully for several years. The company is planning to enter the international market but the management team has little or no information in respect of regional economic integration and trade blocs around the world.

The Managing Director of the company has just engaged your professional accounting firm to provide advice on some salient issues in this respect.

Required:

As the officer in charge of international tax matters in the accounting firm, you are to present a report, to your Principal Partner, on salient points, covering the following areas:

- (a) Differentiation between regional integration and trade blocs
- (b) Objectives of regional integration
- (c) Common market and economic union as major types of regional economic integration

- (d) Benefits of regional economic integration and trade blocs
 - (e) Disadvantages of regional economic integration and trade blocs
2. Regional economic integration and trade blocs have often focused on removing barriers to free trade in the region, increasing the free movement of people, labour, goods, and capital across national borders, reducing the possibility of regional armed conflict and host of others.

Required:

Discuss the following:

- (a) Regional integration
 - (b) Trade blocs
 - (c) Agreements of regional economic integration and trade blocs
3. It is highly advantageous to nations that endeavour to come together, pool ideas and resources- Human and capital - together to form a common market. Despite the benefits that may accrue, it is surprising that as a result of cultural diversity and political differences which sometimes is based on the foreign policy of African nations' former colonial masters, nations remain sceptical and receptive to union of nations.

Despite the existing negative variables there should be unity among nations for the sake of prosperity and growth.

Required:

- (a) Discuss the salient points of the advantages of nations coming together to relate with one another as a group.
 - (b) Discuss **Two** (2) types of regional economic integration.
4. The founders of ECOWAS had a sincere intention of moving the countries of West Africa to a comparative position that could be likened to those of other developed countries of the world. Their unique and sensitive ideas demonstrated the love they had for their individual nations.

Required:

- (a) Discuss the original means of attaining the objectives of ECOWAS.
- (b) Explain the common external tariffs defence measures.

18.11.2 Suggested solutions to questions

1. INTERNAL MEMO

From: Desk Officer

To: The Principal Partner

Date: April 9, 2025

Re: Report on Request from Larry Limited about Regional Integration and Trade Blocs

I refer to the request of the above-named client in respect of regional integration and trade blocs. The salient points are stated below:

(a) Differentiation between Regional Integration and Trade blocs

Regional integration

This is a process in which neighbouring states enter into an agreement to upgrade cooperation through common institutions and rules. The objectives of the agreement could range from economic to political to environmental, although it has typically taken the form of a political economy initiative where commercial interests are the focus for achieving broader socio-political and security objectives, as defined by national governments.

Regional integration has been organised either via supranational institutional structures or through inter-governmental decision-making, or a combination of both. Examples of regional integration includes North American Free Trade Agreement and Asian Pacific Economic Cooperation Forum.

Trade blocs

A trade bloc is basically a free trade zone or near free trade zone formed by one or more tax, tariff, and trade agreements among two or more countries.

Some trading blocs have resulted in agreements that have been more substantive than others in creating economic cooperation.

In the past decade, there has been an increase in these trading blocs with more than one hundred agreements in place and more in the pipeline for example, The European Union (EU), Economic Community of West African State (ECOWAS), etc.

(b) Objectives of regional integration

The objectives of regional integration are as follows:

- (i) strengthening of trade integration in the region;
- (ii) the creation of an appropriate enabling environment for private sector development;
- (iii) development of infrastructure programmes in support of economic growth and regional integration;

- (iv) development of strong public sector institutions and good governance;
- (v) reduction of social exclusion and the development of an inclusive civil society;
- (vi) contribution to peace and security in the region;
- (vii) building of environment programmes at the regional level; and
- (viii) strengthening of the region's interaction with other regions of the world.

(c) Common market and economic union as major types of regional economic integration

Common market

Common market allows for the creation of economically integrated markets between member countries. Trade barriers are removed, as well as any restrictions on the movement of labour and capital between member countries. Like customs unions, there is a common trade policy for trade with non-member nations. The primary advantage to workers, is that they no longer need a visa or work permit to work in another member country of a common market. Examples are the common market for Eastern and Southern Africa (COMESA), West African Common Market (WACM), etc.

Economic union

Economic union is a type of trade blocs that allows products, services and workers to cross borders freely. The union is aimed at eliminating internal trade barriers within member countries, with the goal of economically benefiting all the member countries. Economic union requires the integration of monetary and fiscal policies so that member countries coordinate policies, taxation and government spending relating to their agreement. They also use common currency and fixed exchange rate.

(d) Benefits of regional integration and trade blocs

- (i) **Employment opportunities** - By removing restrictions on labour movement, economic integration can help expand job opportunities.
- (ii) **Consensus and cooperation** - Member nations may find it easier to agree with smaller numbers of countries. Regional understanding and similarities may also facilitate closer political cooperation.
- (iii) **Trade creation** - These agreements create more opportunities for countries to trade with one another by removing the barriers to trade and investment. Due to a reduction or removal of tariffs, cooperation results in cheaper prices for consumers in the bloc countries.
- (iv) **Impetus for private sector planning and investment** - Regional economic integration can serve a useful economic purpose beyond the direct gains from trade liberalisation, by

reducing uncertainties and improving credibility and thus making it easier for the private sector to plan and invest. Indeed, reducing uncertainty may be vital for realising gains from liberalisation. Whether or not economic benefits from a particular regional trade agreement depends on the scope and coverage of its provisions, the nature of the enforcement mechanism and the circumstances in which the agreement can be modified.

- (v) **Other non-economic benefits** - Regional economic integration may allow a member country to reap other non-economic benefits, such as peace and security.

(e) **Disadvantages of regional integration and trade blocs**

- (i) **Trade diversion** - The flip side to trade creation is trade diversion. Member countries may trade more with each other than non-member nations. This may mean increasing trade with a less efficient or more expensive producer simply because it is a member nation. In this sense, inefficient companies can be protected inadvertently with the trade bloc agreements, acting as a trade barrier. In essence, regional agreements have formed new trade barrier with countries outside of the trading bloc.
- (ii) **Investment diversion** - One of the problems facing many smaller economies is lack of foreign investment. Investment diversion is a potential economic disadvantage of regional economic integration program. Foreign investors from non-member countries may see a member country as less attractive place to invest due to higher burden of tariffs and regulations against non-member states.
- (iii) **Employment shifts and reduction** - Countries and companies in one member nation may move production to another member country with a cheaper labour market. Also, workers may move to gain access to better jobs and wages. Sudden shifts in employments can distort the resources of member countries.
- (iv) **Loss of national sovereignty** - With each new round of discussions and agreements within a regional bloc, nations may discover that they have given up their political and economic rights.
- (v) Regional integration and trade blocs are forms of trade barriers with countries which are not members of the trading bloc.

I have commented on the aspects deemed necessary, nevertheless, I will be willing to supply additional information, where necessary.

Yours faithfully,

Femi Oworu

- 2(a) Regional integration is a process in which neighboring states enter into an agreement to upgrade cooperation through common institutions and rules. The objectives of the agreement could range from economic to political to environmental, although it has typically taken the form of a political economy initiative where commercial interests are the focus for achieving broader socio- political and security objectives, as defined by national governments. Regional integration has been organised

either via supranational institutional structures or through intergovernmental decision-making, or a combination of both.

- (b) A trade bloc is basically a free-trade zone, or near-free-trade zone, formed by one or more tax, tariff, and trade agreements between two or more countries. Some trading blocs have resulted in agreements that have been more substantive than others in creating economic cooperation. Of course, there are pros and cons for creating regional agreements. In the past decade, there has been an increase in these trading blocs with more than one hundred agreements in place and more in discussion.
- (c) The benefits derivable from regional economic integration and trade blocs agreements include the following:
 - (i) **Trade creation:** These agreements create more opportunities for countries to trade with one another by removing the barriers to trade and investment. Due to a reduction or removal of tariffs, cooperation results in cheaper prices for consumers in the bloc countries. Studies indicate that regional economic integration significantly contributes to the relatively high growth rates in the less-developed countries.
 - (ii) **Employment opportunities:** By removing restrictions on labour movement, economic integration can help expand job opportunities.
 - (iii) **Consensus and cooperation:** Member nations may find it easier to agree with smaller numbers of countries. Regional understanding and similarities may also facilitate closer political cooperation.
 - (iv) **Impetus for private sector planning and investment:** Regional economic integration can serve a useful economic purpose beyond the direct gains from trade liberalisation, by reducing uncertainties and improving credibility and thus making it easier for the private sector to plan and invest. Indeed, reducing uncertainty may be vital for realising gains from liberalisation. Whether economies benefit from a particular regional trade agreement depends on the scope and coverage of its provisions, the nature of the enforcement mechanism and the circumstances in which the agreement can be modified.

Creation of regional economic integration and trade bloc agreements may lead to the following disadvantages:

- (i) **Trade diversion:** The flip side to trade creation is trade diversion. Member countries may trade more with each other than with non-member nations. This may mean increased trade with a less efficient or more expensive producer because it is in a member country. In this sense, inefficient companies can be protected inadvertently with the bloc agreement acting as a trade barrier. In essence, regional agreements have formed new trade barriers with countries outside of the trading bloc.

- (ii) **Employment shifts and reductions:** Countries may move production to cheaper labour markets in member countries. Similarly, workers may move to gain access to better jobs and wages. Sudden shifts in employment can tax the resources of member countries.
- (iii) **Loss of national sovereignty:** With each new round of discussions and agreements within a regional bloc, nations may find that they have to give up more of their political and economic rights.

3. (a) Salient points on advantages of nations coming together to relate as a group includes the following:

- (i) coming together of nations with comparative advantages will serve to strengthen trade integration in the region concerned;
- (ii) coming together of nations will directly create appropriate enabling environment for private sector development;
- (iii) coming together of nations will lead to the development of infrastructure programmes in support of economic growth and regional integration;
- (iv) coming together of nations will lead to the development of strong public sector institutions and good governance;
- (v) coming together of nations will lead to the reduction of social exclusion and the development of an inclusive civil society;
- (vi) coming together of nations will bring about joint security operations, thereby contributing to peace and security in the region;
- (vii) Coming together of nations will bring about the building of environment programmes at the regional level; and
- (viii) Coming together of nations will strengthen the region's interaction with other regions of the world.

(b) Types of regional economic integration

(i) Common market

This type allows for the creation of economically integrated markets between member countries. Trade barriers are removed, as are any restrictions on the movement of labour and capital between member countries. Like customs unions, there is a common trade policy for trade with non - member nations. The primary advantage to workers is that they no longer need a visa or work permit to work in another member country of a common market.

An example is the Common Market for Eastern and Southern Africa (COMESA).

(ii) Economic union

This type is created when countries enter into an economic agreement to remove barriers to trade and adopt common economic policies. An example is the European Union (EU).

4. (a) The original means of attaining the objectives of ECOWAS

- (i) The suppression of customs duties and equivalent taxes
- (ii) The establishment of a common external tariff
- (iii) The harmonisation of economic and financial policies
- (iv) The creation of a monetary zone

(b) The ECOWAS common external tariff (CET) and its accompanying trade defence measures

- (i) Safeguard measures
- (ii) Anti-dumping measures
- (iii) Anti-subsidy and countervailing measures
- (iv) Supplementary protection measures.

INTERNATIONAL TAX POLICY

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19 International Tax Policy

19.0 Learning objective

The main objective of this chapter is to enable readers to understand international tax policy.

19.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) discuss the concept and objectives of international tax policy;
- (b) explain the concept of jurisdiction;
- (c) evaluate the roles being played by inter-governmental and supranational organisations that shape tax policy;
- (d) examine the roles of World Trade Organisation (WTO), General Agreement on Tariffs and Trade (GATT) and their significance to international taxation;
- (e) evaluate international cooperation between tax administrators in different tax jurisdictions in respect of exchange of information;
- (f) identify and explain practical aspects of Nigeria's exchange of information framework, its effectiveness and challenges encountered in enforcing cross-border compliance;
- (g) discuss the effectiveness of global cooperation and assistance on tax matters; and
- (h) evaluate the use of neutralities in international tax policy.

19.2 Introduction

Globalisation and technological revolution have had a tremendous effect on international taxation. Therefore, international organisations must play key roles in developing policy that will shape global tax administration.

19.3 Concepts and objectives of international tax policy

19.3.1 Concepts of international tax policy

- (a) Tax sovereignty: The right of a country to tax income earned within its borders.
- (b) Double taxation: Taxing the same income in multiple countries, potentially leading to increased tax burdens.
- (c) Tax avoidance: Minimising tax liabilities through legal means, often using international tax planning strategies.
- (d) Transfer pricing: Pricing transactions between related entities in different countries, which can impact tax liabilities.

19.3.2 Objectives of international tax policy

- (a) Fairness: Ensuring that taxpayers contribute to the public purse in a fair and

equitable manner.

- (b) Efficiency: Minimising tax compliance costs and administrative burdens.
- (c) Neutrality: Avoiding tax policies that distort economic decisions or create unintended incentives.
- (d) Competitiveness: Promoting a country's economic competitiveness by creating a favourable tax environment.
- (e) Revenue generation: Generating sufficient revenue for governments to fund public goods and services.

By understanding the concepts and objectives of international tax policy, governments and taxpayers can work together to create a fair, efficient, and competitive tax environment that supports economic growth and development.

19.4 Concept of jurisdiction

19.4.1 Tax jurisdiction

Tax jurisdiction refers to the authority of a country, state, or local government to impose taxes on individuals, businesses, or transactions. It determines which tax laws and regulations apply to a particular taxpayer or transaction.

(a) Types of tax jurisdiction

- (i) Residence-based jurisdiction: Taxpayers are taxed based on their residence or domicile.
- (ii) Source-based jurisdiction: Taxpayers are taxed based on the source of their income, regardless of their residence.

(b) Factors determining tax jurisdiction

- (i) Residency: Where an individual or business is considered a resident.
- (ii) Income source: Where income is earned or sourced.
- (iii) Permanent Establishment: Presence of a permanent establishment in a country.

9.4.2 Tax jurisdiction limits

Tax jurisdiction limits refer to the boundaries and constraints within which a tax authority can impose taxes. These limits are essential in determining the scope of a tax authority's power and ensuring that taxes are levied fairly and consistently.

(a) Types of limits

- (i) Geographical limits: Tax authorities can only impose taxes within their territorial boundaries.
- (ii) Subject matter limits: Tax authorities can only tax specific types of income, transactions, or activities.
- (iii) Personal limits: Tax authorities can only tax individuals or entities with a sufficient connection to the jurisdiction.

(b) Importance of tax jurisdiction limits

- (i) Preventing overreach: Limits prevent tax authorities from overreaching their authority and imposing taxes beyond their jurisdiction.
- (ii) Ensuring fairness: Limits help ensure that taxes are levied fairly and consistently, without arbitrary or discriminatory treatment.
- (iii) Protecting taxpayers: Limits protect taxpayers from excessive or unjustified taxation.

19.4.3 Tax Jurisdiction in cross-border tax collection and enforcement

Jurisdiction plays a crucial role in the collection and enforcement of cross-border taxes. It determines which tax authority has the power to collect taxes and enforce tax laws in cases involving multiple countries.

(a) Challenges in cross-border tax collection

- (i) Multiple jurisdictions: Multiple countries may claim taxing rights, leading to complexity and potential double taxation.
- (ii) Enforcement difficulties: Tax authorities may face challenges in enforcing tax laws and collecting taxes from foreign taxpayers.
- (iii) Information sharing: Tax authorities may need to share information with other jurisdictions to effectively enforce tax laws.

(b) Mechanisms for cross-border tax collection

- (i) Double taxation agreements (DTAs): DTAs help allocate taxing rights between countries and prevent double taxation.
- (ii) Tax treaties: Tax treaties provide frameworks for cooperation and information sharing between tax authorities.
- (iii) Mutual assistance: Countries may provide mutual assistance in tax collection and enforcement.

(c) Impact on tax administration

- (i) Complexity: Cross-border tax collection and enforcement can be complex, requiring specialised expertise.
- (ii) Risk management: Tax authorities must manage risks associated with cross-border tax collection and enforcement.
- (iii) International coordination: Effective jurisdiction requires international coordination and cooperation between tax authorities.

19.4.4 Tax jurisdiction source and residence

(a) Source-based jurisdiction

- (i) Definition: Taxing income based on its source, regardless of the taxpayer's residence.
- (ii) Application: Countries tax income earned within their borders, such as income from:
 - (iii) Business operations
 - (iv) Real estate
 - (v) Employment

(b) Residence-based jurisdiction

- (i) Definition: Taxing income based on the taxpayer's residence, regardless of the income's source.
- (ii) Application: Countries tax income earned by residents, including:
 - (iii) Worldwide income
 - (iv) Foreign-sourced income

19.4.5 Tax jurisdiction to controlled foreign companies

A Controlled Foreign Company (CFC) is a foreign subsidiary or affiliate controlled by a parent company in another country. Tax jurisdiction over CFCs is complex, as it involves the interaction of tax laws in multiple countries.

(a) Tax jurisdiction over CFCs

- (i) Parent company's country: The parent company's country may assert tax jurisdiction over the CFC's income, even if the income is earned in a different country.
- (ii) CFC's country: The country where the CFC is resident may also assert tax jurisdiction over the CFC's income.

(b) Implications

- (i) Double taxation: CFC taxation can lead to double taxation if both the parent company's country and the CFC's country tax the same income.
- (ii) Tax planning: Understanding CFC rules are crucial for tax planning and optimisation.
- (iii) International cooperation: CFC rules may require international cooperation and information sharing between tax authorities.

19.5 The roles being played by inter-governmental and supranational organisations that shape tax policy

International organisations are organs of institutional agreements amongst members of an international system for the purpose of achieving objectives that will meet the aspirations and concerns of its members. They are important actors in international politics, with power in mediation, dispute resolution, peace keeping, applying sanctions and others. Activities are based on the sovereignty of the nation-state. Examples of these organisations include Organisation for Economic Cooperation and Development (OECD), United Nations (UN), European Union (EU), World Bank, International Monetary Fund (IMF), African Union (AU), African Development Bank (ADB).

The concept in terms of global governance promoted by the international organisations is legitimacy and customs.

(a) The roles being played by inter-governmental organisations that shape tax policy

Inter-governmental organisations play a crucial role in shaping tax policy globally. Here's an evaluation of their roles:

- (i) Setting global tax standards: Organisations like the Organisation for Economic Co-operation and Development (OECD) develop guidelines and standards for tax policies, helping countries avoid double taxation and tax evasion.
- (ii) Promoting tax cooperation: These organisations facilitate cooperation among countries, enabling them to address common tax challenges and develop effective tax policies.
- (iii) Developing frameworks for international taxation: Organisations like the OECD and the United Nations (UN) work on developing frameworks for international taxation, including rules for taxing cross-border transactions and digital economy taxation.

Notable organisations

- OECD: Develops guidelines and standards for tax policies, implements initiatives like the Base Erosion and Profit Shifting (BEPS) project to prevent tax avoidance, and provides technical assistance to developing countries.
- United Nations (UN): Provides a platform for countries to discuss and develop international tax policies, particularly for developing countries, and is working on a UN Tax Convention to democratise global tax rules.
- International Monetary Fund (IMF): Offers guidance on tax policy and administration, helping countries strengthen their tax systems.

- World Bank Group (WBG): Supports countries in building effective tax systems, providing technical assistance and financing for tax-related projects.

(b) The roles being played by supranational organisations that shape tax policy

Supranational organisations play a significant role in shaping tax policy globally. These organisations bring together countries to establish common tax standards, rules, and regulations, promoting cooperation and coordination. Here's an evaluation of their roles:

- (i) Setting global tax standards: Organisations like the Organisation for Economic Co-operation and Development (OECD) develop guidelines and standards for tax policies, helping countries to avoid double taxation and tax evasion.
- (ii) Promoting tax cooperation: Supranational organisations facilitate cooperation among countries, enabling them to address common tax challenges and develop effective tax policies.
- (iii) Developing frameworks for international taxation: Organisations like the OECD and the United Nations (UN) work on developing frameworks for international taxation, including rules for taxing cross-border transactions and digital economy taxation.

Notable supranational organisations

- OECD: Develops guidelines and standards for tax policies and implements initiatives like the Base Erosion and Profit Shifting (BEPS) project to prevent tax avoidance.
- United Nations (UN): Provides a platform for countries to discuss and develop international tax policies, particularly for developing countries.
- International Monetary Fund (IMF): Offers guidance on tax policy and administration, helping countries to strengthen their tax systems.
- World Bank Group (WBG): Supports countries in building effective tax systems, providing technical assistance and financing for tax-related projects.
- European Union (EU): Develops and implements tax policies for its member states, including regulations on value-added tax (VAT) and corporate taxation.

19.6 The roles of World Trade Organisation (WTO), General Agreement on Tariffs and Trade (GATT) and their significance to international taxation

The World Trade Organisation (WTO) and the General Agreement on Tariffs and Trade (GATT) play significant roles in shaping international trade policies, which can impact international taxation.

19.6.1 Roles of World Trade Organisation (WTO)

- (a) Promoting free trade: Both WTO and GATT aim to reduce trade barriers, such as tariffs and quotas, to facilitate international trade.
- (b) Setting trade rules: They establish rules and standards for international trade, helping countries negotiate agreements and resolve disputes.
- (c) Facilitating negotiations: WTO and GATT provide platforms for countries to negotiate trade agreements, reducing tariffs and increasing market access.

19.6.2 Roles of General Agreement on Tariffs and Trade (GATT)

The General Agreement on Tariffs and Trade (GATT) is a multilateral trade agreement aimed at promoting free trade by reducing tariffs and other trade barriers. While primarily focused on trade, GATT has implications for international taxation.

- (a) Reducing tariffs: GATT aims to reduce tariffs and other trade barriers, facilitating international trade.
- (b) Promoting non-discrimination: GATT promotes non-discrimination in trade policies, ensuring equal treatment for imports from all member countries.
- (c) Setting trade rules: GATT establishes rules and standards for international trade, helping countries negotiate agreements and resolve disputes.

19.6.3 Significance to international taxation

- (a) Impact on tax revenues: GATT agreements can affect tax revenues by reducing tariffs and altering tax bases.
- (b) Customs valuation: GATT rules on customs valuation can impact taxation of imported goods.
- (d) Non-discrimination: GATT's non-discrimination principle can influence tax policies, ensuring equal treatment for imports from all member countries.
- (e) Trade-related tax issues: GATT addresses trade-related tax issues, such as tax discrimination and export subsidies.

19.7 International cooperation between tax administrators in different tax jurisdictions in respect of exchange of information

19.7.1 Exchange of Information on Request

Exchange of information on request is a crucial aspect of international cooperation between tax administrators. This mechanism allows tax authorities to request information from other jurisdictions to aid in tax audits, investigations, and compliance.

Under this approach, one country ("Applicant State") may request for tax information relating to a particular case from the tax file of another country ("Requested State"). Where the information available in the tax files of the Requested State is not sufficient, it shall take all relevant measures to provide the Applicant State with the information requested.

19.7.2 Automatic exchange of information

This refers to information exchanged periodically on an automatic basis, without any prior request. Automatic exchange of information requires additional procedures to be mutually agreed between the countries that intend to exchange information automatically. After the relevant procedures are in place, parties are expected to automatically transmit information that is foreseeably relevant for the administration or enforcement of their domestic laws concerning the taxes covered by the convention.

19.7.3 Spontaneous Exchange of Information

According to the convention, a jurisdiction is obliged to provide information to another participating jurisdiction without the latter requesting for it. This form of information exchange is beneficial where a jurisdiction has knowledge of tax affairs of any multinational corporation [MNC] that may result in a tax loss in another jurisdiction, reduction of taxes in one State that may increase taxes in the other jurisdiction, or a party supposes that there are tax savings by MNC resulting from artificial transfer of profits within the group.

In effect, spontaneous exchange of information may place focus on the tax planning activities of MNCs without any formal request. It does not require a mutual agreement between both countries.

19.8 Nigeria's exchange of information framework

Nigeria's exchange of information framework is governed by the Nigeria Data Protection Act, which sets guidelines for cross-border data transfers. Key aspects include:

- (a) Adequate level of protection: Data controllers and processors must ensure the recipient country has adequate data protection laws or binding corporate rules.

- (b) Express consent: Data subjects must consent to the transfer, or it must be necessary for a contract, public interest, or legal claims.
- (c) Whitelist: The Attorney General's office maintains a whitelist of countries with adequate data protection laws.

19.8.1 Effectiveness

The framework aims to protect personal data while facilitating international trade and cooperation. Its effectiveness is evident in:

- (a) Regulatory oversight: The Nigeria Data Protection Bureau and the Attorney General's office oversee data protection and cross-border transfers.
- (b) Harmonisation efforts: Nigeria's framework aligns with global data protection best practices, such as the GDPR.

19.8.2 Challenges

Despite the framework's strengths, challenges persist:

- (a) Bureaucracy: Obtaining an Adequacy Decision can be time-consuming, and the white-list hasn't been updated since 2020.
- (b) Inadequate infrastructure: Insufficient data protection regulations in various countries hinder seamless cross-border transfers.
- (c) Capacity building: There's a need for increased awareness and capacity building on data protection in Nigeria.
- (d) Harmonisation: Achieving a unified African data protection legislation would facilitate smoother cross-border data flows.

19.9 The effectiveness of global cooperation

International tax cooperation focuses on the conclusion of bilateral tax treaties, which had the major aim of reducing double taxation. In addition, such cooperation has increasingly looked at setting tax norms to close loopholes and limit the ability of multinational enterprises (MNEs) to avoid paying taxes.

The United Nations and the OECD are the two principle venues for the development of international tax norms. Their means include:

- a) the maintenance of model conventions and commentaries;
- b) codes of conduct and guidance to countries;
- c) it is worth noting that it is only The United Nations that harnesses universal membership. The OECD, while not a universal membership body, has worked with the G-20 group of countries and has established forums open for interested country to participate, such as the global forum on transparency and exchange of information for tax purposes, which currently has over 140 members, and the inclusive framework on BEPS, currently with almost 100 members;
- d) the OECD also serves as a coordinator and overseer of implementation of its agreements and has designed a number of multilateral conventions and instruments;

- e) the United Nations and its agencies conduct international policy analysis, as do the OECD, World Bank and the International Monetary Fund;
- f) the IMF and World Bank also work at the national level on policy analysis and recommendations;
- g) examples of norm setting include model conventions and multilateral treaties. International policy analysis examples are research papers, handbooks, BEPS Action Plan reports. Oversight of implementation includes peer reviews and the assessment of compliance with international standards;
- h) national policy analysis and advice include surveillance, assessment of tax administrations, and policy proposals; and
- i) examples of capacity building work are the OECD/UNDP Tax Inspectors without borders initiative, the Global Tax Program of the World Bank, the UN DESA Capacity Development Unit, the OECD Global Relations programme and IMF technical assistance.

19.10 Neutralities in international tax policy

A neutral tax is one that does not motivate firms or individuals to change their behaviour. Do I invest more or less? Do I work more or less? Do I locate in one place rather than another? Do I employ more or less labour or more or less capital?

Neutrality is an accepted standard for evaluating taxes. In several cases, the concept of neutrality provides a useful way to cut through some of the debates about tax policy and identify a more economically efficient way to organise the tax system.

19.10.1 The concept of tax neutrality

The primary purpose of the tax system is to raise the revenue needed to pay for government spending. As such, the goal is to raise this revenue without distorting the decisions that individuals and firms would otherwise make for purely economic reasons.

Non-neutralities in the tax system lead people and firms to devote more socially wasteful effort to transforming the form or substance of their activities to reduce their tax payments, for example, by hiring accountants to structure financial transactions in a manner that minimises tax liability.

In some cases, deviations from a neutral tax system are unavoidable. It is widely agreed that tax payments should increase with some measure of well-being, like income, consumption or wages.

One inevitable consequence of this agreement is that the market consumption of goods and services will be taxed, either directly (as in a consumption tax) or indirectly (as in an income or employment tax, both of which tax the money used to purchase consumption goods). In other cases, deviations from a neutral tax system reflect the goals of policymakers.

19.10.2 Three Applications of Neutrality to Policy Issues

This general discussion motivates the application of the concept of neutrality to five specific issues.

(a) Overall tax reform: A broader base and lower rates

One of the traditional mantras of tax reform is to “broaden the base and lower the rates. This involves two objectives:

- (i) Broadening the base helps make the tax code more neutral between different activities by including more types of income in the definition of income and allowing fewer deductions and credits for specified activities; and
- (ii) Lowering tax rates makes the tax code more neutral about the choice between working and not working. Both halves of the process potentially improve efficiency.

(b) Using the tax code to encourage desired behaviour: Credits instead of education

In some cases, policymakers may want to encourage desired activities like home ownership or a college education. In these cases, it is worth examining whether the specific goal could be better accomplished through a spending program or through the tax code. In many cases, a spending program can be more effectively targeted and delivered to serve the goal in question. In some cases, subsidising these activities through the tax code may be more efficient.

(c) Discouraging undesired activity

Just as it can sometimes be appropriate to introduce non-neutralities into the tax system to encourage desired activities so can it be appropriate to use the tax system to discourage undesirable ones like smoking, drinking alcohol, or emitting carbon. In this manner, this can lead businesses and consumers to take the social costs of their actions into account, helping to ensure that the outcome of decentralised decisions and market competition leads to overall social efficiency.

19.11 Chapter review

This chapter examines the international tax policy with respect to roles being played by the inter-governmental and multinational organisations that shape global tax policy.

Readers must have learnt the uniqueness of international organisations and their roles in global economic governance.

19.12 Worked examples

19.12.1 Questions

1. The global alignment not only strengthens Nigeria’s tax enforcement capabilities but also fosters trust and cooperation with international partners. Together, these

frameworks demonstrate Nigeria's evolving capacity to manage and exchange information securely, efficiently, and in alignment with global best practices.

Required:

Discuss the practical aspects of Nigeria's exchange of information framework, its effectiveness and challenges encountered in enforcing cross-border compliance.

2. The World Trade Organisation (WTO) and the General Agreement on Tariffs and Trade (GATT) play significant roles in shaping international trade policies, which can impact international taxation.

Required:

Discuss the following:

- (a) The impact of GATT on international taxation.
 - (b) The impact of GATT's dispute settlement mechanism on international taxation.
3. Cross-border transactions in Nigeria are increasingly vital to the country's economic growth, driven by globalisation, foreign direct investment (FDI), and regional integration efforts such as the African Continental Free Trade Agreement (AfCFTA). However, navigating these transactions involves a complex web of regulatory requirements that span multiple legal domains.

Despite these frameworks, businesses face challenges such as jurisdictional conflicts, documentation burdens, tax complexities, and compliance with anti-money laundering (AML) regulations.

Required:

- (a) Discuss the regulatory complexities in cross-border transactions in Nigeria.
 - (b) Discuss the impact of Nigeria's tax framework on cross-border transactions.
 - (c) Discuss the ways by which disputes are resolved.

19.12.2 Suggested solutions to questions

1. Nigeria's exchange of information framework plays a crucial role in enhancing tax compliance and enforcement across borders. Here are some practical aspects, effectiveness, and challenges:

(a) Practical aspects

- (i) **Information exchange agreements:** Nigeria has signed information exchange agreements with several countries, enabling the automatic exchange of financial information to combat tax evasion.
- (ii) **Cross-border tax administration:** The framework streamlines tax compliance processes, reducing the complexity of cross-border transactions and enhancing the efficiency of tax administration.
- (iii) **Common reporting standard (CRS):** Nigeria's participation in global initiatives, such as the automatic exchange of information (AEOI) and the common reporting standard (CRS), facilitate cooperation with other countries in tax matters.

(b) Effectiveness

- (i) **Improved tax compliance:** The framework has improved tax compliance by enabling the exchange of information between countries, reducing the opportunities for tax evasion.
- (ii) **Enhanced transparency:** The AEOI and CRS initiatives promote transparency in tax matters, enabling countries to identify and address tax avoidance and evasion schemes.

(c) Challenges

- (i) **Robust rules:** Nigeria's ability to benefit from new international standards providing for automatic exchange is compromised by the absence of robust rules with respect to information exchange.
- (ii) **Capacity building:** The effectiveness of the framework depends on Nigeria's capacity to implement and utilise the exchanged information effectively.
- (iii) **Cross-border complexity:** The complexity of cross-border transactions and the varying regulatory frameworks can create challenges in enforcing compliance.

2.(a) GATT's provisions on tariffs and trade barriers have significant implications for international taxation. By reducing tariffs and promoting transparency in trade policies, GATT helps to:

- (i) **Minimise double taxation:** By reducing tariffs, GATT minimises the risk of double taxation on imported goods.
- (ii) **Promote tax neutrality:** GATT's principles of non-discrimination and transparency promote tax neutrality, ensuring that tax policies do not unfairly disadvantage foreign goods or services.

(b) GATT's dispute settlement mechanism provides a framework for resolving trade disputes among member countries. This mechanism helps to:

- (i) **Enforce tax compliance:** By resolving disputes, GATT's mechanism ensures that member countries comply with their tax obligations.
- (ii) **Promote tax cooperation:** The dispute settlement mechanism fosters cooperation among member countries, promoting a more transparent and predictable tax environment.

3.(a) Different jurisdictions have diverse legal, compliance, and regulatory requirements. Parties must consider varying tax laws, import and export restrictions, administrative costs, foreign exchange regulations, anti-money laundering laws, and other similar requirements. Compliance with these laws is essential to ensure legal and regulatory compliance.

(b) Cross-border transactions may trigger tax liabilities in multiple jurisdictions. Nigeria has operational double taxation treaties with 15 countries, which can provide relief from double taxation, reduced tax rates, or exemption of income from tax. Parties must carefully consider tax implications to ensure compliance, minimise tax exposure, and achieve tax efficiency.

(c) Parties can agree to refer disputes to a neutral third party via mediation or arbitration. International arbitration institutions like the International Chamber of Commerce play a vital role in administering cross-border arbitration proceedings. Nigeria is also a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

CURRENT TAX ISSUES

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20 Current Tax Issues

20.0 Learning objective

The objective of this chapter is for readers to appreciate current tax issues that could easily impact on their day-to-day economic activities.

20.1 Learning outcomes

After studying this chapter, readers should be able to explain the following:

- (a) tax inspectors without borders;
- (b) cooperative compliance;
- (c) common reporting standards;
- (d) foreign account tax compliance;
- (e) mutual agreement procedures;
- (f) country-by-country reporting; and
- (g) African Continental Free Trade Area Agreement (ACFTA).

20.2 Tax inspectors without borders

The current wave of globalisation and technological revolution has had a tremendous effect on international taxation. The financial and economic liberalisation has brought such sophistication and complexity into business practices that Nigeria tax administration is ill-equipped to cope with the emerging tax problems. Techniques for tax abuses have become too sophisticated for developing economies. Therefore, there is growing need to update tax administrator knowledge through continuous familiarisation with some terms used in international tax.

Tax Inspectors without borders (TIWB) is a joint new initiative of the Organisation for Economic Co-operation and Development (OECD) and the United Nations Development Programme (UNDP) for delivering assistance needed to build tax audit capacity in developing countries, bridging the gap between theory and practice and complementing efforts from the international development community to help with a range of broader domestic resource mobilisation (DRM) issues. As such, TIWB can make a significant contribution to DRM efforts by developing countries.

TIWB facilitates targeted, tax audit assistance programmes in developing countries across the globe. Under TIWB, tax audit experts work alongside local officials of developing country tax administrations on current direct and indirect tax audits and audits related issues concerning international tax matters and sharing general audit practices for specific cases. TIWB programmes can include pre-audit risk assessment and case selection, investigatory techniques, audit cases involving transfer pricing issues, anti-avoidance rules, or sector-specific issues, relating for example to natural resources, e-commerce, financial services or telecommunications.

The host administrations of developing countries are the lead partners in TIWB programmes, clearly specifying their needs and scope of work. TIWB assistance is delivered by current or recently retired tax audit experts. Audit experts work with the host administration under a programme agreement which covers all the legal and practical safeguards and provisions. The experts are not intended to act as a

substitution of local audit staff or to carry out audit work where no local audit personnel would otherwise exist.

20.3 Cooperative compliance

Cooperative compliance is a tax planning strategy that is in a form of relationship between the revenue authority and a taxpayer with the objective of agreeing actions that ensure that taxpayer is tax compliant in an uncertain and controversial tax situation. The aim of cooperative compliance is to ensure that a business is fully tax compliant through a preventive dialogue with tax authorities.

In recent years, a growing number of tax authorities have shifted their strategies towards large organisations to include forms of so-called cooperative compliance programmes (OECD, 2013). These programmes require large organisations to have internal (or tax) control frameworks in place that assure that they can comply with their tax obligations and can also detect uncertain tax positions and disclose these to the tax authority. In exchange, the tax authority sees to it that tax matters are resolved quickly, quietly, fairly and with finality (OECD, 2007). Cooperative compliance programmes have therefore been characterised as “transparency in exchange for certainty”

20.4 Simultaneous tax examination

A simultaneous tax examination is an arrangement between two or more countries to examine the tax affairs of a person or entity simultaneously, but independently, in each country. This approach allows tax authorities to:

- a. exchange information and coordinate efforts to ensure accurate taxation;
- b. minimise the risk of double taxation and tax disputes; and
- c. streamline tax audits and examinations.

20.4.1 Benefits of simultaneous tax examination

- a. It encourages taxpayers to comply with tax laws and regulations.
- b. It helps detect and prevent tax evasion and avoidance schemes.
- c. It fosters cooperation and collaboration between tax authorities.

20.4.2 Key considerations

- a. It requires careful coordination and communication between tax authorities
- b. It must ensure confidentiality and protection of taxpayer information
- c. It may involve complex tax laws and regulations

The Organisation for Economic Co-operation and Development (OECD) and other tax authorities have developed toolkits and guidelines to facilitate simultaneous tax examinations and joint audits. These initiatives aim to promote cooperation, reduce tax disputes, and ensure fair taxation.

20.5 The common reporting standards

The common reporting standards (CRS) is a standard for automatic exchange of bank account information on individuals and certain types of entities. All countries that have implemented the standard will be required to automatically exchange this information on an annual basis.

In August 2017, Nigeria took a step towards implementing the standard by signing the Multilateral Competent Authority Agreement (MCAA) on the CRS. Implementing the CRS will allow Nigeria to automatically receive information on the bank accounts held in other countries by Nigeria tax residents.

More than 95 countries such as the UK, Netherlands, Belgium, Japan, and China have implemented the CRS. Countries that have implemented the standards also includes several of the popular offshore financial centres such as Bermuda, Cayman Islands, Luxembourg, and Mauritius.

All the banks in each of these countries will collate the required information and send to their tax authorities. The relevant tax authorities will then collate the information that relates to Nigeria (and other countries that they have agreed to share information with) and share. Similarly, Nigerian banks will also be required to share information on the bank accounts held by individuals that are tax residents (and in some cases citizens) of other countries with the Nigeria Revenue Service (NRS). The NRS will then automatically share this information with these other countries. For this to happen, Nigeria should have implemented the CRS and activated exchange relationships with the relevant countries.

20.6 Foreign Account Tax Compliance Act (FATCA)

The Foreign Account Tax Compliance Act (FATCA) is a tax law that compels U.S. citizens at home and abroad to file annual reports on any foreign account holdings. FATCA was endorsed in 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act to promote transparency in the global financial service sector.

FATCA provisions require all U.S. taxpayers to report yearly all assets held outside of the country. By taxing these foreign-held assets, the U.S. increases its revenue stream, which is put towards its incentive account for job stimulation. Penalties are imposed on U.S. residents who do not report their foreign account holdings and assets that exceed \$50,000 in value in any given year.

Non-U.S. foreign financial institutions (FFI) and non-financial foreign entities (NFFE) are also required to comply with this law by disclosing the identities of U.S. citizens and the value of their assets held in their banks to the Internal Revenue Service (IRS) or the FATCA Intergovernmental Agreement (IGA). FFIs that do not comply with the IRS will not only be excluded from the U.S. market but will also have 30% of the amount of any withholdable payment deducted and withheld from them as a tax penalty. Withholdable payments in this instance refer to income generated from U.S. financial assets held by these banks and include interests, dividends, remunerations, wages and salaries, compensations, periodic profits, etc. FFIs and NFFEs that agree to the law must annually report the name, address, and tax identification number (TIN) of each account holder that meets the criteria of a U.S. citizen; the account number; the account balance; and any deposits and withdrawals on the account for the year.

Although the price to pay for not complying with FATCA is high, compliance costs are also high. TD Bank, Barclays, and Credit Suisse reportedly spent millions of dollars in fighting this law given that they faced compliance costs of about \$100 million. Large banks like HSBC, Commerzbank, and Deutsche, following the enactment of the law, either limited the services offered to Americans or completely stopped serving U.S. investors to mitigate the high compliance cost.

FATCA seeks to eliminate tax evasion by American individuals and businesses that are investing, operating, and earning taxable income abroad. While it is not illegal to control an offshore account, failure to disclose the account is considered illegal since the United States taxes all income and assets of its citizens on a global scale.

20.7 Mutual agreement procedures (MAP)

Mutual agreement procedures (MAP) is a dispute resolution mechanism, established in tax treaties enforceable in Nigeria, through which a Nigerian taxpayer may request a competent authority, for example, the Minister of Finance or his authorised representative in Nigeria to engage the competent authorities of other countries with whom Nigeria has tax treaties to seek mutual resolution of tax issues affecting such taxpayer. MAP is triggered by taxpayers who is of the opinion that actions of either or both of the tax authorities may result in tax implications that are not for seen in the treaty.

20.8 Disruptive technologies

Disruptive technologies are significantly impacting tax administration, particularly in the digital economy. Some key technologies and challenges include:

- a. **Digital platforms:** e-commerce platforms, app stores, and online payment services are creating new tax compliance challenges. Tax authorities are struggling to track and collect taxes from digital transactions.
- b. **Artificial intelligence (AI) and Data Analytics:** Advanced technologies like AI and data analytics can enhance tax compliance and enforcement. However, they also require significant investment and expertise to implement effectively.
- c. **Blockchain and cryptocurrencies:** The rise of blockchain and cryptocurrencies have introduced new complexities in tax administration, such as tracking and taxing cryptocurrency transactions.
- d. **Cloud Computing:** Cloud computing enables businesses to operate remotely, making it challenging for tax authorities to determine the source of income and profits.
- e. **Data Analytics:** Advanced data analytics can help tax authorities identify tax compliance risks, detect anomalies, and optimise audit strategies.

20.8.1 Benefits of disruptive technologies

- a. **Improved efficiency:** Disruptive technologies can automate manual processes, reducing administrative burdens and improving efficiency.
- b. **Enhanced compliance:** Advanced technologies can help tax authorities detect tax evasion and improve compliance.
- c. **Data security:** Disruptive technologies can also introduce new data security risks, requiring tax authorities to implement robust security measures.

20.8.2 Future directions

- a. **Tax technology (TaxTech):** The intersection of tax and technology will continue to evolve, with emerging technologies like AI, blockchain, and data analytics playing a key role in shaping the future of tax administration.
- b. **Collaboration and Innovation:** Tax authorities, governments, and private sector organisations will need to collaborate and innovate to harness the potential of disruptive technologies and improve tax administration.

20.9 Chapter review

This chapter examines current issues. Readers must have learnt how to explain some issues in international tax as it affects cross-border transactions.

20.10 Worked examples

20.10.1 Questions

1. In Nigeria, where tax authorities are increasingly engaging with global standards and practices, simultaneous tax examinations offer a strategic tool.

Required:

Discuss simultaneous tax examination, its benefits and key considerations.

2. Current tax issues are necessary and relevant to all the actors in a particular economy. It is highly educative and tends to protect the interest of corporate taxpayers as well as trading nations.

Required:

Discuss mutual agreement procedures (MAP) and disruptive technology.

3. Tax Inspectors Without Borders (TIWB) is a flagship initiative jointly led by the OECD and UNDP. Over the past decade, TIWB has supported over 70 jurisdictions, helping to mobilise more than US\$2.4 billion in additional tax revenues, with Africa alone accounting for US\$1.91 billion

Required:

Discuss the workings of tax inspectors without border and the recent year's approach of a number of tax authorities on cooperation compliance.

20.10.2 Suggested solutions to questions

1. Simultaneous tax examination is an arrangement between two or more countries to examine the tax affairs of a person or entity simultaneously, but independently, in each country. This approach allows tax authorities to:
 - (i) exchange information and coordinate efforts to ensure accurate taxation;
 - (ii) minimise the risk of double taxation and tax disputes; and
 - (iii) streamline tax audits and examinations.

Benefits of simultaneous tax examination include the following:

- (i) it encourages taxpayers to comply with tax laws and regulations;
- (ii) it helps detect and prevent tax evasion and avoidance schemes; and
- (iii) it fosters cooperation and collaboration between tax authorities.

Key Considerations

- (i) it requires careful coordination and communication between tax authorities.
- (ii) it must ensure confidentiality and protection of taxpayer information.
- (iii) it may involve complex tax laws and regulations.

2. Mutual agreement procedures (MAP) is a dispute resolution mechanism, established in tax treaties enforceable in Nigeria, through which a Nigerian taxpayer may request a competent authority, for example, the Minister of Finance or his authorised representative in Nigeria to engage the competent authorities of other countries with whom Nigeria has tax treaties to seek mutual resolution of tax issues affecting such taxpayer. MAP is triggered by taxpayers who is of the opinion that actions of either or both of the tax authorities may result in tax implications that are not for seen in the treaty.

On the other hand, disruptive technologies are significantly impacting tax administration, particularly in the digital economy. Some key technologies and challenges include:

Digital Platforms: E-commerce platforms, app stores, and online payment services are creating new tax compliance challenges. Tax authorities are struggling to track and collect taxes from digital transactions;

Artificial Intelligence and data analytics: Advanced technologies like AI and data analytics can enhance tax compliance and enforcement. However, they also require significant investment and expertise to implement effectively;

Blockchain and cryptocurrencies: The rise of blockchain and cryptocurrencies is introducing new complexities in tax administration, such as tracking and taxing cryptocurrency transactions; and

Cloud computing: Cloud computing enables businesses to operate remotely, making it challenging for tax authorities to determine the source of income and profits.

3. **Tax Inspectors Without Borders (TIWB)**

This is a joint new initiative of the Organisation for Economic Co-operation and Development (OECD) and the United Nations Development Programme (UNDP) for delivering assistance needed to build tax audit capacity in developing countries, bridging the gap between theory and practice and complementing efforts from the international development community to help with a range of broader domestic resource mobilisation (DRM) issues. As such, TIWB can make a significant contribution to DRM efforts by developing countries.

TIWB facilitates targeted, tax audit assistance programmes in developing countries across the globe. Under TIWB, tax audit experts work alongside local officials of developing country tax administrations on current direct and indirect tax audits and audits related issues concerning international tax matters and sharing general audit practices for specific cases. TIWB programmes can include pre-audit risk assessment and case selection, investigatory techniques, audit cases involving transfer pricing issues, anti-avoidance rules, or sector-specific issues, relating for example to natural resources, e-commerce, financial services or telecommunications.

Recent year's approach to cooperation and compliance:

In recent years, a growing number of tax authorities have shifted their strategies towards large organisations to include forms of so-called cooperative compliance programmes (OECD, 2013). These programmes require large organisations to have internal (or tax) control frameworks in place that assure that they can comply with their tax obligations and can also detect uncertain tax positions and disclose these to the tax authority. In exchange, the tax authority sees to it that tax matters are resolved quickly, quietly, fairly and with finality (OECD, 2007). Cooperative compliance programmes have therefore been characterised as “transparency in exchange for certainty.”

EMERGING TRENDS

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21 Emerging Trends

21.0 Learning objective

The objective of this chapter is to enhance readers' understanding of local and global emerging trends as they affect tax processes.

21.1 Learning outcomes

After studying this chapter, readers should be able to explain the:

- a) core goals of sustainable development;
- b) role of taxation in the achievement of sustainable development;
- c) tax challenges in Africa and its impact on sustainable development; and
- d) United nation development programme 2021 on tax for SDGs.

21.2 Introduction to sustainable development

Sustainable development is an approach to growth and progress that balances economic, social, and environmental needs, ensuring a lovable future for generations to come. It's about meeting the needs of the present without compromising the ability of future generations to meet their own needs.

21.2.1 Key aspects of sustainable development

- a) **Economic growth:** Sustainable development promotes economic growth that is environmentally friendly and socially inclusive.
- b) **Social inclusion:** It aims to reduce poverty and inequality, ensuring that everyone has access to basic needs like healthcare, education, and clean water.
- c) **Environmental protection:** Sustainable development prioritises the protection of natural resources, biodiversity, and ecosystems, recognizing the importance of a healthy environment for human well-being.

21.2.2 Principles of sustainable development

- a) **Intergenerational equity:** Considering the needs and well-being of current and future generations.
- b) **Environmental stewardship:** Protecting and preserving natural resources for future generations.

21.2.3 Achieving sustainable development

- a) **Renewable energy:** Transitioning to renewable energy sources to reduce dependence on fossil fuels.

- b) **Sustainable agriculture:** Promoting sustainable agricultural practices to ensure food security and reduce environmental impact.
- c) **Responsible consumption:** Encouraging responsible consumption patterns to reduce waste and minimize environmental footprint.

By adopting sustainable development practices, we can create a more equitable, prosperous, and environmentally conscious world for all.

21.3 Core goals of sustainable development

The core goals of sustainable development are outlined in the 17 Sustainable Development Goals (SDGs) adopted by the United Nations in 2015. These goals aim to achieve a balance between economic growth, social well-being, and environmental protection. The 17 SDGs are discussed below:

- a. **Eradicate poverty:** End poverty in all its forms and dimensions, promoting sustainable, inclusive, and equitable economic growth.
- b. **Zero hunger:** End hunger, achieve food security, and promote sustainable agriculture.
- c. **Good health and well-being:** Ensure healthy lives and promote well-being for all at all ages.
- d. **Quality education:** Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
- e. **Gender equality:** Achieve gender equality and empower all women and girls.
- f. **Clean water and sanitation:** Ensure availability and sustainable management of water and sanitation for all.
- g. **Affordable and clean energy:** Ensure access to affordable, reliable, sustainable, and modern energy for all.
- h. **Decent work and economic growth:** Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all.
- i. **Industry, innovation, and infrastructure:** Build resilient infrastructure, promote inclusive and sustainable industrialisation, and foster innovation.
- j. **Reduced inequalities:** Reduce inequality within and among countries.
- k. **Sustainable cities and communities:** Make cities and human settlements inclusive, safe, resilient, and sustainable.
- l. **Responsible consumption and production:** Ensure sustainable consumption and production patterns.
- m. **Climate action:** Take urgent action to combat climate change and its impacts.
- n. **Life below water:** Conserve and sustainably use the oceans, seas, and marine resources for sustainable development.
- o. **Life on land:** Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt biodiversity loss.

- p. **Peace, justice, and strong institutions:** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive all levels.
- q. **Partnerships for the goals:** Strengthen the means of implementation and revitalise the global partnership for sustainable development.

These goals are interconnected and aim to address various aspects of sustainable development, including economic growth, social inclusion, and environmental protection.

21.4 Role of taxation in the achievement of sustainable development

Taxation plays a crucial role in achieving sustainable development. It is described as a dynamic form of social contract.

Taxation plays the under listed roles in the achievement of sustainable development of a nation:

- a) **Generating revenue:** Taxation provides the government with the necessary funds to invest in sustainable development projects, such as infrastructure, education, and healthcare.
- b) **Redistributing wealth:** Taxation can help reduce income inequality by redistributing wealth from the rich to the poor through progressive taxation and social welfare programs.
- c) **Influencing behaviour:** Taxation can influence behaviour by discouraging harmful activities, such as pollution, and encouraging sustainable practices, such as renewable energy production.
- d) **Promoting economic growth:** Taxation can promote economic growth by providing incentives for investment, innovation, and entrepreneurship.
- e) **Funding public goods and services:** Taxation helps fund public goods and services, such as healthcare, education, and infrastructure, which are essential for sustainable development.

21.4.1 Key taxation strategies for sustainable development

- a. **Green taxes:** Implementing taxes on activities that harm the environment, such as carbon emissions, to discourage their use.
- b. **Tax incentives:** Offering tax incentives for investments in sustainable development projects, such as renewable energy or sustainable infrastructure.
- c. **Progressive taxation:** Implementing progressive taxation to reduce income inequality and redistribute wealth.

- d. **Tax transparency:** Promoting tax transparency and accountability to prevent tax evasion and ensure that taxes are used for sustainable development.

21.5 Tax challenges

- a) **Balancing economic growth and sustainability:** Taxation policies need to balance economic growth with sustainability goals, ensuring that economic development does not come at the expense of environmental degradation.
- b) **International cooperation:** Taxation policies need to be coordinated internationally to address global sustainability challenges, such as climate change.
- c) **Tax capacity and administration:** Governments need to strengthen their tax capacity and administration to effectively implement taxation policies for sustainable development.
- d) By leveraging taxation, governments can promote sustainable development, reduce inequality, and ensure that economic growth is environmentally sustainable.

21.5.1 The challenges

Africa faces significant tax challenges that impact sustainable development. Some of the key challenges include:

- a) **Limited tax capacity:** Many African countries struggle to formulate tax capacities and mobilise domestic resources, hindering their ability to achieve sustainable development goals.
- b) **Tax evasion and avoidance:** Weak tax administration and lack of transparency can lead to tax evasion and avoidance, depriving governments of much-needed revenue.
- c) **Digital economy taxation:** The rise of the digital economy poses new tax challenges, including ensuring that digital businesses contribute fairly to the tax base.
- d) **Informal economy:** A significant portion of Africa's economy operates in the informal sector, making it difficult to track and tax economic activity.
- e) **Revenue mobilisation:** African countries need to improve revenue mobilisation to fund public goods and services essential for sustainable development.

21.5.2 The weight of tax challenges on sustainable development

- a. **Reduced funding:** Inadequate tax revenue can limit funding for essential public services, such as healthcare, education, and infrastructure.

- b. **Inequality:** Weak tax systems can exacerbate income inequality, as those who evade or avoid taxes may have an unfair advantage over those who comply.
- c. **Limited economic growth:** Tax challenges can hinder economic growth by discouraging investment and innovation.

21.5.3 Handling tax challenges

Addressing these tax challenges is crucial for achieving sustainable development goals in Africa. This can be achieved through:

- a. **Strengthening tax administration:** Improving tax administration and increasing transparency can help reduce tax evasion and avoidance.
- b. **Investing in tax capacity:** Building tax capacity and mobilizing domestic resources can help African countries fund public goods and services.
- c. **Promoting tax cooperation:** International cooperation and knowledge sharing can help African countries learn from best practices and address common tax challenges.

21.6 United Nations Development Programme 2021 on tax for SDGs

The United Nations Development Programme (UNDP) launched the "Tax for SDGs" initiative in 2021 to help countries leverage taxation and mobilise domestic resources to achieve the Sustainable Development Goals (SDGs). This initiative supports developing nations in strengthening their economic resilience against external shocks and equips national tax administrations and finance ministries with the skills and knowledge to combat tax evasion and align tax policies with the SDGs.

21.6.1 Key Objectives

- a) **Strengthening tax systems:** Enhance tax policy and revenue administration to support sustainable development.
- b) **Domestic resource mobilisation:** Increase domestic resource mobilisation (DRM) to fund public goods and services essential for achieving the SDGs.
- c) **Promoting sustainable growth:** Encourage sustainable growth strategies and influence behaviour towards desired outcomes related to climate, nature, well-being, and governance

21.6.2 Implementation

- a) The initiative covers multiple countries including Uzbekistan, where it supports comprehensive tax reform and aims to simplify taxation, improve the business environment, and trigger economic growth.
- b) The Tax for SDGs Initiative developed an assessment tool to help countries identify ways to better align their tax systems with the SDGs.
- c) It also includes launching the Tax Inspectors Without Borders (TIWB) Program, a joint initiative of UNDP and OECD.

21.6.3 Tools and resources

- a) **SDG taxation framework:** A comprehensive tool designed for national governments to optimise the linkage of a country's tax system with the SDGs.
- b) **Tax for SDGs Dialogue:** An annual event convening high-level policymakers, diplomats, tax administrators, and experts to discuss how fiscal policies and tax reforms can help realise the 2030 Agenda.

21.6.4 Outcomes of programme

The United Nations Development Programme's (UNDP) "Tax for SDGs" initiative, launched in 2021, aims to help countries leverage taxation to achieve the Sustainable Development Goals (SDGs). Key outcomes and expected results are as follows:

- a) **Increased domestic resource mobilisation:** Enhancing tax systems to support sustainable development and reduce dependence on external financing.
- b) **Improved tax administration:** Strengthening tax authorities' capacity to tackle tax avoidance, evasion, and illicit financial flows.
- c) **Alignment of tax policies with SDGs:** Encouraging governments to align tax and fiscal policies with the SDGs, promoting sustainable growth strategies and influencing behaviour towards desired outcomes.
- d) **Digitalisation of tax services:** Supporting the digitalisation of tax services to improve efficiency and effectiveness.
- e) **Gender equality:** Promoting gender-neutral economic outcomes through taxation and implementing the gender equality seal standard.
- f) **Tax inspectors without borders (TIWB) program:** Launching the TIWB program to enhance tax audit effectiveness, generating more revenues to fund SDG-related initiatives.

21.6.5 Extent of coverage

- a) Covered 25 countries in 2022, with the number increasing substantially in 2023.
- b) Developed an assessment tool to help countries align their tax systems with the SDGs.
- c) Supported countries in promoting sustainable development through informed tax policies.
- d) Collaborated with the OECD on the TIWB initiative, helping raise over \$2 billion in additional tax revenue since 2015.
- e) Overall, the Tax for SDGs initiative aims to support countries in achieving the SDGs by leveraging taxation as a tool for revenue collection and sustainable development.

21.7 Chapter review

This chapter -emerging trends- examines a dynamic area of present living and preparation for the future generation. Readers must have learnt, among others, the core goals, role of taxation, united nation contributions and the effect of disruptive technology as they affect emerging trends.

21.8 Worked examples

21.8.1 Questions

1. Nature is highly dynamic and prone to changes. People must make provision for its future. Our present living conditions, emerging trends and all its associated variables should form the basis of making provision for the future.

Required:

Discuss how tax challenges affect sustainable development and growth in emerging countries, like Nigeria.

2. Achieving sustainability developments is a direct response to emerging trends. This ensures that adequate provision is made for the future and our ever-growing population is not exposed to the risks that may lead to possible gradual extinction

Required:

Discuss the salient points of sustainability development core goals.

3. The United Nations, playing its role of adding value to developing nations of the world, introduced the United Nations development programme 2021 on tax for sustainability development.

Required:

Discuss the content of this unique contribution.

4. Tax challenges in Africa and its impact on sustainability development is one of the major areas needing urgent and proactive approach

Required:

Discuss the:

- a. Basic principles of sustainability development and key taxation strategies for sustainable development
- b. Tax challenges in Africa and its impact on sustainability development

21.8.2 Suggested solutions to questions

1. The effects of tax challenges on sustainable development and growth

Tax challenges

- (a) **Limited tax capacity:** Many African countries struggle to formulate tax capacities and mobilise domestic resources, hindering their ability to achieve sustainable development goals.
- (b) **Tax evasion and avoidance:** Weak tax administration and lack of transparency can lead to tax evasion and avoidance, depriving governments of much-needed revenue.
- (c) **Digital economy taxation:** The rise of the digital economy poses new tax challenges, including ensuring that digital businesses contribute fairly to the tax base.
- (d) **Informal economy:** A significant portion of Africa's economy operates in the informal sector, making it difficult to track and tax economic activity.
- (e) **Revenue mobilisation:** African countries need to improve revenue mobilisation to fund public goods and services essential for sustainable development.

2. The core goals of sustainable development, outlined in the 17 Sustainable Development Goals (SDGs) adopted by the United Nations in 2015 are discussed below:

- (a) **Eradicate poverty:** End poverty in all its forms and dimensions, promoting sustainable, inclusive, and equitable economic growth.
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- (c) **Good health and well-being:** Ensure healthy lives and promote well-being

for all at all ages.

- (d) **Quality education:** Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all.
- (e) **Gender equality:** Achieve gender equality and empower all women and girls.
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- (i) **Industry, innovation, and infrastructure:** Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation.
- (j) **Reduced inequalities:** Reduce inequality within and among countries.
- (k) **Sustainable cities and communities:** Make cities and human settlements inclusive, safe, resilient, and sustainable.
- (l) **Responsible consumption and production:** Ensure sustainable consumption and production patterns.
- (m) **Climate action:** Take urgent action to combat climate change and its impacts.
- (n) **Life below water:** Conserve and sustainably use the oceans, seas, and marine resources for sustainable development.
- (o) **Life on land:** Protect, restore, and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt biodiversity loss.
- (p) **Peace, justice, and strong Institutions:** Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable, and inclusive all levels.
- (q) **Partnerships for the goals:** Strengthen the means of implementation and revitalise the global partnership for sustainable development.

These goals are interconnected and aim to address various aspects of sustainable development, including economic growth, social inclusion, and environmental protection

3. The United Nations Development Programme (UNDP) launched the "Tax for SDGs" initiative in 2021 to help countries leverage taxation and mobilise domestic resources to achieve the Sustainable Development Goals (SDGs). This initiative supports developing nations in strengthening their economic resilience against external shocks and equips national tax administrations and finance ministries with the skills and knowledge to combat tax evasion and align tax policies with the SDGs.

Key objectives

Strengthening tax systems: Enhance tax policy and revenue administration to support sustainable development.

Domestic resource mobilisation: Increase domestic resource mobilisation (DRM) to fund public goods and services essential for achieving the SDGs.

Promoting sustainable growth: Encourage sustainable growth strategies and influence behaviour towards desired outcomes related to climate, nature, well-being, and governance

Implementation: The initiative covers multiple countries, including Uzbekistan, where it supports comprehensive tax reform and aims to simplify taxation, improve the business environment, and trigger economic growth.

The tax for SDGs Initiative developed an assessment tool to help countries identify ways to better align their tax systems with the SDGs.

It also includes launching the Tax Inspectors Without Borders (TIWB) Program, a joint initiative of UNDP and OECD

Tools and resources

SDG taxation framework: A comprehensive tool designed for national governments to optimise the linkage of a country's tax system with the SDGs.

Tax for SDGs dialogue: An annual event convening high-level policymakers, diplomats, tax administrators, and experts to discuss how fiscal policies and tax reforms can help realise the 2030 Agenda

Outcomes of programme

The United Nations Development Programme's (UNDP) "Tax for SDGs" initiative, launched in 2021, aims to help countries leverage taxation to achieve the Sustainable Development Goals (SDGs). Key outcomes and expected results.

Increased domestic resource mobilisation: Enhancing tax systems to support sustainable development and reduce dependence on external financing.

Improved tax administration: Strengthening tax authorities' capacity to tackle tax avoidance, evasion, and illicit financial flows.

Alignment of tax policies with SDGs: Encouraging governments to align tax and fiscal policies with the SDGs, promoting sustainable growth strategies and influencing behaviour towards desired outcomes.

Digitalisation of tax services: Supporting the digitalization of tax services to improve effectiveness.

Gender equality: Promoting gender-neutral economic outcomes through taxation and implementing the Gender Equality Seal standard.

Tax inspectors without borders (TIWB) programme: Launching the TIWB programme to enhance tax audit effectiveness, generating more revenues to fund SDG-related initiatives.

Extent of coverage

Covered 25 countries in 2022, with the number increasing substantially in 2023

Developed an assessment tool to help countries align their tax systems with the SDGs.

Supported countries in promoting sustainable development through informed tax policies.

Collaborated with the OECD on the TIWB initiative, helping raise over \$2 billion in additional tax revenue since 2015.

Overall, the Tax for SDGs initiative aims to support countries in achieving the SDGs by leveraging taxation as a tool for revenue collection and sustainable development.

4(a) The principles of sustainable development include:

- (i) **Intergenerational equity:** Considering the needs and well-being of both current and future generations.
- (ii) **Environmental stewardship:** Protecting and preserving natural resources for future generations.

Key tax objectives

- (i) **Strengthening tax systems:** Enhance tax policy and revenue administration to support sustainable development.
- (ii) **Domestic resource mobilisation:** Increase domestic resource mobilisation (DRM) to fund public goods and services essential for achieving the SDGs.

- (iii) **Promoting sustainable growth:** Encourage sustainable growth strategies and influence behaviour towards desired outcomes related to climate, nature, well-being, and governance.

(b) Tax challenges impacting sustainability development in Africa

Africa faces significant tax challenges that impact sustainable development. Some of the key challenges include:

- (i) **Limited tax capacity:** Many African countries struggle to formulate tax capacities and mobilise domestic resources, hindering their ability to achieve sustainable development goals.
- (ii) **Tax evasion and avoidance:** Weak tax administration and lack of transparency can lead to tax evasion and avoidance, depriving governments of much-needed revenue.
- (iii) **Digital economy taxation:** The rise of the digital economy poses new tax challenges, including ensuring that digital businesses contribute fairly to the tax base.
- (iv) **Informal economy:** A significant portion of Africa's economy operates in the informal sector, making it difficult to track and tax economic activity.
- (v) **Revenue mobilisation:** African countries need to improve revenue mobilisation to fund public goods and services essential for sustainable development.

MERGERS AND ACQUISITIONS

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22 Mergers and Acquisitions

22.0 Learning objective

The main objective of this chapter is to let readers understand mergers and acquisitions of businesses in Nigeria.

22.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- (a) understand the concept of mergers and acquisitions;
- (b) explain the regulatory landscape of mergers and acquisitions in Nigeria;
- (c) understand the reporting requirements and statutory filings with the Corporate Affairs Commission (CAC) and the Securities and Exchange Commission (SEC);
- (d) know the basis periods for assessment relating to mergers and acquisitions;
- (e) understand the tax consideration for mergers and acquisitions;
- (f) advise the entities involved in business re-organisation and restructuring on specified tax concessions and conditions to be met before qualifying for such concessions; and
- (g) understand the practical successful merger and acquisitions deals in Nigeria, Africa and other climes.

22.2 Concepts of mergers and acquisitions

Merger and acquisition are a form of business combination whereby two or more companies join to become one enlarged surviving company. It can also be described as an arrangement in which the assets, liabilities and businesses of two or more companies are vested in and carried on by one company which may or may not be one of the merging companies.

(c) Horizontal merger

This involves a merger involving companies in the same line of business (producing similar goods or providing similar services) for example, merger of two banks (former Chartered Bank and IBTC merged to become Stanbic IBTC Bank Plc.).

(d) Vertical merger

This is a merger between two businesses in the same industry where one company supplies goods to the other company. An example is a soft drink company merging with a bottle making company.

(e) Acquisition

Acquisition is said to involve the purchase of all, or majority of the equity shares of one or more companies by another company. Where A limited acquires more than 50% of the equity shares of companies B & C, these B & C become subsidiaries of A, and A becomes the holding company.

22.3 The regulatory landscape of mergers and acquisitions in Nigeria

The regulatory landscape of mergers and acquisitions (M&A) in Nigeria is governed by several laws and regulatory bodies. Here's an overview:

- a. **Federal Competition and Consumer Protection Commission (FCCPC):** The primary regulator for M&A transactions, responsible for ensuring compliance with the Federal Competition and Consumer Protection Act (FCCPA) 2018.
- b. **Securities and Exchange Commission (SEC):** Regulates M&A activities involving public companies, ensuring transparency, fairness, and investor protection.
- c. **Corporate Affairs Commission (CAC):** Regulates companies in Nigeria, including those involved in M&A transactions.
- d. **Central Bank of Nigeria (CBN) and National Insurance Commission (NAICOM):** Sector-specific regulators that impact M&A transactions in the banking and insurance industries, respectively.
- e. **Relevant tax authority (RTA):** These include the Nigerian Revenue Service (NRS), the State Internal Revenue Service and the Federal Capital Territory Internal Revenue Service.

22.4 The reporting requirements and statutory filings with the Corporate Affairs Commission (CAC), Securities and Exchange Commission (SEC) and the Relevant Tax Authority

22.4.1 Corporate Affairs Commission (CAC)

The CAC requires companies to file various documents and reports, including:

- (a) **Annual returns:** Companies must file annual returns with the CAC, which include information about the company's directors, shareholders, and financial position.
- (b) **Notice of change of directors:** Companies must notify the CAC of any changes to their directors, including appointments, resignations, or removals.
- (c) **Notice of change of shareholding:** Companies must notify the CAC of any changes to their shareholding structure. Most mergers and acquisitions lead to changes in the existing shareholding structure of the companies involved, therefore the CAC must be duly notified.

Also, as provided under section 189 (1b) of the Nigeria Tax Act, 2025, where sale or transfer of a trade or business results into the cessation of a trade or business, cessation rule shall apply to the trade that ceased operations.

Therefore, the basis period for assessment shall be the amount of the profits from the beginning of the accounting period to the date of cessation.

22.4.2 Securities and exchange commission (SEC)

The SEC requires publicly traded companies to file various reports, including:

- (a) **Annual reports:** Publicly traded companies must file annual reports with the SEC, which include audited financial statements and other relevant information.
- (b) **Quarterly reports:** Publicly traded companies must file quarterly reports with the SEC, which provide updates on their financial performance and other relevant information.
- (c) **Material events:** Publicly traded companies must disclose material events, such as mergers and acquisitions, changes in management, or other significant developments.

22.4.3 Relevant Tax Authority (RTA)

The Nigeria Tax Administration Act, 2025 and the Nigeria Tax Act, 2025 make provisions for the notification of the relevant tax authority in case of mergers and acquisitions.

In line with section 9(1) iv of the Nigeria Tax Administration Act, 2025, every taxable person shall, within 30 days of the occurrence of a change in its particulars, must notify the relevant tax authority of the change. The change to the particulars include sale, liquidation, acquisition, take-over or merger of a business and all relevant information regarding the sale, liquidation or merger, and full details of the new owners must be submitted to the relevant tax authority.

In addition, section 189 (4) of the Nigeria Tax Act, 2025 states that the relevant tax authority shall be notified of any restructuring of a trade, business, profession or vocation prior to commencing such arrangement.

22.5 Advise on the basis periods for assessment relating to mergers and acquisitions

As provided under section 189 (1a) of the Nigeria Tax Act, 2025, merger of two or more businesses shall not lead to commencement of business or cessation of business. The commencement rule shall not be applicable to the surviving trade or business and cessation rule shall not apply to the trade or business that ceased as a result of the merger.

Therefore, the basis period for assessment shall be the profits of the accounting

period immediately preceding the year of assessment from all sources i.e. preceding year basis.

If the surviving trade or business is a new company, the basis period for assessment for the first year of assessment shall be the profits from the date in which such trade, business, profession or vocation commences in Nigeria to the end of the first accounting period.

22.6 Tax consideration for mergers and acquisitions

The tax implications of business restructuring in form of sale, transfer, mergers, acquisitions, depend on the category of the companies and arrangement effected by the companies involved. The common possibilities are as follows:

(a) Merger of two or more businesses

The following are the tax implications of merger of two or more businesses in line with the provisions of section 189 (1) (a) of the Nigeria Tax Act, 2025 on business restructuring:

- i. a new trade or business shall not be deemed to have commenced as a result of the merger. Therefore, the commencement rule shall not be applicable to the surviving trade or business;
- ii. the rules relating to cessation of trade or business shall not apply to the trade or business that ceased as a result of the merger;
- iii. the assets transferred to the new or surviving trade or business as a result of the merger shall not be considered as chargeable assets and no Chargeable gains will arise as a result of the transfer;
- iv. assets of the merging trades or businesses shall be deemed to have been transferred at the residue of the qualifying capital expenditure on the day following the merger;
- v. capital allowances shall be claimed on the assets transferred because of the merger based on the remaining useful tax life of the asset;
- vi. unutilised capital allowance on the assets transferred shall be available for the use of the new or surviving trade or business;
- vii. unabsorbed losses of the merging entities shall be available to the surviving trade or business provided that such losses were incurred by the merged trade or business;
- viii. taxes deducted at source in respect of the merged trades or businesses shall be available to the merged trade or business; and
- ix. assets transferred because of the merger shall not constitute supply of goods and shall not be liable to value added tax.

(b) Sale or transfer of a trade or business which results into the cessation of a trade or business

The following are the tax implications of sale or transfer of a trade or business which results into the cessation of a trade or business in line with the provisions of section 189 (1) (b) of the Nigeria Tax Act, 2025 on business restructuring:

- i. the rules relating to cessation of trade or business shall apply to the trade or business that ceased as a result of sale or transfer;
- ii. capital allowances shall be claimed on the assets sold or transferred based on the sale or transfer value;
- iii. unutilised capital allowance on the assets sold or transferred shall not be available for use in the new or surviving trade or business;
- iv. unabsorbed losses of the old business shall not be available for use in the new or surviving trade, business, profession or vocation;
- v. taxes deducted at source from the old trade or business, shall not be available for use by the new or surviving trade or business; and
- vi. assets sold or transferred under this business restructuring shall not constitute supply of goods and shall not be liable to value added tax.

(c) Sale or transfer of a trade or business asset which does not result into the cessation of a trade or business

The following are the tax implications of sale or transfer of a trade or business asset which does not result into the cessation of a trade or business in line with the provisions of section 189 (1) (c) of the Nigeria Tax Act, 2025 on business restructuring.

In the case of a sale or transfer of a business asset which does not result into the cessation of the trade or business, and where the parties agreed to sell or transfer the asset for an amount not exceeding the sum of the residue of the qualifying capital expenditure and unutilised capital allowance of the asset:

- i. capital allowances shall be claimed by the buying company on the assets sold or transferred based on the remaining useful tax life of the asset;
- ii. the unutilised capital allowance on the asset sold or transferred shall be available for use by the buying trade or business;
- iii. the trade or business that sold or transferred the assets shall not claim any part of the unutilised capital allowance pertaining to the asset sold or transferred;
- iv. the assets sold or transferred shall not be considered as chargeable assets and no Chargeable gains will arise as a result of the transfer; and

- v. assets sold or transferred under this business restructuring shall not constitute supply of goods and shall not be liable to value added tax.

(d) Accounting period for upstream petroleum operations company in case of business restructuring

For companies engaged in upstream petroleum operations, where business restructuring results in the formation of a new company and cessation of the old business, the accounting period of the company acquiring that trade or business shall commence on:

- i. the date on which the sale or transfer of the trade or business to the new company takes place;
- ii. such date within the calendar month in which the sale or transfer takes place, as may be elected by the company with the approval of the Service, and end on December 31 of the same year, provided that any gap between the old and surviving business shall be treated as being part of the new or surviving company.

(e) Terms of economic development incentive and mergers and acquisitions

In line with section 169 (6) of the Nigeria Tax Act, 2025, where a company to which economic development incentive status has been issued;

- i. acquires another company to which an economic development incentive certificate has been issued under the provisions of the Nigeria Tax Act, 2025 or its equivalent under the Industrial Development (Income Tax Relief) Act, the incentive status of both companies shall cease on the expiry date indicated on the economic development incentive certificate of the subsisting or surviving company;
- ii. takes over the assets and business of any company which is not a company with an economic development incentive status, such acquisition of asset and business of that company shall be subjected to the application for economic development incentive certificate and addition of product to the economic development incentive certificate processes;
- iii. is acquired by a company with no economic development incentive status, the economic development incentive status of the acquired company shall not be transferred to the acquiring company except the acquiring company apply for economic development incentive certificate and is approved and issued;

- iv. merges with one or more companies that have been issued economic development incentive certificate or its equivalent:
 - the incentive status of the merging companies shall cease on the date of the merger;
 - the emerging company from the merger may apply for economic development incentive status; and
 - the expiration date of the economic development incentive certificate to be granted to the emerging company shall not be longer than the later date on the economic development incentive certificate of the merging companies.

22.7 Advise on entities involved in business re-organisation and restructuring

Where there is business re-organisation and restructuring (i.e. sale or transfer) among entities that are related, the following tax concessions are applicable:

- (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) No value added tax and Chargeable gains on disposal of assets amongst related parties in a business restructuring.

Conditions to be met before qualifying for such tax concessions

The Finance Act, 2019 introduced amendment to Section 29 (9) of CITA to the effect that:

- (a) qualification for exemption from commencement and cessation rules in a business restructuring amongst related parties include requirements to be related for a period of at least one year prior to the restructuring;
- (b) no disposal of assets post restructuring until after one year; and
- (c) flouting of this provision will lead to a revocation of the exemption.

In addition, based on the provisions of section 189 (1) (b) of the Nigeria Tax Act, 2025 on business restructuring which state that capital allowances shall be claimed on the assets sold or transferred based on the sale or transfer value, entities involved in business restructuring can claim more capital allowances through careful consideration of these provisions.

22.8 Practical successful mergers and acquisitions in Nigeria, African and other climes

22.8.1 Mergers and Acquisitions in Nigeria

The year 1982 was a landmark year in the history of mergers and acquisitions in Nigeria. Prior to 1982 the concept of mergers and acquisitions had minimal actual significance in Nigeria. One of the very few major mergers that took place before that time was the amalgamation of three companies- Re Bendel Co Ltd, Bendel Intra-city Bus Service Ltd and Trans-Kalife Ltd- to form the Bendel Transport Service Ltd. This situation changed significantly after the Securities and Exchange Commission (SEC) began its operations in 1982, marking the beginning of regulated business combinations in Nigeria.

The first merger attempt was in 1982 between United Nigeria Insurance Company Limited and United Life Insurance Company Limited, which was, however, not consummated. Between 1982 and 1988, The Securities and Exchange Commission supervised thirteen mergers including the mergers of Lever Brothers Nigeria Limited and Lipton Nigeria Ltd, SCOA Nigeria Ltd and Nigeria Automotive Components Ltd, John Holt Ltd and John Holt Investment Ltd- only two of which were unsuccessful.

The prospects of mergers and acquisitions in Nigeria have continued to evolve since then. Different legislations have been passed to regulate business combinations, including the Companies and Allied Matters Act of 1990 (as amended by the Companies and Allied Matters Act, 2020) and the Investment and Securities Act, 2007 (as amended by the Investment and Securities Act, 2025), as well as some sector-specific Acts, such as the Banking and other Financial Institutions Act, 1991 (as amended by the Banking and other Financial Institutions Act, 2020), the Insurance Act, 2003 (as amended by the Nigerian Insurance Industry Reform Act, 2025) and the Electric Power Sector Reform Act, 2005 (as amended by the Electricity Act, 2023). In 2002, there was a merger of two important petroleum companies: Agip Nigeria Plc and Unipetrol Plc to form Oando Plc.

One of the biggest M&A transactions in Nigeria is the merger between Access Bank and Diamond Bank. The deal was strategic as it consolidated Access Bank's position as a tier one bank with a strong capital base. The merger has contributed to a healthy competition between the new entity and other existing banks and helped strengthen the Nigeria banking system.

Another which occurred in 2012 was the acquisition of Conoco Phillips by Oando Plc through its subsidiary Oando Energy Resources in a transaction worth over \$1.5 billion. Skye bank Plc also acquired Mainstreet Bank limited from the Asset Management Corporation of Nigeria (AMCON) for N120 billion.

In the ICT sector, MTN Nigeria Limited acquired VGC Communications Limited in 2008 to form a new entity MTN Nigeria Limited. In 2011, Visafone also acquired 100 % shares (N2.7 billion) in Cellcom Communications Limited. On February 17, 2026, MTN Group completed acquisition of IHS Towers in a deal valuing the tower operator at approximately \$6.2 billion.

In the oil production sector, notable mergers that have happened in Nigeria include the merger between Niger Delta Exploration & Production Plc and Niger Delta Petroleum Resources to form a new entity called Niger Delta Exploration & Production Plc, and the acquisition of Elf Nigeria Limited by Total Nigeria in 2001. The shareholders of Elf Nigeria Limited surrendered their shares for an appropriate number in Total Nigeria Plc. One other very notable acquisition transaction was Prudent Energy and Services Limited's acquisition of 75% majority stake of Forte Oil Plc in 2019.

In the manufacturing sector, two notable mergers that have happened in Nigeria include; The merger between Tower Aluminium (Nigeria) Plc & Cook N Lite (Nigeria) Plc to form the new entity Tower Aluminium Nigeria Plc, the acquisition of 50% equity holdings in Nigeria Eagle Flour mills Limited by Flour Mills of Nigeria Plc in 2010, and GlaxoSmithKline's (GSK) \$2.1 billion sale of its nutritional drink brands Lucozade and Ribena to Suntory Beverage & Food Limited in 2013.

Other popular merger and acquisition transactions include Coca-Cola's acquisition of Chi limited. Coca Cola's reason for acquiring was because they were very optimistic about Africa's consumer opportunity. Mansard Insurance Plc also acquired 60 percent equity stake of Penman Pension Limited in 2015.

22.8.2 Successful mergers and acquisitions deals in Africa

Africa has seen significant merger and acquisition activity in recent years, driven by factors such as economic growth, industry consolidation, and foreign investment. Here are some notable examples:

South Africa

- (a) **Stripe's Acquisition of Paystack:** Stripe acquired Paystack, a Nigerian payment startup, for \$200 million, marking its entry into Africa.
- (b) **Visa's Minority Stake in Interswitch:** Visa acquired a minority stake in Interswitch, a Nigerian digital payments firm, boosting Interswitch's valuation to unicorn status.

22.8.3 Successful mergers and acquisitions deals in other climes

Here are some notable examples of successful merger and acquisition deals:

(a) Telecommunications

- (i) Vodafone and Mannesmann (1999): Vodafone acquired Mannesmann for \$202.8 billion, creating the world's largest mobile operator at the time.
- (ii) Verizon and Vodafone (2013): Verizon acquired Vodafone's US wireless division for \$130 billion, gaining full control over its wireless operations.
- (iii) AT&T and BellSouth (2006): AT&T acquired BellSouth for \$86 billion, expanding its presence in the telecommunications market.

(b) Energy

- (i) Exxon and Mobil (1999): Exxon acquired Mobil for \$80 billion, creating one of the world's largest publicly traded energy corporations.
- (ii) Shenhua Group and China Guodian Corporation (2017): The two companies merged for \$278 billion, creating the world's largest power utility company by installed capacity.
- (iii) Energy Transfer Equity and Energy Transfer Partners (2018): The companies merged in a deal worth \$90 billion, simplifying their corporate structure.

(c) Pharmaceuticals

- (i) Pfizer and Warner-Lambert (2000): Pfizer acquired Warner-Lambert for \$90.27 billion, expanding its product portfolio and market presence.
- (ii) Glaxo Wellcome and SmithKline Beecham (2000): The companies merged to form GlaxoSmithKline, one of the world's largest pharmaceutical firms.
- (iii) AbbVie and Allergan plc (2019): AbbVie acquired Allergan for \$63 billion, expanding its portfolio in key therapeutic areas.

(d) Technology

- (i) Microsoft and Activision Blizzard (2023): Microsoft acquired Activision Blizzard for \$75.4 billion, boosting its gaming segment across various platforms.
- (ii) Broadcom and VMWare (2023): Broadcom acquired VMWare for \$61 billion, strengthening its infrastructure software business.

22.9 Chapter review

This chapter discusses the concepts of mergers, and acquisitions. It was noted that the reporting requirements and statutory filings with the Corporate Affairs Commission (CAC), the Securities and Exchange Commission (SEC) and the relevant tax authority must be met before any merger, transfer or restructuring of a trade or business carried on by a company, can take place. Tax implications of various forms of business restructuring including mergers and acquisitions were also covered in line with the provisions of the Nigeria Tax Act, 2025.

22.10 Worked examples

22.10.1 Questions

In its bid to increase market power, growth and enhanced operating economies, the Board of Directors of a medium-sized beverage outfit, Yemmysea Beverages Limited, Abeokuta, considered the proposals on merger or acquisition with a business entity in the same line of business. The Chairman of the Board found all the proposals attractive.

The Financial Accountant, however, submitted that the Board needs to take into consideration tax implications on each of the merger or acquisition arrangements tabled before it. A reputable tax consulting outfit, with vast tax experience in merger, acquisition and re-organisation was recommended for this assignment.

Your firm has just been approached to offer professional advice on tax implications on each of the following business restructuring arrangements:

Proposal 1: Merger of two or more trades or businesses;

Proposal 2: Sale or transfer of a trade or business which results into cessation of a trade or business; and

Proposal 3: Sale or transfer of a trade or business asset which does not results into cessation of a trade or business.

Required:

As the company's Tax Consultant, you are to submit a report to the Managing Director in line with the provisions of the Nigeria Tax Act, 2025 and Nigeria Tax Administration Act, 2025 explaining:

- a) The tax implications of merger of two or more trades or business.
- b) The tax implications of sale or transfer of a trade or business which results into cessation of a trade or business.
- c) The tax implications of sale or transfer of a trade or business asset which does not results into cessation of a trade or business.
- d) The roles of the Nigeria Revenue Service on issues that concern mergers and acquisition of companies.

2. At a recent quarterly round-table discussion programme organised by a reputable Nigerian Manufacturers Association in Warri, the issue of how business enterprises could cope under the prevailing difficult operating and economic climate in both domestic and foreign markets was discussed. One of the lead discussants, in his submission, encouraged firms especially in related industry or line of business to consider the option of merger or acquisition. His suggestion was premised upon the synergy from business operations and economies of scale that would result from it.

Partway Agro-allied Limited, a private limited liability company, based in Okomu, Edo State, with interests in cultivation and sales of fruit crops, such as mango, pineapple and cashew was represented at the programme by its Managing Director and Chief Executive, Mr. Charles Obuoro. In his contribution, Charles Obuoro, whose company was being ravaged by poor agricultural yield and low revenue in the last three years accepted the submission of the lead discussant, but with reservation. His major area of concern was the tax implications to companies that are involved in merger or acquisition. The other participants who spoke on the issue were unable to convince him beyond reasonable doubt.

Oxy Foods Limited is a leading juice-making company located in a major city in the South Western part of the country. The company was having an issue with sourcing for its raw materials (edible fruits). The director of the company, Mr. Bolaji Bakare, who also attended the event during the plenary session, had preliminary discussion with Charles Obuoro on the possibility of merger or acquisition of their business entities. Both senior officials promised to discuss the possibility of merging the two companies with their respective management and board for consideration and approval.

An emergency meeting of the Board of Directors of Partway Agro-allied Limited has been scheduled for the next three weeks, purposely to discuss and take a position on the possibility of being merged with or acquired by Oxy Foods Limited under any of the following scenarios:

- i. Complete acquisition by Oxy Foods Limited, whereby both Partway Agro-allied Limited and Oxy Foods Limited would cease operations and a new company would arise from the process;
- ii. To merge with Oxy Foods Limited, whereby the company will inherit all the assets and operations of the Partway Agro-allied Limited companies. The company's name will be Oxy Foods Limited; or
- iii. As a result of merger with Oxy Foods Limited, Partway Agro-allied Limited will cease operations.

You have been appointed as the tax consultants for Partway Agro-allied Limited and your mandate is to offer professional advice that will assist management in selecting the best option that will be beneficial to its shareholders.

Required:

You are to draft a report to the Managing Director and Chief Executive of Partway Agro-allied Limited, explaining the following:

The tax implications of two companies in the same industry merging with each other, where:

- a. An entirely new company emerges from the process;
- b. One of the merging companies survives with its old name or new name.
- c. Any of the merged companies ceases business operations.
- d. The possible tax effect on gains accruing to the shareholders of Partway Agro-allied Limited for surrendering their shares in exchange for cash and/or equity shares from the new company that will emerge from the merger.

22.10.2 Suggested solutions to questions

The following are the tax implications of sale or transfer of a trade or business which results into the cessation of a trade or business in line with the provisions of section

1.

Nonye & Co (Tax Consultants)
Tonadey Road
Abeokuta

Date

The Managing Director
Yemmysea Beverages Limited
Abeokuta

Dear Sir,

RE: Tax Implications on Merger and Acquisition Arrangements, and Roles of Nigeria Revenue Service

We refer to your request on the above subject matter and wish to comment as follows:

(a) Merger of two or more businesses

The following are the tax implications of merger of two or more businesses in line with the provisions of section 189 (1a) of the Nigeria Tax Act, 2025 on business restructuring:

- i. a new trade or business shall not be deemed to have commenced as a result of the merger. Therefore, the commencement rule shall not be applicable to the surviving trade or business;
- ii. the rules relating to cessation of trade or business shall not apply to the trade or business that ceased as a result of the merger;
- iii. the assets transferred to the new or surviving trade or business as a result of the merger shall not be considered as chargeable assets and no Chargeable gains will arise as a result of the transfer;
- iv. assets of the merging trades or businesses shall be deemed to have been transferred at the residue of the qualifying capital expenditure on the day following the merger;
- v. capital allowances shall be claimed on the assets transferred because of the merger based on the remaining useful tax life of the asset;
- vi. unutilised capital allowance on the assets transferred shall be available for the use of the new or surviving trade or business;
- vii. unabsorbed losses of the merging entities shall be available to the surviving trade or business provided that such losses were incurred by the merged trade or business;
- viii. taxes deducted at source in respect of the merged trades or businesses shall be available to the merged trade or business; and
- ix. assets transferred because of the merger shall not constitute supply of

goods and shall not be liable to Value Added Tax.

(b) Sale or transfer of a trade or business which results into the cessation of a trade or business

Also, In line with section 9(1) iv of the Nigeria Tax Administration Act, 2025, companies involved in merger and acquisition must notify the Nigeria Revenue Service within 30 days of the occurrence of a change in its particulars, include sale, liquidation, acquisition, take-over or merger of a business and all

- i. relevant information regarding the sale, liquidation or merger, and full details of the new owners must be submitted to the Nigeria Revenue Service.
- ii. Direction and clearance shall be obtained from the Nigeria Revenue Service by companies involved in merger and acquisition with respect to any tax that may be due and payable.

We hope this presentation meets your requirements. If you need any further clarification on this, please do not hesitate to contact us.

189 (1b) of the Nigeria Tax Act, 2025 on business restructuring:

- i. the rules relating to cessation of trade or business shall apply to the trade or business that ceased as a result of sale or transfer;
- ii. capital allowances shall be claimed on the assets sold or transferred based on the sale or transfer value;
- iii. unutilised capital allowance on the assets sold or transferred shall not be available for use in the new or surviving trade or business;
- iv. unabsorbed losses of the old business shall not be available for use in the new or surviving trade, business, profession or vocation;
- v. taxes deducted at source from the old trade or business, shall not be available for use by the new or surviving trade or business; and
- vi. assets sold or transferred under this business restructuring shall not constitute supply of goods and shall not be liable to Value Added Tax.

(c) Sale or transfer of a trade or business asset which does not result into the cessation of a trade or business

The following are the tax implications of sale or transfer of a trade or business asset which does not results into the cessation of a trade or business in line with the provisions of section 189 (1c) of the Nigeria Tax Act, 2025 on business restructuring.

In the case of a sale or transfer of a business asset which does not result into the cessation of the trade or business, and where the parties agreed to sell or transfer the asset for an amount not exceeding the sum of the residue of the qualifying capital expenditure and unutilised capital allowance of the asset:

- i. capital allowances shall be claimed by the buying company on the assets sold or transferred based on the remaining useful tax life of the asset;
- ii. the unutilised capital allowance on the asset sold or transferred shall be available for use by the buying trade or business;
- iii. the trade or business that sold or transferred the assets shall not claim any part of the unutilised capital allowance pertaining to the asset sold or transferred;
- iv. the assets sold or transferred shall not be considered as chargeable assets and no Chargeable gains will arise as a result of the transfer; and
- v. assets sold or transferred under this business restructuring shall not constitute supply of goods and shall not be liable to Value Added Tax.

(d) The roles of the Nigeria Revenue Service on issues that concern mergers and acquisition of companies include

- iii. The Nigeria Tax Administration Act, 2025 and the Nigeria Tax Act, 2025 make provisions for the notification of Nigeria Revenue Service in case of mergers and acquisitions.
- iv. In line with the provision of section 189 (4) of the Nigeria Tax Act, 2025, Nigeria Revenue Service must be notified of case of merger and acquisition prior to commencing such arrangement.

Yours faithfully

For: NONYE & CO.

A. BODE
Managing Partner

2. Ahmed Kelechi & Co. (Chartered Accountants)
13, Long Avenue, Warri, Delta State

September 10, 2024

The Managing Director
Partway Agro-allied Limited
KM 45, Okomu, Edo State

Dear Sir,

Re: Proposal on Merger or Acquisition - Oxy Foods Limited

Further to our discussion and subsequent engagement as your tax consultants, please find below our comments on the related issues of merger or acquisition:

- a. Tax implications of two companies in the same industry merging with each other where an entirely new company emerges from the process:**
 - i. Rendition of annual returns;
 - ii. Commencement provisions under section 22(2) of the Nigeria Tax Act, 2025 will apply;
 - iii. Claim of capital allowances on qualifying capital expenditure will be deemed to have been taken over at their tax written down values;
 - iv. Unabsorbed losses and un-utilised capital allowances brought forward by the old company can be carried forward to the new company;
 - v. Taxes and related expenses (stamp duties, fees for SEC, NSE, CBN, land authorities, professional fees that is liable to VAT and WHT deductions, etc) to be capitalised; and
 - vi. Any cost associated with the merger or arrangement (i.e. capital in nature) shall not be allowed for tax purposes.
- b. One of the merging companies surviving with its old name or new name**
 - i. Surviving company must file returns not more than 6 months after the end of the accounting year.
 - ii. Commencement rules will not be applicable.
 - iii. Claim of annual allowance on tax written down value (TWDV) of the assets inherited.
 - iv. Unabsorbed losses and unutilised capital allowance of the merger shall be inherited.
 - v. Professional service fees to be liable to VAT and WHT.
 - vi. Stamp duties to be paid on increase in share capital.
- c. Where any of the merged companies ceased business operation**

- i. Cessation rule will not be applicable to the ceased company in line with the provision of section 189 (1a) of the Nigeria Tax Act, 2025..
 - ii. the assets transferred by the ceased company to the new or surviving trade or business as a result of the merger shall not be considered as chargeable assets and no Chargeable gains will arise on the ceased company as a result of the transfer
- d. **Possible effect on gains accruing to the shareholders of Partway Agro-allied Limited for surrendering their shares in exchange for cash and/or equity shares received from the new company**
 - i. Where the shares of the acquirer are issued in exchange for the shares of the acquired company (that is, share for share exchange), the transaction is exempted from capital gains tax.
 - ii. Where shareholders are either wholly or partly paid in cash for surrendering their shares in the ceased business, the gains arising from such cash payment will be considered as Chargeable gains and shall be included as taxable income in companies income tax computations (for limited liability companies shareholders) or included as taxable income in personal income tax computations (for individuals or bodies of individuals shareholders) subject to the exemption under section 34 of the Nigeria Tax Act 2025 that exempted from tax shares disposal proceeds that is less than ₦150,000,000 in aggregate and the Chargeable gains that does not exceed ₦10,000,000 in any 12 consecutive months.

It is pertinent to note that in any business combination, the consent of the Nigeria Revenue Service must be sought and clearance obtained regarding the full liabilities of companies involved in the combination have been settled.

We shall be pleased to provide further clarification on this matter if the need arises.

Yours faithfully,
For: AHMED KELECHI & Co.

B. YARO
Managing Partner

TAX PRACTICE MANAGEMENT

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- 23.1 Learning outcomes
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- 23.8 The role of technology in running a contemporary tax practice
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- 23.10 Chapter review
- 23.11 Worked examples

23 Tax Practice Management

23.0 Learning objective

The learning objective of this chapter is to appreciate the process of tax managements, relevant procedures and modern approach using available technologies.

23.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) understand the process of tax consultant's engagement by the clients;
- (b) understand the roles of various tax practitioners in tax practice;
- (c) understand the nature of documents to be kept by the client and tax consultant under the engagement;
- (d) understand types of services that could be rendered by tax consultants to their clients;
- (e) understand the benefits and risks of running a professional tax practice;
- (f) understand the roles of technologies in running a professional tax practice and the associated challenges; and
- (g) know the code of ethics expected of Revenue officials and tax consultants.

23.2 Introduction

Tax practice involves services ranging from compliance, planning and advocacy. Tax compliance services deal with timely filing of tax returns and payment of required taxes to the relevant tax authorities. Tax planning involves the structuring of taxpayers' books in a way that is tax efficient and ensure payment of minimal tax payable bearing in mind the provision of the tax laws. Tax advocacy arise when there is dispute between the taxpayer and the tax authority necessitating representation in court. A professional tax consultant can handle any or combination of these services for his client. In rendering the services to his client, a tax consultant should demonstrative high level of professionalism and competence.

23.3 Legal requirement for professional accountant in practice

In line with the professional code conduct issued by the Institute of Chartered Accountants of Nigeria, a Chartered Accountant in public practice should not engage in any business, occupation or activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the rendering of professional services.

23.4 Client and engagement acceptance

23.4.1 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 representation to the tax authorities.

Taxpayers are of two categories:

- a) individual taxpayers; and
- b) corporate taxpayers.

Both individual taxpayers and corporate taxpayers file tax returns to State Internal Revenue Service (SIRS), Federal Capital Territory Internal Revenue Service (FCTIRS) and Nigeria Revenue Service (NRS).

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.

23.4.2 Appointment of a tax consultant

- (a) Appointment of a tax consultant is usually communicated vide an appointment letter from the client to the tax consultant. Following this, the tax consultant will then issue a letter of engagement to the client spelling out the terms of the engagement including scope of work, deliverables, fees and payment terms.
- (b) A typical letter of appointment, letter of acceptance and letter of introduction to tax office are as shown below:

Illustration 23.1

Letter of appointment as tax consultant written on the letterhead of DDB Nigeria Ltd.

April 7, 2026

The Managing Partner
Adedeji Consultants
Mable House
Broad Street
Lagos

Dear Sir,

Re: Appointment as Tax Consultants

We refer to the discussion held recently with our directors on tax and related matters; we hereby confirm that management has approved your firm's appointment as tax consultants to our company with immediate effect.

Please note that the services to be rendered include, tax matters of employees, directors and the company.

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 Tuesday, April 28, 2026, by 2 pm at our Surulere head office to finalise the details.

We look forward to a mutually beneficial business relationship between our company and your organisation.

Yours faithfully,
for: **DDB Nigeria Ltd**

(Signed)
F. Atanda

Managing Director

23.4.4 Acceptance of offer as tax consultant

The acceptance of offer as tax consultant to a taxpayer 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 for service.

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

Illustration 23.2

Specimen letter of acceptance on the letterhead of Adedeji Consultants

April 10, 2026

The Managing Director
DDB Nigeria Limited
4, Brown Road
Surulere
Lagos.

Dear Sir,

Re: Acceptance of Offer as Tax Consultants

Your letter dated April 7, 2026, on the above subject 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 advisory services to your company, its directors as well as its employees. We will also 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,

For: Adedeji Consultants

(Signed)

Romoke Busari

Managing Partner

23.4.5 Introduction to tax authorities

Once the acceptance of offer to act as tax consultant has been concluded and the fees agreed, the next step is for the client to formally introduce the tax consultants to the relevant tax authorities. This introduction is usually done with a letter to the relevant tax authorities, and the tax consultants will be copied in such letter, as illustrated below:

Illustration 23.3

Specimen letter of introduction to Nigeria Revenue Service on the letterhead of DDB Nigeria Ltd

April 30 , 2026

The Tax Controller
Nigeria Revenue Service
Surulere Emerging Taxpayers Office (ETO)
5, Adeniran Ogunsanya Street
Surulere, Lagos

Dear Sir,

Re: Appointment as Tax Consultants

This is to inform you that we have appointed Adedeji Chartered Accountants as our Tax Consultants. Their office is located at Marble House (5th Floor), 23, Broad Street, Lagos.

The firm has been authorised to represent our company with respect to our tax matters in your office.

Kindly extend to them your usual co-operation and support.

Yours faithfully,

For: **DDB NIGERIA LTD**

cc:

The Managing Partner
Adedeji Consultants
Marble House (5th floor),
23, Broad Street Lagos.

Illustration 23.4

Specimen letter of introduction to Lagos State Internal Revenue Service on the letterhead of DDB Nigeria Ltd

April 30, 2026

The Head of Station
Lagos State Internal Revenue Service Surulere Tax Office
14, Bode Thomas Street Surulere, Lagos

Dear Ma,

Re: Appointment as Tax Consultants

This is to inform you that we have appointed Adedeji Consultants as our tax consultants. Their office is located at Marble House (5th Floor), 23, Broad Street, Lagos.

The firm has been authorised to represent our company with respect to our tax matters in your office.

Kindly extend to them your usual co-operation and support.

Yours faithfully,
for: **DDB NIGERIA LTD**

(Signed)
F. Atanda
Managing Director

cc:
The Managing Partner
Adedeji Consultants
Marble House (5th floor), 23, Broad Street Lagos.

Note: A similar letter of introduction should be written to each of the State Internal Revenue Services in Nigeria including the Federal Capital Territory Internal Revenue Service where the company have branches.

23.4.6 Client and engagement acceptance – (Communication with tax authorities)

The tax authorities rely on documents and firsthand information provided by any taxpayer (or the tax consultant), in determining the possible tax liabilities of the taxpayer.

Additional information 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 provisions of the Nigeria Tax Administration Act, 2025, the relevant tax authorities have rights to receive or demand for additional information from taxpayers and third parties, on matters affecting any taxpayer.

Communication with tax officials will usually cover the following:

- a) registration with tax authorities for Income and other taxes using standard questionnaires;
- b) filing of self –assessments tax returns within time limits provided by the tax laws;
- c) objections to any forms of assessments emanating from the relevant tax authority including best of judgment (BOJ) assessments; and
- d) tax queries and replies.

These are fully discussed below:

Registration with tax authorities

The Nigeria Revenue Service, State Internal Revenue Service and FCT Internal Revenue Service have a standard questionnaire which are expected to be completed by taxpayers for registration under the provisions of Nigeria Tax Administration Act, 2025.

The following details, together with Certified True Copies (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 taxpayer:

- a. Name, Registration number and Date of incorporation/Registration.
- b. The registered or residential 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.

Once the required application and documents are submitted to the relevant tax authority in line with the provisions of the Nigeria Tax Administration Act, 2025 and guidelines issued by the relevant tax authority, the taxpayer will be registered and issued Taxpayer Identification (Tax ID).

Filing of tax returns

Any company registered in Nigeria must submit relevant information to the tax authority within six months of the accounting year end. A new company must file its tax returns within 18 months of incorporation or 6 months after its first accounting period, whichever is earlier. In addition, an ongoing company must file its tax returns within six (6) months after its accounting year end.

With respect to personal income tax, an Individual must also provide relevant information in the specified format (Form A) at the beginning 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 NRS as tax returns, within eighteen months of incorporation of the company or six months after the end of the accounting year-end (whichever is earlier) for a new company and not later than six (6) months after the accounting year end for an ongoing company:

- 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; and
- d. evidence of payment of self-assessment tax computation

Due date for payment of tax

Payment of income tax is due on the filing date in case of a lump sum payment or in case of instalmental payment, as may be approved by the NRS, not exceeding three instalments and the last instalment must be paid not later than the due date; in this case, evidence of first instalmental payment must be submitted along with the tax returns.

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 taxpayer.

It is relevant to note here that the tax registration, filing of tax returns and tax payments to NRS, SIRS and FCTIRS are now done electronically on the e-registration, e-filing and e-payment platforms. The e-tax administration services have therefore reduced the level of written communication with the tax authorities.

Best of judgment (BOJ) assessment

Where the taxpayer fails to file Self-assessment forms and pay the normal tax within the time limit specified under the tax law, BOJ assessment may be raised on the affected taxpayer.

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

Illustration 23.5

Bamiji Limited, Ibadan is a trading company which has been operating in Nigeria for over ten years. The company is duly registered for both income tax and VAT and has been filing returns regularly.

Unfortunately, the company's accounts for the year ended December 31, 2024 could not be signed by the directors until August 1, 2025, 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 July 30, 2025. The tax consultant filed and paid for self-assessment on August 2, 2025 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, write a suitable letter of objection to the tax office on the BOJ assessment.

Suggested solution to illustration 23.5

Specimen letter of objection to Nigeria Revenue Service must be on the letterhead of XYZ Consultants

August 8, 2025

The Tax Controller
Nigeria Revenue Service Integrated Tax Office
Minna Way,
Ibadan

Dear Sir,

Bamiji Limited

TIN NO: 21494422 – 0001

Objection to BOJ Assessment No YC/A/110/2018/1 dated July 30, 2025 for ~~N4.5M~~

We write to raise a formal objection to the above quoted BOJ assessment of ~~N4.5m~~ raised on our above – named client, Bamiji Limited for 2025 assessment year.

Our grounds of objection are as follows:

- (a) Our client has been a good corporate taxpayer 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 2025 due to ill health of the Managing Director. Photocopies of his medical reports for treatment received in Toronto are attached for your perusal;
- (c) The BOJ assessment was served on the company few days ago; and
- (d) Tax returns and self-assessment form and payments for Income tax, Education tax and LRP were submitted to your office on August 2, 2025. Please see copies attached for ease of reference.

We will, therefore, be grateful if you would please discharge the BOJ assessment of ~~N4.5~~ on compassionate ground and substitute with the self-assessment Returns for ~~N2.75m~~ based on the income tax computations already filed.

We sincerely thank you for your cooperation.

Yours faithfully,
For: XYZ Consultants

Tolu Ojo
For: Managing Partner
CC:
The Managing Director Bamiji Limited
4, UI Road
Ibadan

23.4.7 Tax queries and replies to queries

Tax queries emanate from desk examinations of tax returns by tax officials. Returns are examined, supporting documents are requested for to ascertain whether or not the taxpayer's income has not been understated, reliefs not overstated or that the expenses deducted from the income for the period, were **“wholly and exclusively-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 taxpayers' 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, to eliminate any private or capital expenditure from the tax returns and guide against tax avoidance to some reasonable extent:

- (a) whether there exists, supporting documents for assets, liabilities income and expenditure in the name of the taxpayer;
- (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 expenditure in form of cost of increase in capital or incorporation expenses, general bad debts and depreciation have been written back to profit; and
- (f) whether losses and carry forward rules have been adequately observed.

Replies

When replying to tax queries, tax practitioners should endeavour to be ethical and use professional language as much as practicable. The consultant may quote decided cases or tax laws provided the 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.

23.4.8 Client and engagement acceptance – (Communication with other stakeholders) Communication with other stakeholders is specifically required to gather additional information on the clients' business.

23.4.9 Communication with former tax consultant and auditors

To satisfy professional ethics, an incoming tax consultant is required to liaise with the former consultant and/or auditors in charge of the client's tax matters.

In these 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; and
- (c) plan the assignment.

23.4.10 Communication with other stakeholders

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; and
- 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. He should exercise the duty of reasonable care in making use of any third parties' evidence.

23.4.11 Client and engagement acceptance – (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.

23.4.12 Documentation/information to be maintained/provided by clients

The company's (client's) officers should have 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 (CAC3), CAC Status Report;
- d) Certificate of increase in share capital including stamp duties, registration fees, board's resolution, etc.;
- e) Contracts, rents and of her agreements;

Financial matters

- a) Signed audited financial statements
- b) Books of account, ledgers, trial balance (hard & soft copies)
- c) Fixed assets register and title documents
- d) Accounts and procedural manual
- e) Payment vouchers, receipts, etc.
- f) Banking & cash transaction documents
- g) Monthly payroll and directors' emolument
- h) Correspondence with tax authorities and other third parties
- i) Minutes of board of directors' and annual general meetings (AGM)
 - i. Tax and other payment receipts, assessments, forms, tax clearance certificates, etc.; and
 - ii. 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.

23.4.13 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, details of directors (CAC 07), Shareholders, Secretary, Share Capital details, CAC Status Report, etc.;
- b) Engagement letter;
- c) Company auditors, if different from the 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) Correspondence 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; and
- i) Other documents, financials and non-financials.

23.5 Risks and benefits of running a professional tax practice

23.5.1 Risks of running a professional tax practice

Tax legislation is becoming increasingly complex, bringing ever more risk for the professional tax practitioners. Tax is a highly contested practice area in accounting profession. Statistics show that the highest volume and value of professional liability insurance (PLI) claims for small and mid-sized firms are related to tax services. With an increasingly complicated tax system, it is quite easy to see why tax is the top of the list when it comes to insurance claims and complaints. It is therefore crucial that practitioners

take care when practicing tax, keeping up with the latest tax changes and implementing quality controls within their practice.

The following are the risks of running professional tax practice:

a. Lack of expertise

This may lead to errors due to practitioners advising clients on technical tax matters when they didn't have adequate experience or knowledge. Examples include giving wrong professional opinion on tax matters, advise of tax implications of business arrangement and re-organisation or restructuring, etc.

b. Lack of attention to detail

This may lead to errors that could have been avoided if there had been procedures and controls in place. This include late filing of tax returns whose penalties is huge for clients.

c. Lack of documentation

Failing to maintain evidence of client engagement terms or tax filing positions in working paper files. This include failure to detect the client's non-compliance with certain tax laws when it was unclear whether the compliance to such tax laws was part of the tax practitioner's mandate (engagement letters are a key tool for reducing this sort of risk).

d. Unpredictable Income for owners

Owner's income can be unpredictable — Owners are responsible for the financial well-being of their employees and the last one to get paid is the owners. While others can mentally "check out" at the end of the workday, owner's brain is typically plugged into business.

23.5.2 Benefits of running a professional tax practice

The following are some of the benefits of running a professional tax practice:

a) Own schedule and rules

One of the biggest advantages of practice ownership is the ability to make your own schedule working whenever, wherever. Owning your own firm means you are better able to balance work, family and play. To accomplish this, you need to have good procedures in place for your staff, your clients, and, yes, even for yourself.

b) Financial benefits

While your income can be unpredictable, that's not necessarily a bad thing if you are profitable. As a practice owner, you get to decide what you never would have been able to decide as an employee, how much of the funds to retain in the firm and how much to bonus out. This means more money in your pocket.

c) You pick your own team

Your success as a practice owner is immensely dependent on your team. As an employee sometimes you can get stuck working with people that are not productive or simply not very nice. With ownership comes the benefit of choosing people that will fit the firm culture and will help it prosper. This is also very important to make possible all of the above listed benefits. As an owner of your own practice, you get to choose who to hire and what type of environment you want to have at work.

d) Opportunity to pick own clients

Although many practice owners don't take advantage of this benefit, they really should because they are not limited to just picking specific industries.

It is also very important that your clients fit your culture, that is, if you are a technology driven firm, you do not have to accept clients who loathe technology and handle everything through paper copies. When creating a desired culture, it is advantageous to accept only clients who fit that culture. Detouring from that creates inefficiencies and disadvantages for you, your team and the clients.

e) You create your own vision

As a practice owner, you are also the vision owner. The key to the success of the practice goes back to setting rules, picking the right team, and the right clients. These things are not necessarily easy to achieve, but for a practice owner, unlike for an employee, they are very much possible.

23.6 Risk mitigation strategies in tax practice

Tax practitioners in Nigeria face various risks, including compliance risks, reputational risks, and operational risks. Here are some risk mitigation strategies:

- a) regularly review and update knowledge of Nigerian tax laws, regulations, and guidelines to ensure compliance;
- b) identify potential tax risks and assess their likelihood and impact on clients or the organisation;
- c) establish and maintain effective compliance procedures, including record-keeping, reporting, and documentation;
- d) ensure accurate and complete records of tax-related documents, including returns, payments, and correspondence;
- e) provide regular training and education to staff and clients on tax laws, regulations, and best practices;
- f) monitor and address interactions with tax authorities, including audits, inspections, and disputes;
- g) develop and implement tax risk management policies and procedures to guide decision-making and ensure consistency;
- h) engage with tax professionals and experts to seek guidance and advice on complex tax issues;

- i) utilise technology and automation to streamline tax processes, improve accuracy, and reduce errors;
- j) regularly review and update tax strategies to ensure they remain effective and compliant with changing tax laws and regulations;
- k) only take on work within your circle of competence;
- l) tax practitioners can avoid many of these risks by only accepting work for which they have either adequate experience or the ability to outsource the work to qualified tax specialists;
- m) implement quality control systems in professional tax practice; and
- n) quality control systems can not only help you avoid common pitfalls and manage risk, but they can also help you improve your practice effectiveness.

Other ideas to mitigate the risks

- a) **Use checklists:** A best practice for the practice is to create general tax preparation and review checklists for all your staff to use.
- b) **Implementation of a task and deadline tracking system:** A task tracking system can help tax practitioner monitor client filings and meet their due dates.
- c) **Follow client acceptance practices:** Before taken on new clients, it's wise to determine their past filing history and any issues encountered with the relevant tax authorities and their past tax advisors.
- d) **Invest in education:** The Nigerian tax system is becoming complex and constantly changing, so the practice should continually invest in staff training.
- e) **Document all material advice in writing:** Client working paper files should always include records of filing positions taken as well as client correspondence confirming the relevant facts. When tax practitioners give their client material verbal advice, they should also document a summary of the discussion in case an issue arises later.
- f) **Obtain professional valuations:** When related parties transact with each other in significant transactions including reorganisations, professional valuations should be obtained to avoid the significant risks associated with an unreasonable valuation. If the client doesn't want to obtain a valuation, tax practitioners should decide on whether the work should be done at all. At a minimum, the risks should be communicated and documented in their working paper files.
- g) **Maintain a strong professional network,** including relationships with other tax practitioners, experts, and industry associations.
- h) **Stay informed about industry developments,** including changes in tax laws, regulations, and best practices.
- i) **Participate in professional development opportunities,** including training, conferences, and workshops.
- j) **Consider professional indemnity insurance** to protect against potential claims and liabilities.

23.7 Submission of objection letter via electronic and physical means

The Finance Act, 2019 made provisions for the use of electronic means to exchange correspondences between the States Internal Revenue Service, FCT Internal Revenue Service and the taxpayers. In addition, the Finance Act, 2020 made provisions for the use of electronic means to exchange correspondences between the Nigeria Revenue Service and the taxpayers.

The use of electronic means to exchange correspondences such as objection letter between the relevant tax authority and the taxpayers is also enshrined in the provisions of the Nigeria Tax Administration Act, 2025 that states that objection letter could be served by courier service or via electronic means.

23.8 The role of technology in running a contemporary tax practice

The role of technology in running a contemporary tax practice is changing rapidly. The tax ecosystem is currently at a turning point because the tax practice itself is currently faced with a wide range of issues, new layers of complexity and regulatory pressure.

A new synthesis between taxation and technology is emerging and is establishing a new taxation paradigm that has been adopted by enterprise organisations and small businesses alike.

The new frontier of taxation is the digital realm. The adoption of digital tax accounting practices is a highly disruptive trend that brings real-time analytics, real-time access, and enhanced visibility to business owners and tax consultants.

Tax legislations are being amended in recognition of the role of technology as it affects digital transactions and mode of correspondences between the tax authority and the taxpayers.

Therefore, to cope with continuous changes in tax landscape, tax practice firm needs to invest heavily in technology to enhance their service offerings to their clients.

The following forms of technological-driven tools could be adopted in tax practice and tax administration:

(a) Cloud computing technology:

These are cloud-based independent automated solutions for tax management. When a tax practice or administration subscribes to a cloud-based tax management solution, it is relieved of the need to invest in physical onsite servers with the attendant costs of maintenance and support. Cloud-based tax management solutions also enable tax practitioners and administrators to work remotely from practically any device with internet connection and serve their clients from any location at any time. This tool further helps tax practitioners to facilitate collaboration among themselves, clients and taxpayers

(b) Artificial intelligence and robotics:

In the conventional tax practice, practitioners put a lot of efforts into collating and analysing financial data in order to serve their clients and taxpayers. Artificial intelligence and robotics make it easier for

tax practitioners to simplify and accelerate various data-related tasks. Robotic Process Automation (RPA) software has been demonstrated to be effective in handling routine monotonous aspects of the tax man's job. Artificial intelligence and robotics help reduce costs and errors by streamlining operations.

(c) Blockchain technology:

This tool became popular globally through the advancements in digital currency transactions such as Bitcoin. Many businesses now leverage on the technology to record their financial and non-financial transactions in an open, secured and decentralised ledger. Where the tax consultants or the tax administrators are part of the transaction flow and given access to the data chain, it makes it possible for all parties to see each transaction and determine the tax implication. The tool can also be used to facilitate tax payments to the government at highly reduced processing cost.

(d) Data analytics technology:

This tool makes use of data and it allows real-time status monitoring of financial matters including their tax implications to be easily achieved. In the financial realm, data produces valuable insights, drives results and creates a better experience for clients. The tool helps tax administrators to improve internal operations and build revenue for the government. Through data analytics software, tax practising firms could offer more valuable advisory services to their clients.

(e) Social media technology:

The social media platforms: These platforms (such as Twitter, Facebook, LinkedIn, Instagram) have become useful tools in the hands of tax practitioners and administrators. They are used primarily for dissemination of tax information due to their wide reach and makes collaboration among tax professionals, clients and administrators seamless.

(f) Mobile app technology:

Tax practitioners can make use of their mobile devices to access the financial data of their clients anytime and anywhere, especially where the client has adopted cloud accounting technology. Also, tax administrators and practitioners could develop and deploy mobile apps which taxpayers and clients could download and install for tax updates and news.

Benefits of application of technology in tax administration to taxpayers

Application of technology in tax administration creates the following advantages to taxpayers:

Ease of doing business: Automation will enable taxpayers reduce or minimize cost of compliance and boost their ease of doing business.

Cost saving: Automation saves cost for taxpayers in terms of time and money spent where there is no automation.

Efficiency: With Automation, there is general improvement in efficiency.

Health: Automation enables the taxpayer to safely comply with his tax obligation without risking or compromising health of individuals in the event of a pandemic when physical contact will be restricted.

23.9 Challenges of using available digital technology solution for tax compliance

The challenges include the following:

- a) Infrastructure and connectivity issues: Poor internet connectivity, limited access to computers or mobile devices, and frequent power outages can hinder the effectiveness of digital tax solutions.
- b) Cybersecurity concerns: Taxpayers may be hesitant to share personal financial information online due to concerns about data security and the risk of cyber-attacks.
- c) Digital literacy and skills gap: Some taxpayers may lack the necessary digital literacy and skills to effectively use technology solutions for tax compliance.
- d) Complexity of tax laws and regulations: Tax laws and regulations can be complex and difficult to navigate, making it challenging for taxpayers to ensure compliance.
- e) Cost and affordability: Some technology solutions may be costly, making them inaccessible to small businesses or individuals with limited financial resources.
- f) Data quality and accuracy: Ensuring the accuracy and quality of data entered into tax systems can be a challenge, particularly if taxpayers are not familiar with the technology.
- g) Integration with existing systems: Integrating new technology solutions with existing systems and processes can be complex and time-consuming.
- h) User experience and accessibility: Taxpayers may experience difficulties with user experience and accessibility, particularly if the technology solution is not user-friendly or accessible.
- i) Regulatory compliance: Ensuring that technology solutions comply with relevant tax laws and regulations can be a challenge.
- j) Scalability and flexibility: Technology solutions may need to be scalable and

flexible to accommodate changing tax laws and regulations, as well as increasing numbers of taxpayers.

23.10 Chapter review

In this chapter, readers must have learnt the processes of tax consultants' engagement; various forms of communication between the tax consultants and its clients; various forms of communication between the tax consultants and the relevant tax authorities; nature of services that tax consultants could render to its clients; and types of documents to be kept by both client and tax consultants in the course of engagement.

The benefits and risks of running a professional tax practice as well as ways of mitigating the risks was also discussed in this chapter. Besides, the chapter evaluated the roles of technology in running contemporary tax practice.

23.11 Worked examples

23.11.1 Questions

1. James Bond Nigeria Limited, based in Enugu was incorporated in January 2022, as a producer of wallets and other safe keeping products. The first set of audited accounts was for the year ended December 31, 2022, and it was filed by Messrs F.J. Yaba & Co. to the relevant tax authority together with the tax computations.

Upon examination of the tax returns, the Tax Controller raised some queries relating to the following expenses:

- a. Bank charges
- b. Electricity expenses
- c. Hotel expenses
- d. Cost of equipment
- e. Building costs
- f. Purchase of raw materials
- g. Salaries and wages
- h. Directors' fees
- i. Business insurances
- j. Rent.

Required:

Assuming you are the Tax Controller, draft a letter to the Tax Consultants of the company requesting for the relevant documents to support the various expenses noted above.

2. A Calabar-based textile manufacturer, Deptec Ventures Nigeria Limited, was incorporated on January 1, 2022, but commenced business on July 1, 2022.

The financial year-end of the company is December 31. The Board of Deptec Ventures Nigeria Limited has just appointed your firm as the company's external auditors, and you have been duly informed.

Assume that the necessary audited accounts have been prepared by your firm in accordance with the provisions of the relevant laws and accounting standards.

Required:

Prepare a letter addressed to the appropriate tax authority stating the following:

- (a) The audited financial statements attached, in accordance with the provisions of the Companies and Allied Matters Act, 2020;
- (b) Tax computation for relevant year of assessment; and
- (c) Any other information required to accompany the first set of returns as an agent of Deptec Ventures Nigeria limited.

3. Eye Service Limited was incorporated as a limited liability company on February 25, 2024. The major object clause of the company as stated in its Memorandum of Association is "to carry out preventive and diagnostic eye examination and screening". It has an Authorised Share Capital of ₦1,000,000 made up of 1,000,000 ordinary shares of ₦1.00 each, fully allotted to the three subscribers, who are also the founding directors as stated in the incorporation documents.

You have just been appointed as the first Tax Consultant to the company, which has its registered and business address at 22c, Crossroads Lane, Kano. The company commenced operations on Monday, May 4, 2024.

Required:

Prepare the letters for income tax and VAT registration to the appropriate Nigeria Revenue Service tax office for Eye Service Limited.

4. The success achieved by the Nigeria Revenue Service (NRS) in meeting the revenue targets set for its Integrated Tax offices nationwide was seen as a challenge by its state counterpart, that is, State Internal Revenue Service (SIRS). As a result, the Chairman, New State Board of Internal Revenue Service, in a bid to increase the revenue drive from the self-employed category, announced various incentives to staff who meet the targets set.

You have been engaged as the Tax Consultant to the Chairman of New State Board of Internal Revenue Service.

Required:

Advise the Chairman of New State Board of Internal Revenue Service on:

- (a) Identifying constraints facing the tax authorities in the assessment and collection of taxes from self-employed taxpayers.

- (b) Evolving strategies for expanding the State tax net to improve tax collection from the self-employed category of taxpayers.

23.11.2 Suggested solutions to questions

1. Letterhead of the Tax Office

Our reference (O/R)

Your reference (Y/R)

Date

The Tax Partner
Messrs F. J. Yaba & Co.
New Heaven Street
Uwani, Enugu.

Dear Sir,

**Re: Audited Financial Statements of James Bond Nigeria Limited
For the Year Ended December 31, 2022**

We refer to the tax returns filed on behalf of your client, for the year ended December 31, 2022, together with the tax computations 2023 years of assessments.

Having examined the accounts and the accompanying schedules, it has become highly imperative to seek for more clarifications on some of the expenses incurred by your client. To this end, we hereby request for some documents evidencing the various expenses as follows:

a) Bank charges

Give details of your client's bankers and provide us with all the bank statements from January to December 2022.

b) Electricity expenses

Forward copies of all electricity bills and evidence of payment for the year under review.

c) Hotel expenses

All hotel bills for the year under review are needed.

d) Cost of equipment

All invoices and receipts evidencing payments and delivery of the equipment to be submitted.

e) Building costs

Building plan, survey plan, receipts and invoices, vouchers, certificate of occupancy, architect's certificates are needed.

f) Purchase of raw materials

Receipts and invoices, goods received notes, waybills and stock cards are required.

g) Salaries and wages

Staff payroll, evidence of remittance of PAYE and appointment letters are required.

h) Directors' fees

Forward evidence of withholding tax deducted and remitted to the relevant tax authorities and vouchers for payments of directors' fees.

i) Business insurances

Insurance policies, receipts issued by insurance companies and claims received, if any, are to be submitted.

j) Rent

Rent agreements, receipt issued by the landlord, evidence of deduction and payment of Withholding tax and vouchers are required.

It is our hope that you will expedite action in this regard by providing all the above documents.

Kindly respond to our queries within 30 days after the date of receipt of this letter.

Thanks for your anticipated cooperation.

Yours faithfully,

For: UWANI MEDIUM TAX OFFICE

J. OLABISI

Tax Controller

2.

XYZ &Co. (Chartered Accountants)

Plot 10, Ogoja Road, Calabar

May 1, 2025

The Tax Controller
Nigeria Revenue Service Calabar Medium Tax office
Calabar.

Dear Sir,

RE: Registration of Deptec Ventures Nigeria Limited for Tax Purposes

We wish to inform you that we have been appointed as the external auditors to the above-named company. We also have instructions to file all necessary documents with your office.

Please find enclosed, herewith copies of the statement of affairs for the period ended December 31, 2023 (18 months) and audited financial statements for year ended December 31, 2024. Also included, are the copies of the relevant tax computations for 2023 and 2024 years of assessment, completed self-assessment forms and evidence of payment of self-assessed tax liabilities.

The following documents/information are supplied for record purposes:

- a. a reply to your questionnaires;
- b. names and addresses of directors;
- c. copy of the Memorandum and Articles of Association;
- d. copy of the Certificate of incorporation (original available for sighting);
- e. copy of the form, containing the particulars of directors duly stamped by the Corporate Affairs Commission;
- f. accounting year-end is December 31, every year;
- g. letters of appointment of our firm as the external auditors and tax consultants addressed to you, by our client;
- h. date of commencement of business – July 1, 2022;
- i. the company manufactures textiles; and
- j. the company's registered address is 2, Ikot-Ekpene Road, Calabar.

Whilst thanking you for your usual cooperation in this regard, kindly update our client's tax records accordingly.

Yours faithfully

For: BABA AFOL & Co.

A. AFOLABI

Managing Partner

cc:
The Managing Director
Deptec Ventures Nigeria Limited
2, Ikot-Ekpene Road
Calabar

3 (a)

Shehu & Company (Chartered Accountants)
3, Rano Road, Kano

O/R: NRS /IT/12/01

Your reference (Y/R):

Date

The Tax Controller
Nigeria Revenue Service
Medium Tax Office
4, Ramat Road
Kano.

Dear Sir,

Re: Application for Registration of Eye Service Limited (Rc: 105449) for Income Tax Purposes

We wish to register the above-named company for income tax purposes. The following information / documents which will enable you open a tax file are as follows:

1. the company was incorporated on February 25, 2024;
2. the registered and business address of the company is 22C, Crossroads Lane, Kano;
3. the company is in the business of providing eye services;
4. the company commenced business on May 4, 2024;
5. the accounting year-end is December 31, each year;
6. the appointed banker is Long-Time Bank Ltd., 40, Bello Road, Kano;
7. the particulars of the shareholders are as follows:

Names	No of Shares Held
(a) Dr. Ibrahim Dogo	700,000
(b) Hajia Munirat Dogo	150,000
(c) Hajia. Mariam Dogo	<u>150,000</u>
	<u>1,000,000</u>

8. the directors and their addresses are:

Name	Address
Dr. Ibrahim Dogo -	15, Moloko Way, Kano.
Munirat Dogo -	15, Moloko Way, Kano.
Hajia Mariam Dogo -	15, Moloko Way, Kano.

9. the directors have no other directorship; and

10. the appointed auditors/tax consultant is: Shehu & Company (Chartered Accountants) 3, Rano Road, Kano.

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 for your records.

Thanks for your anticipated assistance.

Yours faithfully,

FOR: SHEHU & Co.

S. Musa
Managing Partner

cc: The Managing Director, Eye Service Limited
22c, Crossroads Lane, Kano.

4.

ABC & Co. (Chartered Accountants)
11, Edith Muhammad Street, Ojodu
Makurdi

Our reference (O/R)

Your reference (Y/R)

Date

The Chairman
New State Board of Internal Revenue Service
Makurdi 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 providing an advisory service on the above subject 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 men and women, artisans and all other entities that are not liable to companies income tax, but liable personal income tax. 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 the relevant state tax authorities every year. Such tax return is expected to disclose transactions relating to the individual's 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 utilisation 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 avoidant 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 experience and suitable qualified personnel**

There is the dearth of experienced tax personnel, hence the difficulty in ascertaining the correct assessments for self-employed taxpayers.

(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 uncondusive operating environment. The society has been impoverished such that paying tax may further impoverish the low-income earners.

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 assessment 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, 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 utilisation 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 utilised effectively.

(vii) **Promulgation of anti-avoidance provision**

Making provisions to block the several loopholes 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 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 insisting that they should file returns of all their new customers with the Revenue.

- (x) **Engagement of experienced and qualified personnel** Employing qualified personnel and paying competitive remuneration will further enhance dedication 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 outdated and which makes it difficult to comply with. Some of those provisions encourage tax evasion.

We have commented on areas deemed necessary, nevertheless, please do not hesitate to contact the undersigned, should you require any further clarification.

Yours faithfully,
For: ABC & Co.

D. OWOEYE
Managing Partner

TAX PLANNING, AVOIDANCE AND EVASION

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24 Tax Planning, Avoidance and Evasion

24.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the basic concepts and application of tax planning, avoidance and evasion.

24.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- a) understand the concept and application of tax planning;
- b) mandatory disclosure of tax planning transaction under the Nigeria Tax Administration Act, 2025;
- c) know the concept and application of tax avoidance;
- d) understand the concept and application of tax evasion;
- e) differentiate between tax avoidance and evasion;
- f) ascertain the tax implication on thin capitalisation;
- g) understand the tax implication on tax havens;
- h) ascertain the tax implication on treaty shopping;
- i) understand the tax implication on non-tax factors; and
- j) advise on tax planning activities and strategies.

24.2 Tax planning

The main taxes in Nigeria can be classified into direct and indirect taxes.

24.2.1 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 (in form of hydrocarbon tax and companies income tax) is payable by companies engaged in petroleum operations, and Development levy payable by companies.

24.2.2 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 (that is, 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 to 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 is 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 minimise his or her tax liability at every point in time. It 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 minimized. Payment of tax is an outflow from the viewpoint of a taxpayer. With respect to profits/income tax, the amount that can be retained by the taxpayer from the profits/income of his business/ investments is reduced by the amount of tax that such taxpayer must pay. Payment of tax in any country is regulated by the laws of the 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 minimize 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, of taxable profits of the taxpayer, ought to be considered in tax planning, before deciding on the taxpayer's accounting date.

Planning regarding 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 businessperson 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 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.

24.2.3 Tax planning check list

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;
- (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) Nigeria Social Insurance Trust Fund (NSITF); and
 - (viii) National Housing Fund (NHF); and due dates for income tax payment, to avoid penalty and interest.
- (k) in Chargeable gains, consider roll-over relief;
- (l) in Chargeable gains, consider the exemption threshold;
- (m) Consider current tax incentives:
 - (i) economic development tax incentives;
 - (ii) export processing zone allowance;
 - (iii) free trade zone exempt profit; and
 - (iv) exemption for agricultural businesses
- (n) consider income tax exemptions under chapter 8, part 1 of Nigeria Tax Act, 2025;
- (o) investment options – consider bonds issued by the federal or state government;
- (p) dividend distribution out of Franked Investment Income; and

- (q) employees remuneration structuring; and consider the effects of benefits in kind on taxable remuneration.

24.2.4 Mandatory disclosures of tax planning transaction

In line with the provisions of section 30 (1) of the Nigeria Tax Administration Act, 2025, any person who enters or intends to enter into any transaction or agreement, referred to as a disclosable transaction or agreement, whose principal purpose is a benefit which enables, or might be expected to enable, such a person to obtain a tax advantage, shall without notice or request, provide to the relevant tax authority, information relating to that disclosable transaction or agreement. Transaction includes course of action, agreement, scheme or arrangement.

Section 30 (2) of the Nigeria Tax Administration Act, 2025 also provide further that the relevant tax authority may make regulations specifying:

- i. the information to be provided by a person in relation to a disclosable transaction or agreement;
- ii. the form and manner of delivery of that information to the relevant tax authority;
- iii. the period of time within which the disclosable transaction or agreement information shall be provided to the relevant tax authority; and
- iv. administrative penalties for non-disclosure, false disclosure, incomplete disclosure or late disclosure.

Also provided for in section 30 (3) of the Nigeria Tax Administration Act, 2025 tax advantage means;

- i. a relief or increased relief from tax;
- ii. repayment or increased repayment of tax;
- iii. avoidance or reduction of a charge to tax or an assessment to tax;
- iv. avoidance of a possible assessment to tax;
- v. deferral of a payment of tax or advancement of a repayment of tax; or
- vi. avoidance of an obligation to deduct or account for tax

24.3 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. Apart 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 minimise 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 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 minimize 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 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.

24.3.1 Anti-avoidance legislation

The two possible forms of anti-avoidance legislation are:

- (a) specific legislation to block known tax avoidance devices; and
- (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 minimizing 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 authorities the power to set aside certain tax avoidance schemes. Tax avoidance schemes that could be cancelled are:

- where there exists 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(s) 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 jeopardized 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, there are various anti-avoidance provisions under the Nigeria Tax Administration Act, 2025.

Section 46 of Nigeria Tax Administration Act, 2025 on artificial transaction

Where a relevant tax authority 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, as regards liability to tax, as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would be affected by the transaction and any taxable person concerned shall be assessed accordingly.

Transactions between persons who are connected shall be deemed to be artificial or fictitious if in the opinion of the relevant tax authority 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 47 of Nigeria Tax Administration Act, 2025 on prohibited tax avoidance arrangement

The relevant tax authority may counteract a prohibited tax avoidance arrangement by way of adjustments, disregarding, or re-characterising the arrangement through an assessment, the modification of an assessment, amendment or disallowance of a claim or otherwise, in part or whole, unless the taxable person proves, to the satisfaction of the relevant tax authority, that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the tax law.

Arrangement includes any agreement, understanding, scheme, transaction or series of transactions, whether or not legally enforceable.

Prohibited tax avoidance arrangement means any arrangement where, having regard to the facts and circumstances, it is reasonable to conclude that;

- i. the main purpose of the arrangements was to obtain a tax benefit or advantage;
- ii. obtaining the tax advantage is contrary to the object and purpose of the provisions of this Act or any other tax law;
- iii. it results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act or any other tax law; or
- iv. it lacks commercial substance or coherence in whole or in part.

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.

24.4 Tax evasion

Tax evasion is a contravention of tax laws whereby a taxable person neglects to pay the tax due or reduces the tax liability by making fraudulent or untrue claims on the income tax forms or returns. Put differently, tax evasion is the act whereby the taxpayer achieve minimisation of tax paid 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 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 of chargeable income from tax returns.

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 was not discovered.

24.5 Advise on tax planning activities and strategies

Tax planning is the analysis and arrangement of a person's financial situation in order to maximise tax reliefs and minimize tax liabilities in a legal and efficient manner. In other words, tax planning refers to the “arrangement of a person's business or private affairs in order to minimize tax liability.” Tax rules can be complicated, but taking some time to know and use them for your benefit can change how much you end up paying as tax.

There are always tax planning opportunities for companies and corporations regardless of their size or the jurisdictions they work on.

At the local level, corporate tax planning is carried out through a review of the company's income generation activities, expenses, benefits and other deductions, profit distribution, tax rates, and any other variable that may affect the result, against the applicable law to find optimisation opportunities.

In addition to local planning strategies, multinational enterprises (MNEs) can make use of international tax planning to take advantage of the differences in the rates from one jurisdiction to another, and the different tax benefits that may be offered between jurisdictions.

Nevertheless, it is important to note that most countries are putting into effect regulations to prevent tax base erosion or profit shifting from one jurisdiction to other, emphasizing instead stricter regulations for transactions that involve lower taxation jurisdictions.

With a sound corporate tax planning process, companies can understand their requirements to comply with local legislation in the countries they operate.

Further to that, having knowledge of the various incentives and benefits available to them with comprehensive corporate tax planning will also enable the company to improve its profitability. With full compliance and awareness of available benefits, companies can minimize their tax burden and optimize available profits.

Tax planning is a right that taxpayers must exercise to reduce tax liability and improve profitability while fully complying with the standing legislation to avoid penalties and further risks. Therefore, taxpayers (both corporate and individuals) should make sure they engage an experienced and trusted tax planning strategist/consultants to receive sound advice and guidance and make informed decisions on how to protect their themselves or company.

24.6 Tax avoidance and tax evasion compared

Tax evasion and tax avoidance are both ways of reducing tax burden of a taxpayer. In essence, tax evasion is illegal while tax avoidance is legal under the ambience of the law. Paying less tax or not at all than what one is legally obliged to is described as tax evasion while tax avoidance is an act of doing everything possible within the confines of the tax law to reduce the tax paid. Therefore, the main difference between them is the legality of the taxpayer's action.

Comparison between tax avoidance and tax evasion

S/N	Tax avoidance	Tax evasion
1	Legal	Illegal
2	Achievable through exploiting loopholes in the tax laws	Achievable through deliberate action of fraud and deceit or rendering incorrect returns
3	Result in taxpayer paying minimum tax possible without breaking the law	Result 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	No supported by the courts
5	No criminal liability	There is criminal liability
6	When stretched to the extreme, the scheme could be disregarded by the Revenue applying appropriate anti avoidance legislation	At any level, Revenue will frown at tax evasion
7	No Revenue investigation as a result of tax avoidance. Prior years assessment will not be reopened.	Revenue investigation will be instituted. Revenue has the power to open prior assessments beyond the statutory six-year limit.

24.7 Tax implication on thin capitalisation

A company is said to be thinly capitalized when its capital is made up of a much greater proportion of debt than equity, i.e. its gearing, or leverage, is too high. This is perceived to create problems for two classes of people:

- (a) creditors bear the solvency risk of the company, which has to repay the bulk of its capital with interest; and
- (b) tax authorities, who are concerned about abuse by excessive interest deductions.

Credit risk

If the shareholders have introduced only a nominal amount of paid-up share capital, then the company has lower financial reserves with which to meet its obligations. If all or most of the company's capital comes from debt, which (unlike equity) needs to be serviced, and ultimately repaid, it means that the providers of capital are ultimately competing with the company's trade creditors for the same capital resources.

At the risk of generalising, most traditionally common law countries do not tend to employ thin capitalization rules generally in relation to raising and maintenance of capital. However, several civil law jurisdictions do.

However, in almost all jurisdictions there are certain types of regulated entity which require a certain amount, or a certain proportion, of paid-up share capital to be licensed to trade. The most common examples of this are banks and insurance companies. This is because if such companies were to fail and go into liquidation, the economic effect of such failures can lead to a domino effect, which can have catastrophic consequences for other businesses and, ultimately, regional economies.

Tax issues

Even where countries' corporate laws permit companies to be thinly capitalized, tax authorities in those countries will often limit the amount that a company can claim as a tax deduction on interest, particularly when it receives loans at non-commercial rates (for example, from connected parties). However, some countries simply disallow interest deductions above a certain level from all sources when the company is too highly geared under applicable tax regulations.

Some tax authorities limit the applicability of thin capitalization rules to corporate groups with foreign entities to avoid "tax leakage" to other jurisdictions. The United States "earnings stripping" rules are examples. Hong Kong protects tax revenue by prohibiting payers from claiming tax deductions for interest paid to foreign entities, thus eliminating the possibility of using thin capitalisation to shift income to a lower-tax jurisdiction.

24.7.1 Provisions of Nigeria Tax Act, 2025 on thin capitalisation

Finance costs (such as interest) incurred on loans/debts are generally allowed as deductions for tax purposes.

However, where a loan is obtained from a foreign-related party, the deductibility of the finance cost is subject to restrictions under the third schedule to the Nigeria Tax Act, 2025. Deduction of Interest on related party loans is restricted to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) in line with paragraph 2 of the third schedule to Nigeria Tax Act, 2025.

The portion of interest above this 30% threshold is known as "excess interest" and is disallowed for tax purposes.

Any excess interest disallowed in a given year can be carried forward and claimed as a deduction in subsequent years, subject to the 30% EBITDA limit. This carry forward is limited to five (5) consecutive years after the year in which the excess interest arose.

This rule does not apply to Nigerian subsidiaries of foreign companies engaged in banking or insurance business.

24.8 Tax Implication on tax havens

24.8.1 Introduction

A tax haven is a state, country or territory where certain taxes are levied at a low rate or not at all. A tax haven country can also be defined as "a country or state or territory that imposes little or no tax on the profits from the transactions carried on from that country". Individuals or corporate entities can find it attractive to establish their subsidiaries or move themselves to areas with reduced or nil taxation levels relative to typical international taxation. This creates a situation of tax competition among governments. Different jurisdictions tend to be havens for different types of tax, and for different categories of people or companies. States that are sovereign or self-governing under international law have theoretically unlimited powers to enact tax laws affecting their territories, unless limited by previous international treaties.

24.8.2 Definitions

The Organisation for Economic Co-operation and Development (OECD) identifies three key factors in deciding that a jurisdiction is a tax haven:

- a) Nil or only nominal taxes. Tax havens impose nil or only nominal taxes (generally or in special circumstances) and offer themselves, or are perceived to offer themselves, as a place to be used by non-residents to escape high taxes in their countries of residence.
- b) Protection of personal financial information. Tax havens typically have laws or administrative practices under which businesses and individuals can benefit from strict rules and other protections against scrutiny by foreign tax authorities. This prevents the transmittance of information about taxpayers who are benefiting from the low tax jurisdiction.
- c) Lack of transparency. A lack of transparency in the operation of the legislative, legal or administrative provisions is another factor used to identify tax havens. The OECD is concerned that laws should be applied openly and consistently, and that information needed by foreign tax authorities to determine a taxpayer's situation is available. Lack of transparency in one country can make it difficult, if not impossible, for other tax authorities to apply their laws effectively. 'Secret rulings' negotiated tax rates, or other practices that fail to apply the law openly and consistently are examples of a lack of transparency. Limited regulatory supervision or lack of government's legal access to financial records are contributing factors.

24.8.3 Classification

Corporations, to achieve effective tax avoidance, use multiple types of tax havens. Three types of tax haven form a Dutch Sandwich:

- a) primary tax havens: the location where financial capital winds up. Subsidiary shell companies there have obtained rights to collect profits from corporate intellectual property (IP) by transfers from their parent.
- b) semi-tax havens: locations that produce goods for sale primarily outside of their territorial boundaries and have flexible regulations to encourage job growth, such as free trade zones, territorial-only taxation, and similar inducements.
- c) conduit tax havens: locations where income from sales, primarily made outside their boundaries, is collected, and then distributed. Semi-tax havens are reimbursed for actual product costs, perhaps with a commodity mark-up. The remaining profits are transferred to the primary tax haven, because it holds rights to profits due to the corporate IP. By matching outflow to income they do not retain capital and their role, while crucial, remains invisible.

Large multinational corporations may have dozens of such tax haven entities interacting with each other. Each haven can claim that it does not satisfy definitions that attempt to place all tax havens into a single class. Even increased transparency does not change the effectiveness of corporate tax avoidance.

24.8.4 Examples

Research has suggested that roughly 15% of the countries in the world are tax havens that these countries tend to be small and affluent, and that better governed and regulated countries are more likely to become tax havens and are more likely to be successful if they become tax havens.

- Switzerland
- Luxembourg—primarily a conduit tax haven

Other sovereign countries that have such low tax rates and lax regulation that they can be considered semi-tax havens are:

- Ireland
- Netherlands—primarily a conduit tax haven.

Non-sovereign jurisdictions commonly labelled as tax havens include:

- Jersey;
- Isle of Man;
- British Overseas Territory;
- Bermuda;
- British Virgin Islands;
- Cayman Islands;
- Delaware, United States; and
- Puerto Rico (United States).

24.8.5 Methodology

At the risk of oversimplification, it can be said that the advantages of tax havens are viewed in the following three principal contexts:

- a) personal residency: Since the early 20th century, wealthy individuals from high tax jurisdictions have sought to relocate themselves to low-tax jurisdictions. In most countries in the world, residence is the primary basis of taxation. Almost no tax haven assesses any kind of capital gains tax, or inheritance tax. Individuals who

are unable to return to a higher-tax country in which they used to reside for more than a few days a year are sometimes referred to as tax exiles.

- b) corporate residency: Corporate persons, in contrast to natural persons, can own subsidiary corporations in many countries. That allows them to take advantage of the variety of laws, regulations, and conventions in multiple countries, without overtly engaging in any questionable activities. Only in extreme cases will they move their formal corporate headquarters.
- c) asset holding: Asset holding involves utilising an offshore trust or offshore company, or a trust owning a company. The company or trust will be formed in one tax haven and will usually be administered and resident in another. The function is to hold assets, which may consist of a portfolio of investments under management, trading companies or groups, physical assets such as real estate or valuable chattels. The essence of such arrangements is that by changing the ownership of the assets into an entity which is not tax resident in the high-tax jurisdiction, they cease to be taxable in that jurisdiction.

24.8.6 Regulation measures

To avoid tax competition, many high tax jurisdictions have enacted legislation to counter the tax sheltering potential of tax havens. Generally, such legislation tends to operate in one of five ways:

- (i) attributing the income and gains of the company or trust in the tax haven to a taxpayer in the high-tax jurisdiction on an arising basis. Controlled Foreign Corporation legislation is an example of this.
- (ii) transfer pricing rules, standardisation of which has been greatly helped by the promulgation of OECD guidelines.
- (iii) restrictions on deductibility, or imposition of a withholding tax when payments are made to offshore recipients.
- (iv) taxation of receipts from the entity in the tax haven, sometimes enhanced by notional interest to reflect the element of deferred payment. The EU withholding tax is probably the best example of this.
- (v) exit charges, or taxing of unrealised capital gains when an individual, trust or company emigrates.

However, many jurisdictions employ blunter rules. For example, in France securities regulations are such that it is not possible to have a public bond issue through a company incorporated in a tax haven.

Also becoming increasingly popular is “forced disclosure” of tax mitigation schemes. Broadly, these involve the revenue authorities compelling tax advisors to reveal details

of the scheme, so that the loopholes can be closed during the following tax year, usually by one of the five methods indicated above. Although not specifically aimed at tax havens, given that so many tax mitigation schemes involve the use of offshore structures, the effect is much the same.

Anti-avoidance came to prominence in 2010/2011 as non-governmental organisations and politicians in leading economies looked for ways of reducing tax avoidance, which plays a role in forcing unpopular cuts to social and military programmes. The International Financial Centres Forum (IFC Forum) has asked for a balanced debate on the issue of tax avoidance and an understanding of the role that the tax neutrality of small international financial centres plays in the global economy.

24.8.7 Criticism

Tax havens have been criticised because they often result in the accumulation of idle cash which is expensive and inefficient for companies to repatriate. The tax shelter benefits result in a tax incidence disadvantaging the poor. Many tax havens are thought to have connections with fraud, money laundering and terrorism. While investigations of illegal tax haven abuse have been ongoing, there have been few convictions. Lobbying pertaining to tax havens and associated transfer pricing has also been criticised.

Some politicians have begun to stand up against the use of tax havens by large companies. Reform proposals, centring on the Big Four accountancy firms have been advanced. Some governments appear to be using computer spyware to scrutinize some corporations' finances.

24.9 Tax implication on treaty shopping

Treaty shopping is a situation where a person, who is resident in one country (say the "home" country) and who earns income or capital gains from another country (say the "source" country), is able to benefit from a tax treaty between the source country and yet another country (say the "third" country). This situation often arises where a person is resident in the home country, but the home country does not have a tax treaty with the source country.

Treaty shopping is an analysis of tax treaty provision by non-treaty party to structure an international transaction or operation so as to gain or take advantage of a particular treaty benefit. This practice consists in a resident of a state that is not a party to the double taxation treaty establishing an entity within a state that is party to the treaty in order to take advantage of its provision.

Consider a situation that there is double taxation treaty between country A and country B. Instead of a company resident in country C (which does not have a tax treaty with country A) investing directly in country A, it establishes a legal entity in country B through which it invests in country A in order to take advantage of country A/country B

tax treaty to minimize its tax liability. Meanwhile, since there is no tax treaty between country C and the treaty countries (i.e. countries A and B), resident of country A and B will not receive equal tax treatment with respect to income derived from country C. Therefore, the principle of reciprocity is breached.

The problem of treaty shopping could be tackled through anti-treaty shopping provisions despite the fact that it is one of the most complex international tax rules. Some countries have also tackled the problem of treaty shopping by including in their tax treaties specific provision referred to as “limitation on benefit” or “LOB”. These provisions limit the benefit under the treaties in certain circumstances. Therefore, companies which are not bona fide residents of the treaty countries or which are set up for treaty shopping purpose may be denied the treaty benefits.

24.10 Tax implication on non-tax factors

Once an investor has determined the business structure of his/her investments, the investor engages in identifying a jurisdiction with the infrastructure that will optimally attain his/her objectives. Infrastructure represents tax and non-tax incentive of the jurisdiction.

The tax regime that applies in a specific location is generally an important consideration of a holding company and usually plays a role in the decision of where company should be established. However non-tax factors cannot be undermined as they are important to the success of the investment that is undertaken. Factors that affect the choice of location differs from one business to another, depending on the objectives of the investment.

The more important non-tax factors include:

- (a) economic and political ability;
- (b) adequate physical, business, accounting and legal infrastructure;
- (c) the absence (or limited presence) of bureaucratic obstacles;
- (d) adequate communication channels;
- (e) ability to negotiate profit freely;
- (f) effective banking system; and
- (g) the availability of an adequate dispute resolution mechanism.

The social, economic and political stability, and risks within different countries are major considerations in the decision-making, especially where the need for raising of finance is important. A factor that supplements the social, economic and political stability is the functionality of the country's legal system and rule of law. Thus, not only should the legal system be suitable for transacting business, but it should also be possible for legal subjects to enforce their legal rights.

Alternative dispute resolution as a legal process is normally an expedient and cheap alternative to the often-lengthy legal processes. Where available, it too should be reliable. The country's government should also respect the rule of law and ideally have an enshrined constitution that protects the rights of the country's subjects. As Olivier and Honiball observed a combination of operational business activities with an intermediary holding company in a single legal structure could expose an operational company's assets and investments to commercial risks.

Stable laws and ease of compliance could assist in offsetting such risks. The commercial language of the host country is also important. It is important that the language used is the same as the language of the investor (or at least a common language such as English or French). The importance of this factor is illustrated by the loss of popularity of the Danish holding company structure due to the requirement that compliance and reporting documentation had to be in Danish. Linked to the prevailing commercial language, are reliable communication channels such as telecommunication, fax and email, without which the performance of various roles would be impaired.

Business deals with control and management (including investment management) and the discharging of such services requires a few highly skilled people in the areas of law, financing and financing structures, economics, accounting and auditing. Most holding companies do not necessarily require large numbers of employees to be stationed in the host country.

24.11 Chapter review

This chapter deals with tax planning, tax avoidance as tax schemes that taxpayers could utilise to achieve tax savings. Such tax saving schemes are only allowed, if obtained through legitimate exploitation of loopholes in tax laws. Tax evasion is subject to criminal prosecution and is subject to fines and/or imprisonment. Some advanced tax mitigating issues were also discussed in this chapter.

Readers must have also learnt about the taxpayer's mandatory disclosure of tax planning transactions to the relevant tax authority as specified under the Nigeria Tax Administration Act, 2025 and the rules guiding deductible interest on debts from foreign related party entity as governed by the provisions of the Nigeria Tax Act, 2025.

24.12 Worked examples

24.12.1 Questions

- (1) 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 Exchange (NGX).

Required:

Advise the management of Ultimate Risk Limited on the tax implications of the issues listed below:

- a) The cost of increasing the authorised share capital with the Corporate Affairs Commission, Abuja
- b) The cost of obtaining approval from regulatory authorities like, the Nigerian Exchange, Securities and Exchange Commission, and National Insurance Commission (NAICOM)
- c) Acquisition of another insurance company. Concern yourself only with the tax implications from the side of the acquired company.

- (2) In the evolving landscape of global and domestic finance, tax planning has emerged as a strategic imperative for individuals, businesses, and governments alike. It is not merely a tool for minimising tax liabilities but a framework for achieving financial efficiency, regulatory compliance, and long-term sustainability.

Required:

Discuss the following in respect to tax planning for taxpayer in 2025 tax year:

- a) Bonus issue and dividend.
 - b) Staff remuneration.
 - c) Life assurance policy.
- (3) The Board of Directors of Dragbat Limited, Lagos, a medium-sized company, at its last meeting, deliberated on the company's tax related issues vis-à-vis one of its major competitors in the same line of business. The Managing Director presented the audited accounts of the two companies for the previous three years. He affirmed that their company has been paying more corporate taxes than their competitors, while returning lower profit before tax in each of the years under review. The board has since directed the Managing Director to do a thorough investigation on how competitors, according to the Chairman of the board, are having it easier with the tax authorities.

With the assistance of a former course-mate in the university, who works in the Finance unit of a competitor's organisation, the Managing Director was informed that the competitor was involved in tax planning and tax avoidance activities, and these have helped in reducing the company's tax liabilities over the years.

Being an engineer with sparse knowledge of accounting and taxation, the Managing Director has contacted you as the company's tax consultant to help explain some fundamental issues in tax planning and tax avoidance. To help you in carrying out this assignment, the Managing Director of Dragbat Limited provided you with the audited financial statements of the two competing companies for the last three years. He also informed you that the major difference between the two companies is simply that their organisation is servicing a loan facility of ₦120 million obtained five years ago and the company is not finding it comfortable in implementing the terms of the loan, despite its increased profitability over the last three years.

As the board will be meeting in a fortnight to consider the report on the preliminary investigation carried out, the Managing Director expects you to submit your report to him next week.

Required:

As the company's tax consultant, you are expected to advise on the following issues in your report:

- a) The concepts of tax planning, tax avoidance, and thin capitalisation
 - b) Tax planning activities and strategies
 - c) Tax implications on companies that practice tax planning, tax avoidance, and thin capitalisation
- (4) Tax planning is a right that taxpayers must exercise to reduce tax liability and improve profitability while fully complying with existing tax legislations to avoid penalties and further risks. Thin capitalisation and non-tax factors are important fiscal policy issues which corporate players and governments in different tax jurisdictions should not undermine.

Required:

- a) Discuss the concept of "thin capitalisation" and the problems it may create to both creditors and tax authorities.
- b) Advise on interest deductible rules in line with paragraph 2 of the third schedule to Nigeria Tax Act, 2025
- c) Recommend **SIX** important non-tax factors, which may affect the choice of location of a corporate entity by a holding company in another tax jurisdiction.

24.12.2 Suggested solutions to questions

1. Our reference (O/R) Your reference (Y/R) Date

The Board of Directors
Ultimate Risk Limited
Lagos.

Gentlemen,

Re: The Tax Implications of Meeting the New Capital Base for Insurance Companies

We wish to thank you for our recent appointment as the Consultant in respect of the above subject.

We wish to advise that:

- (i) 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 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;
- (ii) the cost of obtaining approval from the relevant authorities like Securities Exchange Commission (SEC), Nigerian Stock Exchange (NSE) and National Insurance Commission (NAICOM) will be considered as capital in nature. They will thus be treated as disallowable for tax purposes;
- (iii) 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 (i.e. tax due diligence) are as follows:

- 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 is deemed to be continuing in business;
- no initial allowance will be granted on the assets; and
- 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. if you require further clarifications, please do not hesitate to contact us.

Thank you.

Yours faithfully,

For: A-Z CONSULTANTS

Juliana OYETAYO

Managing Partner

2. 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. Below are the tax planning strategies a taxpayer can use on the following transaction/arrangement in 2025 tax year:

- a) Bonus issue and dividend

An investor in a company shall prefer scrip or bonus issue to cash dividend payment because the latter will attract 10% Withholding tax deduction on the dividend receivable.

b) Employer using staff remuneration for planning

This occurs when an employer in a bid to minimize the tax liability of the employees reduces the basic salaries and any other monetized 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 is exempt from personal income tax provided the amount paid is within the threshold of exemption.

c) 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 evidence 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.

3.

**Sunny & Co. (Tax Consultants)
Success Avenue, Lagos**

April 22, 2026

The Managing Director
Dragbat Limited
Independence Road
Lagos.

Dear Sir,

RE: Advice on Tax Planning, Tax Avoidance and Thin Capitalisation

We refer you to our discussion in your office requesting us to assess and provide advice on the above subject. We have since concluded the assignment and our comments are as follows:

a) Concepts of tax planning, tax avoidance and thin capitalisation

i) Tax planning

- This is the analysis and arrangement of a taxpayer's financial situation to maximise allowances and tax reliefs and minimise tax liabilities in a legal and efficient manner.
- It involves anticipating a set of circumstances and the identification of opportunities to minimise or defer tax liabilities within the law.
- Tax rules can be complicated, but taking some time to know and use them for one's benefit can change how much one ends up paying as tax.

ii) Tax avoidance

- This 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 or organisation that does not buy the goods and /or services on which VAT is levied.
- Apart 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 to avoid or minimise tax.

- To a very large extent, tax avoidance is legal once it is done within the limits permissible by the tax laws.

iii) Thin capitalisation

- A company is said to be thinly capitalised when its capital is made up of a much greater proportion of debt than equity. It shows that the company's gearing or leverage is too high.
- A thinly capitalised company is perceived to create problems for two classes of people. These are:
 - ❖ Creditors: They bear the solvency risk of the company, which must repay the bulk of its capital with interest; and
 - ❖ Tax authorities: They are concerned about abuse by excessive interest deduction, which at the end of the day, will lead to loss of tax income to the tax authorities/government.
- Following from the review carried out by us on your financial statements, your company is headed towards thin capitalisation. We advise that the terms of the loan should be restructured in such a way that annual interest payment will be less and the principal sum spread over long period. In such a way, more money hitherto spent in paying the loan will be freed and used for other ventures that will have positive effect on the company's profitability.

b) Tax planning activities and strategies

The following are known tax planning activities and strategies:

- i) there are always tax planning opportunities for companies regardless of their sizes or the jurisdictions they work in;
- ii) at the local level, corporate tax planning is carried out through a review of the company's income generation activities, expenses, benefits and other deductions, profit distribution, tax rates and any other variable that may affect the final result, against the applicable law to find optimisation opportunities;
- iii) in addition to local planning strategies, multinational enterprises can make use of international tax planning to take advantage of the

differences in the rates from one jurisdiction to another, and the different tax benefits that may be offered between jurisdictions;

- iv) with a sound corporate tax planning process, companies can reflect their requirements to comply with local legislation in countries they operate;
- v) tax planning is a right that taxpayers, including your company, must exercise to reduce tax liability and improve profitability while fully complying with the extant legislation to avoid penalties and further risks; and
- vi) as a matter of urgency, your company should engage an experienced and trusted tax planning strategist/ consultant to receive sound advice and guidance so as to make informed decisions on how to protect the company. Perhaps, this may be the cutting hedge your competitor is using over the years to pay lesser tax liabilities.

c) Tax implications on companies that practise tax planning, tax avoidance and thin capitalisation are:

- i) there is no offence in practising tax planning so far it is not done to the limit. If properly implemented, planning could result in significant financial advantage to a business concern as lower tax liability will be paid;
- ii) however, if it is practiced to the limit, the tax authorities can disregard such transactions and appropriate tax liability paid by the taxpayer;
- iii) on tax avoidance, this is also supported by tax laws and is legal as the taxpayer only exploited loopholes in the tax legislation to pay reduced/lower tax liability;
- iv) when tax avoidance schemes are stretched to the limit, transactions would be seen only in mere form and lacking in substance. When this signal is present, the Revenue Service would want to step in to disallow such transactions;
- v) 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(s);
- vi) for companies having thin capitalisation issues, the profit as well as tax liabilities will be significantly affected negatively; and

- vii) the Revenue Service will pay more attention to the interest payment. When it is above a particular threshold in a year (such as 30% of earnings before interest, taxes, depreciation and amortisation, on loans by a foreign connected person, paragraph 2 of the third schedule to Nigeria Tax Act, 2025), such is considered as excess interest and recognised as a disallowable deduction in that year.

If you require further clarifications on issues raised above, please do not hesitate to contact us.

Your faithfully,
For: SUNNY & Co.

S. KAJOL
Principal Partner

4.

- (a) **Concept of thin capitalisation** A company is said to be thinly capitalised when its capital is made up of a much greater proportion of debt than equity, that is, its gearing, or leverage, is too high. This is perceived to create problems for two classes of people. These are the:
 - i) Creditors who bear the solvency risk of the company, which has to repay the bulk of its capital with interest;
 - ii) Tax authorities, who are concerned about abuse by excessive interest deductions.

- (b) **Provision of paragraph 2 of the third schedule to Nigeria Tax Act, 2025 on interest deductible**

Finance costs (such as interest) incurred on loans/debts are generally allowed as deductions for tax purposes.

However, where a loan is obtained from a foreign-related party, the deductibility of the finance cost is subject to restrictions under the third schedule to the Nigeria Tax Act ,2025 . Deduction of Interest on related party loans is restricted to 30% of earnings before interest, taxes, depreciation and amortization (EBITDA) in line with paragraph 2 of the third schedule to Nigeria Tax Act, 2025.

The portion of interest above this 30% threshold is known as "excess interest" and is disallowed for tax purposes.

Any excess interest disallowed in a given year can be carried forward and claimed as a deduction in subsequent years, subject to the 30% EBITDA limit. This carry forward is limited to five (5) consecutive years after the year in which the excess interest arose.

This rule does not apply to Nigerian subsidiaries of foreign companies engaged in banking or insurance business.

(c) Non-tax factors

The tax regime that applies in a specific location is generally an important consideration of a holding company and usually plays a role in the decision of where the company should be established. However, non-tax factors cannot be undermined as they are key to the success of the investment that is undertaken. The more important non-tax factors include:

- (i) economic and political stability: A tax jurisdiction that is not stable economically and politically will not attract foreign investors and will also lose its local investment to other tax jurisdictions with fair or stable economy;
- (ii) adequate physical, business, accounting and legal infrastructure: Availability of infrastructures that support business, accounting, and legal operation in a country is an encouraging factor usually considered by some entities in citing a fixed base in a country;
- (iii) the absence (or limited presence) of bureaucratic obstacles: Little or no bureaucratic bottlenecks give confidence to investors in locating their business entities in a tax jurisdiction;
- (iv) Adequate communication channels: Availability of information source, reliable medium of communication, security of information and adequate communication channels play vital role in affecting the choice of an entity in citing its holding company in a country;
- (v) The availability of an adequate dispute resolution mechanism: A tax jurisdiction with an independent and effective dispute resolution process and procedures is often considered ahead of countries without such process in citing of business entity and holding company;
- (vi) Effective banking system: A country with a standard and reliable system of banking operation and financial sector shall be deemed suitable for facilitating financial transactions if the holding company or branch of the entity is present in such tax jurisdiction;
- (vii) Ability to repatriate profit freely;

- (viii) The social, economic and political stability, and risks within different countries are major considerations in the decision-making, especially where the need for raising of finance is important;
- (ix) A factor that supplements the social, economic and political stability is the functionality of the country's legal system and rule of law. Thus, not only should the legal system be suitable for transacting business, but it should also be possible for legal subjects to enforce their legal rights;
- (x) Alternative dispute resolution as a legal process is normally an expedient and cheap alternative to the often-lengthy legal processes. Where available, it should also be reliable. The country's government should also respect the rule of law and ideally have an enshrined constitution that protects the rights of the country's subjects;
- (xi) The commercial language of the host country is also important. It is important that the language used is the same as the language of the investor (or at least a common language such as English or French);
- (xii) Linked to the prevailing commercial language, are reliable communication channels such as telecommunication, fax and email, without which the performance of various roles would be impaired; and
- (xiii) Business deals with control and management (including investment management) and the discharging of such services requires a few highly skilled people in the areas of law, financing and financing structures, economics, accounting and auditing. Most holding companies do not necessarily require large numbers of employees to be stationed in the host country.

TAX AUDIT AND TAX INVESTIGATION

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25 Tax Audit and Tax Investigation

25.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the concepts and application of tax audit and investigation.

25.1 Learning outcomes

On successful completion of this chapter, readers should be able to:

- a) differentiate between tax audit and tax investigation;
- b) know the legal basis of the power of Tax Authorities to conduct tax audit and tax investigation;
- c) know the objectives of tax audit;
- d) know how to conduct a tax audit;
- e) know the reasons for tax investigation;
- f) know how to conduct a tax investigation; and
- g) know typical documents/information required to conduct tax audit and tax investigation.

25.2 Introduction

Statutory audit

Statutory audit is an independent examination of an organisation's financial records by external auditors with a view to expressing an opinion on whether an organisation is providing fair and accurate representation of its financial position. It is an examination usually conducted 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 applicable legislations, for example, Companies and Allied Matters Act (CAMA), 2020 (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 is not part of the objectives of statutory audits. When a specialised audit is carried out, the auditor would cover in his report the objectives that are to be achieved as set out in the auditor's terms of reference.

25.3 Tax Audit

Tax audit is a process of carefully assessing tax returns filed by taxpayers in accordance with the provisions of the relevant applicable tax laws. The assessment must establish that the taxpayer has correctly reported all tax liabilities. The tax audit process entails an examination of tax returns, accounting records, and other financial documents by a tax authority, with the broad goal of verifying the accuracy of a company's tax payments.

Tax audit is a routine exercise, and the outcome usually leads to reassessment or referral for special investigation, if tax evasion is suspected. The primary purpose of tax audit has been expanded to monitor and maintain the confidence in the integrity of the 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. The thrust of a tax audit will be that of verification of the figures and other information submitted by the taxpayer for tax purposes.

25.3.1 Tax Audit Departments

These are departments within the Nigeria Revenue Service (NRS), States Internal Revenue Service (SIRS) and Federal Capital Territory Internal Revenue Service (FCTIRS) that are saddled with the responsibility of conducting tax audit of taxpayers.

25.3.2 Objectives of Tax Audit

The objectives are to enable the tax auditors determine whether:

- 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.
- d) provision of an avenue to educate taxpayers on various provisions of the tax law;
- e) discourage tax evasion;
- f) detect and correct accounting and/or arithmetical errors in tax returns;

- g) provide feedback to the management on various provisions of the law and recommend possible changes;
- h) identify cases involving tax fraud and recommend them for investigation;
- i) forestall taxable persons' failure to render tax returns;
- j) forestall taxable persons rendering incomplete or inaccurate returns; and
- k) to encourage voluntary compliance that is one of the strong reasons in support of the self-assessment scheme. It is usually conducted by a group of experienced personnel of the Revenue Authority.

25.4 Types of tax audit

The two types of tax audit are:

- (a) Desk audit;
- (b) Field audit.

25.4.1 Desk review/audit

This is also called desk review or desk examination. It is conducted on the tax return submitted to a tax office. As soon as a tax return is received in the tax office, such would be subjected to examination by the tax official. 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 or desk review or desk examination would be to ensure completeness of the returns submitted. The officer 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 desk audit or desk review is usually a desk audit report or query letter issued to taxpayer stating the findings from the review and requests the taxpayer to respond to the audit findings within a specified period of time. On receipt of desk audit or desk review findings report from a tax office, the taxpayer should respond to the tax office within the timeline specified or request for extension of time to respond, if it is not feasible to respond within the time specified by the tax office. Receipt of formal response from the taxpayer is usually followed with reconciliation meetings between the tax authority and taxpayer. Where the taxpayer is unable to provide the necessary documentary evidence to support the returns being audited through desk audit or desk review, it may lead to issuance of additional assessment by the tax authority.

In addition, in some cases, whenever additional information or documentary evidence required to satisfy the officer carrying out the desk audit or desk review are not satisfactorily provided, a desk audit may lead to the conduct of a field audit.

25.4.2 Field audit

A field audit is more elaborate and comprehensive than a desk audit. It is usually carried out outside the tax 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 obtain appropriate information directly from the officials of the business.

25.5 Stages involved in tax audit

The stages involved in field tax audit are as follows:

- i. selection of taxpayer to be audited;
- ii. preliminary review of taxpayer's file;
- iii. notification of taxpayer;
- iv. pre-audit meeting followed immediately by field audit;
- v. actual field audit;
- vi. post-audit meeting;
- vii. interim audit report;
- viii. post audit review;
- ix. reconciliation meetings; and
- x. final audit report.

25.5.1 Selection of taxpayer to be audited

The guidelines and criteria for selection of files for audit are to be determined by the tax audit department/unit. The selection of cases for audit is a management function.

The criteria which would vary from one type of audit 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 VAT refund, 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 sartorial audit (project audit);
- (f) based on lead information received from Intelligence or other NRS 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 audit or 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; and
- (r) directive from higher government authority.

25.5.2 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 includes, 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 head of audit department or unit, as appropriate.

Preliminary activities

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

- (a) gathering of the relevant 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; and

- (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) Statement of financial position and statement of comprehensive income;

- (iii) Cash flow statements; and
 - (iv) Notes to the accounts.
- (c) Tax returns.
- From the above, a spreadsheet of statement of financial position, statement of profit or loss and other comprehensive income and notes to the accounts of the years to be covered is prepared.

Ratios

The relevant ratios, out of the following, 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 a 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);
and
- (f) Omission of income.

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

25.5.3 Notification of taxpayer

On completion and approval of the preliminary review by the Head of the audit 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 tax 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.

On receipt of letter of notification of tax audit from the tax authority, the taxpayer or its tax consultants should respond to the tax office acknowledging receipt of the letter and confirm the date and time for the commencement of the tax audit as stated in the tax authority letter or request for extension of date for the commencement of the tax audit, if it is not feasible to commence the tax audit on the date proposed by the tax authority.

25.5.4 Pre-audit meeting

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

The objectives of pre-audit meeting are to:

- a. inform the taxpayer of the purpose of the audit;
- b. confirm background information of the taxpayer earlier obtained in the assessment file;
- c. get other relevant information that are not available in the file;
- d. familiarise with the company's accounting and operational systems which include, but not limited to the following:
 - i. Whether the company operates manual or computerised accounting system;
 - ii. whether the accounting system is on cash or accrual basis;
 - iii. the invoicing system in place for sales and purchases; and
 - iv. Whether all cash received are banked intact before expending therefrom.
- e. give the taxpayer the opportunity to express their views on the audit; and
- f. seek the cooperation of the taxpayer in terms of providing books and records, and explanation where necessary.

25.5.5 Actual field audit

This is the beginning of the tax audit cycle; it is usually carried out in the taxpayers' premises on an earlier agreed date.

After the pre-audit meeting, the Revenue officer will commence the field audit proper starting with the list of records/documents to be made available for the audit earlier sent to the taxpayers when tax audit notification was sent. Documents/information provided by the taxpayers are thoroughly reviewed at this stage. Additional documents/information will be requested by tax officers and explanations are sought from taxpayers on some items.

25.5.6 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 maybe 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.

25.5.7 Interim audit reports

Preliminary reports: Sometimes, the scheduled officer of a case, would come across material issues, during 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 head of audit department 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.

25.5.8 Post-audit review

A post audit review of all findings during the field audit will be carried out, 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.

25.5.9 Reconciliation meetings

This is a meeting between the tax auditors (with representatives of the tax authority 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 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 taxpayer 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 NRS' defence against any appeal filed by the taxpayer before the Tax Appeal Tribunal.

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.

25.5.10 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 a 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 and signed by the head of the audit. The report 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, VAT, PAYE, etc) for each year of assessment concerned. The report should indicate details of how each additional assessment was arrived at. The final audit report will also form the basis of NRS defence in case of an appeal to the Tax Appeal Tribunal, in which case, a copy of the report will be sent to the Legal Adviser for follow-up.

25.6 Types of audit exercise

25.6.1 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 industry.

25.6.2 Routine zonal audit

This type of audit is conducted on all organisations or companies in particular zones, irrespective of industry of the taxpayer.

25.6.3 Special purpose audit

Apart from routine audits, sometimes management would direct the tax audit department or unit 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 tax office on specific issues;
- iii. suspected cases of tax evasion;
- iv. value added tax audit; and
- v. management's directives.

25.7 Technical procedures in tax audit

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 tax official who would be the schedule officer for each case. The criteria for allocating cases are mainly the level of competence of an officer, 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 office where the taxpayer file is domiciled 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 the various identified third parties for independent confirmation of certain information.
- (d) **The field audit:** An audit team comprising officers 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 when all contentious issues have been resolved. Thereafter, a final letter of intent detailing the Service'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. This will be done by the assessment

department. Also, the collection department would be advised to pursue collection of any tax that may become due as a result of the field audit 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.

25.8 Audit programme

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

Benefits of 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.

25.9 Tax investigation

Tax investigation is an extensive inquiry by the Relevant Tax Authority to recover undercharged taxes from previous years of assessment. It is usually carried out on reasonable suspicion of fraud, evasion or wilful default; and sometimes by random sampling. A tax investigation can also be viewed as a thorough examination by tax authorities to identify the potential for non-compliance or tax evasion by taxpayers. Whether prompted by specific intelligence, suspicion, or random sampling, these inquiries deep-dive into financial transactions and records to verify that taxes are correctly reported and paid.

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

Tax investigation is similar to any other form of investigation. It is not carried out on routine basis as that of tax 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 tax 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 officials 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 tax fraud or tax evasion and to obtain evidence for possible prosecution. Tax investigators have been given greater power than tax auditors. They have powers to obtain all the documents needed to substantiate the evidence of tax evasion and tax fraud.

In summary, tax investigation could be triggered or caused by any of the following:

- a) failure to register for tax purposes;
- b) refusal to file tax returns despite persistent request and visitation by the tax office in-charge;
- c) refusal to allow access to books and records;
- d) abusive tax scheme or aggressive tax avoidance scheme;
- e) suspicion of tax fraud;

- f) denial of access of tax audit exercise;
- g) regulatory authority sanction of the taxpayer i.e. CBN, NDIC, SEC, NCC etc.;
- h) non- remittance of taxes collected on behalf of the tax authority i.e. value added tax and withholding tax
- i) negative media tax report on the company;
- j) whistle blowers on tax evasion / fraud by the company; and
- k) referral from tax audit or law enforcement agencies.

25.10 Stages of tax Investigation

Actual investigation of tax cases involves 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) Notification of taxpayer

On completion of surveillance or pre-investigation activities, the taxpayer to be investigated will be formally notified of the investigation exercise which will be carried out in the taxpayer's premises. The notification letter will state the period (years) that the investigation will cover, list of records/documents to be made available for the investigation, date and time of commencement and names of the tax officials that will carry out the exercise.

(c) Pre-investigation meeting

The investigation exercise must commence with a preliminary meeting with the management of the organisation to be investigated usually represented by the Managing Director and/or Financial Director or their representatives. The organisation's Tax Consultants, where necessary are also expected to be in attendance at this meeting.

The pre-investigation meeting aimed at:

- i) informing the taxpayer of the purpose of the investigation;
- ii) confirming background information of the taxpayer earlier obtained in the surveillance or pre-investigation activities assessment file;
- iii) familiarisation with the company's accounting and operational systems;
- iv) giving the taxpayers opportunity to express their views on the investigation; and
- v) seeking the cooperation of the taxpayer in terms of providing books and

records and explanation where necessary.

The investigation team leader is expected to chair the meeting while a member of the investigation team is expected to take minutes of the meeting. A signed copy of the minutes of meeting must be given to the representatives of parties concerned.

(a) Evidential audit or investigation

Once pre-investigation meeting is concluded, the investigators move into the business premises of the taxpayer to conduct in- depth tax investigation, 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.

(b) 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.

(c) 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.

(d) 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; and
- (iv) if the suspect dies or becomes medically or legally insane.

25.11 Investigation/intelligence departments

The Investigation/Intelligence Department of the Nigeria Revenue Service (NRS) oversees all investigations and intelligence activities of NRS.

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

- (a) articulate and direct policies and programmes aimed at achieving the objectives of the department;
- (b) define key operating / guiding principles;
- (c) design strategies for deterring violations of tax laws, 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 department;
- (i) develop and implement appropriate training programmes 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 department.

25.11.1 Civil investigations unit

The activities of this unit revolve around the following:

- a) investigate tax avoidance schemes; Examples are:
 - i. artificial transactions – Section 46 of Nigeria Tax Administration Act, 2025 states

where a relevant tax authority 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, as regards liability to tax, as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would be affected by the transaction and any taxable person concerned shall be assessed accordingly;

- ii. creating an offshore company for purposes of reducing tax payable. For example, instead of having the Nigerian 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 Nigerian 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 offshore;
 - 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 (for example, to avoid Withholding Tax (WHT) or enjoy lower treaty rate);
 - v. alleged 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; and
 - vii. income splitting arrangements;
- b) investigate cases for tax refunds;
 - c) review cases for mergers and acquisitions;
 - d) issue warrants for search and seizure as specified by the Nigeria Tax Administration Act, 2025;
 - e) refer cases to criminal investigations unit where there are indications of deliberate intention to evade tax or commit fraud, etc; and
 - f) identify areas of amendments to tax laws in order to plug all areas of tax leakages.

25.11.2 Criminal investigation unit

- a) The criminal investigation unit is responsible to investigate, penalize and recommend prosecution in cases of tax evasion. With tax evasion, you have fraud with “mensrea”. 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 is unlawful to do so. 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 Nigeria Revenue Service access to records.
- b) Investigate and liaise with relevant agencies for prosecution in cases of:
- i. fraudulent diversion of Nigeria 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 evidence obtained to establish criminal violation, follow up with assessment, penalties and prepare case for prosecution.

- e) Identify the areas of 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.

25.11.3 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 Nigeria Revenue Service in general.

Specifically, the unit will:

- (a) liaise with tax offices to obtain information on returns filed including late returns, etc for the taxpayer database;
- (b) liaise, on a regular basis, with banks and the Corporate Affairs Commission to obtain information on new accounts (section 29 of Nigeria Tax Administration Act, 2025), new companies, that is non-filers;
- (c) liaise with Ministries/government parastatals on contracts for current and prior years, for cross-checking returns filed by 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 programmes 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.

25.12 Assessment of investigation/intelligence departments

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

Strengths

- a) Top management support
- b) Quality staffing with officers of high integrity and professional competence, mostly chartered accountants, economists and lawyers
- c) Enforcement powers in the tax laws such as power to issue warrants after due consultation with the management in the case of resistance
- d) NRS legal unit's continued assistance in the prosecution of tax offenders and advising on legal issues.

Weaknesses

- a) Internal and external interference
- b) Obstruction of investigation through abuse of the judicial process
- c) Conflicts between Tax Audit Section in tax offices and Civil Investigation Unit
- d) Delays through lack of cooperation from taxpayers in the provision of necessary documents and records
- e) Inadequate funding due to budgetary constraints
- f) Inadequate experience in criminal investigation
- g) Reliance on external bodies such as the Nigerian Police, Economic and Financial Crimes Commission, etc
- h) Inadequate Infrastructure - computers and equipment to perform necessary duties and unstable power supply

25.13 Legal basis for the power of tax authorities to conduct tax audit and tax Investigation

The legal backing for conduct of tax audit and tax investigation by the tax authority are contained in the provisions of the Nigeria Tax Administration Act, 2025.

25.13.1 Provisions of tax laws

Section 57 of Nigeria Tax Administration Act, 2025 – Power of tax authority to call for returns, books, documents and information

For the purpose of obtaining information in respect of the tax liability of a taxable person or for performing any function conferred on the relevant tax authority by the tax laws, the relevant tax authority may give notice or further notice to any taxable person to:

- (a) complete and deliver to the tax authority any return specified in such notice or further notice, whether or not the person is liable to pay tax, and whether or not a return had been previously filed for a year of assessment;
- (b) appear personally before an officer of the tax authority for examination with respect to a matter to which such notice or further notice relates;
- (c) produce or cause to be produced for examination, books, documents, records or information relating to any assets, at the place and time stated in the notice or further

notice, which time may be from day-to-day, or for such period as the tax authority may deem necessary;

(d) provide orally or in writing, any information specified in such notice or further notice; and

(e) grant the tax authority access to records, data or information stored or residing in computers or other electronic devices, including magnetic media or cloud computing facilities maintained, operated, controlled or owned by the individual, company or person.

The time specified in the notice or further notice shall not be less than seven days from the date of service.

In addition, the tax authority shall not be precluded from verifying, by tax audit or investigation, any matter relating to a return or entry in a book, document, accounts, including those stored on a computer, cloud computing facilities, in digital, magnetic, optical or electronic media as may be specified in any guideline by the relevant tax authority.

Section 64 of Nigeria Tax Administration Act, 2025 – Power of tax authority to conduct Tax Investigation

The tax authority shall have the power to investigate or cause an investigation to be conducted to ascertain any violation of any tax law, whether or not such violation has been reported to the relevant tax authority.

In addition, the relevant tax authority may employ Special Purpose Tax Officers for the purpose of carrying out investigation of any offence and may seek the assistance of any relevant law enforcement agency.

Where an investigation reveals the commission of any tax offence or an attempt to commit any offence, the relevant tax authority shall undertake the prosecution of the offences.

Section 48 of Nigeria Tax Administration Act, 2025 – Exchange of information and joint audit by the relevant tax authorities

The relevant tax authorities shall exchange relevant information with one another to ensure compliance with the provisions of the laws.

Where any tax authority discovers non-compliance in the course of audit of any tax accruing to another tax authority, it shall refer such non-compliance to, or invite that other tax authority for a joint audit.

25.13.2 Power of distraint for non-payment of tax

In line with the provisions of section 61 of Nigeria Tax Administration Act, 2025, where an assessment has become final and conclusive, and a demand note has been served on the company or upon the person in whose name the company is chargeable, then if payments of the tax is not made within the time limit by the demand note, the relevant tax authority may, for the purpose of enforcing payment of the tax due seek the power of court to:

- a) distraint the taxpayer by his goods or other chattels, bonds or other securities; and
- b) distraint upon any land, premises or places in respect of which the taxpayer is the owner and, subject to certain proviso, recover the amount of tax due by sale of anything so distrained.

The proviso applicable includes the fact that:

- i) the authority to distraint is a sufficient warrant and authority to levy by distress the amount of tax due;
- ii) the authority may be exercised by any officer authorised in writing by the Board. He may carry out his function by breaking open any building or place if necessary, in the day time for the purpose of levying such distress and he may call to his assistance any police officer. It shall be the duty of the police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress;
- iii) the items distrained may be kept for a period of fourteen days at the cost of the taxpayer after which they may be sold in the event that the tax due is not paid;
- iv) the sales proceeds are applied in meeting the incidental cost of keeping and selling the items distrained and the payment of tax, penalty and interest owed. The balance shall be paid to the taxpayer upon a demand by him provided such a demand is made within one year of the date of sale; and
- v) no immovable property may be sold without an order of a high court.

25.13.3 Power of search and seizure

Where the tax authority has a reasonable ground to suspect that an offence involving an form of total or partial non-disclosure of information or any irregularity or offence in connection with tax has been committed or can be found on the premises, registered office or any other office or place of management of the taxpayer or in his residence or

the residence of its principal officers, agents, or representatives, the tax authority may authorise any of its officers to enter, if necessary by force, such locations at any time from the date of such authorisation and conduct a search.

The authority to enter and search must be made in the prescribed warrant form as contained in the second schedule of the Nigeria Tax Administration Act, 2025.

Upon entering the premises, 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 taxpayer or as evidence for the purpose of proceedings in respect of such an offence.

An officer authorised to carry out any such search and seizure may execute any warrant by calling to his assistance any police officer and it shall be the duty of the police officer to aid and assist him.

25.14 Differences between tax audit and tax investigation

While tax audits and investigations aim to ensure tax compliance, they vary in scope, conduct, extent, and results. The differences between tax audit and tax investigation could be summarised as follows:

- a) a tax audit's primary objective is to examine whether there is accuracy and compliance in a company's tax payments, while tax investigation's primary objective is to determine whether tax violations have occurred and recover taxes underpaid in prior evaluation years;
- b) tax audit is legally required periodically, to confirm the accuracy of the self-assessment of a taxpayer. Tax investigation is like any other form of investigation. It is not carried out on routine basis as that of a tax audit;
- c) in a tax 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 what is required for a tax audit exercise;
- d) a tax audit reviews records for compliance with tax laws, while tax investigation is to investigate a taxpayer's actions initiated by suspicion of deliberate default or fraud;
- e) tax audit's goal is to guide businesses to pay taxes accurately and timely, while tax investigation's goal is to regain undercharged taxes from prior years, which requires the identification of potential tax evasion;
- f) tax investigation would be carried out when a taxpayer is suspected to have committed fraud. Suspected cases of tax evasion could lead to investigation. Meanwhile, tax audit is routine in nature;
- g) during tax audit taxpayers typically get notified in advance, while during tax

investigation taxpayers get surprise visits.

- h) tax investigation 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. These are not required for tax audit; and
- i) the principal aim of investigation is to expose all the circumstances of 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.

25.15 List of required documents for Nigeria Revenue Service tax audit and investigation exercise

- (a) Audited accounts for the relevant years
- (b) Management accounts
- (c) Chart of accounts
- (d) Year-end final trial balances
- (e) General ledgers/ledger printouts
- (f) Back up documents for entries in the General Ledger
- (g) Audit adjustment journals
- (h) Relevant schedules
- (i) Sales invoice file
- (j) Purchase invoice file
- (k) Payment vouchers for bank and petty cash payment
- (l) Import documents
- (m) Export documents (where applicable)
- (n) Fixed assets register/schedules
- (o) Value added tax file(s)
- (p) Evidence of input VAT claimed
- (q) Evidence of VAT deducted at source (if any)
- (r) Evidence of zero rated/exempted VAT items
- (s) Withholding tax file(s)
- (t) Chargeable gains records
- (u) Schedule of bankers and the bank statements for each of the period of audit coverage
- (v) Minutes of Board's meetings
- (w) Inventory count records
- (x) Schedule of contracts executed, contract agreements/offer letters and Valuation Certificate for company engaged in construction
- (y) Rent agreements
- (z) Any other documents required for the audit/investigation

25.16 List of required documents for tax audit and investigation exercise carried out by States Internal Revenue Service

- (a) Audited financial statements (AFS) /management accounts for the year(s) under review
- (b) General ledger/trial balance
- (c) Staff list with designation
- (d) Payroll for local staff and expatriate staff
- (e) Schedule of company vehicles and designation
- (f) Analysis of staff cost in the audited financial statements
- (g) Evidence of registration and monthly remittance of pension
- (h) Evidence of registration and monthly remittance of National Housing Fund (NHF) and Nigeria Social Insurance Trust Fund (NSITF)
- (i) Schedule of local and expatriate PAYE tax paid
- (j) Employment contracts of both temporary & permanent expatriate staff
- (k) Letter of expatriate quota for the company
- (l) Copies of monthly returns on expatriates to Immigration Service
- (m) Copies of expatriate deletion form
- (n) Payment advice to banks for local and expatriate staff
- (o) Schedule of the company's operating and administrative expenses
- (p) List of suppliers/contractors, including their addresses
- (q) Payment vouchers for the period under review
- (r) Rent schedule and rent agreement
- (s) Schedule of withholding tax paid
- (t) Names and address of directors
- (u) Schedule of payments made to directors
- (v) Copies of Tax Clearance Certificate of the directors
- (w) List of the company offices, including head office
- (x) Receipt for the business premises registration/renewal
- (y) Receipt for the development levy paid
- (z) Any other documents required for the audit

25.17 Benefits of tax health check to tax audit and investigation

A tax health check is a review of a taxpayer's tax and accounting records to ascertain the level of compliance with relevant tax laws, quantifying the potential tax exposures (if any) and evaluating recommendations for improved compliance.

A tax health check provides an assurance that tax implications for a certain period, an area of compliance or a specific transaction are identified, duly addressed and appropriate actions for risk mitigation are taken. Conducting such health checks on a periodic basis will help in managing tax risks, ensure appropriate compliance, result in better preparedness for tax audits and strengthen tax positions.

25.17.1 Step by step guideline for conducting a tax health check

- a) **Understanding your business:** The first step in a tax health check is to understand your business and the industry it operates.
- b) **Determining the scope of work:** It is important to set the scope of work to enable you to work effectively and efficiently. For example, your scope of work could include, but is not limited to the following:
 - i) review of audited financial statements
 - ii) review all contracts/transactions for the period under review to confirm their tax implications.
 - iii) review all tax returns for compliance
 - iv) review all tax correspondence with the tax authorities.
 - v) review all tax payments and ensure all tax receipts are properly filed.
 - vi) prepare Tax Health Check Report and discuss it with key business stakeholders (management).
- c) **Set a timeline:** It is important to set a project timeline to facilitate the completion of a tax health check exercise at the appropriate time and deliver the report accordingly. A timeline should be allocated to each task.
- d) **Gather adequate data:** Ensure all data gathered are adequate, complete and free of errors.
- e) **Analyse the data:** Data is the foundation upon which this new digital tax world is being built, and the quality of the outcomes that result will depend on the quality of the data that goes in. To match what governments are doing and stay one step ahead, companies must look at the tax function thoroughly.
- f) **Identify risks and concerns:** Identify risks that could be triggered by the lack of documentation and non-compliance with the relevant tax laws.
- g) **Identify opportunities:** Perform a comprehensive review of tax reconciliation to ensure all opportunities to reduce tax liability or to obtain a refund of overpaid tax are identified.
- h) **Create your tax report:** Suggesting remedies in areas of risks and ways to ensure tax compliance.
- i) **Implement the result:** This may sound needless, but some companies delay the implementation of tax health check results till later. In most cases, a delayed implementation leads to no implementation or even sanctioned implementation when tax authorities come knocking on your doors. Thus, the implementation of results must be immediate.

25.17.2 Benefits of conducting tax health check

The benefits of conducting Tax Health Check are as stated below:

- a) Establish any inherent tax risks through an in-depth and systematic review of a company's books of accounts.
- b) Establishing any risk of, and quantifying any potential back-taxes discovered during a review.
- c) Providing advice on the mitigation and settlement of any tax liabilities including engagement with the Revenue for a favourable settlement plan.
- d) It facilitates tax planning and management.

25.18 Ethical Issues in tax administration and practice

Tax professionals must adhere to codes of conduct/ethics of their professional associations and internal codes developed by their employers. The issues of confidentiality, conflict of interest, disclosure of information in tax practice, honesty and due care should not be taken for granted.

Tax practitioners do, however, face ethical dilemmas in discharging their professional responsibilities within an increasingly competitive environment of conflicting pressures from clients (particularly, alteration of tax returns), the revenue authority, government and the wider community.

The answers to the following ethical questions would go a long way in solving tax practitioners' ethical problems:

- a) What are the major ethical issues which tax practitioners face in today's ethical environment?
- b) What is the perceived frequency of occurrence of the major ethical problems?
- c) What is the perceived level of importance of these problems?
- d) How do the ethical problems compare relative to 'frequency of occurrence' and 'level of importance'?
- e) How do tax practitioners rate the ethical climate in the tax practice arena?
- f) What opportunities exist for unethical behaviour?
- g) What is the relationship between success and unethical behaviour?
- h) How relevant is a professional code of ethics?

25.19 The role of tax practitioner on communication with clients, tax authorities and other stakeholders

Tax practitioners have the primary goal of serving the public interest as outlined in the professional Code of Conduct. The work done by a tax practitioner must be trusted by clients, stakeholders and society at large. The work done by these professionals does not only reflect on themselves individually but more importantly, on the accounting profession. Hence, International accounting organisations, such as International Federation of Accountants (IFAC), are rapidly developing codes for their members who provide tax advice.

The role of a tax practitioner is to apply the tax legislation and judicial rulings to specific transactions to determine the tax consequences to the taxpayer by ensuring tax equity and equality.

IFAC code of ethics for professionals

The International Federation of Accountants (IFAC) is a global organisation representing the accounting profession. The five fundamental principles of ethics for professionals:

- a) **Integrity:** A tax professional is expected to be straightforward and honest in all professional and business relationship. A professional shall not knowingly be associated with reports, returns, communications or other information where the professional believes that the information (a) contains a materially false or misleading statement (b) contains statement or information provided recklessly.
- b) **Objectivity:** A tax professional shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others. Tax professionals should seek to advance their client's position to the extent that the tax position (advice given to clients) taken must comply with applicable professional standards, laws and regulations.
- c) **Professional competence and due care:** Professional competence is commensurate with the concept of 'due professional care'. A tax professional should not undertake professional work which they are not competent to perform unless the professional has the necessary assistance from an appropriately qualified specialist. A tax professional must comply with the principle of professional competence and due care, which requires a professional:
 - i) to attain and maintain professional knowledge and skill at the level required to ensure that a client or the employing organisation receives competent professional service, based on current tax legislations; and

- ii) to act diligently in commensurate with professional standards.
- d) **Confidentiality:** A tax professional must comply with the principle of confidentiality which requires him/her to respect the confidentiality of information acquired as a result of professional and business relationship. A tax professional shall continue to comply with the principle of confidentiality even after the end of the relationship between the tax professional and a client or employing organisation. When changing employment or acquiring a new client, the tax professional is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of professional or business relationship.
- e) **Professional behaviour:** A tax professional must comply with the principle of professional behaviour, which requires tax professional to comply with the relevant laws and regulations and avoid any conduct that the tax professional knows or should know might discredit the profession. A tax professional must not tolerate and aid or encourage tax evasion which is illegal. The tax professional must advise client not to enter any arrangement that the tax professional reasonably believes that could result in tax evasion. If the client elects to ignore the tax professional's advice, tax professional must withdraw the letter of engagement with the client.

25.20 Assessment procedures after tax audit or tax investigation

If after tax audit or tax investigation, the relevant tax authority or the Service discovers that any taxpayer liable to tax has been assessed at a less amount than which ought to have been charged, the Service may, within a year of assessment or within six years after assessing such taxpayer at such additional amount as ought to have been charged. The assessment raised by the Service at this juncture is referred to as additional assessment or back duty assessment.

Features of back duty /additional assessment are:

- (i) It arises on a tax audit exercise where the relevant tax authority has reviewed the underlying records of a taxpayer to confirm that the records agree with the returns that were earlier on filed.
- (ii) Any difference observed between the original returns and the underlying records form the basis of an additional assessment. This may be due to fraud, willful default or neglect by the taxpayer, which were discovered from the review of the documents submitted.
- (iii) Such additional assessments may become the subject of the objection and appeal procedures.
- (iv) Back-duty work is limited to 6 years before the year of the audit.

Objection and appeal procedure

Valid objection: Where best of judgement assessment or any assessment is raised and served on a taxpayer, but the taxpayer is aggrieved, the tax laws makes provision for the taxpayer to object to such assessment. For such objection to be considered valid, the following conditions must be met:

- (a) the objection must be in writing
- (b) the objection must be made within thirty (30) days of the service of the notice of Assessment
- (c) the objection must state the grounds for objection and include the figure for the revised Assessment

Where the tax authority is satisfied with the grounds of objection, or agrees with the taxpayer on alternative figures, the assessment will be discharged, and a revised/amended assessment would be raised. However, where the tax authority did not agree with the taxpayer on the ground of objection, the tax authority will issue a notice of refusal to amend (NORA).

If after objecting to the assessment and the Service issue a notice of refusal to amend the assessment, an appeal will be lodged with the Tax Appeal Tribunal (TAT). The appeal will be in the form of notice to the Service, and to the Secretary of the Tax Appeal Tribunal and must be made within thirty (30) days after the date of service of notice of the refusal of the Service to amend the assessment.

The notice of appeal against the assessment will contain the following:

- (a) the official number of the assessment and the year for which it was made;
- (b) the amount of tax charged by the assessment;
- (c) the amount of total profits upon which the tax was charged;
- (d) the date the notice of refusal was served;
- (e) the grounds of appeal as contained in the notice of objection; and
- (f) an address for service of any notice.

Should the Tax Appeal Tribunal refuse the appeal on points of law, an appeal will be made against such decision to the Federal High Court.

Further appeal by either of the party against the decision of the Federal High Court will be made to the Court of Appeal and Supreme Court.

Final and conclusive assessments

An assessment is deemed to be final and conclusive if:

- (a) the objection or appeal is not made within the statutory time limit (30 days);
- (b) when an objection has been made against an assessment by the company/individual and subsequently the company/individual agrees with the relevant tax authority as regards the amount to which it is liable to be assessed; and
- (c) on appeal, the assessment is determined by the tax appeal tribunal, Federal High Court or the Court of Appeal or the Supreme Court.

25.21 Chapter review

This chapter defines tax audits and tax investigations and explains their objectives. It also describes the two types of tax audit and explains the process of carrying out a tax audit, especially 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.

The chapter also identifies the typical documents usually requested for by the Nigeria Revenue Service and States Internal Revenue Services to conduct tax audit and tax investigation.

25.22 Worked examples

25.22.1 Questions

1. "Tax audit is conducted for the purpose of ensuring that a taxpayer has conducted his affairs in accordance with the tax laws and practices".

Required:

Discuss the following regarding the tax audit that is usually conducted by the Service:

- (a) Objectives of a tax audit

(b) Selection of taxpayers for audit

2. Tax audit is a critical component of any robust tax administration system. It serves as a mechanism for verifying the accuracy of tax returns, ensuring compliance with tax laws, and promoting voluntary compliance among taxpayers.

Required:

Discuss the stages in a typical tax audit process.

3. As an experienced tax consultant, a client located in Kano has informed you that the Nigerian tax authority is currently conducting random tax audits on companies within the state. The client therefore wishes to be adequately prepared in the event that its organisation is selected for a similar audit. Consequently, the company has requested your assistance in preparing a comprehensive list or schedule of documents that may be required by the tax authority during such an audit exercise.

Required:

Prepare a list of the documents required for the tax audit that is usually carried out by Nigeria Revenue Service.

4. DYO Nigeria Plc is an indigenous manufacturer of home appliances for the past fifteen years operating. The company has branches in the six geographical zones of Nigeria and it is planning to expand its business beyond Nigerian shores. The company is operating efficiently and would be able to out-perform any of its competitors.

Over the past three years, the company has been in continuous disagreement with the tax authority regarding the tax returns it submitted under the self-assessment system. In the last two years, the tax authority maintained that the company should instead be subjected to a Best of Judgment (BOJ) assessment. This position was strongly opposed by the company's Managing Director. Although several meetings were held between both parties to resolve the issue, no agreement was reached.

Due to the breakdown in communication between both parties, the tax office formally notified the company that a team of tax investigators would be visiting its

premises. The company was requested to grant the team unrestricted access to all records and information relating to its tax affairs.

Required:

As a tax consultant to the company, the Managing Director has requested for a presentation on tax audit and investigation covering the following:

- (a) (i) Tax audit
- (ii) Check list in tax audit
- (iii) Tax audit report
- (iv) Compare tax investigators with tax auditors
- (b) the stages involved in tax investigation.
- (c) the factors that could lead to the termination of a tax investigation.

5. The Lagos State Internal Revenue Service has notified one of your clients based in Lagos of its intention to carry out a tax audit on the company. Your client wants to be prepared for a successful engagement with the tax authority. As a result, the company is seeking your help to prepare the list/schedule of possible documents that may be required for the exercise.

Required:

Prepare the list of documents that may be required for the tax audit to be carried out by Lagos State Internal Revenue Service.

6. Most States Governments in Nigeria lack adequate resources and expertise in harnessing revenue within their respective states. This has led to low internally generated revenue. In their bid to overcome this challenge, many of them have engaged tax consultants to conduct back-duty reviews and tax investigations. This initiative has significantly boosted revenue generation for the states. However, it has also led to an increase in disputes, resulting in the filing of notices of appeal and more frequent appearances before the Tax Appeal Tribunal.

This is attributable to the fact that there is lack of proper understanding of how the processes operates. Therefore, the need to educate taxpayers in the state of the powers of the State Internal Revenue Service to conduct tax audit and investigation has become necessary.

Required:

You have been appointed as a resource person to educate taxpayers in the state during a seminar that has been arranged for that purpose, by the Internal Revenue Service. You are required to address the following in your presentation:

- (a) Back duty and tax investigation

- (b) Investigatory power
- (c) Search and seizure
- (d) Appeals
- (e) Notices of appeal
- (f) Hearing of appeal
- (g) Appeal against the decision of Tax Appeal Tribunal
- (h) When an assessment is final and conclusive

25.22.2 Suggested solutions to questions

1(a) The objectives of a tax audit are to enable the tax auditors determine whether:

- (i) adequate accounting books and records exist for the purpose of determining the taxable profits or loss of the taxpayer and consequently the tax payable;
- (ii) the tax computations submitted to the tax authority by the taxpayer agree with the underlying records;
- (iii) all applicable tax legislations have been complied with;
- (iv) provision of an avenue to educate taxpayers on various provisions of the tax law;
- (v) discourage tax evasion;
- (vi) detect and correct accounting and/or arithmetical errors in tax returns;
- (vii) provide feedback to the management on various provisions of the law and recommend possible changes;
- (viii) identify cases involving tax fraud and recommend them for investigation;
- (ix) forestall taxable persons' failure to render tax returns;
- (x) forestall taxable persons' rendering incomplete or inaccurate returns; and
- (xi) 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 staff of the Revenue.

(b) The guidelines and criteria for selection of files for audit are to be determined by the Tax Audit Department. The selection of cases for audit is a management function.

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

- (i) self-assessment taxpayers – at least two years since the last audit of the taxpayer;
- (ii) taxpayers with refund claims – especially arising from excess withholding tax credits and, or other named reasons;
- (iii) taxpayers with nil returns or continuous loss situation;
- (iv) taxpayers with very low adequacy ratios;
- (v) based on routine industry checks or sectorial audit (project audit);

- (vi) based on lead information received from Intelligence or other FIRS departments or external sources;
- (vii) transfer pricing arrangements;
- (viii) tax planning schemes;
- (ix) claims under double taxation agreement (DTA);
- (x) secondary files – relationship with another taxpayer by way of holding, subsidiary, associated or related companies, could be criteria for selecting companies for audit;
- (xi) industrial group's compliance evaluation and profitability comparison;
- (xii) verification of poor or extraordinary performance;
- (xiii) referrals resulting from desk examinations;
- (xiv) information resulting from examination, audit and investigation of other taxpayers;
- (xv) random sampling;
- (xvi) firms making unusual requests or taking extraordinary decisions such as centralizing an erstwhile decentralised operation;
- (xvii) information from intelligence unit of the tax authority; and
- (xviii) directive from higher government authority.

2. **Stages in tax audit process**

- (a) Selection of the taxpayer to be audited
- (b) Preliminary review of the taxpayer's file
- (c) Notification of taxpayer
- (d) Pre-audit meeting
- (e) Fieldwork
- (f) Post-audit meeting
- (g) Interim audit report
- (h) Post-audit review by regional/headquarters' audit unit
- (i) Reconciliation meetings
- (j) Final audit report

3. **List of documents required for the tax audit that is usually carried out by Nigeria Revenue Service Federal Inland Revenue Service**

- a) Audited accounts for the relevant years
- b) Management accounts
- c) Chart of accounts
- d) Year-end final trial balances
- e) General ledgers/ledger printouts
- f) Back up documents for entries in the general ledger
- g) Audit adjustment journals
- h) Relevant schedules
- i) Sales invoice file
- j) Purchases invoice file

- k) Payment vouchers for bank and petty cash payment
- l) Import documents
- m) Export documents (where applicable)
- n) Fixed assets register/schedules
- o) Value Added Tax file(s)
- p) Evidences of Input VAT claimed
- q) Evidences of VAT deducted at source (if any)
- r) Evidence of zero rated/exempted VAT items
- s) Withholding tax file(s)
- t) Capital gain tax records
- u) Schedule of bankers and the bank statements for each of the period of audit coverage
- v) Minutes of Board's meetings
- w) Stocks count records
- x) Schedule of contracts executed, contract agreements/offer letters and valuation certificate for company engaged in construction
- y) Rent agreements
- z) Any other documents required for the audit, as the list is not exhaustive

4(a)(i) **Tax audit**

Tax audit is the examination carried out by tax officials on the accounting books, records, documents and tax returns filed by a company with a view to determining the level of compliance with the provisions of the tax laws.

(ii) Tax audit checklist

This is the comprehensive list of the documents and information required in carrying on the audit. It ensures that the exercise is carried out in a systematic manner.

(iii) Tax audit report

This is the report issued by the tax officials on the audit exercise carried out on a company. The report should state the period covered by the audit, the scope of work done, findings and the additional tax liability established.

(iv) Tax investigators/tax auditors

Tax investigation aims to unearth fraud no matter how long and to secure evidential materials for possible prosecution of tax evasion or tax fraud in the law court. Investigators have a greater authority than tax auditors because they can take all possible steps to facilitate their work and obtain all the documents needed to substantiate the existence of tax evasion or fraud. Tax auditors' major focus is on checking that the taxpayer has complied with the relevant provision of tax laws.

(b) **Stages of tax investigation**

(i) **Surveillance or pre-investigation activities**

This involves checking and cross-checking of information and documentation on the purported tax fraud or complaint. It involves discrete analysis of data, reports and complaints.

(ii) **Notification of taxpayer**

On completion of surveillance or pre-investigation activities, the taxpayer to be investigated will be formally notified of the investigation exercise which will be carried out in the taxpayer's premises. The notification letter will state the period (years) that the investigation will cover, list of records/documents to be made available for the investigation, date and time of commencement and names of the tax officials that will carry out the exercise.

(iii) **Pre-investigation meeting**

The investigation exercise must commence with a preliminary meeting with the management of the organisation to be investigated, usually represented by the Managing Director and/ or Financial Director or their representatives. The organisation's Tax Consultants, where necessary, are also expected to be in attendance at this meeting. A signed copy of the minutes of meeting must be given to the representatives of parties concerned.

(iv) **Evidential audit or investigation**

At this stage, investigators move into the business premises of the taxpayer, conduct in-depth tax audit, take charge of any available evidential materials, secure a warrant of arrest (if necessary) and lock up the suspect. At this stage, any individual can be invited for interrogation.

(v) **Case preparation**

This involves the collection of witnesses, the interrogation of taxpayer and a careful examination and analysis of documents obtained. At this stage, the case can be stopped, if the evidence is weak.

(vi) **Arraignment**

At this stage, it means that the case has gone to court for criminal prosecution. Therefore, the court processes will start until the case is concluded and judgement passed.

(vii) **Termination of investigation**

An investigation of a criminal tax fraud or tax evasion can be terminated at any stage based on the following conditions:

(c) **The following circumstances can lead to the termination of a tax investigation**

- (i) Insufficient evidence
- (ii) Criminality is not involved. This may be where tax avoidance is mistaken for tax evasion; or
- (iii) If the suspect dies or becomes medically or legally insane.

5. **The list of documents required for the tax audit to be carried out by Lagos State Internal Revenue Service**

- a) Audited financial statements (AFS) /management accounts for the year(s) under review
- b) General ledger/trial balance
- c) Staff list with designation
- d) Payroll for local staff and expatriate staff
- e) Schedule of company vehicles and designation
- f) Analysis of staff cost in the AFS
- g) Evidence of registration and monthly remittance of pension
- h) Evidence of registration and monthly remittance of National Housing Fund(NHF) and Nigeria Social Insurance TrustFund (NSITF)
- i) Schedule of local and expatriate PAYE tax paid
- j) Employment contracts of both temporary and permanent expatriate staff
- k) Letter of expatriate quota for the company
- l) Copies of monthly returns on expatriate to Immigration Service
- m) Copies of expatriate deletion form
- n) Payment advice to banks for local and expatriate staff
- o) Schedule of the company's operating and administrative expenses
- p) List of suppliers/contractors including their addresses
- q) Payment vouchers for the period under review
- r) Rent schedule and rent agreement
- s) Schedule of withholding tax paid
- t) Names and address of directors
- u) Schedule of payments made to directors
- v) Copies of tax clearance certificate of directors
- w) List of the company offices, including head office
- x) Receipt for the business premises registration/renewal
- y) Receipt for the development levy paid
- z) Any other documents required for the audit, as the list is not exhaustive

6.

- a) Back-duty assessment will arise on a tax audit exercise where the relevant tax authority has reviewed the underlying records of a taxpayer to confirm that the records agree with the returns that was earlier obtained on-field. Any difference observed between the original returns and the underlying records form the basis of an additional assessment. Such additional assessments may become the subject of the objection and appeal procedures. Meanwhile, such back-duty work is limited to six years before the year of the audit.

On the other hand, an investigation is a more rigorous exercise which has no limit for the examination. Here, it may be triggered by some criminal activities such as outright evasion of tax. It will usually involve the use of law enforcement agents and the offenders may be charged to court for criminal activities.

(b) Investigatory power

- i. The Service shall employ Special Purpose Tax Officer to assist any relevant law enforcement agency in the investigation of any offence under the tax laws;
- ii. The Service shall have the power to investigate or cause investigation to be concluded to ascertain any violation of any tax law whether or not such violation has been reported to the service;
- iii. In conducting any investigation, the Service may cause investigation to be conducted into the properties of any taxable person, if it appears to the Service that the lifestyle of the person and extent of the properties are not justified by the source of income;
- iv. Where any investigation reveals the commission of any offence or an attempt to commit any offence, the Service shall undertake the prosecution of the offences.

(c) Search and seizure

Where the tax authority has a reasonable ground to suspect that an offence involving any form of total or partial non-disclosure of information or any irregularity or offence in connection with tax has been committed or can be found on the premises, registered office or any other office or place of management of the taxpayer or in his residence or the residence of its principal officers, agents, or representatives, the tax authority may authorise any of its officers to enter, if necessary by force, such locations at any time from the date of such authorization and conduct a search. The authority to enter and search must be made in the prescribed warrant form as contained in the second schedule of the Nigeria Tax Administration Act, 2025.

Upon entering the premises, 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 taxpayer or as evidence for the purpose of proceedings in respect of such an offence.

An officer authorised to carry out any such search and seizure may execute any warrant by calling to his assistance any police officer and it shall be the duty of the police officer to aid and assist him.

(d) **Appeals**

A taxpayer may appeal against the decision of either the tax authority or the court, where it is not satisfied. Such appeals must be lodged in writing and not later than 30 days after the receipt of the Notice of refusal to amend or the receipt of the judgement of the court.

(e) **Notices of appeal**

The Notices of appeal must be written, contain the grounds of appeal and must be lodged not later than 30 days after the receipt of the Notice of Refusal to Amend or the receipt of the judgement of the court.

The Notice of appeal must contain certain basic information such as the name of the taxpayer; the tax file number; the relevant year assessment; the amount of taxable profit; the amount of assessment; the date the notice of refusal to amend or the judgement of the court was received and the ground of appeal.

(f) **Hearing of appeal**

The hearing of the appeal before the Tax Appeal Tribunal is usually made in public. Sometimes, the hearing will involve the taxpayer and the tax authority being represented to make their case. Each party is allowed the use of its auditors, tax consultants and legal advisers. The decision of the Tax Appeal Tribunal is usually under the hands of the chairman.

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

Once judgement has been delivered at Tax Appeal Tribunal, an appeal may be lodged to the High Court within 30 days of receipt of the judgement. The appeal must be written and must show the grounds upon which the appeal is being made.

(h) **When an assessment is final and conclusive**

An assessment becomes final and conclusive where no valid objection or appeal has been lodged within the time limit. It is also applicable where an assessment as made or agreed to, revised or determined on appeal has not been the subject of a further appeal within the time allowed.

ETHICS AND PROFESSIONALISM IN TAX MANAGEMENT

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26 Ethics and Professionalism in Tax Management

26.0 Learning objective

The learning objective of this chapter is for readers to understand the ethics and the professionalism associated with tax practice management

26.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) understand the five fundamental principles and guidance in International Ethics Standards Board for Accountants (IESBA) codes;
- (b) understand the conditions when taxpayer's information may be disclosed;
- (c) understand issues of conflict of interest in tax practice;
- (d) understand the ethical issues that could arise from tax work;
- (e) explain the practical process to follow in addressing a tax violation under the Non-compliance with law and regulation (NOCLAR); and
- (f) know the code of ethics expected of Revenue officials and tax consultants.

26.2 The five fundamental principles and guidance for accountants (IESBA codes)

International Ethics Standards Board for Accountants (IESBA) is an independent standard-setting body within the International Federation of Accountants (IFAC). The IESBA develops and issues in the public interest high-quality ethics standards and other pronouncements for professional accountants for use around the world. It encourages member bodies to adopt high standards of ethics for their members and promotes good ethical practices globally. The IESBA also fosters international debate on ethical issues faced by accountants.

The mission of IFAC is to serve the public interest, strengthen the worldwide accountancy profession and contribute to the development of strong international economies by establishing and promoting adherence to high-quality professional standards, furthering the international convergence of such standards and speaking out on public interest issues where the profession's expertise is most relevant.

The fundamental principles of ethics as specified by the International Ethics Standards Board for Accountants (IESBA) are:

Integrity

A professional accountant shall comply with the principle of integrity, which requires an accountant to be straightforward and honest in all professional and business relationships.

Integrity implies fair dealing and truthfulness. A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information contains materially false or misleading statement.

Objectivity

A professional accountant shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgment because of bias, conflict of interest or undue influence of others. A professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the accountant's professional judgment regarding that activity.

Professional competence and due care

A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation and act diligently and in accordance with applicable technical and professional standards.

Confidentiality

A professional accountant shall comply with the principle of confidentiality, which requires an accountant to respect the confidentiality of information acquired as a result of professional and business relationships.

The principle of confidentiality imposes an obligation on all professional accountants to refrain from:

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

Professional behaviour

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

26.3 Disclosure of taxpayers information

The need to comply with the principle of confidentiality continues even after the end of relationships between a tax practitioner and a client. However, when a consultant is engaged by a new client, he may use his prior experience in his new engagement without contravening the principle of non-disclosure in his new assignment. On the other hand, there are instances when a tax consultant may disclose information on a client (whether past or present). The following are circumstances where a tax consultant may disclose information on a taxpayer, when:

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

26.4 Conflict of Interest

A conflict of interest creates threats to compliance with the principle of objectivity and might create threats to compliance with other fundamental principles. Such threats may be created when:

- (a) The tax practitioner undertakes a professional activity related to a particular matter for two or more clients whose interests with respect to that matter are in conflict; or
- (b) The interests of the tax practitioner with respect to a particular matter and the interests of a client for whom the tax practitioner undertakes a professional activity related to that matter are in conflict.

What a tax practitioner should do when a conflict of interest arises

- i. A tax practitioner may be required to resolve a conflict by complying with the fundamental principles.
- ii. It may be in the best interests of the tax practitioner to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.
- iii. If a significant conflict cannot be resolved, a tax practitioner may consider obtaining professional advice from the relevant professional body, that is, ICAN or CITN. The tax practitioner generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with the relevant professional body on an anonymous basis or with a legal advisor under the protection of legal privilege.
- iv. If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a tax practitioner shall, where possible, refuse to remain associated with the matter creating the conflict. The tax practitioner shall determine whether, in the circumstances, it is appropriate to withdraw from the specific assignment or client.

26.5 Possible legal and ethical issues arising from tax works undertaken

The following are the possible legal and ethical issues that could arise from tax works:

- (a) Technical competence - Failure of tax practitioners to maintain an appropriate level of professional competence by ongoing development of their knowledge and skills.
- (b) Reasonable enquiry - Failure to make reasonable enquiries where information or documentation as furnished by a client appears to be inaccurate or incomplete.

- (c) Continue to act - Continuing to act for a client in circumstances where incorrect or misleading information is not corrected by the client.
- (d) Tax avoidance - Conflicts which arise in distinguishing between legitimate tax planning/tax minimisation arrangements and tax avoidance activities/schemes.
- (e) Supervision of tax audit - Failure to carefully plan for or otherwise supervise on behalf of the client, audit activities carried out by tax authorities.
- (f) Tax loopholes - "Loophole seeking" to deliberately test the boundaries of tax law.
- (g) Fee setting - Basing the amount of the fee charged for tax services on the amount of tax saved/tax liability i.e., contingent fee setting.
- (h) Aggressive interpretation - Adoption of overly aggressive interpretations of questionable issues and reporting positions on the basis that detection of the issue by the tax authorities is unlikely i.e., playing the "tax audit lottery".
- (i) Misleading advice - Provision of inadequate or misleading advice to clients as to the potential risks and consequences of adopting various reporting positions and tax arrangements.
- (j) Misrepresentation - Misrepresenting or concealing limitations in a tax practitioner's competence or skills to perform tax services.
- (k) Personal gain - Conflicts between opportunities for personal financial gain (or other personal benefit) and proper performance of a tax practitioner's responsibilities.
- (l) Conflict of interest - Conflicts of interest that involve providing services to competing clients such that the interests of one client may be prejudiced.
- (m) Documentation - Preparing and signing a return without seeing full documentation.
- (n) Communication - Failure to communicate to clients unfavourable as well as favourable information and professional opinions.
- (o) Tax authority's errors - Inaction by the tax practitioner in respect of a clear and significant mathematical or clerical mistake by the relevant tax authorities in favour of a client.
- (p) Reporting position - Determining whether the client or the tax practitioner should make the final reporting decisions for contentious or ambiguous items.
- (q) Public responsibility - Failure to acknowledge a public responsibility to contribute to the improvement of the tax laws and their administration for example, reporting blatant tax avoidance arrangements.
- (r) Professional judgment - Carrying out a client's instructions which are inconsistent with the professional judgment of the tax practitioner. (Professional judgment).
- (s) Poaching clients - Poaching or soliciting potential clients from other practitioners/practices.
- (t) Authority - Dealing with a client's funds (for example, a tax refund cheque) without client authority;
- (u) Tax audit - Structuring a transaction, or the preparation of a tax return in such a way as to reduce the chances of a tax audit.
- (v) Research - Failure to conduct adequate research on a problem as a reasonable basis for identifying issues and forming carefully considered conclusions and recommendations.
- (w) Prior years errors - Inaction by the tax practitioner in respect of a clear and significant error detected in a client's prior year return(s). (Prior year errors).
- (x) Confidentiality - Failure to ensure confidentiality regarding privileged client information.
- (y) Tax minimisation - Keeping a client informed of current tax minimisation arrangements which have no real commercial or family purpose.

26.6 Justifications for appropriate legal action for non-compliance

Appropriate action for non-compliance with the fundamental principles of ethics is supported by:

- a) the power of the Institute to enforce ethical standards is derived from the Institute of Chartered Accountants of Nigeria Act No 15 of 1965. This power is conferred on the Accountants Disciplinary Tribunal. The Tribunal in this respect is independent of Council;
- b) the Investigating Panel considers complaints against the conduct of members, and is empowered to initiate disciplinary action by referring appropriate cases to the Disciplinary Tribunal for adjudication;
- c) where a complaint is against the conduct of a firm having more than a partner, the complaint shall be deemed to have been made against each member who was partner in the said firm at the material time for the purposes of this scenario; and
- d) any failure to follow the guidance in fundamental principles or in the statements shall also be considered by the Committee of the Institute responsible for regulating the work of members and member firms.

26.7 Significance of legal and ethical issues in preparation of returns and in reporting

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

- (a) imposition of fines;
- (b) suspension from membership of the Institute for a period of time;
- (c) expulsion from membership of the Institute;
- (d) withdrawal of certificate and licence to practice;
- (e) reprimand; and
- (f) payment of costs associated with the investigations and meetings.

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

26.8.1 Threats

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

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

Threats fall into one or more of the following categories:

- (a) Self-interest - The threat that a financial or other interest will inappropriately influence the professional accountant's judgment or behaviour, for instance, a firm having undue dependence on total fees from a client.

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

26.8.2 Safeguards against threats

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

- (a) Safeguards created by the profession, legislation or regulation - This includes:
 - i. continue professional development requirement;
 - ii. professional standards; and
 - iii. corporate governance regulations.
- (b) Safeguards in the work environment – This includes:
 - i. leadership and transparency; and
 - ii. recruitment procedures for high caliber staff.

26.9 Non-compliance with law and Regulation (NOCLAR) principles

26.9.1 Framework as a professional accountant

In providing a professional service to a client or carrying out professional activities for an employer, Professional Accountants (PAs) come across various acts or suspected acts of non-compliance with laws and regulations (NOCLAR). The Professional Accountants (PAs) has a prima facie ethical responsibility not to turn a blind eye to such matters. At the same time, the International Ethics Standards Board for Accountants (IESBA) recognised that such a situation can often be a difficult and stressful one. In order to provide a solution to the dilemma, the Board approved the NOCLAR pronouncement to develop enhancements to the IESBA Code to help guide the PAs in dealing with the situation and in deciding how best to act in the public interest. When responding to non-compliance or suspected non-compliance, the objective of the professional accountant should be to comply with fundamental principles of integrity and professional behaviours while taking public interest into consideration. In addition, the aim of response by PAs is for the entity to correct the NOCLAR and remediate or prevent its occurrence where it is still being suspected.

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

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

- (a) become aware (see it, but do not seek it);
- (b) obtain an understanding of the matter;
- (c) address the issue with management and those charged with governance;
- (d) communicate the matter to the entity's external auditor;
- (e) consider whether further action is needed in the public interest for example, disclosing to authorities or withdrawing from the engagement; and
- (f) documentation i.e. the matter, result of discussion with management or those charged with governance, actions taken.

26.9.3 Practical process to address tax laws violation by professional accountants in business

(a) Professional accountants other than senior professional Accountants

When an organisation has established protocols and procedures regarding how non-compliance or suspected non-compliance should be raised internally, the professional accountant is expected to consider them in determining how to handle non-compliance:

- (i) Subject to established protocols and procedures, inform an immediate superior to enable the superior to take appropriate action.
- (ii) If the PA's immediate superior appears to be involved in the matter, inform the next higher level of authority within the organisation.
- (iii) In exceptional circumstances, the PA may decide that disclosure of the matter to an appropriate authority is an appropriate course of action.
- (iv) Documentation i.e. matter, discussion, response by superior, and decision taken.

(b) Senior professional accountants (SPAs)

SPAs are directors, officers or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of human, financial, technological, physical and intangible resources.

- (i) Become aware (see it, but do not seek it)
- (ii) Obtain the understanding of the matter
- (iii) Address the matter
- (iv) Determine whether further action is needed
- (v) Determine whether to disclose the matter to an appropriate authority
- (vi) Documentations

26.10 Ethical issues in data privacy

The Nigerian Data Protection Act 2023 addresses critical ethical issues in data privacy, client confidentiality, and data handling. These are discussed below:

26.10.1 Data privacy

- (a) Consent: Data subjects must provide informed consent for the collection and processing of their personal data.
- (b) Purpose limitation: Personal data can only be collected and processed for specified, legitimate purposes.
- (c) Data minimisation: Only necessary personal data should be collected and processed.
- (d) Accuracy: Data controllers must ensure the accuracy and up-to-datedness of personal data.
- (e) Storage limitation: Personal data should not be stored for longer than necessary.

26.10.2 Client confidentiality

- (a) Confidentiality: Data controllers and processors must maintain the confidentiality of personal data.
- (b) Non-disclosure: Personal data should not be disclosed to unauthorised parties.
- (c) Duty of care: Data controllers and processors have a duty of care to protect personal data.

26.10.3 Data handling

- (a) Data protection by design: Data controllers and processors must implement data protection measures from the outset.
- (b) Data protection impact assessment: Assessments must be conducted for high-risk data processing activities.
- (c) Data breach notification: Data controllers must notify data subjects and the relevant authorities in case of a data breach.
- (d) Accountability: Data controllers and processors are accountable for their data handling practices.

26.10.4 Rights of data subjects

- (a) Right to access: Data subjects have the right to access their personal data.
- (b) Right to rectification: Data subjects can request the correction of inaccurate personal data.
- (c) Right to erasure: Data subjects can request the deletion of their personal data.

- (d) Right to object: Data subjects can object to the processing of their personal data.

26.10.5 Obligations of data controllers and processors

- (a) Registration: Data controllers and processors may need to register with the relevant authorities.
- (b) Data protection officer: Some data controllers and processors may need to appoint a data protection officer.
- (c) Training: Data controllers and processors should provide training on data protection to their staff.

26.10.6 Enforcement and penalties

- (a) Regulatory oversight: The Nigerian Data Protection Commission will oversee compliance with the Act.
- (b) Penalties: Non-compliance can result in fines and other penalties.

26.10.7 Framework for protecting personal data

The Nigerian Data Protection Act 2023 provides a framework for protecting personal data and promoting trust in the digital economy. Organisations must comply with the Act's provisions to avoid penalties and maintain the trust of their customers and stakeholders.

The Nigerian Data Protection Act of 2023 provides a comprehensive framework for protecting personal data, which includes:

(a) Key principles

- (i) Lawfulness, Fairness, and Transparency: Personal data must be processed with the data subject's consent and in a transparent manner.
- (ii) Purpose limitation: Data should only be collected for specified purposes and not used for other purposes without consent.
- (iii) Data minimisation: Only necessary personal data should be collected and processed.
- (iv) Storage limitation: Personal data should not be stored for longer than necessary.
- (v) Accuracy: Personal data must be accurate and up-to-date.
- (vi) Integrity and confidentiality: Data controllers and processors must ensure the security and confidentiality of personal data.
- (vii) Accountability: Data controllers and processors are responsible for demonstrating compliance with these principles.

(b) Rights of data subjects

- (i) Right to information: Data subjects have the right to know how their personal data is being processed.

- (ii) Right to access: Data subjects can request access to their personal data.
- (iii) Right to rectification: Data subjects can request correction of inaccurate personal data.
- (iv) Right to erasure: Data subjects can request deletion of their personal data.
- (v) Right to object: Data subjects can object to the processing of their personal data.
- (vi) Right to data Portability: Data subjects can request transfer of their personal data to another organisation.

(c) Obligations of data controllers and processors

- (i) Registration: Data controllers and processors of major importance must register with the Nigerian Data Protection Commission.
- (ii) Data protection officer: Data controllers and processors of major importance must appoint a Data Protection Officer.
- (iii) Data breach notification: Data controllers must notify the Commission and affected data subjects in case of a data breach within 72 hours.
- (iv) Data protection impact assessment: Data controllers and processors must conduct data protection impact assessments for high-risk data processing activities.

(d) Enforcement and penalties

- (i) Nigerian Data Protection Commission: The Commission is responsible for overseeing compliance with the Act and imposing penalties for non-compliance.
- (ii) Fines and imprisonment: Non-compliance can result in fines and imprisonment, with fines ranging from N2 million to N10 million and imprisonment terms of up to 3 years.

26.11 Chapter review

In this chapter, readers must have learnt the:

- i. five fundamental ethical principles and guidelines for accountants (IESBA codes);
- ii. nature of threats to compliance with IESBA codes and their safeguards;
- iii. conditions that could lead to disclosure of taxpayers information;
- iv. conflict of interest that could be encountered in tax practice;
- v. key requirements, obligations and impact of NOCLAR on professional accountants; and
- vi. ethical issues in data privacy.

26.12 Worked examples

26.12.1 Questions

1. Ethical standards are the cornerstone of professional integrity in accountancy. The Institute of Chartered Accountants of Nigeria (ICAN) has adopted the IFAC IESBA Code of Ethics for

Professional Accountants in upholding public trust, ensuring transparency, and maintaining the credibility of financial reporting. These standards are not optional, they are enforceable principles that shape the behaviour and decisions of professionals in both public and private sectors. Among the various ethical principles are Integrity, Objectivity, Professional Competence and Due Care, and Confidentiality. Each plays a vital role in safeguarding the profession's reputation and ensuring that accountants act in the best interest of stakeholders and society at large.

Required:

- (a) Discuss the **FOUR** (4) fundamental principles of ethical standards as stated above.
 - (b) Explain the penalties for a member's non-compliance with ethical standards.
 - (c) Examine the powers available to the Institute to enforce compliance with ethical standards.
- 2 Professionals may face pressure to engage in aggressive tax planning, exploit legal loopholes, or even facilitate tax avoidance strategies, while technically legal, may be ethically questionable. Moreover, conflicts of interest, confidentiality breaches, and misrepresentation of facts can compromise the credibility of both the individual and the profession. In jurisdictions like Nigeria, where regulatory oversight is evolving, the ethical conduct of tax practitioners becomes even more critical in promoting transparency, equity, and public trust.

Required:

- (a) Discuss **eight** (8) ethical issues that could arise from tax engagement.
 - (b) Discuss the processes that should be followed by professional accountants in practice to address violation of tax laws.
3. Professional Accountants do come across various acts or suspected acts of non-compliance with laws and regulations (NOCLAR) in the course of their engagements.

Required:

- (a) Discuss the International Ethics Standards Board for Accountants (IESBA) approved pronouncement on dealing with NOCLAR.
 - (b) Discuss the practical process to be taken by a professional accountant in an organisation when he observes violations of tax laws in the course of his work.
4. Ethical issues in data processing have been variously addressed by the Nigerian Data Protection Act, 2023. The Nigerian Data Protection Regulation (NDPR) provides the framework for treating some specific ethical issues ranging from privacy to data handling.

Required:

Discuss the ethical issues in data processing and the framework for protecting personal data as contained the Data Protection Act, 2023.

26.12.2 Suggested solutions to questions

1(a). Fundamental principles of ethical standards as provided in the Institute of Chartered Accountants of Nigeria's Code of Professional Conduct for Accountants are:

- (i) **Integrity:** A Chartered Accountant should be straightforward and honest in all professional and business relationships. Integrity implies not merely honest, but fair dealing and truthfulness.
- (ii) **Objectivity:** is the state of mind, which has regard to all considerations relevant to the task at hand, but no other consideration. A Chartered Accountant should not allow bias, conflict of interest or undue influence to override his professional or business judgment.
- (iii) **Professional competence and due care:** A chartered accountant has a continuing duty to maintain professional knowledge and skills at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A member should not accept or perform work, which he is not competent to undertake unless he obtains such advice and assistance as will enable him to do so. A Chartered Accountant should act diligently and in accordance with applicable technical and professional standards when providing professional services. A member should carry out his professional work with due skill, care, diligence and expedition and with proper regard for the technical and professional standards expected of him as a member.
- (iv) **Confidentiality:** A chartered accountant should respect the confidentiality of information acquired as a result of professional and business relationships and should not disclose any of such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the chartered accountant or third party.
- (v) **Professional behaviour:** A chartered accountant should comply with relevant laws and regulations and should avoid any action that discredits the profession. A member should conduct himself with courtesy and consideration towards all with whom he comes in contact within the course of performing his work.

(b) Penalties for a member's unethical behaviour

- (i) Imposition of fines
- (ii) Membership of the Institute for a period
- (iii) Expulsion from membership of the Institute
- (iv) Withdrawal of certificate and licence to practice
- (v) Reprimand

- (vi) Payment of costs associated with the investigations and meetings

(c) Enforcement of ethical standards

- (i) The power of the Institute to enforce ethical standards is derived from the Institute of Chartered Accountants of Nigeria Act No 15 of 1965. This power is conferred on the Accountants Disciplinary Tribunal. The Tribunal in this respect is independent of Council.
- (ii) The Investigating Panel considers complaints against the conduct of members and is empowered to initiate disciplinary action by referring appropriate cases to the Disciplinary Tribunal for adjudication.
- (iii) Where a complaint is against the conduct of a firm having more than a partner, the complaint shall be deemed to have been made against each member who was partner in the said firm at the material time for the purposes of this scenario.
- (v) Any failure to follow the guidance in fundamental principles or in the statements shall also be considered by the Committee of the Institute responsible for regulating the work of members and member firms.

2(a). The following ethical issues could arise from tax engagement:

- (i) Technical competence - Failure of tax practitioners to maintain an appropriate level of professional competence by ongoing development of their knowledge and skills.
- (ii) Reasonable enquiry - Failure to make reasonable enquiries where information or documentation as furnished by a client appears to be inaccurate or incomplete.
- (iii) Continue to act - Continuing to act for a client in circumstances where incorrect or misleading information is not corrected by the client.
- (iv) Tax avoidance - Conflicts which arise in distinguishing between legitimate tax planning/tax minimisation arrangements and tax avoidance activities/schemes.
- (v) Supervision of tax audit - Failure to carefully plan for or otherwise supervise on behalf of the client, audit activities carried out by tax authorities.
- (vi) Tax loopholes - "Loophole seeking" to deliberately test the boundaries of tax law.
- (vii) Fee setting - Basing the amount of the fee charged for tax services on the amount of tax saved/tax liability i.e., contingent fee setting.
- (viii) Aggressive interpretation - Adoption of overly aggressive interpretations of questionable issues and reporting positions on the basis that detection of the issue by the tax authorities is unlikely i.e., playing the "tax audit lottery".
- (ix) Misleading advice - Provision of inadequate or misleading advice to clients as to the potential risks and consequences of adopting various reporting positions and tax arrangements.
- (x) Misrepresentation - Misrepresenting or concealing limitations in tax practitioner's competence or skills to perform particular tax services.
- (xi) Personal gain - Conflicts between opportunities for personal financial gain (or other personal benefit) and proper performance of a tax practitioner's responsibilities.

- (xii) Conflict of interest - Conflicts of interest that involve providing services to competing clients such that the interests of one client may be prejudiced.
 - (xiii) Documentation - Preparing and signing a return without seeing full documentation.
 - (xiv) Communication - Failure to communicate to clients unfavourable as well as favourable information and professional opinions.
 - (xv) Tax authority's errors - Inaction by the tax practitioner in respect of a clear and significant mathematical or clerical mistake by the relevant tax authorities in favour of a client.
 - (xvi) Reporting position - Determining whether the client or the tax practitioner should make the final reporting decisions for contentious or ambiguous items.
 - (xvii) Public responsibility - Failure to acknowledge a public responsibility to contribute to the improvement of the tax laws and their administration for example, reporting blatant tax avoidance arrangements.
 - (xviii) Professional judgment - Carrying out a client's instructions which are inconsistent with the professional judgment of the tax practitioner. (Professional judgment).
 - (xix) Poaching clients - Poaching or soliciting potential clients from other practitioners/practices.
 - (xx) Authority - Dealing with a client's funds (for example, a tax refund cheque) without client authority. (Authority).
 - (xxi) Tax audit - Structuring a transaction, or the preparation of a tax return in such a way as to reduce the chances of a tax audit.
 - (xxii) Research - Failure to conduct adequate research on a problem as a reasonable basis for identifying issues and forming carefully considered conclusions and recommendations.
 - (xxiii) Prior years errors - Inaction by the tax practitioner in respect of a clear and significant error detected in a client's prior year return(s). (Prior year errors).
 - (xxiv) Confidentiality - Failure to ensure confidentiality regarding privileged client information.
 - (xxv) Tax minimisation - Keeping a client informed of current tax minimisation arrangements which have no real commercial or family purpose.
- (b) When a professional accountant in tax practice becomes aware of a non-compliance or suspected noncompliance with provisions of tax laws, the following process/steps are to be taken:
- (i) become aware (see it, but do not seek it);
 - (ii) obtain an understanding of the matter;
 - (iii) address the issue with management and those charged with governance;
 - (iv) communicate the matter to the entity's external auditor;
 - (v) consider whether further action is needed in the public interest, for example, disclosing to authorities or withdrawing from the engagement; and
 - (vi) documentation, that is, the matter, result of discussion with management or those charged with governance, actions taken.

- 3(a) In the rendering professional service to a client or carrying out professional activities for an employer, professional accountants could come across various acts or suspected acts of non-compliance with laws and regulations (NOCLAR).

The professional accountants have a prima facie ethical responsibility not to turn a blind eye to such matters. At the same time, the International Ethics Standards Board for Accountants (IESBA) recognised that such a situation can often be a difficult and stressful one. In order to provide a solution to the dilemma, the Board approved the NOCLAR pronouncement to develop enhancements to the IESBA Code to help guide the professional accountant in dealing with the situation and in deciding how best to act in the public interest.

When responding to non-compliance or suspected non-compliance, the objective of the professional accountant should be to comply with fundamental principles of integrity and professional behaviours while taking public interest into consideration. In addition, the aim of response by professional accountants for the entity to correct the NOCLAR and remedy or prevent its occurrence where it is still being suspected.

- (b) There are steps to be taken by professional accountants other than senior professional accountants when violations of tax laws are observed during their engagements.

When organisations have established protocols and procedures regarding how noncompliance or suspected noncompliance should be raised internally, the professional accountant is expected to consider them in determining how to handle non-compliance.

Other steps are:

- (i) subject to established protocols and procedures, inform an immediate superior to enable the superior to take appropriate action;
- (ii) if the professional accountants immediate superior appears to be involved in the matter, inform the next higher level of authority within the organisation;
- (iii) in exceptional circumstances, the professional accountant may decide that disclosure of the matter to an appropriate authority is an appropriate course of action; and
- (iv) documentation, that is, matter, discussion, response by superior, and decision taken.

4. The salient ethical issues provided in the Nigerian Data Protection Act, 2023 are as follows:

Data privacy

- (a) Consent: Data subjects must provide informed consent for the collection and processing of their personal data.
- (b) Purpose limitation: Personal data can only be collected and processed for specified, legitimate purposes.
- (c) Data minimisation: Only necessary personal data should be collected and processed.

- (d) Accuracy: Data controllers must ensure the accuracy and up-to-datedness of personal data.
- (e) Storage limitation: Personal data should not be stored for longer than necessary.

Client confidentiality

- (a) Confidentiality: Data controllers and processors must maintain the confidentiality of personal data.
- (b) Non-disclosure: Personal data should not be disclosed to unauthorised parties.
- (c) Duty of care: Data controllers and processors have a duty of care to protect personal data.

Data handling

- (a) Data protection by design: Data controllers and processors must implement data protection measures from the outset.
- (b) Data protection impact assessment: Assessments must be conducted for high-risk data processing activities.
- (c) Data breach notification: Data controllers must notify data subjects and the relevant authorities in case of a data breach.
- (d) Accountability: Data controllers and processors are accountable for their data handling practices.

Rights of data subjects

- (a) Right to access: Data subjects have the right to access their personal data.
- (b) Right to rectification: Data subjects can request the correction of inaccurate personal data.
- (c) Right to erasure: Data subjects can request the deletion of their personal data.
- (d) Right to object: Data subjects can object to the processing of their personal data.

Obligations of data controllers and processors

- (a) Registration: Data controllers and processors may need to register with the relevant authorities.
- (b) Data protection officer: Some data controllers and processors may need to appoint a data protection officer.
- (c) Training: Data controllers and processors should provide training on data protection to their staff.

Enforcement and penalties

- (a) Regulatory oversight: The Nigerian Data Protection Commission will oversee compliance with the Act.
- (b) Penalties: Non-compliance can result in fines and other penalties.

Framework for protecting personal data

The Nigerian Data Protection Act, 2023 provides a framework for protecting personal data and promoting trust in the digital economy. Organisations must comply with the Act's provisions to avoid penalties and maintain the trust of their customers and stakeholders.

The Nigerian Data Protection Act, 2023 provides a comprehensive framework for protecting personal data, which includes:

(a) Key principles

- (i) Lawfulness, Fairness, and Transparency: Personal data must be processed with the data subject's consent and in a transparent manner.
- (ii) Purpose limitation: Data should only be collected for specified purposes and not used for other purposes without consent.
- (iii) Data minimisation: Only necessary personal data should be collected and processed.
- (iv) Storage limitation: Personal data should not be stored for longer than necessary.
- (v) Accuracy: Personal data must be accurate and up-to-date.
- (vi) Integrity and confidentiality: Data controllers and processors must ensure the security and confidentiality of personal data.
- (vii) Accountability: Data controllers and processors are responsible for demonstrating compliance with these principles.

(b) Rights of data subjects

- (i) Right to information: Data subjects have the right to know how their personal data is being processed.
- (ii) Right to access: Data subjects can request access to their personal data.
- (iii) Right to rectification: Data subjects can request correction of inaccurate personal data.
- (iv) Right to erasure: Data subjects can request deletion of their personal data.

- (v) Right to object: Data subjects can object to the processing of their personal data.
- (vi) Right to data Portability: Data subjects can request transfer of their personal data to another organisation.

(c) Obligations of data controllers and processors

- (i) Registration: Data controllers and processors of major importance must register with the Nigerian Data Protection Commission.
- (ii) Data protection officer: Data controllers and processors of major importance must appoint a Data Protection Officer.
- (iii) Data breach notification: Data controllers must notify the Commission and affected data subjects in case of a data breach within 72 hours.
- (iv) Data protection impact assessment: Data controllers and processors must conduct data protection impact assessments for high-risk data processing activities.

(d) Enforcement and penalties

- (i) Nigerian Data Protection Commission: The Commission is responsible for overseeing compliance with the Act and imposing penalties for non-compliance.
- (ii) Fines and imprisonment: Non-compliance can result in fines and imprisonment, with fines ranging from N2 million to N10 million and imprisonment terms of up to 3 years.

TAX ACCOUNTING AND REPORTING

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27 Tax Accounting and Reporting

27.0 Learning objective

The objective of this chapter is to enhance readers' understanding of tax accounting and reporting in Nigerian business environment.

27.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) appreciate the nature of accounting for taxes;
- (b) understand accounting entries with respect to tax;
- (c) know the disclosure requirements; and
- (d) know how to present tax account in financial statements.

27.2 Nature of tax account

The tax accounts of a company are used to record movements in the company's tax transactions for each year. For clarity, it is highly recommended that a separate account be maintained for each type of tax in the company's ledger. A typical tax account of a company contains the following:

(a)	Unpaid taxes at the beginning of the year	- opening balance	- CR
(b)	Provision for companies income tax	- current year	- CR
(c)	Provision for development levy	- current year	- CR
(d)	Prior year under-provision for tax	- previous year(s)	- CR
(e)	Prior year over-provision for tax	- previous year	- DR
(f)	Provision for deferred tax liabilities on timing differences	- current year	- CR
(g)	Provision for deferred tax assets on timing differences	- current year	- DR
(h)	Tax payments during the year		- DR
(i)	Withholding tax credit notes set-off		- DR
(j)	Unpaid taxes at the end of the year	- closing balance	- CR

27.3 Posting into the tax account

(a) Provision for income tax

Entries in the tax account are posted by raising the following journals:

Dr – Statement of profit or loss

Cr - Tax account

Being provision for income tax for the year based on 30% of the total profit

(b) Provision for development levy

Dr – Statement of profit or loss

Cr - Tax account

Being provision for development levy-4% of assessable profit

- (c) Under provision for tax in the prior year

Dr – Statement of profit or loss

Cr - Tax account

Being prior year under-provision for income tax

- (d) Over provision for tax in the prior year

Dr – Tax account

Cr - Statement of profit or loss

Being prior year over provision for Income tax

- (e) Cash payment of taxes

Dr – Tax account

Cr - Bank

Being payment on account of outstanding income tax and development levy liabilities

- (f) **Offset of income tax with withholding tax credit notes**

Dr - Income tax account

Cr - Withholding tax account (receivable)

Being set-off of withholding tax suffered at source against income tax liabilities for the year

27.4 Deferred tax

Deferred tax is the tax attributable to timing differences. It could be deferred tax assets or deferred tax liability. Deferred tax assets are the amounts of taxes recoverable in future periods which are attributable to temporary differences. Deferred tax liabilities are the taxes payable in future accounting periods attributable to temporary differences. The objective of providing for deferred taxes is to ensure that the tax expense reported in an income statement of a particular period reflects the tax effects of transactions included in the accounting profit/loss of the period.

Permanent differences are not taken into consideration as they do not affect other periods.

27.4.1 Computation and accounting for deferred taxes (IFRS)

Deferred tax is computed by multiplying the difference between the tax base (for example, TWDV of property, plant and equipment (PPE)) and the carrying amounts (for example, NBV of PPE) by the ruling company income tax rate of 30%. Postings into deferred tax account are done by raising the following journals:

- (a) Provision for deferred tax liabilities on timing differences

Dr - Statement of profit or loss

Cr - Deferred tax account

Being provision charged for deferred tax liabilities on timing differences

(b) Provision for deferred tax assets on timing differences

Dr - Deferred tax account

Cr – Statement of profit or loss

Being provision charged for deferred tax assets on temporary differences

Illustration 27.1

Where there is no revaluation surplus

Deferred Tax Asset (DTA) = Tax written down value (TWDV) less Net book value (NBV) or carrying amount x 30%

Assuming TWDV is N500m while NBV is N420m. DTA will be $(500m - 420m) \times 30\% = N24m$

DTL = NBV less TWDV x 30% e.g NBV is N900m while TWDV is N350. DTL will be $(900m - 350m) \times 30\% = N165m$

Where there is revaluation surplus

DTA = (TWDV less NBV less revaluation surplus) x 30%

Assuming TWDV is N500m, NBV is N420m and revaluation surplus is N50m. DTA will be $(500m - 370m) \times 30\% = N39m$

Note: N370m = N420m less N50m

DTL = (NBV less revaluation surplus less TWDV) x 30% e.g NBV is N900m, revaluation surplus is N120m while TWDV is N350. DTL will be $(900m - N120m - 350m) \times 30\% = N129m$

27.5 Disclosure of taxes in financial statements

Companies are required to disclose the components of tax expenses, tax assets and liabilities in the financial statements. Such disclosures are usually made in the financial statements by way of notes.

27.6 Presentation of taxes in financial statements

The note on taxation is usually presented in the financial statements in a vertical form, as follows:

	N'000
Income tax on profit before tax	x
Development levy (4% of assessable profit)	x
Prior year's under provision for income tax	x
Deferred tax liability (charge)	<u>x</u>
Per profit or loss account	xx
Outstanding at the beginning of the year	x
Adjustment for deferred tax charge	(x)
Payments during the year	<u>(x)</u>
Per statement of financial position	<u>xx</u>

27.7 Risks of wrong or misleading tax disclosure

Financial statements are prepared in accordance with a financial reporting framework. The term financial reporting framework is defined as “a set of criteria used to determine measurement, recognition, presentation, and disclosure of all material items appearing in the financial statements”. Examples of financial reporting frameworks are generally accepted accounting principles (GAAP) in the United States of America, International Financial Reporting Standards (IFRSs), and other financial reporting framework in other jurisdictions.

The essence of the financial reporting framework is to ensure standardisation that will engender faithful representation and comparability.

Taxes (both current and deferred) are one of the disclosures in the financial statements. Therefore, taxes should be fairly disclosed in the financial statements to ensure that users of financial statements are well informed and not misled by wrong tax disclosures.

Meanwhile, since tax expert and professionals make use of the financial statements generated using accounting principles and standards, care should be taken on the level of reliance placed on financial statements to ensure that the risk of wrong or misleading tax disclosure are mitigated.

27.8 Chapter review

This chapter covers sequence of accounting entries required and necessary to record the tax transactions of a company. It provides the disclosure requirements with regards to components of tax expenses to be detailed in notes to the financial statements.

27.9 Worked examples

27.9.1 Questions

1. Isiaka Jimoh Limited is a company engaged in manufacturing of imirat oil. Its accounts for the year ended September 30, 2023, revealed the following results:

	₦'000
Net profit for the year after charging:	300,000
Depreciation of prop., plant and equip.	22,500
Loss on sale of prop., plant and equip.	500
Penalty and fine	200
Loan interest	8,500
Salaries and wages	30,000
and crediting:	
Franked Investment Income	20,000
Interest on foreign deposit a/c repatriated	5,600

Additional information:

- (i) The company has unrelieved losses of ₦15 million
- (ii) Capital allowances claim amounted to ₦55 million
- (iii) The tax written down value of fixed assets as at 30 September 2023, after the above capital allowances have been considered was ₦620million while the net book value on the same date was ₦550million. The opening tax written down values and net book values were ₦665million and ₦630 million respectively.
- (iv) Unpaid tax at the beginning of the year was ₦52 million while payment in the year was ₦60 million.
- (v) Assume a depreciation rate of 5% per annum on property, plant and equipment.
- (vi) The company revalued its property, plant and equipment during the year ended September 30, 2018. The revaluation surplus arising from the revaluation which amounted to ₦100 million was reflected in the company's financial statements for that year.

Required:

- (a) Compute the company's tax liabilities for the relevant year of assessment
 - (b) Compute the deferred tax
2. (a) Define deferred tax
(b) Explain how entries are made into the tax account
3. Ojeaga Limited is a financial institution based in Europe. The audited financial statements of the company for the year ended December 31, 2024, revealed the following:

	1/1/2024 ₦'million	31/1/2024 ₦'million
Net book value of equipment	625	720
Tax written down value of equipment	651	808
Outstanding tax	78	63

The company recorded a net profit of N660 million After charging:

	₦'million
Depreciation of equipment	17
Stamp duties	2
Interest and bank charge	15
Staff costs	42
The profit for the year also included: Profit on sale of equipment	4
Franked investment income	25

The company has unrelieved losses brought forward of ₦10 million and capital allowances of ₦60 million for the year. The company also revalued its property (land and building) on July 31, 2021 with a revaluation surplus of ₦120 million which has been incorporated into its accounts as at that point in time. The company's depreciation rate on the property is 10% per annum.

Required:

Compute the company's tax liabilities for the relevant tax year, with note to the financial statements in line with the provisions of relevant accounting standards.

4. Show the journal entries for the treatment of the following transactions:
- Education tax per accounts amounted to ~~₦~~2,800,000
 - Income tax under-provided for by ~~₦~~500,000
 - ~~₦~~2,750,000 paid as part of outstanding income tax
 - Provision for deferred taxes liability on timing differences of ~~₦~~570,000

27.9.2 Suggested solution to illustration question

1 (a) **Isiaka Jimoh Limited Computation of tax liabilities Assessment year 2024**

	₦'000	₦'000
Net Profit per accounts		300,000
Add:		
Depreciation		22,500
Loss on sale of plant and equipment		500
Penalties and fines		<u>200</u>
		323,200
Deduct:		
Franked investment	20,000	
Repatriated interest	<u>5,600</u>	<u>(25,600)</u>
Adjusted/assessable profit		297,600
Deduct:		
Unrelieved losses brought forward		<u>(15,000)</u>
		282,600
Capital allowances		<u>(55,000)</u>
Total profit		<u>227,600</u>
Taxes payable		
Companies income tax – (₦227,600) at 30% =	₦68,280	
Tertiary education tax – (₦227,600) at 3%		
		= ₦8,928

(b) Computation of deferred tax Assessment year 2024

	2024			2023		
	₦'000	₦'000	₦'000	₦'000	₦'000	₦'000
Tax written down value			620			665
Less:						
Net book values		550		630		
Deduct:						
Revaluation surplus	100			100		
Less:						
Depreciation 2024						
₦100m at 5% p.a. x 6yrs	(30)	(70)	(480)	(25)		
Depreciation 2023						
₦100m at 5% p.a. x 5 years			(25)	(75)	(555)	
Timing difference			<u>140</u>			<u>110</u>
Deferred tax provision						
Thereon at 30%			<u>42</u>	<u>33</u>		

Additional provision for deferred tax assets for the year (N42,000 – N33,000) = N9,000

Notes to the accounts

Taxation	₦'000
Income tax based on profit for the year	68,280
Tertiary edu. Tax based on 3% of ass. profits	8,928
Deferred tax credit	<u>(9,000)</u>
Per statement of profit or loss	68,208
Unpaid taxes at the beginning of the year	52,000
Income tax based on profit for the year	68,280
Tertiary edu. tax based on 3% of ass. Profits	8,928
Payments in the year	<u>(60,000)</u>
Per statement of financial position	69,208

Deferred tax assets account

	₦' million
Balance as at 1/10/2022	33
Additional credit/provision during the year	9
Balance as at 30/09/2023	42

- (vii) Provision for deferred tax assets on timing differences

Deferred tax account	DR
Statement of profit or loss	CR
Being deferred tax assets provision on temporary differences	

3. **Ojeaga Limited**

Computation of tax liabilities for 2025 tax year

	N' million	N' million
Net profit for the year		660
Add: Disallowable expenses		
Depreciation	17	
Stamp duties	<u>2</u>	<u>19</u>
		679
Less: Profit on sale of property	4	
Franked investment income	<u>25</u>	<u>29</u>
Assessable profit		650
Less: Unrelieved losses b/f		<u>10</u>
		640
Less: Capital allowances		<u>60</u>
Total profit		<u>580</u>
Companies income tax (30% of N580 million)		<u>174</u>
Tertiary education tax (3% of N650 million)		<u>19.5</u>

Computation of deferred tax for 2025 tax year

	N' million	N' million
Tax base(TWDV)	808	651
Less: Carrying value(NBV)	(648)	(541)
Temporary difference	160	110
Deferred tax provision@30%	48	33
Additional provision for the year (N48 million –33million)		
	= N15million.	

Notes to the accounts Taxation account

	N' million
Companies income tax provision	174
Tertiary Education tax provision	19.5
Deferred tax credit	<u>(15)</u>
Charged to profit and loss accounts	<u>178.5</u>
Outstanding tax as at 1/1/2024	78
Companies income tax provision	174
Tertiary Education tax provision	<u>19.5</u>
	271.5
Outstanding tax as at 31/12/2024	<u>(63)</u>

Tax paid during the year

208.5

Deferred tax assets account

	N' million
Balance as at 1/1/2024	33
Additional credit/provision during the year	<u>15</u>
Balance as at 31/12/2024	<u>48</u>

Workings

1. Calculation of net book value

	2025	2024
	N' million	N' million
Net book value as per accounts	720	625
Less: Revaluation surplus	120	120
Depreciation	<u>(48)</u>	<u>(36)</u>
	72	<u>84</u>
	648	541

2. Depreciation on revaluation surplus

2025 tax year: 10% of ~~N~~120 million x 4 = ~~N~~48million

2024 tax year: 10% of ~~N~~120 million x 3 = ~~N~~36million

- 4
- (a) Dr Profit and Loss Account ~~N~~2,800,000
Cr Provision for Education Tax Account ~~N~~2,800,000
- (b) Dr Profit and loss Account ~~N~~500,000
Cr Provision for Income Tax Account ~~N~~500,000
- (c) Dr Income Tax Provision Account ~~N~~2,750,000
Cr Bank ~~N~~2,750,000
- (d) Dr Profit and loss Account ~~N~~570,000
Cr Deferred Tax Account ~~N~~570,000

OIL AND GAS TAXATION

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28 Oil and Gas Taxation

28.0 Learning objective

The objective of this chapter is to enhance readers' understanding of the operations of oil and gas taxation in Nigeria.

28.1 Learning outcomes

After studying this chapter, readers should be able to:

- (a) understand the governance and regulatory institutions in the oil and gas industry;
- (b) know the general administration, licences and leases;
- (c) know the fiscal/operating arrangements/regimes in the upstream sector;
- (d) understand the accounting period, conversion, transition and compliance; and tax implications of a company with converted and non-converted licences/leases;
- (e) identify the sources of income accruing to petroleum companies;
- (f) determine royalties based on production and price using applicable rates;
- (g) identify allowable and non-allowable expenses;
- (h) know how to compute adjusted profit;
- (i) know the treatment of losses in computations of hydrocarbon and companies income tax;
- (j) understand the treatment of unabsorbed losses and unrecouped capital allowances;
- (k) know the Income chargeable to, and exemptions from, hydrocarbon tax;
- (l) understand the treatment of qualifying capital expenditure;
- (m) know the treatment of production allowance, cost price ratio and balancing charge;
- (n) compute hydrocarbon tax and development levy of an oil and gas company;
- (o) understand the operations of Oil and Gas Companies (Tax Incentives, Exemptions, Remissions); tax credits for non-associated gas; incentives to deep water oil and gas projects; and Gas utilisation investment allowance;
- (p) understand the frontier exploration fund, drilling of prospects or leads by NNPC Limited and frontier basin exploration and development plan committee;
- (q) describe the decommissioning and abandonment fund;
- (r) understand the establishment, funding, and utilisation of the host community fund;
- (s) know the offences and penalties applicable to petroleum companies;
- (t) know the registration and filing of returns for petroleum companies; and
- (u) understand the dispute resolution mechanisms provided in the PIA, 2021.

28.2 General overview of the oil and gas industry in Nigeria

The property and ownership of petroleum within Nigeria and its vesting of territorial waters, continental shelf and exclusive economic zone is vested in the Government of the Federation of Nigeria.

28.2.1 Objectives of regulations

The objectives of regulating the oil and gas industry and the functions of relevant authorities in Nigeria in accordance with PIA, 2021 are to:

- a) create efficient and effective governing institutions, with clear and separate roles for the petroleum industry;
- b) establish a framework for the creation of a commercially oriented and profit-driven national petroleum company;
- c) promote transparency, good governance and accountability in the administration of the petroleum resources of Nigeria;
- d) foster a business environment conducive for petroleum operations; and
- e) deepen local content practice in Nigeria oil and gas industry.

28.2.2 Powers of the Minister of petroleum resources

Section 3(1) of PIA 2021 provides that the Minister shall:

- (a) formulate, monitor and administer government policy in the petroleum industry;
- (b) exercise general supervision over the affairs and operations of the petroleum industry in accordance with the provisions of this Act;
- (c) report developments in the petroleum industry to the government;
- (d) represent Nigeria at international organisations on petroleum matters;
- (e) promote an enabling environment for investment in the Nigerian petroleum industry;
- (f) negotiate treaties or other international agreements on matters pertaining to petroleum on behalf of the government;
- (f) upon the recommendation of the Commission, grant petroleum prospecting licences and petroleum mining leases through the processes established in this Act;
- (g) upon the recommendation of the Commission and pursuant to the provisions of this Act and the regulations, revoke and assign interests in petroleum prospecting licences and petroleum mining leases;
- (h) delegate in writing to the Chief Executive of the Commission or Authority any power conferred on the Minister by or under this Act;
- (i) upon the recommendation of the Commission or Authority approve the fees for services rendered by the Commission or Authority in regulations;
- (j) upon the recommendation of the Commission or the Authority, direct in writing the suspension of petroleum operations in any area;
- (i) until arrangements to prevent danger to life or property have been made to his satisfaction, or

- (ii) where in his opinion, a contravention of this Act or any regulation made under this Act has occurred or is likely to occur.

Section 3(2-5) of PIA also provides that:

- a) the Minister may order a cutback of the levels of crude oil or condensate production in the context of international oil pricing agreements supported by Nigeria;
- b) the Minister shall have rights of pre-emption of petroleum and petroleum products marketed under any license or lease in the event of a national emergency under the First Schedule to this Act;
- c) the Minister shall give general policy directives to the Commission on matters concerning upstream petroleum operations and on matters relating to midstream and downstream petroleum operations as well as matters related to co-operation among the two entities as provided and the Commission shall comply with such directives; and
- d) the Minister shall cause the general policy directives to be published in the Federal Government Gazette.

28.2.3 The Nigerian Upstream Petroleum Regulatory Commission

(a) Introduction

The Nigerian Upstream Petroleum Regulatory Commission (NUPRC) has the understated attributes:

- (i) the Commission is a body corporate with perpetual succession and common seal;
- (ii) the Commission has the power to acquire, hold and dispose of property;
- (iii) the Commission can sue and be sued in its own name; and
- (iv) the commission shall be responsible for the technical and commercial regulation of upstream petroleum operations

(b) Objectives of the NUPRC

The objects and functions of the Commission are limited to upstream petroleum operations. The objectives of the Commission as provided for in section 6 of PIA 2021, are to:

- (i) regulate upstream petroleum operations including technical, operational and commercial activities;
- (ii) ensure compliance with all applicable laws and regulations governing upstream petroleum operations;
- (iii) ensure that upstream petroleum operations are carried out in a manner to minimise waste and achieve optimal government revenues;

- (iv) promote healthy, safe, efficient and effective conduct of upstream petroleum operations in an environmentally acceptable and sustainable manner;
- (v) ensure efficient, safe, effective and sustainable infrastructural development of upstream petroleum operations;
- (vi) determine, administer and ensure the implementation and maintenance of technical standards, codes, practices and specifications applicable to upstream petroleum operations pursuant to good international petroleum industry practices;
- (vii) implement government policies for upstream petroleum operations as directed by the Minister of Petroleum in accordance with the provisions of the PIA;
- (viii) promote an enabling environment for investment in upstream operations;
- (ix) ensure strict implementation of environmental policies, laws and regulations for upstream petroleum operations;
- (x) ensure the implementation of national policies for upstream petroleum operations; and
- (xi) implement such other policies and objectives as are consistent with the provisions of the PIA.

(c) The technical regulatory functions of the Commission

These include:

- (i) enforce, administer and implement laws, regulations and policies relating to upstream petroleum operations;
- (ii) ensure compliance with applicable national and international petroleum industry policies, standards and practices for upstream petroleum operations;
- (iii) establish, monitor, regulate and enforce health, safety and environmental measures and standards relating to upstream petroleum operations including;
 - management of petroleum reserves and installations, and
 - exploration, development and production activities onshore, frontier, shallow water and deep offshore acreages of Nigeria;
- (iv) administer, monitor and enforce compliance with the terms and conditions of leases and licenses and permits and authorisation issued to a company in respect of upstream petroleum operations;
- (v) set, define and enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations and facilities used or to be used in upstream petroleum operations including:
 - crude oil and natural gas evaluation and management,
 - upstream natural gas gathering,
 - natural gas treatment, and

- the elimination of natural gas flaring and venting;
- (vi) keep public registers of:
 - licenses and leases granted by the minister and permits and other authorisation issued by the commission;
 - beneficial ownership, and
 - award, renewal, assignment, amendment, suspension and revocation;
 - (vii) carry out enquiries, tests, audits or investigations and take other steps to monitor the activities of licensees, lessees or permit holders;
 - (viii) establish and enforce standards relating to upstream petroleum operations;
 - (ix) undertake evaluation of national reserves and develop policies for prudent reservoir management practices;
 - (x) maintain a Nigerian petroleum industry data bank comprising of materials, information and data acquired by, or submitted to, the Commission in the exercise of its statutory and regulatory functions;
 - (xi) require lessees, licensees and permit holders to furnish and publish specified information relating to upstream petroleum operations in this Act and the National Data Repository Regulation, 2020;
 - (xii) supervise and ensure accurate calibration and certification of equipment used for metering upstream petroleum operations, pursuant to applicable laws, and issue certificates of quality and quantity for petroleum produced;
 - (xiii) publish reports and statistics on upstream petroleum operations to promote the growth of the petroleum industry;
 - (xiv) advise the Minister on fiscal, operational, technical and other matters to enhance the upstream petroleum operations;
 - (xv) issue permits and other authorisation as may be necessary under an upstream licence or lease, including:
 - drilling operations, and
 - design, construction and operation of facilities for upstream petroleum operations;
 - (xvi) establish special laboratories to provide data storage and testing, quality assurance and certification for upstream petroleum operations;
 - (xvii) perform technical evaluation and assessments regarding submissions made to the Commission by licensees, lessees or permit holders involved in upstream petroleum operations;
 - (xviii) keep records, data and reports obtained from upstream petroleum operations, as may be required under any Act or regulation and give directive to any person, company or entity in that regard;
 - (xix) manage and administer data regarding unallocated acreage;

- (xx) conduct bidding rounds for the award of petroleum prospecting licences and petroleum mining leases pursuant to this act and applicable regulations;
- (xxi) when requested, provide assistance to parties conducting upstream petroleum operation, where in the sole opinion of the Commission such assistance is merited;
- (xxii) approve field development plans for upstream petroleum operations as well as monitor its execution;
- (xxiii) compute, determine, assess and ensure payment of royalties, rents, fees, and other charges for upstream petroleum;
- (xxiv) operations as stipulated under this Act and any regulation;
- (xxv) establish parameters and codes of conduct for licensees, lessees or permit holders in the upstream petroleum operations;
- (xxvi) monitor the financial viability of licensees, lessees or permit holders with respect to upstream petroleum operations;
- (xxvii) develop, maintain and publish a database of upstream petroleum operations;
- (xxviii) subject to the confidentiality provisions of section 83 (7) of the PIA, share information and data on the upstream petroleum operations with other government entities which have functions with respect to the petroleum sector;
- (xxix) perform such other function as may be necessary to give effect to the provisions of this Act;
- (xxx) ensure and monitor performance of industry players and quality of the provision of services of servicing companies in the upstream petroleum industry;
- (xxxi) conduct studies relating to the economy, efficiency and effectiveness of the upstream petroleum industry; and
- (xxxii) issue certificates of quality and quantity to exporters of crude oil, natural gas and petroleum products from integrated operations and crude oil export terminals established prior to the effective date and the Commission shall have the power to monitor and regulate the operations of crude oil export terminals and the responsibility of weights and measures at the crude oil export terminals shall cease to exist from the effective date.

(d) Commercial regulatory functions of the Commission

The commercial regulatory functions of the Commission shall be to:

- i. review and approve the commercial aspects of field development plans in the upstream petroleum operations;
- ii. develop cost studies and benchmarks for the evaluation of upstream petroleum operations taking into account petroleum industry specific issues, including field size, reservoir depth, location of operations, technology

- applied, production methods and petroleum quality;
- iii. allocate petroleum production quotas for the purpose of curtailing export of petroleum in conjunction with NNPC Limited pursuant to regulations; and
- iv. where in situ facilities or fixed or floating platforms or vessels provide for fully integrated upstream and midstream petroleum operations, the Commission shall consider and the Commission shall be in charge of such integrated operations and petroleum operations may be considered integrated where there is a joint use of utilities used exclusively for the upstream and midstream operations.

(e) The functions of the Commission with respect to frontier basins

These are to:

- i. promote the exploration of the frontier basins of Nigeria;
- ii. develop exploration strategies and portfolio management for the exploration of unassigned frontier acreages in Nigeria;
- iii. identify opportunities and increase information about the petroleum resources base within frontier basins in Nigeria;
- iv. undertake studies, analyse and evaluate unassigned frontier basins in Nigeria;
- v. where data acquired and interpreted under a petroleum exploration licence, in the judgment of the Commission, require testing and drilling of identifiable prospects and leads, and no commercial entity has publicly expressed an intention of testing or drilling such prospects, the Commission shall, in line with section 64 (k) of this Act, request the services of NNPC Limited to drill or test such prospect and leads on a service fee basis to be charged to the Frontier Exploration Fund under the PIA;
- vi. where commercial discovery is made under subsection (2), NNPC limited shall have the first right of refusal in the award of the acreage for subsequent development and other petroleum operations in such frontier acreages under the PIA;
- vii. There shall be maintained, for the purpose of this section, a Frontier Exploration Fund which shall be 30% of NNPC Limited's profit oil and profit gas as in the production sharing, profit sharing and risk service contracts; and
- viii. NNPC Limited shall transfer the 30% of profit oil and profit gas under subsection (4) to the Frontier Exploration Fund escrow account dedicated for the development of frontier acreages and utilise the funds to carry out exploration and development activities in the frontier acreages subject to appropriation by the National Assembly.

(f) Power of the Commission

- (i) Enforce the provisions of any:
 - regulation made with respect to upstream petroleum operations;
 - regulations, policies or guidelines formerly administered by the Department of Petroleum Resources or the Petroleum Inspectorate, with respect to upstream petroleum operations, and
 - enactments with respect to the upstream petroleum industry made prior to the coming into force of this Act and any regulations made pursuant to powers given under them.
- (ii) Seal up any premises, under section 217 of this Act, including any facility or plant engaged in upstream petroleum operations, where there has been a contravention of this Act or any regulations made under this Act.
- (iii) Ensure compliance with the Nuclear Safety and Radiation Protection Act and such other legislative provisions as may be applicable in upstream petroleum operations.
- (iv) Set standards to promote the adoption of new technologies for upstream petroleum operations.
- (v) Require lessees, licensees and permit holders to publish specified and non proprietary information relating to upstream petroleum operations.
- (vi) Issue guidelines in accordance with the provisions of this Act or any regulation in respect of upstream petroleum operations.
- (vii) Recommend to the Minister the revocation or suspension of licences or leases in accordance with this Act and approve renewal of leases.
- (viii) Within the jurisdiction of the Commission, have access to:
 - areas or rights of way regarding licences, leases or any related offices or buildings where information or data are available for inspection under this Act; and
 - all installations to which this Act applies, including plants and stations of every description, for the purpose of inspecting the operations conducted therein after enforcing the provisions of this Act and any regulations made under it.
- (ix) Impose on a petroleum prospecting licence, petroleum exploration licence or any petroleum mining lease to which this Act applies, special terms and conditions consistent with this Act at the grant or renewal of the licence or lease.
- (x) Renew licenses and leases subject to the provisions of this Act.
- (xi) Do such other things as are necessary and expedient for the effective and discharge of any of its functions under this Act.

(g) Governing Board of the Commission

The Governing Board shall be responsible for the policy and general administration of the Commission and shall consist of:

- (i) one non-executive Chairman;
- (ii) two non-executive Commissioners;
- (iii) the Chief Executive of the Commission (in this Act referred to as the Commission Chief Executive;
- (iv) two other executive Commissioners who are responsible for finance and accounts and exploration and acreage management;
- (v) one representative of the Authority not below the rank of Director;
- (vi) one representative of the Ministry not below the rank of Director; and
- (vii) one representative of the Ministry of Finance not below the rank of Director.

Appointments to the Board of the Commission shall be made by the President subject to confirmation by the Senate except for the appointments of ex-officio members in (v), (vi) and (vii) above.

A person appointed under (i) and (ii) above shall have at least 15 years post-qualification cognate experience in petroleum or other relevant sector of the economy and shall hold office for a period of five years and may be re-appointed for a further term of five years, under such terms and conditions as may be specified in the letter of appointment.

A Commissioner shall hold office for five years and may be re-appointed for a further term of five years.

A non-executive Commissioner shall hold office on part-time basis.

The Board of the Commission may authorise in writing any Commissioner, committee of the Board of the Commission, the Commission Chief Executive or any other officer or employee of the Commission, to exercise any power or carry out any duty or function of the Commission under the PIA or regulation made under the PIA.

The proceedings of the Board of the Commission and other ancillary matters shall be as prescribed by regulation made under this Act.

(h) Functions of the Board of the Commission

The Board of the Commission shall:

- i. be responsible for the formulation of policy, supervision and giving strategic direction to the Commission;
- ii. provide general guidance for the carrying out of the functions of the Commission;
- iii. review and approve the business, strategic and operating plans of the Commission;
- iv. consider and approve the annual budget of the Commission before submission to the National Assembly for appropriation;
- v. approve the management accounts and audited accounts of the Commission and consider the management letter from the external auditors;
- vi. determine the terms and conditions of service of employees of the Commission;
- vii. recommend remuneration, allowances, benefits and pensions or employees of the Commission in consultation with the National Salaries, Incomes and Wages Commission, having regard to the:
 - specialised nature of work to be performed by the Commission,
 - need to ensure the financial self-sufficiency of the Commission, and
 - remuneration and allowances paid in the private sector in upstream petroleum operations to individuals with equivalent responsibilities, expertise and skills;
- viii. structure the Commission into such number of departments as it deems fit for the effective performance of the functions of the Commission; and
- ix. perform such other functions as may be necessary for the efficient and effective administration of the Commission under the PIA.

(i) Remuneration and allowances of the Board of the Commission

- i. Commissioners shall be paid from the funds of the Commission such remuneration and allowances as applicable.
- ii. The Commission shall comply with the policy and guidelines of the National Salaries, Incomes and Wages Commission regarding remunerations.

(j) Suspension or removal of members of the Board of the Commission

A member of the Board of the Commission may be suspended or removed from office by the President, where the member:

- (i) is found to be:
 - unqualified for appointment under section 11 of the PIA;
 - unqualified subsequent to his appointment, or
 - in breach of conflict of interest provisions in the Companies and Allied Matters Act or any regulation regarding conflicts of interest passed under this Act;

- (ii) ceases to be an employee of the ministry or agency he represents on the Board of the Commission;
- (iii) has demonstrated an inability to effectively discharge the duties of his office;
- (iv) has been absent from the meeting of the Board of the Commission for three consecutive times without the consent of the Chairman or in the case of the Chairman, without the consent of the President, except where good reason is shown for the absence;
- (v) is found guilty of serious misconduct by a court or tribunal of competent jurisdiction; or has, under the law in force in any country:
 - been adjudged or declared bankrupt or insolvent and has not been discharged;
 - made an assignment to or arrangement or composition with his creditors which has not been rescinded or set aside, or
 - been declared to be of unsound mind.

28.2.4 Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

Section 29 of PIA provides for the establishment of the Nigerian Midstream and Downstream Petroleum Regulatory Authority. It is a body corporate with perpetual succession and a common seal.

- a. The Authority shall have the power to acquire, hold and dispose of property, sue and be sued in its own name.
- b. The Authority shall be responsible for the technical and commercial regulation of midstream and downstream petroleum operations in the petroleum industry.
- c. The objects and functions of the Authority in this Part are limited to midstream and downstream petroleum operations in the petroleum industry.
- d. The objectives of the Authority shall be to:
 - i. regulate midstream and downstream petroleum operations, including technical, operational, and commercial activities;
 - ii. ensure efficient, safe, effective and sustainable infrastructural development of midstream and downstream petroleum operations;
 - iii. promote healthy, safe, efficient and effective conduct of midstream and downstream petroleum operations in an environmentally acceptable and sustainable manner;
 - iv. promote a competitive market for midstream and downstream petroleum operations;
 - v. promote the supply and distribution of natural gas and petroleum products

- in midstream and downstream petroleum operations and the security of natural gas supply for the domestic gas market;
- vi. ensure compliance with applicable laws and regulations governing midstream and downstream petroleum operations;
 - vii. ensure crude oil supply for domestic refineries;
 - viii. determine, administer and ensure the implementation and maintenance of technical standards, codes, practices and specifications applicable to upstream and downstream petroleum operations pursuant to good international petroleum industry practices;
 - ix. implement Government policies for midstream and downstream petroleum operations as directed by the Minister and in accordance with the PIA;
 - x. promote, establish and develop a positive environment for international and domestic investment in midstream and downstream petroleum operations;
 - xi. ensure strict implementation of environmental policies, laws and regulations for midstream and downstream petroleum operations;
 - xii. develop and enforce a framework on tariff and pricing for natural gas and petroleum products; and
 - xiii. implement such other policies and objectives as are consistent with the provisions of the PIA.

Functions of the NMDPRA

The functions of the Authority according to section 32 of the PIA are to:

- i. regulate and monitor technical and commercial midstream and downstream petroleum operations in Nigeria;
- ii. regulate commercial midstream and downstream petroleum operations, including:
 - petroleum liquids operations.,
 - domestic natural gas operations
 - export natural gas operations;
- iii. determine appropriate tariff methodology. Including for:
 - processing of natural gas;
 - transportation and transmission of natural gas; and
 - transportation of crude oil, and bulk storage of crude oil and natural gas;
- iii. setting cost benchmarks for midstream and downstream petroleum operations;
- iv. provide pricing and tariff frameworks for natural gas in midstream and downstream gas operations and petroleum products based on the fair market value of the applicable petroleum products;

- v. advise the government, government agencies and other stakeholders on commercial matters relating to tariff and pricing frameworks;
- vi. develop open rules applicable to petroleum liquids and natural gas transportation pipelines, terminal facilities and bulk storage facilities;
- vii. regulate the bulk storage, distribution, marketing and transportation pipelines of petroleum products;
- viii. grant, issue, modify, extend, renew, review, suspend, cancel, reissue or terminate licences, permits and authorisations for midstream and downstream petroleum operations;
- ix. monitor and enforce compliance with the terms and conditions of licences, permits and authorisations issued by the Authority;
- x. keep public registers of:
 - licences, permits and other authorisations issued by the Authority; and
 - renewals, assignments, amendments, suspensions or revocations;
- xi. set, define and enforce approved standards and regulations for design, construction, fabrication, operation and maintenance of plants, installations and facilities used or to be used in midstream and downstream petroleum operations;
- xii. carry out enquiries, tests, audits or investigations and take other steps to monitor the midstream and downstream petroleum operations;
- xiii. ensure security of supply, development of the markets and competitions in the markets for natural gas and petroleum products;
- xiv. ensure third party access to facilities under gas processing licences, transportation pipelines and transportation networks and midstream bulk storage facilities, where such facilities are operated for the account or the owner;
- xv. develop rules for trading in wholesale gas supplies to gas distributors;
- xvi. establish customer protection measures in accordance with the provisions of the PIA;
- xvii. publish decisions, directions or determinations of the Authority that have implications for customers and industry participants, together with the reasons for such decisions, directions or determinations which, in the opinion of the Authority, shall be published to promote the interests of customers with regard to midstream and downstream petroleum operation;
- xviii. promote the principles of economic development of infrastructure with regards to midstream and downstream petroleum enquiries;
- xix. promote competition and private sector participation in midstream and downstream petroleum operations;

- xx. determine the domestic gas demand requirement and the crude oil required for the domestic crude oil supply obligation and ensure that economic and strategic domestic demands are met;
- xxi. regulate the supply, distribution, marketing and retail of petroleum products;
- xxii. administer and monitor strategic stocks of petroleum products;
- xxiii. monitor the application of petroleum product prices, pricing formulae and frameworks;
- xxiv. monitor market behaviour with respect to midstream and downstream petroleum operations;
- xxv. identify, investigate and prevent abuse of dominant positions and restrictive business practice with regard to midstream and downstream petroleum operations;
- xxvi. establish, monitor, regulate and enforce technical, health, environmental and safety measures relating to midstream and downstream petroleum operations;
- xxvii. develop, specify and monitor technical and safety standards for wholesale marketing, processing plant, retail marketing and bunkering of petroleum products;
- xxviii. ensure the accuracy of metering pumps and related measurement facilities in midstream and downstream petroleum operations;
- xxix. define and enforce approved standards and guidelines for the design, procurement, construction, operation and maintenance of plants, installations and facilities in the midstream and downstream petroleum operations;
- xxx. establish laboratories to provide data storage and testing, quality assurance and certification of crude oil, natural gas and petroleum products and regulate the activities of third-party laboratories used in midstream and downstream petroleum operations;
- xxxi. keep and classify records, data and reports as may be prescribed in regulations or guidelines;
- xxxii. ensure the promotion of safety and development of midstream and downstream petroleum operations;
- xxxiii. issue certificates of quality and quantity to exporters of crude oil, LNG and petroleum products;
- xxxiv. implement and enforce compliance with IAS, regulations and policies relating to midstream and downstream petroleum operations;
- xxxv. establish parameters and codes or conduct for operators in the midstream and downstream petroleum operations;
- xxxvi. monitor the financial viability of operators with respect to midstream and downstream petroleum operations;
- xxxvii. develop, maintain and publish a database of midstream and downstream petroleum operations;

- xxxviii. monitor and ensure that the quality of petroleum products sold in Nigeria conform to defined specifications;
- xxxix. establish, monitor and ensure compliance with the standards for the processing of petroleum products in Nigeria;
- xl. request information and documents relating to licenced activities, including pricing information and macro-economic data from any licensee or permit holder in midstream and downstream petroleum operations;
- xli. publish or direct licensees, lessees and permit holders to publish, in the interest of the public, information relating to midstream and downstream petroleum operations in accordance with applicable law or regulation;
- xl.ii. regulate the domestic base price and the prices applicable to wholesale customers of the strategic sectors and gas distributors;
- xl.iii. perform such other function as may be necessary to give effect of the provisions of this Act;
- xl.iv. ensure and monitor performance parameters of industry players and the quality of service provided by servicing companies in the midstream and downstream petroleum industry; and
- xl.v. conduct studies relating to the economy and efficiency and effectiveness of the midstream and downstream petroleum industry.

Regulations by the Authority

The Authority, in line with the provisions of section 33 of PIA, may make regulations:

- i. concerning the processing, refining, transmission, distribution, supply, sale and storage of petroleum and petroleum products as well as other midstream and downstream petroleum operations;
- ii. establishing those midstream and downstream petroleum operations to be subject to a licence or permit from the Authority;
- iii. establishing the application criteria and procedure for licences and permits for midstream and downstream operations;
- iv. establishing the procedure for review and approval of licence and permit applications for midstream and downstream petroleum operations;
- v. establishing the duration and conditions of licences and permits for midstream and downstream petroleum operations;
- vi. concerning those licences and permits already in effect prior to the date of any regulations issued by the authority for midstream and petroleum operations;
- vii. establishing the conditions and procedures for the transfer, surrender, suspension or revocation of licences and permits for midstream and

- downstream petroleum operations;
- viii. establishing the procedure for the modification of licences and permits for midstream and downstream petroleum operations;
 - ix. establishing the penalties and enforcement mechanisms in respect of breaches of the regulations issued by the Authority;
 - x. monitoring processes for midstream and downstream petroleum operations;
 - xi. concerning the construction and operation of. third party access to infrastructure for midstream and downstream petroleum operations;
 - xii. concerning the production, transportation, and sale of petrochemicals and lubricants;
 - xiii. concerning the national strategic stock;
 - xiv. establishing tariffs for midstream and downstream petroleum operations;
 - xv. concerning domestic natural gas supply and demand;
 - xvi. concerning natural gas trading and export;
 - xvii. ensuring the continuity and security of the supply of natural gas, crude oil, and petroleum products to customers;
 - xviii. concerning rights of way and pertaining to surface rights;
 - xix. relating to the retail sale and distribution of petroleum products;
 - xx. concerning dispute resolution and customer protection;
 - xxi. regulating pricing regimes for midstream and downstream petroleum operations;
 - xxii. establishing fees payable to the Authority;
 - xxiii. concerning competition and anti-competitive behaviour;
 - xxiv. establishing public and non-public registries in respect of licences, permits and authorisations issued by the Authority, to be maintained by the Authority; and
 - xxv. any other matters as may be determined by the Authority under this Act which includes imposition of gas flare penalty arising from midstream operations which shall be for the credit of the Midstream and Downstream Gas Infrastructure Fund, and shall be utilised for midstream and downstream gas infrastructure investment within the Host Community of a designated facility.

Governing Board of the Authority

There is established a Governing Board that shall be responsible: for the policy and general administration of the Authority.

(i) Membership of the Board

As provided for in section 34 (1) of PIA, the board consists of:

- one non-executive Chairman;
 - two non-executive members;
 - the Chief Executive of the Authority referred to as the Authority Chief Executive;
 - two other executive Directors responsible for finance and accounts and distribution systems, storage and retailing infrastructure;
 - one representative of the Commission not below the rank of the executive commissioner;
 - one representative of the Ministry of Petroleum Resources not below the rank of a Director; and
 - One representative of the Ministry of Finance not below the rank of Director; and one representative of the Ministry of Finance not below the rank of Director.
- (ii) Appointments to the Board of the Authority under this section shall be made by the President and be subject to confirmation by the Senate. except for the appointments of ex officio members under subsection (2) (e), (f) and (g), that is, the last three bullet points above.
- (iii) A person appointed under subsection (2) (o) and (b) shall have at least 15 years post qualification experience in petroleum or other relevant sector of the economy and shall hold office for a period of five years and may be reappointed for term of five years, on such terms and conditions as may be specified in the letter of appointment.
- (iv) Subject to subsection (4) and section 41 (3) of the PIA. a member of the Board of the Authority shall hold office for five years and may be re-appointed for a further term of five years.
- (v) A non-executive Board member shall hold office on part time basis.
- (vi) The Board of the Authority may authorise in writing any executive director, committee of the Board of the Authority, the Authority Chief executive or any other officer or employee of the Authority. to exercise any power or carry out any duty or function of the Authority under the PIA or regulation made under the PIA.

28.3.5 The Nigerian National Petroleum Company (NNPC) Limited

Section 53 of PIA provides for the incorporation of NNPC Limited.

- a) The Minister shall within six months from the commencement of the PIA, cause to be incorporated under the Companies and Allied Matters Act, a limited liability company, which shall be called Nigerian National Petroleum Company Limited (NNPC Limited).

- b) The Minister shall at the incorporation of NNPC Limited, consult with the Minister of Finance to determine the number and nominal value of the shares to be allotted, which shall form the initial paid-up share capital of NNPC Limited and the Government shall subscribe and pay cash for the shares.
 - c) Ownership of all shares in NNPC Limited shall be vested in the Government at incorporation and held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated in equal portions on behalf of the Federation and the Ministry of Petroleum Incorporated is incorporated under the provisions of the Eighth Schedule to the PIA.
 - d) The Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated in consultation with the Government may increase the equity capital of NNPC Limited.
 - e) Shares held by the Government in NNPC Limited are not transferable including by way of sale, assignment, mortgage, or pledge unless approved by the Government and endorsed by the National Economic Council on behalf of the Federation.
 - f) Notwithstanding any provision to the contrary in the Companies and Allied Matters Act and except by way of security, any sale or transfer of shares of NNPC Limited shall be at a fair market value and subject to an open, transparent and competitive bidding process and the sale or transfer of the shares of NNPC Limited shall be on equal proportion basis of shares held by the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated.
 - g) NNPC Limited and any of its subsidiaries shall conduct their affairs on a commercial basis in a profitable and efficient manner without recourse to government funds and their memorandum and article of association shall state these restrictions and NNPC Limited.
 - h) Allied Matters Act entity, declare dividends to its shareholders and retain 20% of profits as retained earnings to grow its business.
- NNPC Limited shall operate as a companies and where NNPC Limited has a participating interest or 100% interest in a lease or licence, NNPC Limited shall pay its share of all fees, rents, royalties, profit oil shares, taxes and other required payments to Government as any company in Nigeria.

Transfer of assets and liabilities

The processes involved in the transfer of assets and liabilities of NNPC to NNPC Limited are provided for in section 54 of PIA.

- (a) The Minister and the Minister of Finance shall within 18 months of the effective date

determine the assets, interests and liabilities of NNPC to be transferred to NNPC Limited or its subsidiaries and upon the identification, the Minister shall cause such assets, interests and liabilities to be transferred to NNPC Limited.

- (b) Assets, interests and liabilities of NNPC not transferred to NNPC Limited or its subsidiary under subsection shall remain the assets, interests and liabilities of NNPC until they become extinguished or transferred to the Government and six months following the determination, the Minister, the Minister of Finance and the Attorney-General of the Federation shall develop a framework for the payment of the liabilities not transferred to NNPC Limited and if such determination of which assets, interests and liabilities to be transferred has not been concluded within the stipulated period of 18 months, all the assets, interests, liabilities of NNPC is deemed to be transferred to NNPC Limited after 18 months from the effective date.
- (c) NNPC shall cease to exist after its remaining assets, interests and liabilities other than its assets, interests and liabilities transferred to NNPC Limited or its subsidiaries has been extinguished or transferred to the Government.
- (d) Bonds, hypothecations, securities, deeds, contracts, instruments, documents and working arrangements with regards to assets, interests or liabilities transferred to NNPC Limited or any of its subsidiary which remains subsisting before the date of transfer shall, beginning from the date of transfer, be effective and enforceable against or in favour of NNPC Limited.
- (e) Any pending action or proceeding brought by or against NNPC before the transfer date with regard to assets. Interests or liabilities transferred to NNPC Limited may be enforced or continued by or against NNPC Limited as the successor of NNPC.
- (f) Notwithstanding the provisions of (e) above:
 - i. an action or proceeding shall not be commenced against NNPC Limited, its subsidiary, director, officer, employee or agent with regard to asset, interest or liability of NNPC Limited, where the time for commencing the action or proceeding would have expired had such asset, interest or liability not been transferred to NNPC Limited or its subsidiaries; and
 - ii. the transfer of asset, interest and liability of NNPC to NNPC Limited under shall not create or be deemed to have created a new cause of action in favour of:
 - a creditor of NNPC, or
 - party to a contract, agreement or arrangement with NNPC that was entered into before the date of transfer.
- (g) For the purpose of this section and the Second Schedule to the PIA, assets,

interests and liabilities" means tangible, intangible, real or personal property, rights and obligations, in each case of all types.

- (h) Subject to any arrangements that NNPC has entered into, any debt to NNPC related to outstanding cash calls under joint venture agreements shall become debt of:
 - i. NNPC Limited where the assets have been transferred to NNPC Limited; and
 - ii. Government where the assets have not been transferred.
- (i) The initial capitalisation of NNPC Limited shall not be less than its financial requirements to effectively discharge its commercial role and deal with its obligations and liabilities transferred to NNPC Limited.

Appointment of NNPC Limited as agent of NNPC

The Minister shall upon incorporation of NNPC Limited, consult with the Minister of Finance to appoint NNPC Limited as agent of NNPC for the purpose of managing the process of winding down the assets, interests and liabilities of NNPC.

Subject to this appointment, the NNPC Limited shall have the power to deal with the applicable assets, interests and liabilities of NNPC and may enter into contract with third parties on such assets, interests and liabilities.

Pursuant to this appointment, the NNPC shall:

- (a) not deal with the applicable assets, interests and liabilities;
- (b) at the request of NNPC Limited execute and deliver any document and do such other acts or things as may be required by NNPC Limited with regard to any asset, interest or liability referred to above; and
- (c) pay a nominal fee of US \$1 to NNPC Limited as administrative charges on the applicable assets, interests and liabilities to which NNPC Limited has been appointed.

The cost of winding down the assets, interests and liabilities of NNPC shall be borne by the Government.

A cause of action shall not arise in tort, contract or otherwise between NNPC and NNPC Limited in respect of the applicable assets, interests and liabilities to which NNPC Limited has been appointed as agent of NNPC.

Any guarantee granted or issued by the Government with regard to the transfer of liability of NNPC to NNPC Limited shall be enforceable against the Government as if such liability was a liability of NNPC, provided that such guarantee was effective prior to such transfer.

Upon incorporation of NNPC Limited employees of NNPC and its subsidiaries shall be deemed to be employees of NNPC Limited on terms and conditions not less

favourable than that enjoyed prior to the transfer of service and shall be deemed to be service for employment related entitlements as specified under any applicable law.

NNPC Limited shall continue to fulfill the statutory obligations of NNPC in relation to the pension scheme of employees of NNPC and its subsidiaries prior to the date of incorporation of NNPC Limited.

The Board of NNPC Limited

There shall be a Board of the NNPC Limited which shall perform its duties in accordance with the, PIA, the Companies and Allied matters Act and the articles of association of NNPC Limited.

Except as set out in this section, the composition of the Board of the NNPC Limited shall be determined in accordance with the Companies and Allied Matters Act and its Articles of Association.

The Board of NNPC Limited shall be appointed by the President and composed of:

- a non-executive Chairman;
- the Chief Executive of NNPC Limited;
- the Chief Financial Officer of NNPC Limited;
- a representative of the Ministry of Petroleum, not below the rank of a director;
- a representative of the Ministry of finance, not below the rank of a director; and
- six non-executive members with at least 15 years post qualification cognate experience in petroleum or any other relevant sector of the economy one from each geo-political zone.

A person to be appointed as the Chief Executive of NNPC Limited shall have extensive managerial, technical and professional knowledge in the petroleum or other relevant industry with at least 15 years post-qualification experience.

In the absence of the Chairman, the members of the Board of NNPC Limited may appoint a non-executive member of the Board to act as alternate Chairman.

The provisions of this section shall apply where NNPC Limited remains wholly-owned by the Government and where NNPC Limited is not wholly owned by Government, the composition of the Board of NNPC Limited shall be determined by the shareholders of NNPC Limited in accordance with the provisions of the Companies and Allied Matters Act and the articles of association of NNPC Limited.

The Board of NNPC Limited shall, within three months of the incorporation of NNPC Limited, develop formal and transparent process for the creation of its committees and nomination of members of the Board or NNPC Limited to the committees.

The mandate, composition and procedures of each committee of the Board of NNPC Limited shall be comprehensive and open for inspection by the shareholders of NNPC Limited.

The Board of NNPC Limited shall nominate non-executive members of the Board capable of exercising independent judgment to its committees where there is likelihood of conflict of interest.

The Board of NNPC Limited shall have committees for:

- i. ensuring the integrity of financial and non-financial reporting;
- ii. the nomination of Board of NNPC Limited members and key executives;
- iii. remuneration of members of the Board of NNPC Limited; and
- iv. any other committee as the Board of NNPC Limited may consider appropriate.

Members of the Board of NNPC Limited shall discharge their responsibilities in accordance with the highest standards, practices and principles of corporate governance.

The Board of NNPC Limited shall, upon request by one or more of shareholders holding not less than 10% of the voting interests in NNPC Limited, provide a comprehensive written explanation of any motion or decision taken by the Board of NNPC Limited to its shareholders, provided that the Board of NNPC Limited may withhold the explanation if permitted under a duty of Confidentiality NNPC Limited owed to any third party.

The objectives of NNPC Limited

The objectives of NNPC Limited shall include to:

- (a) carry out petroleum operations on a commercial basis, comparable to private companies in Nigeria carrying out similar activities including exemption to Public Procurement Act, Fiscal Responsibility Act including Treasury Single Account;
- (b) NNPC Limited to be vested as the concessionaire of all Production Sharing Contracts (PSC), Profit Sharing, and Risk Service Contracts as the National oil company on behalf of the Federation in line with its competencies;
- (c) lift and sell royalty oil and tax oil on behalf of the Commission and the Service respectively for an agreed commercial fee and in the case of profit oil and profit gas payable to the concessionaire, NNPC Limited shall promptly remit the

- proceeds of the sales of the profit oil and profit gas to the Federal to the federation less its 30% for management fee and frontier Exploration Fund as specified in section 9(4) of the PIA;
- (d) carry out test marketing to ascertain the value of crude oil and report to the Commission;
 - (e) be vested with the rights to natural gas under production sharing contracts entered into prior to and after the effective date of the PIA;
 - (f) carry out the management of production sharing contracts for a fee, based on the profit oil share or profit gas share;
 - (g) with respect to any joint operating agreement in which NNPC is a party on the effective date assume the working interest held by NNPC irrespective of whether such licence or lease is converted under the PIA;
 - (h) engage in the business of renewables and other energy investments;
 - (i) promote the domestic use of natural gas through development and operation of large-scale gas utilisation industries;
 - (j) maintain the role of NNPC, under section 54 of the PIA;
 - (k) carry out task requested by the Commission or Authority on a fee basis and generally engage in activities that ensure national energy security in an efficient manner, in the overall interest of the Federation;
 - (l) carry out such other tasks as may be determined by the Board of NNPC Limited; and
 - (m) make NNPC Limited supplier of last resort for security reasons and all associated costs shall be for the account of the Federation.

28.3 General administration

The objectives are to:

- a) promote the exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people;
- b) promote the efficient, effective and sustainable development of the petroleum industry;
- c) promote the safe and efficient operation of the transportation and distribution infrastructure for the petroleum industry;
- d) provide the framework for developing third party access arrangements to petroleum infrastructure;
- e) encourage and facilitate both local and foreign investment in the petroleum industry;
- f) promote transparency and accountability in the administration of petroleum resources in Nigeria;
- g) develop, where appropriate, competitive markets for the sales and distribution of petroleum and petroleum products;
- h) promote safe and affordable access to petroleum and petroleum products

- in Nigeria;
- i) promote the processing of petroleum within Nigeria and the development of fuel and chemical industry and other related value-added products and activities;
 - j) create a conducive business environment for operations in the petroleum industry;
 - k) promote the liberalisation of the downstream petroleum industry;
 - l) establish an orderly, fair and competitive commercial environment within the petroleum industry; and
 - m) ensure that petroleum operations are conducted in a manner that protects the health and safety of persons, property and the environment.
 - n) The above stated information shall apply to:
 - (i) activities within or associated with petroleum operations and the petroleum industry; and
 - (ii) persons conducting such activities.

28.4 Licences granted by the Commission

Section 70 of PIA provides for recognised licences and leases relating to upstream petroleum operations. There are three types of licences. These are:

- (a) Petroleum exploration licence (PEL);
- (b) Petroleum prospecting licence (PPL); and
- (c) Petroleum mining licence (PML).

These licences are discussed in turn.

(a) 28.4.1 Petroleum exploration license (PEL)

This may be granted to qualified applicants to carry out petroleum exploration operations on a non-exclusive basis. The features, as provided for under section 71 of PIA, are as stated below:

- (a) the Commission shall be responsible for granting of petroleum exploration licences;
- (b) the holder of a petroleum exploration licence shall have non-exclusive right to carry out petroleum exploration operations within the area provided for in the licence;
- (c) a petroleum exploration licence shall be for three years and may be renewable for additional period of three years subject to fulfilment of prescribed conditions, but shall not include any right to win, extract, work,

store, carry away, transport, export or otherwise treat petroleum discovered in or under the licence area;

- (d) a petroleum exploration licence may cover an area that includes petroleum prospecting licences or petroleum mining leases, provided that the holders of such licences or leases, shall have no obligation to purchase the results of any survey conducted under the petroleum exploration licence;
- (e) a petroleum exploration licence granted in respect of frontier acreages may include a provision permitting the licensee to select, based on the result of his exploration work and be granted one or more petroleum prospecting licences prior to the termination of the licence containing the fiscal provisions stipulated in the PIA;
- (f) the Commission shall have sole right and title over any acquired raw and interpreted data obtained by a licensee pursuant to a petroleum exploration licence, provided that the licensee shall be entitled to grant a data use licence to a third party subject to a written authorisation by the Commission, which shall not be unreasonably withheld;
- (g) a licensee is entitled to a fee from a third party for data use licence granted to under the PIA and shall remit to the Commission any agreed portion of the fee due to the Commission;
- (h) exploration activities conducted pursuant to a petroleum exploration licence shall be monitored and administered by the Commission in accordance with regulations made under the PIA;
- (i) the Commission shall have sole right and title over all acquired and interpreted data from existing speculative survey agreements entered into with the Department of Petroleum Resources on behalf of the Government prior to the effective date; and
- (j) the carrying out of geological, geophysical or geochemical surveys for scientific or educational purposes in relation to petroleum do not require a petroleum exploration licence, where the results or such surveys are not for sale or commercial gain.

28.4.2 Petroleum prospecting licence (PPL)

Petroleum prospecting licence, as provided for under section 72 of PIA, may be granted to qualified applicants to drill exploration and appraisal wells and do corresponding test production on an exclusive basis and carry out petroleum exploration operation on a non-exclusive basis.

- (a) The holder of a petroleum prospecting licence shall, subject to the fulfilment of obligations imposed by the PIA have:

- (i) exclusive right to drill exploration and appraisal wells and non-exclusive right to carry out petroleum exploration operations within the area provided for in the licence; and
 - (ii) right to carry away and dispose of crude oil or natural gas won or extracted during the drilling of exploration or appraisal wells as a result of production tests, subject to the fulfilment of obligations imposed by the PIA.
- (b) A holder of the petroleum prospecting licence shall not be granted an extension except as prescribed under sections 78 (4), (9) and 79 (6) of the PIA.
 - (c) Where a holder of a petroleum prospecting licence fails to fulfil any term or condition of the licence, it shall not, except as provided in the licence, give the Minister a right of claim against the licensee or be deemed a breach of the licence, if the failure arises from force majeure.
 - (d) Where there is any delay by a licensee in the fulfilment of any term or condition of a petroleum prospecting licence caused by force majeure, the period of such force majeure shall be added to the period fixed for the fulfilment of the applicable term or condition, provided that such period shall not exceed three years in total after which, the licence may be terminated by the Commission or the licensee.
 - (e) The Minister may grant a petroleum prospecting licence to a qualified applicant recommended by the Commission and shall not grant such licence to any other person and where the Minister does not grant the licence, the Minister shall inform the Commission in writing for the rationale of the decision.

28.4.3 Petroleum mining lease (PML)

Petroleum mining lease may be granted to qualified applicants to:

- (a) win, work, carry away and dispose of crude oil, condensates, and natural gas on an exclusive basis;
- (b) drill exploration and appraisal wells and carry out the related test production on an exclusive basis; and
- (c) carry out petroleum exploration operations on a non-exclusive basis.

A Petroleum mining lease (PML) has the following features:

- i. Granting authority - The Minister of Petroleum grants PML based on the recommendation of the Nigerian Upstream Petroleum Regulatory Commission.
- ii. Eligibility - A PML is granted to qualified applicants who have discovered oil or gas in commercial quantities, performed conditions imposed in the

Petroleum Prospecting License (PPL), and received approval for their field development plan from NUPRC.

- iii. Rights - The lease grants exclusive rights to: *Win and Dispose*: Win, work, carry away, and dispose of crude oil, condensates, and natural gas.
- iv. Prospecting operations - Carry out prospecting operations within the lease area on a non-exclusive basis.
- v. Term - The lease is granted for a maximum period of 20 years.
- vi. (vi) Renewal - The NUPRC is responsible for renewing PMLs, which can be renewed for one or more successive terms not exceeding 20 years each, provided the lease area continues to produce in paying quantities and the lessee has satisfied all rents, royalties, and fiscal obligations.
- vii. Relinquishment: After 10 years of grant, the lessee must relinquish:
 - Non-producing areas: All parcels not within the boundaries of the producing field; and
 - Deep rights: Any formation deeper than the deepest producing formation, which vests in the government.
- viii. Revocation: The Minister of Petroleum can revoke a PML if the lessee fails to remedy a default within a specified period (not less than 60 days) after receiving a notice of default.

28.5 Fiscal/operating arrangement/regimes in the upstream sector

The Petroleum Industry Act (PIA) 2021, introduces significant changes to the fiscal and operating arrangements in Nigeria's upstream sector. Here is an overview of the key arrangements:

28.5.1 Joint venture (JV)

A JV is a collaborative agreement between the Nigerian National Petroleum Company Limited (NNPC Limited) and an international oil company (IOC) to explore, develop, and produce petroleum resources.

- i) Fiscal Terms: The PIA introduces a new fiscal regime for JVs, which includes a Hydrocarbon Tax (HT) and Companies Income Tax (CIT).
- ii) NNPC Limited's Interest: NNPC Limited's interest in JVs is expected to be managed by NNPC Limited, with the option to participate in JVs on commercial terms.

Incorporated joint venture company (IJVC)

- i) NNPC Limited and other parties to joint operating agreements in respect of upstream petroleum operations, may on a voluntary basis restructure their joint operating agreement as a joint venture carried out by way of a limited

liability company, each referred to as an "incorporated joint venture company" (IJVC), based on the principles established in the Second Schedule to the PIA.

- ii) The IJVC referred to in subsection (I)–shall not be subject to the provisions of the Fiscal Responsibility Act and the Public Procurement Act.
- iii) The proposed IJVC structure shall be an independent entity, having a strong commercial orientation and transparent company operation for the IJVC shareholders, with clear rules for accountability.

28.5.2 Production sharing contract (PSC)

- i) PSC is a contractual arrangement between the government (represented by NNPC Limited) and an IOC, where the IOC bears the exploration and production risks and costs in exchange for a share of the production.
- ii) Fiscal terms: The PIA retains the PSC regime, with some modifications, including the introduction of a new royalty regime.
- iii) Cost recovery: The PSC allows the contractor to recover costs from a portion of the production, with the remainder split between the government and the contractor.

28.5.3 Risk service contract (RSC)

- i. An RSC is a contractual arrangement where a contractor provides services to develop and produce petroleum resources in exchange for a fee.
- ii. Fiscal Terms: The PIA introduces RSCs as a new contractual model, with the contractor bearing the risks and costs of exploration and production.
- iii. Payment: The contractor is paid a fee for their services, which may be tied to production levels or other performance metrics.

28.5.4 Oil and gas free trade zone

- i. Definition: An Oil and Gas Free Trade Zone is a designated area where oil and gas activities can be conducted with favourable regulatory and fiscal terms.
- ii. Benefits: The zone is expected to attract investment, promote economic growth, and increase efficiency in the oil and gas sector.
- iii. Regulations: The PIA provides for the establishment of Oil and Gas Free Trade Zones, with specific regulations and incentives to be determined by the relevant authorities.

28.6 Accounting period for tax purposes

In relation to a company engaged in upstream petroleum operations, accounting period means:

- a) a period of one year commencing on January 1; and ending on December 31, of the same year (for on-going business);

- b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil, domestic, export or both, and ending on December 31, of the same year; or
- c) any period of less than a year being a period commencing on January 1 of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations; and
- d) If there is any dispute with respect to the date of the first sale of chargeable oil above or with respect to the date on which the company ceases to be engaged in petroleum operations, the Commission shall determine the same and there shall be no appeal.

Note: Accounting date or financial year end means the date on which a company usually prepares its accounting statement. Under the PIA, the accounting date is December 31, of each year.

28.7 Conversion, transition, and compliance in relation to PIA, 2021

28.7.1 Conversion and transition: The following features apply:

- a) Existing oil prospecting licenses (OPLs) and oil mining leases (OMLs) can be converted to petroleum prospecting licenses (PPLs) and petroleum mining licenses (PMLs), respectively under the PIA.
- b) Operators have an 18-month timeline for voluntary conversion to PIA fiscal terms; otherwise, they can wait until their existing lease expires.
- c) Upon conversion, the hydrocarbon tax (HCT) and companies income tax (CIT) will apply, replacing the petroleum profits tax (PPT).

28.7.2 Conversion provisions

- a) **Voluntary conversion:** Existing holders of oil prospecting licences (OPLs) and oil mining leases (OMLs) may voluntarily convert to the new regime petroleum prospecting licences (PPLs) and petroleum mining leases (PMLs).
- b) **Automatic conversion:** If a lease expires, conversion becomes mandatory under the PIA.
- c) **Conversion deadline:** Operators had an 18-month window from the effective date (August 16, 2021) to convert voluntarily.
- d) **Contract:** A formal agreement must be signed between the licensee and the regulator to finalise the conversion.

28.7.3 Transition provisions

- a) **Dual tax computation:** In the year of transition, companies compute taxes under both the old Petroleum Profits Tax Act (PPTA) and the new PIA rules:
 - i. From January 1 to conversion date → PPTA applies.

- ii. From conversion date to December 31 → PIA rules apply.
- b) **Non-converted licences:** Companies that do not convert will continue under PPTA until their licences expire.
- c) **Mixed licence scenario:** Companies with both converted and non-converted assets must file separate tax computations for each.
- d) **Compliance requirements**
 - i. Separation of upstream, midstream, and downstream operations
 - ii. Incorporation of Host Community Development Trust
 - iii. Establishment of Decommissioning and Abandonment Plan
 - iv. Preparation and submission of Environmental Management Plan
 - v. Filing tax returns based on PPLs or PMLs, with HCT and CIT payments collected by the Federal Inland Revenue Service (FIRS).
- e) **Fiscal provisions**
 - i. Hydrocarbon tax (HCT): 30% for converted PMLs and 15% for PPLs, applicable to onshore and shallow water operations, as well as marginal fields.
 - ii. Companies Income Tax (CIT): Applies to all upstream petroleum operations, with a focus on "reasonability" in expense deductibility.
 - iii. Royalty rates: Varying rates apply based on the location and type of operation.
- f) **Compliance matters**

Exemptions from HCT: Deep offshore operations, associated and non-associated gas and certain condensates are exempt.
- g) **Self-assessment and filing:**
 - (i) Companies must file annual tax returns with self-assessment forms and evidence of payment off self-assessed tax.
 - (ii) Revised estimated returns are allowed based on updated production and pricing data.
- h) **Losses and capital allowances**
 - i. Unabsorbed losses under PPTA can be carried forward and deducted under HCT and CIT.
 - ii. Un-recouped capital allowances may also be relieved, except for investment tax credit which is no longer applicable.
- i) **Key implications**

Operators not converting to PMLs will continue under the PPTA regime until their licenses expire.

28.8 Tax implications of a company with converted and non-converted licenses/leases

Companies holding both converted and non-converted licenses and leases face a unique tax scenario that requires careful compliance and dual reporting as described below:

- a) Dual tax computation requirement
 - i. A company with mixed assets.
 - ii. Where a company with mixed assets converted some to the PIA regime and left others under the old Petroleum Profits tax Acts (PPTA), tax computations must be prepared for each category.
- b) Converted assets:
 - i. Subject to hydrocarbon tax (HCT) and companies income tax (CIT) under the PIA.
 - ii. HCT rate: 15% for PPLs, 30% for PMLs.
 - iii. CIT rate: 30% across all petroleum operations.
- c) Non-converted assets:
 - i. Continue under **PPTA** until lease expires.
 - ii. Taxed solely under **petroleum profits tax**, typically at 85% for upstream operations.
- d) Filing obligations
 - i) The company must file **one annual tax return**, but it must include the following three separate tax computations:
 - PPTA-based computation for non-converted assets;
 - HCT computation for converted assets; and
 - CIT computation for converted assets.
 - ii) Self-assessment forms and evidence of payment must accompany the filings.
- e) **Transition year treatment**

In the year of conversion:

 - i. taxes are computed under **both regimes**;
 - ii. from January 1 to conversion date - PPTA rules apply; and
 - iii. from conversion date to December 31 - PIA rules apply

This split-year approach ensures accurate tax liability under each framework..

- f) **Losses and capital allowances**
 - i. **Unabsorbed losses** under PPTA can be carried forward and deducted under HCT and CIT.
 - ii. **Unrecouped capital allowances** may also be relieved under the new regime
 - iii. However, investment tax credit (ITC) from the old regime is not transferable.
- g) **Compliance risks**

- i. Failure to segregate computations correctly may lead to penalties.
- ii. Companies must notify the Federal Inland Revenue Service (FIRS) upon conversion and submit relevant documentation.

28.9 Sources of income accruing to petroleum companies

Under the Petroleum Industry Act (PIA) 2021, the sources of income accruing to petroleum companies are derived from various activities across the upstream, midstream, and downstream sectors of the petroleum industry. These sources include:

a) Upstream petroleum operations

- i. **Crude oil sales:** Revenue from the sale of crude oil produced from petroleum mining leases or prospecting licenses.
- ii. **Natural gas sales:** Income from the sale of associated and non-associated natural gas, including marketable natural gas.
- iii. **Condensates and natural gas liquids (NGLs):** Revenue from the production and sale of condensates and NGLs derived from crude oil or natural gas.
- iv. **Exploration and production activities:** Income from exploration, appraisal, and development of petroleum resources.

b) Midstream petroleum operations

- i. **Gas processing:** Revenue from processing natural gas into marketable natural gas, liquefied natural gas (LNG), or other by-products such as ethane, propane, and butane.
- ii. **Pipeline transportation:** Income from the transportation of crude oil, natural gas, or petroleum products through pipelines, including tariffs and fees for third-party access.
- iii. **Storage services:** Revenue from the bulk storage of crude oil, natural gas, or petroleum products in storage facilities.
- iv. **Liquefied natural gas (LNG) operations:** Income from the production, storage, and export of LNG.

c) Downstream petroleum operations

- i. **Refining:** Revenue from refining crude oil into petroleum products, such as gasoline, diesel, jet fuel, and other derivatives.
- ii. **Petrochemical production:** Income from the production and sale of petrochemicals, including fertilizers and other industrial products.

- iii. **Retail and distribution:** Revenue from the sale of petroleum products to retail customers through filling stations or distribution networks.
 - iv. **Wholesale supply:** Income from the wholesale supply of petroleum products to bulk customers.
- d) **Other sources of income**
- i. **Royalties and profit oil:** For companies operating under production sharing contracts, income may include profit oil or gas after deducting royalties and cost recovery.
 - ii. **Service fees:** Revenue from providing technical or operational services to other companies in the petroleum industry.
 - iii. **Trading and marketing:** Income from the trading and marketing of crude oil, natural gas, and petroleum products in domestic and international markets.
 - iv. **Export sales:** Revenue from the export of crude oil, LNG, and other petroleum products to international markets.
 - v. **Investment income:** Earnings from investments in midstream and downstream infrastructure, such as pipelines, refineries, and storage facilities.
- e) **Incentives and tax benefits**
- i. **Tax deductions:** Companies may benefit from tax deductions for contributions to host community development trusts, environmental remediation funds, and decommissioning and abandonment funds.
 - ii. **Gas utilisation incentives:** Income from gas-based industries such as gas-to-liquids (GTL) plants, LNG plants, and fertilizer production may benefit from incentives under the PIA.
- f) **Refined product sales**
- Refined petroleum products Companies with refinery licences earn income by refining crude and selling products (gasoline, diesel, kerosene, LPG) into the domestic and export markets.
- g) **Pipeline transportation and processing fees**
- i. **Transportation tariffs** Licence-holders operating gas and oil trunk pipelines earn fees for volumetric throughput, based on regulated tariff schedules.
 - ii. **Processing, storage and regasification fees** Midstream players generate revenue by processing gas, storing crude or regasifying LNG for delivery to Domestic Gas Aggregators or end-users.

h) Technical service contracts

Service-remuneration fees under technical service contracts (TSCs), companies providing drilling, engineering or project management services invoice daily rates and project milestones rather than direct production shares.

i) Joint venture dividends and equity returns

- i. Joint venture dividends: International oil companies (IOCs) and the Nigerian National Petroleum Company (NNPC Ltd) share dividends from profit distributions in Joint Venture (JV) arrangements.
- ii. Equity lifts: Companies holding equity stakes in licences may elect to “lift” crude or gas in kind, monetising their share through direct sale or swap arrangements.

28.10 Basis period for income tax on petroleum operations

Any company involved in upstream petroleum operations shall apply the accounting periods established for hydrocarbon tax on an actual year basis for its income tax.

28.11 Allowable deductions and deductions not allowed

28.11.1 Allowable deductions (section 68, NTA, 2025)

In computing the adjusted profit of a company in upstream petroleum operations related to crude oil for any accounting period, there shall be deducted expenses wholly, and exclusively incurred during that period include the following:

- a. rents incurred by the company for the period pursuant to a petroleum mining lease or petroleum prospecting licence;
- b. all royalties the liability for which was incurred and were paid by the company during that period in respect of crude oil and associated gas and where a petroleum mining lease includes payments to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features under a model contract and the company has incurred liability for such payments in kind or in cash;
- c. expenses directly incurred for repair of plant, machinery or fixtures employed for the purpose of carrying on production activities or for the renewal, repair or alteration of production implement, utensils or articles. so employed;
- d. an expenditure, tangible or intangible directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field, whether the wells are productive or not, provided that subsequent exploration wells, appraisal wells and other wells shall be treated as qualifying

drilling expenditure under the Part II of the First Schedule to this Act and 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 Part II of the First Schedule to this Act;

- e. any amount contributed to a fund, scheme or arrangement approved by the Commission for the purpose of decommissioning and abandonment, provided that the surplus or residue of the fund shall be subject to tax under this Act at the end of life of the field, where such surplus is returned to the lessee;
- f. all sums incurred by the company to the Federal Government or any State or Local Government Council by way of levies, stamp duties, and fees;
- g. costs of gas reinjection wells, which are re-injecting natural gas that otherwise would be flared, subject to ratification by the Commission; and
- h. any amount contributed to any fund, scheme or arrangement approved by the Commission pursuant to the establishment of host communities development trusts under Chapter 3 of the PIA, Environmental Remediation Fund, Niger Delta Development Commission and other similar contributions.

Note: Section 68(2) provides that liability waived or recovered shall be treated under this Part in accordance with section 193 of NTA, 2025.

28.11.2 Deductions not allowed (section 69, NTA, 2025)

Subject to this Part, for the purpose of ascertaining the adjusted profit of a company in the accounting period from its upstream petroleum operations applicable to crude oil, no deduction shall be allowed in respect of:

- a. expenditure for the purchase of information relating to the existence and extent of petroleum deposits, other than for the acquisition of geophysical, geological and geo-chemical data and information;
- b. expenditure incurred as a penalty, natural gas flare fees or imposition relating to natural gas flare; financial or bank charges, arbitration and litigation costs, bad debts and interest on borrowing;
- c. head office or affiliate costs, shared costs, research and development costs or any other like shared indirect production costs;
- d. production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits, bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or marginal field or fees paid for assigning rights to another party;
- e. tax inputted into a contract or an agreement on a net tax basis and paid by a company on behalf of the vendor or contractor;
- f. capital withdrawn or sum employed or intended to be employed as capital;
- g. capital employed in improvements as distinct from repairs;

- h. sum recoverable under an insurance or contract of indemnity, except an amount that is not recovered under the scheme;
- i. rent of or cost of repairs to any premises or part of premises not incurred for the purpose of those operations;
- j. amounts incurred in respect of, any income tax, special tax, development levy, profits tax or other similar taxes, whether charged within Nigeria or elsewhere;
- k. the depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
- l. payment to provident, savings, widows and orphans or other society, scheme or fund; and
- m. any contribution to a pension, provident or other society, scheme or fund for production staff which may be approved, with or without retrospective effect, by the National Pension Commission subject to such general conditions or particular conditions in the case of the society, scheme or fund as the Service may prescribe, provided that any sum received by or the value of any benefit obtained by the company, from any approved pension, provident or other society, scheme or fund, in the accounting period of that company shall, for the purpose of section 68(2) of NTA 2025, be treated as income of the company for that accounting period.

28.12 Allowances for the purposes of income tax on petroleum operations

- (a) Acquisition costs of petroleum rights in accordance with section 81(1) of NTA, 2025 shall be eligible for annual allowance at the rate of 20% until the cost is fully written off.
- (b) Capital allowance for other assets shall be granted as follows:
 - (i) upstream petroleum operations assets shall be in accordance with Part II of the First Schedule to this Act; and
 - (ii) midstream and downstream operations shall be in accordance with Part I of the First Schedule to this Act.
- (c) Section 82 (1) of the NTA, 2025 states that, for the purpose of determining income tax, section 20 of this Act shall be read in conjunction with the provisions of this subsection as regards the following:
 - (i) all rents and royalties the liability for which was incurred by the company during that period in respect of crude oil sold, condensate sold and natural gas sold or delivered or disposed of in any other commercial manner and where a petroleum mining lease includes payments to the Federation Account related to production sharing, profit sharing, risk service

contracts or other contractual features and the company has incurred liability for such payments and such payments were made;

- (ii) any amount contributed to any fund, scheme or arrangement approved by the Commission or Authority for the purpose of providing for:
 - abandonment and decommissioning;
 - petroleum host communities development trust; or
 - environmental remediation; and
- (iii) any other deduction as may be prescribed by the Minister by order published in the Official Gazette.
- (iv) For the purpose of determining income tax, section 21 of this Act shall be read in conjunction with the provisions of this subsection as regards the following:
 - any expenditure for the purchase of information relating to the existence and extent of petroleum deposits, other than for the acquisition of geological, geophysical and geochemical data or information;
 - any expenditure incurred as a penalty including natural gas flare fees or any such imposition relating to natural gas flare;
 - production bonuses, signature bonuses paid for the acquisition of, or of rights in or over, petroleum deposits, signature bonuses or fees paid for renewing petroleum mining lease or petroleum prospecting licence or fees paid for assigning rights to another party including for marginal fields; and
 - any tax inputted into a contract or an agreement on a net of tax basis and paid by a company on behalf of the vendor or contractor.

28.13 Adjusted profit

This is defined in section 262(3) of PIA 2021, the profits of that period after the deductions allowed. The deductions allowed are the expenses specifically stated in section 263. those expenses that are wholly and exclusively for the purpose of the business.

28.14 Treatment of losses in computation of hydrocarbon tax and companies income tax

Under the section 70(3), NTA, 2025, the treatment of losses in the computation of hydrocarbon tax (HT) and companies income tax (CIT) for petroleum operations is outlined below:

a) Deduction of losses

Losses incurred in any accounting period can be carried forward and deducted from the adjusted profits of the accounting period immediately succeeding the accounting period in which the loss was incurred, and in subsequent accounting periods, until the loss is fully recouped.

b) Limitations on loss deduction

- i) Losses can only be carried forward and deducted against profits from the same class of chargeable tax:
 - **Class A:** Profits from petroleum mining leases (PMLs) selected under Section 93(6)(b) and (7)(b) of the PIA for onshore and shallow water areas; and
 - **Class B:** Profits from petroleum prospecting licenses (PPLs) selected under Section 93(6)(a) and (7)(a) of the PIA for onshore and shallow water areas.
- ii) Losses from one class cannot be used to offset profits from another class.

c) Carry-forward period (section 70(3) of NTA, 2025)

Losses can be carried forward indefinitely until they are fully utilised, provided the company continues to engage in petroleum operations.

d) Restrictions on loss deduction

- i) Losses cannot be deducted if they arise from:
 - penalties, fines, or disallowed expenses; and
 - costs exceeding the cost price ratio (CPR) limit of 65% of gross revenues in any accounting period. Such excess costs are carried forward but remain subject to the CPR limit in subsequent periods.

e) Treatment of losses for companies income tax (CIT)

i) Deduction of losses

- Losses incurred in any accounting period can be carried forward and deducted from the **assessable profits** of subsequent accounting periods.
- Losses are deducted in the order in which they are incurred (first-in, first-out basis).

ii) Consolidation of losses

- Losses from upstream petroleum operations can be consolidated across terrains (onshore, shallow water, and deep offshore) for the purpose of CIT computation.
- Losses from midstream and downstream operations are treated

separately and cannot be consolidated with upstream losses.

iii) Carry-forward period

Losses can be carried forward indefinitely for CIT purposes, provided the company continues to engage in petroleum operations.

iv) Restrictions on loss deduction

Losses cannot be deducted if they arise from:

- disallowed expenses, such as penalties, fines, or non-operational costs; and
- costs exceeding the CPR limit for hydrocarbon tax purposes.

f) Special provisions for losses

i) Losses on transfer of assets

If a company transfers its trade or business to another company, any unutilised losses cannot be transferred to the acquiring company unless both companies are part of a recognised group and meet the conditions specified in the PIA.

ii) Losses in production sharing contracts (PSCs)

- For companies operating under PSCs, losses are consolidated across petroleum prospecting licenses (PPLs) and petroleum mining leases (PMLs) granted after the commencement of the PIA.
- Losses are applied to the two classes of chargeable tax separately.

iii) Losses from terminated operations

If a company ceases petroleum operations, any unutilised losses cannot be carried forward or deducted.

28.15 Treatment of unabsorbed losses and unrecouped capital allowances in hydrocarbon tax computations of transited companies

a) Background: Transition from PPTA to PIA

Under Nigeria's Petroleum Industry Act (PIA), companies that were operating and taxed under the Petroleum Profits Tax Act (PPTA) immediately before the PIA's effective date are deemed **transited companies**. Transitional provisions preserve certain tax attributes specifically unabsorbed losses and unrecouped capital allowances-so they can be carried forward into both hydrocarbon tax and companies income tax (CIT) computations under the PIA framework.

b) Detailed treatment of unrecouped capital allowances

The PIA preserves capital allowances unutilised under the PPTA as follows:

i) All transited companies (excluding PSCs) to:

- carry forward all unrecouped capital allowances; and
- deduct in computing both Hydrocarbon Tax and CIT profits for upstream activities.

ii) Companies under production sharing contracts (PSCs) to:

- continue to claim capital allowances to reduce Hydrocarbon Tax and CIT profits; and
- ITCs, however, may not be carried forward to offset CIT after transition.

Allowance type	Hydrocarbon tax	CIT
Unrecouped writing-down allowances	Yes	Yes
Balancing allowances on disposals	Yes	Yes
Investment tax credits (PSCs only)	No	No (post-PIA)

28.16 Assessable profit/loss and chargeable profit

In line with the provisions of section 70(1 and 2) of NTA, 2025, the assessable profits for each company or petroleum mining lease for any accounting period shall be the adjusted profit of that period after the deduction of the amount of any loss incurred by that company during any previous accounting period.

The assessable profit shall be determined separately for each of the two classes of chargeable tax identified in section 72(a) and (b) of NTA, 2025.

However, if the deductions allowed exceed the adjusted profit (very unlikely), this will result in assessable loss.

In Section 71(1) of NTA, 2025 the chargeable profits of a company for any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section as follows:

- (a) the aggregate amount of capital allowances;
- (b) production allowance; and
- (c) In the case of acquisition costs of petroleum rights, the value of the rights and the value of the assets acquired shall be reported separately to the NRS,

provided that the value of the rights shall be eligible for annual allowance of 20% per annum until it is fully written off and the value of the assets shall be depreciated based on the applicable depreciation rates for the respective assets under Part II of the First Schedule to NTA, 2025.

It is pertinent to note that in determining the chargeable profit, the total cost shall not exceed the cost-price ratio as provided for in the Sixth Schedule to the Act (PIA, 2021).

28.17 Income chargeable to hydrocarbon tax under the PIA, 2021

Under the Petroleum Industry Act, 2021, hydrocarbon tax (HT) applies to profits arising from specific upstream petroleum products. Section 262 of the PIA explicitly lists what constitutes income chargeable for HT purposes.

a) Chargeable income

- i) Crude oil profits from the sale or disposal of crude oil produced in the field, valued at the first upstream measurement point.
- ii) Field condensates profits on condensate liquids recovered alongside crude oil, measured and valued at the field's designated measurement point.
- iii) Natural gas liquids (NGLs) from associated gas profits on propane, butane, pentane and other liquids extracted from associated gas, measured upstream of any gas-processing facility.
- iv) Balancing charges adjustments reflecting differences between estimated volumes or values previously reported and the actual volumes or values sold or disposed.

All four categories above are chargeable to hydrocarbon tax.

b) Exclusions

Hydrocarbon tax does **not** apply to:

- i) associated gas (gaseous hydrocarbons not processed for liquids);
- ii) non-associated gas and any NGLs derived therefrom, if measured at downstream facilities;
- iii) field condensates or NGLs produced downstream of measurement points;
- iv) frontier acreage (until reclassified by the Commission); and
- v) deep-offshore operations (HT is restricted to onshore and shallow water).

c) Measurement and valuation

The "value of chargeable oil" for HT is determined as:

- i. proceeds from sales of chargeable oil plus the imputed value of oil disposed during the period; and

- ii. valuations rely on the same royalty price that the Commission uses for crude oil fields.

This ensures consistency between royalty and HT bases and strips out extraction, transportation and storage costs from the revenue calculation.

Tax rates and chargeable persons

License type	Area	HT rate	CIT rate
Petroleum prospecting licence (PPL)	Onshore and shallow water	15%	30%
Petroleum mining lease (PML)	Onshore and shallow water	30%	30%

All companies engaged in upstream operations under a PPL or PML are chargeable to hydrocarbon tax at the above rates, irrespective of corporate structure (joint venture, partnership or sole company).

28.18 Exemptions from hydrocarbon tax

The Petroleum Industry Act (PIA) 2021 revamps Nigeria's upstream fiscal regime and replaces petroleum profits tax with a dual-tax system - hydrocarbon tax and companies income tax (CIT). While hydrocarbon tax applies to most onshore and shallow-water upstream operations, the Act carves out a number of clear exemptions.

a) Acreage and field-based exemptions

- i) Frontier acreages
 - All frontier acreage is exempt from hydrocarbon tax until either
 - reclassified as onshore/shallow water upon a significant commercial discovery, or
 - converted into a petroleum prospecting licence (PPL) or petroleum mining lease (PML) under the PIA.
- ii) Deep offshore acreages
 - Petroleum operations in water depths beyond 200 metres carry zero hydrocarbon tax. Deep offshore fields are exempt from hydrocarbon tax entirely.
- iii) Non-Commercial/Pre-Production Fields
 - Any PPL that has yet to commence commercial production (for example, certain marginal fields pending development) is not chargeable to hydrocarbon tax until production begins.

b) Product-based exemptions

- i) Associated gas not upstream of measurement point
 - Natural gas that is produced alongside oil but does not cross the designated upstream measurement point is exempt from HT. This ensures that gas used for reinjection, flare avoidance or local consumption before measurement attracts no HT.
- ii) Non-associated gas and derived liquids
 - Gas and gas liquids from non-associated gas fields (including condensates, natural gas liquids) remain outside HT's scope—even if later mixed with crude oil—provided they are measured at the downstream exit point of a gas processing plant.

c) Transaction-based exemptions

- i) Cumulative production allowance
 - A fixed per-barrel production allowance (different rates for existing vs. new leases) reduces the HT base. While not a strict “exemption,” this allowance effectively shields a volume of output from HT.
- ii) Frontier Exploration Fund (FEF) Carve-Outs
 - 30% of NNPC's profit oil/gas that flows into the Frontier Exploration Fund is exempt; this fund finances frontier basin exploration and is itself non-taxable.

d) Host community and decommissioning trust exemptions

- i) Host communities trust contributions
 - The mandatory 3% annual operating-expenditure contribution to a Host Community Development Trust is exempt from HT. It also reduces the HT-chargeable profit base (deductible).

e) Decommissioning and abandonment funds

- i) Contributions to escrowed abandonment funds, required before field retirement, are deductible for HT. While not a permanent exemption, pushing these costs into an escrow account before end-of-life ensures they do not inflate the HT base in that final year.

f) Timing and transitional exemptions

- i) Existing OPL/OML transitional period
 - Fields still under pre-PIA oil prospecting licences (OPLs) and oil mining leases (OMLs) remain under the old PPTA until they convert to PPLs/PLMs. That PPT regime has its own carve-outs and does not expose them to HT until conversion.

ii) Cost-recovery timing

- Unclaimed capital expenditures may be notified to FIRS up to 5 months after year-end (or as extended), effectively exempting late costs from HT in Year 1 but allowing deduction in Year 2.

28.19 Treatment of qualifying capital expenditure

a) Qualifying capital expenditure

Under the Petroleum Industry Act (PIA) 2021, capital allowance is granted for qualifying capital expenditures (QCEs) incurred in the course of petroleum operations under a petroleum mining lease (PML) or a petroleum prospecting licence (PPL). Capital allowance remains a key deductible expense for petroleum upstream companies when calculating hydrocarbon tax (HT) and companies income tax (CIT). It is claimable on the following qualifying capital expenditure as follows:

- qualifying plant expenditure;
- qualifying pipeline expenditure.
- qualifying building expenditure; and
- qualifying drilling expenditure.

b) Rates of capital allowance

Capital allowance is claimed on qualifying capital expenditure on the straight lines basis at the rate of 20% per annum for the first four years and 19% in the fifth year. 1% is retained in the books in the fifth year until the asset is disposed of.

The petroleum investment allowance has been abolished under the PIA 2021. It is replaced by production allowance.

c) Treatment of capital allowance in tax computation

Hydrocarbon tax: Capital allowance is computed separately per field and it is deducted after adjusted profit is computed.

Companies income tax: Capital allowance is aggregated at the company level (not per field) and it is deducted after accounting profit and other allowable deductions.

Illustration 28.1

The accounts of Marian oil Limited, a petroleum company for the year ended December 31, 2025 revealed the schedule of qualifying capital expenditure:

Type	Date of acquisition	Amount (N000)
Plant and machinery	July 2024	9,000,000
Fixtures and fittings	July 2023	8,000,000
Pipeline	Feb. 2025	12,000,000
Building	Feb. 2022	11,000,000
Plant and machinery	July 2021	6,000,000

You are required to compute capital allowance for the relevant year of assessment

Suggested solution to illustration 28.1

Marian Oil Limited

Computation of capital allowance for 2026 Tax Year

QCE	Date	Age	Amount	Rate	Capital allowance
			₦'000		₦'000
Pipeline	2025	1	12,000,000	20%	2,400,000
Plant & Mach	2024	2	9,000,000	20%	1,800,000
Fixtures	2023	3	8,000,000	20%	1,600,000
Building	2022	4	11,000,000	20%	2,200,000
Plant & Mach	2021	5	6,000,000	19%	<u>1,140,000</u>
Total					<u>9,140,000</u>

28.20 Treatment of production allowance for the determination of hydrocarbon tax and companies income tax

Production allowance was introduced as a replacement for Investment tax credit applicable in the repealed Petroleum Profits Tax Act. This is a very good attempt by the government in granting allowances which are directly linked to production as against capital investment as was in practice under the old law (Petroleum Profits Tax Act). Production allowances for crude oil are also applicable to condensates and liquid natural gas liquids.

The Sixth schedule (first part) to the PIA, 2021 provides the production allowances for each of the locations/ area of activities. This is as shown in the table below:

Production allowances schedule

S/N	Location	Production allowance
1	Crude oil production by leases which are converted oil mining leases based on a concession contract	The lower of US \$2.50 per barrel and 20% of the fiscal oil price
2	Leases granted after the commencement the Act:	
A	Onshore areas	The lower US \$8 per barrel and 20% of the fiscal oil price up to a cumulative maximum production of 50 million barrels from commencement of production and the lower of US \$4 per barrel and 20% of the fiscal oil thereafter
B	Shallow waters	The lower US \$8 per barrel and 20% of the fiscal oil price up to a cumulative maximum production of 100 million barrels from commencement of production and the lower of US \$4 per barrel and 20% of the fiscal oil thereafter
C	Deep onshore and frontier	The lower US \$8 per barrel and 20% of the fiscal oil price up to a cumulative maximum production of 500 million barrels from commencement of production and the lower of US \$4 per barrel and 20% of the fiscal oil thereafter

There is no chargeable tax rate for upstream petroleum operations in the deep offshore waters. The companies will however be subjected to Companies Income Tax Act.

28.21 Cost price ratio limit

Paragraph 2(1) of the Sixth Schedule to PIA 2021 provides that all costs prescribed under section 263 and under the Fifth Schedule to the Act, excluding those related to section 263(1)(a), (b) and (h), in an accounting period the sum of which is eligible for

deduction under the hydrocarbon tax shall be subject to a cost price ratio limit of 65% of gross revenues determined at the measurement points.

The Sixth Schedule further stipulates that any excess costs not deductible in a particular year of assessment may be carried forward to subsequent years.

However, where any costs exceed the cost price ratio limit upon the termination of upstream petroleum operations related to crude oil, such costs shall not be deductible for purpose of calculation of the hydrocarbon tax.

The format for computation of cost price ratio limit in line with the circular issued by the Federal Inland Revenue Service (now Nigeria Revenue Service) is as shown below:

Cost price ratio (CPR) limit

S/N	Description	Sub-total US \$	Total US \$
A	Revenue		
	Fiscal value of crude oil sold	X	
	Value of condensate from associate gas sold	X	
	Value of natural gas liquid from associated gas sold	X	
	Total gross revenue		<u>XX</u>
	Minimum allowable costs @ 65% of sales value		<u>XX</u>
	Total costs incurred		
	Royalty incurred and paid	X	
	Other operating costs (section 263)	X	
	Environmental remediation fund	X	
	Excess costs brought forward (if any)	X	
	Unrecouped capital allowances brought forward	X	
	Total capital allowances for the year	<u>X</u>	
B	Total eligible costs	<u>XX</u>	
C	Less: Exempted costs incurred pursuant to section 263(1)(a), (b), and (h)		
	Royalty incurred and paid	X	
	NDDC charge	X	
	Concession rentals	X	
	Host community fund	X	
	Environmental remediation fund	<u>X</u>	
C1	Total exempted costs	<u>XX</u>	

ii. **Net total costs to subject to CPR (B - C1)**

XX

C2. Maximum allowable costs:

The lower of:

Net total costs to be subject to CPR

and

CPR @ 65% of gross revenue

- D Total allowable cost (in line with the practice of NRS) = C1 + C2 (that is, Exempted cost + CPR restricted cost)

Excess total costs carried forward = total eligible costs (incurred by the company) - total allowable cost

28.22 Chargeable hydrocarbon tax

In line with the provisions of section 72, NTA, 2025, chargeable hydrocarbon tax is payable by companies engaged in upstream petroleum operations onshore and shallow water. Chargeable hydrocarbon tax does not apply to associated natural gas, including liquids produced in the fields and contained in the rich gas, and non-associated natural gas. The hydrocarbon tax is the fiscal regime which applies to upstream petroleum operations in relation to crude oil, field condensates and natural gas liquids derived from associated gas and is charged and assessed on the profits derived from such operations and payable within each accounting period. Chargeable hydrocarbon tax is assessed based on actual year basis.

The tax rates imposed under the chargeable hydrocarbon tax is determined by the license acquired by the company during that accounting period, that is, a PML or a PPL. Thus, according to section 72, NTA, 2025, the chargeable hydrocarbon tax for any accounting period of a company shall be a percentage of the chargeable profit for that period aggregated and it shall be:

- (a) 30% of the profit from crude oil for petroleum mining leases (PMLs) selected under section 93 (6)(b) and 7(b) of the PIA with respect to onshore and shallow waters; and
- (b) 15% of the profit from crude oil for onshore and shallow water and for petroleum prospecting licences (PPLs) selected under section 93 (6)(a) and 7(a) of the PIA, 2021.

Under the provisions of PIA, 2021, petroleum companies are required to pay estimated hydrocarbon tax due in 12 equal instalments, together with the final (13th month) instalment. The first instalment is due in the last day of the third month (March) of the financial year. The second instalment through the tenth, will be from April to December. Then, the 11th and 12th instalments will be paid in January and February of the following financial, by which time the actual hydrocarbon tax will be available. The difference between the actual hydrocarbon tax and the 12 advanced instalments paid so far is what is referred to as the 13th month instalment. This is expected to be paid within 21 days of receipt of the notice of assessment.

Where for any accounting period of a company, there is a sale of chargeable oil between connected persons, or disposal of chargeable oil between connected or unconnected persons and the amount of the chargeable hydrocarbon tax for that period is less than the amount prescribed in section 72, NTA, 2025, the company shall pay an additional amount of chargeable hydrocarbon tax for that period equal to the difference between those two amounts (section 73, NTA, 2025).

28.23 Companies income tax

Petroleum producing companies operating in the upstream sector are mandated to pay in an assessment year, companies income tax at the rate of 30%.

Companies income tax is assessed based on preceding year basis (PYB).

The format for the determination of companies income tax is as shown below:

Audu Energies Limited Computation of companies income tax For the relevant assessment year

S/N	Description	Amount	Total amount
		US \$	US \$
Income:			
	Fiscal value of crude oil sold or disposed	x	
	Value of condensate from associate gas sold	x	
	Value of natural gas liquid from associated gas sold	x	
	Fiscal value of associate natural gas sold, transferred or disposed	x	
	Fiscal value of non-associate natural gas sold, transferred or disposed	x	

	Value of condensates and natural gas liquids produced from non-associate gas field and sold or disposed	x	
	Value of condensates or natural gas liquids produced from gas processing plants sold or disposed	x	
	Value of condensate or natural gas liquid from associated gas downstream of measurement points and sold	x	
	Realised exchange gains/(loss)	x	
	Interest income	x	
	Other incidental income	<u>x</u>	
A	Gross total income		XX
	Allowable deductions:		
	Royalty incurred and paid	x	
	Other operating costs under section 263	x	
	CITA allowable deductions	<u>x</u>	
B			<u>XX</u>
	Assessable profit (A - B)		XX
	Add balancing charge		x
	Less: Losses b/f		<u>(x)</u>
C			XX
	Less: Capital allowances		
	For the year	x	
	Unutilised brought forward	<u>x</u>	
D			<u>XX</u>
E	Total profit (C - D)		<u>XX</u>
F	Companies income tax @ 30% (30% of E)		<u>XX</u>

Note: Cost price ratio (CPR) limit does not apply in the determination of allowable expenses and companies income tax payable.

The table below shows how operating costs are computed in line with the provisions of PIA 2021 and Companies Income Tax Act, 2004 (as amended):

Statement of operating cost		
S/N	Account name	Amount US \$
1	Concession rentals	x
2	Repairs of plant, machinery, and fixture	x
3	Repairs or alteration of production implement, utensils	x
4	Cost of gas reinjection wells	x
5	First exploration well costs	x
6	First two appraisal wells costs	x
7	NDDC charge	x
8	Environmental remediation fund contribution	x
9	Host community trust fund contribution	x
10	Stamp duty	x
11	Decommissioning	<u>x</u>
A	Total allowable costs (section 263)	<u>XX</u>
Allowable expenses for CITA		
1	Rent	x
2	Finance cost	x
3	Administrative expenses	x
4	All indirect costs expenses (including costs above fields)	x
5	Etc	<u>x</u>
B	Total allowable costs (CITA)	<u>XX</u>

Note: Only part A above is allowed for hydrocarbon tax computation, while for companies income tax computations, A + B, is applicable.

28.24 Development levy

In line with section 59, NTA, 2025, every company (oil producing company inclusive), with effect from basis period commencing from January 1, 2026, is required to compute and pay development levy in each of its accounting periods. The tax is applicable on the assessable profits determined under the companies income tax at the rate of 4%.

The development levy is not an allowable deduction in the computation of chargeable hydrocarbon tax.

28.25 Pre-production cost

As provided for in section 74 of the NTA, 2025 where a company has not commenced the production and sale or disposal of chargeable oil, all costs incurred wholly and exclusively for the purpose of coming into upstream petroleum operations, subject to sections 68 and 69 of the Act, shall upon commencement of production and sale or disposal of chargeable oil be deemed to have incurred a qualifying pre-production capital expenditure which shall be amortised in line with paragraphs 2 and 14 of Part II of the First Schedule to this Act, which states that where:

- (i) expenditure has been incurred before the first accounting period and the expenditure would have been treated as a qualifying expenditure in any of the classes of qualifying expenditures stated in subparagraph (1)(c), then it shall be so classified; and
- (ii) the expenditure before the first accounting date ought to have been treated as allowable deduction in an accounting period, it shall be allowed, but fully amortised over a period of five years.

28.26 Trade or business sold or transferred

The sale or transfer of a trade or business of upstream petroleum operations carried on in Nigeria by a company to another company shall be treated in accordance with section 191 of the Act and the following rules shall apply:

- (a) in the case of a merger of two or more trades or businesses:
 - (i) a new trade or business shall not be deemed to have commenced as a result of the merger, and the provisions of this Act as they relate to cessation of trade or business shall not apply to the trade or business that ceased as a result of the merger;

- (ii) the provisions of Part VIII of Chapter Two of this Act as they relate to Chargeable gains shall not apply to the assets transferred to the new or surviving trade or business as a result of the merger;
 - (iii) assets of the merging trades or businesses shall be deemed to have been transferred at the residue of the qualifying capital expenditure on the day following the merger;
 - (iv) the provisions of the First Schedule to this Act shall apply on the remaining useful life of the asset transferred because of the merger;
 - (v) unutilised capital allowance on the assets transferred shall be available for the use of the new or surviving trade or business;
 - (vi) unabsorbed losses of the merging entities shall be available to the surviving trade or business provided that such losses were incurred by the merged trade or business; and
 - (vii) taxes deducted at source in respect of the merged trades or businesses shall be available to the merged trade or business;
- (b) in the case of a sale or transfer of a trade or business which results into the cessation of a trade or business:
- (i) the provisions of Part V of Chapter Two of this Act as regards cessation of trade, business, profession or vocation shall apply to the trade or business that was sold or transferred;
 - (ii) for the purposes of the First Schedule to this Act, the asset sold or transferred shall be recognised at the value of which they are sold or transferred;
 - (iii) unutilised capital allowance on the assets sold or transferred shall not be available for use in the new or surviving trade or business;
 - (iv) unabsorbed losses of the old business shall not be available for use in the new or surviving trade, business, profession or vocation; and
 - (v) taxes deducted at source from the old trade or business, shall not be available for use by the new or surviving trade or business;
- (c) in the case of a sale or transfer of a business asset which does not result into the cessation of the trade or business, and where the parties agreed to sell or transfer the asset for an amount not exceeding the sum of the residue of the qualifying capital expenditure and unutilised capital allowance of the asset:

- (i) capital allowance under the provisions of the First Schedule to this Act shall apply to the residue of the asset only;
 - (ii) the unutilised capital allowance on the asset sold or transferred shall be available for use by the buying trade or business;
 - (iii) the trade or business that sold or transferred the assets shall not claim any part of the unutilised capital allowance pertaining to the asset sold or transferred; and
 - (iv) the provisions of Part VIII of Chapter Two of this Act as regards Chargeable gains shall not apply to the asset sold or transferred under this paragraph;
- (d) Notwithstanding the provisions of subsection (1) in the case of companies engaged in upstream petroleum operations, where business restructuring results in the formation of a new company and cessation of the old business, the accounting period of the company acquiring that trade or business shall commence on:
- (i) the date on which the sale or transfer of the trade or business to the new company takes place; or
 - (ii) such date within the calendar month in which the sale or transfer takes place, as may be elected by the company with the approval of the Service, and end on December 31 of the same year, provided that any gap between the old and surviving business shall be treated as being part of the new or surviving company;
- (e) The relevant tax authority shall be notified of any restructuring of a trade, business, profession or vocation prior to commencing such arrangement;
- (f) Reference to a trade or business in this section include references to any part of the trade or business;
- (g) VAT charged under Chapter Six of this Act shall not apply to business restructuring carried out in accordance with this Act;
- (h) Where a business, or a part of the business, which is capable of separate operation is transferred as a going concern and the purchaser uses the assets in the same kind of business, such transfer shall not be treated as a supply of goods or services for the purposes of VAT, provided that the purchaser is registered in accordance with Part II of the Nigeria Tax Administration Act, 2025 or registerable as a result of the transfer.

28.27 Consolidation of costs and revenue

Section 76(1) of the NTA, 2025 states that:

- (a) a company engaged in upstream petroleum operations across terrains shall be allowed to consolidate costs and incomes for the purpose of income tax in this Act.
- (b) a company engaged in upstream petroleum operations related to crude oil across terrains shall be allowed to consolidate costs and revenue for the purposes of hydrocarbon tax, only across assets in which it holds licences and leases in accordance with the two categories of chargeable tax stipulated in section 72 of the Act.

28.28 Partnership business in petroleum operations

- (a) Under section 77 (1) of NTA, 2025, a person, other than a company, who engages in upstream petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from the operations, commits an offence.
- (b) Where the person referred to in subsection (1) has benefitted from any profits on upstream petroleum operations, the person shall be subject to hydrocarbon tax and income tax under section 78 of this Act on the profits and shall pay a penalty provided under the Nigeria Tax Administration Act, 2025.
- (c) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, tax shall be charged and assessed on them in accordance with subsection (d) of this section.
- (d) The apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable upon each company shall be in line with the equity interest of the parties under a jointly executed agreement that will be made available to the Service and where no jointly executed agreement is made available, the Commission shall advise the Service of the approved equity interest of the parties and it shall be binding on the parties.
- (e) Where two or more companies are engaged in upstream petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, the Service may make regulations, for

the ascertainment of tax to be charged or assessed upon each company so engaged.

- (f) Regulations made under subsection (e) may make provisions:
 - (i) with respect to apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and tax chargeable upon each company;
 - (ii) for the computation of any tax as if the partnership, joint venture, scheme or arrangement were carried on by one company and apportion the tax between the companies concerned;
 - (iii) to accept other basis of ascertaining the tax chargeable upon each of the companies; or
 - (iv) which have regard to any circumstances whereby the operations are partly carried on for any company by an operating company whose expenses are reimbursed by those companies.
- (g) Regulations made under this section may be of general application for the purpose of this section and this Part or for a class of arrangement or for a particular application to a specific partnership, joint venture, scheme or arrangement.
- (h) The effect of regulations made under this section shall not impose a greater burden of tax upon any company so engaged in any partnership, joint venture, scheme or arrangement than would have been imposed upon that company under this Part, if all things enjoyed, done or suffered by such partnership, joint venture, scheme or arrangement had been enjoyed, done or suffered by that company in the proportion in which it enjoys, does or suffers those things under or by virtue of that partnership, joint venture, scheme or arrangement.

28.29 Non-associated gas greenfield developments in onshore and shallow water terrains

In accordance with section 85 (1) of the NTA, for all Non-associated gas greenfield developments in onshore and shallow water terrains reaching first commercial gas production from the commencement of this Act to January 1, 2029:

- (a) where the hydrocarbon liquids do not exceed 30 barrels per million standard cubic feet, there shall be granted a gas production tax credit at the rate of

US\$1.00 per thousand cubic feet or 30% of the fiscal gas price, whichever is lower;

- (b) where the hydrocarbon liquids exceed 30 barrels per million standard cubic feet but do not exceed 100 barrels per million standard cubic feet, there shall be granted a gas production tax credit at the rate of US\$0.50 per thousand cubic feet or 30% of the fiscal gas price, whichever is lower;
- (c) where the hydrocarbon liquids exceed 100 barrels per million standard cubic feet, the incentives under subsections (a) and (b) of this section shall no longer apply;
- (d) the gas tax credit granted by this section shall apply on Non-Associated Gas sales for 10 years only, beginning from the date of attaining first gas production; and
- (e) at the expiration of the 10 years referred to in subsection (1)(c) of this section, gas production allowance shall be granted at the respective rates set out in subsection (1)(a) and (b), provided that gas production tax credit and gas production allowance shall not be granted in respect of gas production of the same period.
- (f) In the case of all other Non-Associated Gas Greenfield projects with first commercial gas production after January 1, 2029, gas production allowance shall be granted at US\$0.50 per thousand cubic feet or 30% of the fiscal gas price, whichever is lower, provided that the hydrocarbon liquids do not exceed 100 barrels per million standard cubic feet.
- (g) The gas production tax credit that can be recouped in any year shall not exceed the tax payable on the field(s) for that year on that income, subject to the payment of any minimum tax where applicable.
- (h) Unrecouped tax credit in one year may be carried forward for a maximum of 3 years.
- (i) The fiscal gas price for calculating gas production tax credit and gas production allowance shall be the same price used for determining royalties.
- (j) The provisions of this section shall apply to oil mining leases and petroleum mining leases.
- (k) Where first gas production cannot be achieved due to force majeure, such as natural disasters or acts of terrorism, the timelines and obligations stipulated in 28.3.11 of this section may be suspended, subject to approval by the Commission, until such time as the force majeure ceases to exist.

- (l) The Commission shall certify the applicable hydrocarbon liquid ratios for the purposes of ascertaining appropriate gas production tax credit or gas production tax allowance.
- (m) The incentives under this section shall not apply to any company that has claimed Associated Gas Framework Agreement incentives for the same Non-Associated Gas Greenfield project.

28.30 Oil and Gas Companies (Tax Incentives, Exemptions, Remissions, etc) Order, 2024

A significant development emerged in Nigeria's oil and gas sector on February 28, 2024, when President Bola Ahmed Tinubu signed the Oil and Gas Companies (Tax Incentives, Exemption, Remission, etc.) Order 2024. This Order provides tax incentive investment through tax breaks. Pursuant to the power granted by the order, the Minister of Finance ('MOF'), in collaboration with the Nigeria Revenue Service (NRS), Nigerian Upstream Petroleum Regulation Commission (NUPRC) alongside other relevant stakeholders, subsequently issued implementation guidelines to clarify the application process and eligibility criteria.

This order and implementation guidelines apply to the following:

- a) Non-associated gas (NAG) greenfield developments in onshore and shallow water locations; and
- b) Midstream gas companies carrying out gas utilisation projects.

The Implementation guidelines are addressed in three subdivisions:

- a) The Federal Inland Revenue Service (now Nigeria Revenue Service) guideline on the applicability of tax credits and allowances for Non-Associated Gas Greenfield Development;
- b) The Federal Inland Revenue Service (now Nigeria Revenue Service) Guideline on the applicability of the midstream capital and gas utilisation allowance; and
- c) The Nigerian Upstream Petroleum Regulatory Commission guideline on hydrocarbon liquid content in a Non-Associated Gas Field.

28.31 Tax credits for non-associated gas

This is the first category of incentives under the Order. The guideline on the applicability of tax credits and allowance for Non-Associated Gas Greenfield Development aims to provide clarity on the fiscal incentives available for Non-Associated Gas (NAG) greenfield developments in Nigeria. It outlines the conditions under which companies are eligible for Gas Tax Credits (GTC) or Gas Tax Allowances (GTA) based on the volume and composition of hydrocarbon liquids (HCL) produced alongside natural gas.

a) Eligibility criteria for GTC

NAG greenfield developments in onshore and shallow water locations with a first commercial production date of January 1, 2029, or earlier, are eligible for a GTC equal to

- i. US\$1.00 per thousand cubic feet or 30% of the fiscal gas price, whichever is lower, provided;
- ii. the HCL content does not exceed 30 barrels per million standard cubic feet ("MMSCF"); and
- iii. the HCL is higher than 30 barrels per million standard cubic feet but less than 100 barrels per MMSCF, the tax credit is worth US\$0.50 per thousand cubic feet, or 30% of the fiscal gas price, whichever is less.

b) Eligibility criteria for GTA

Companies commencing gas production after January 1, 2029, are eligible for GTA at a rate of US\$0.50 per MCF or 30% of the fiscal gas price, whichever is lower, if the HCL content is not more than 100 barrels per MMSCF.

Nonetheless, if HCL exceeds 100 barrels per MMSCF, the company is required to revert to pre-existing legislations. The measurement of the HCL in all circumstances is to be determined by the NUPRC.

c) Carry-forward and expiry of GTC surplus

Companies that accumulate more GTC than needed to offset their tax liabilities can carry forward these excess credits for up to three years. However, if these excess credits are not utilised within this timeframe, they expire and can no longer be used to reduce taxes. Additionally, companies eligible for GTC for their greenfield gas projects are ineligible to receive any other incentives or benefits under the Associated Gas Framework Agreement for the same project. This measure aims to ensure fairness and prevent companies from receiving double benefits for the same project, thereby promoting a balanced fiscal regime within the Nigerian oil and gas industry.

d) Time limitation and claim conditions

A company is eligible to claim the GTC if its HCL content remains below 100 barrels MMSCF and it achieved first gas production on or before January 1, 2029. This claim can be made for a maximum of 10 years from the first gas production date. Conversely, the GTA can only be declared by a business that commenced producing commercial gas after January 1, 2029, as long as the HCL content in each MMSCF remains below 100 barrels. The Order stipulates that the gas tax credit any company is entitled to shall not exceed the income tax payable by the company for that year.

Transition from gas tax credit (GTC) to gas tax allowance (GTA)

Companies granted GTC in Greenfield development may be eligible to GTA after the expiration of 10 years in so far it achieved its first gas production on or before January 1, 2029.

28.32 Incentives to deep water oil and gas projects

This is the third category of incentives under the Order. The Order empowered the Minister for Finance to introduce incentives to ensure that investments for deep water oil and gas projects achieve a competitive internal rate of return (the “**Deep-Water Oil and Gas Incentives**”). It further mandates the Ministry of Finance Incorporated and the Ministry of Petroleum Incorporated to take steps to procure the Nigerian National Petroleum Company Limited to consider and recommend commercial enablers for new investments in the deep water pending the time the Deep-Water Oil and Gas Incentives are introduced. The Minister of Finance is empowered to issue implementation guidelines for the provisions of the Order in collaboration with the FIRS, NMDPRA, NUPRC, and other relevant stakeholders.

28.33 Gas utilisation investment allowance (GUIA)

This is the second category of incentives under the Order where the Federal Inland Revenue Service Guideline on the applicability of the midstream capital and gas utilisation allowance (GUIA) the gas utilisation investment allowance is granted on qualifying capital expenditure incurred on plant and equipment by midstream gas companies in respect of any new and ongoing project in the midstream oil and gas industry engaged in processing and transportation of natural gas as regulated by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA). This allowance serves to reduce the company's taxable profits in the qualifying year. The gas utilisation investment allowance is set at 25% of the actual cost of the purchased plant and equipment.

a) Eligibility for GUIA

To qualify for the GUIA, a company must have incurred eligible capital expenditure on plants and equipment in one or more of the following midstream gas operations:

- i. transportation of natural gas to gas conditioning and processing plants.
- ii. transportation of natural gas from gas conditioning and processing plants to gas-based industries and other end-use customers, specifically not exceeding exit points connecting gas distribution pipelines and networks.
- iii. gas processing and conditioning plants.
- iv. gas bulk storage infrastructures installed which are not for sale, but holds stock of plant condensates, liquefied petroleum gas (LPG), or liquefied natural gas (LNG).
- v. companies engaged in these operations must possess the relevant licenses as issued by the NMDPRA. Furthermore, under Section 39 of CITA, a company will only be granted the gas utilisation investment allowance after the expiration of the tax-free period granted under section 39(1) of CITA. It's important to note that a company that has already enjoyed the 25% GUIA will not be entitled to any other investment allowance under Section 39 of CITA.

b) Qualifying plant and equipment for GUIA

Qualifying plant and equipment are tangible assets and other components comprising a plant or equipment used for gas processing and transportation in midstream gas operations, with a useful life exceeding one year.

To be eligible for GUIA, the following conditions must be met:

- i. the cost of the qualifying plant and equipment must have been incurred by the company;
- ii. the cost must have been incurred from the commencement date of this incentive order;
- iii. proof of ownership of qualifying plant and equipment must be provided; and
- iv. evidence of direct use of the plant and equipment for gas processing and transportation in midstream gas operations is required.

c) Exemptions

The gas utilisation investment allowance will not apply under certain circumstances if:

- i. the company sells or transfers the plant and equipment to another company not engaged in the same or related business within five years of incurring the expenditure;
- ii. there is an appropriation of the plant and equipment for purposes other than gas utilisation within five years of incurring the expenditure;
- iii. the cost incurred on the plant and equipment is not a bona fide business transaction or is an artificial or fictitious transaction; and
- iv. the company is an end-product user of gas as feedstock, energy source, and related purposes.

d) Non-interference with capital allowance

- i. The GUIA does not reduce the value of any asset on which capital allowance is claimable under the Companies Income Tax Act. If a company claims capital allowance for an asset, such as a piece of machinery or equipment, the value of that asset for capital allowance purposes remains the same even if the company also claims GUIA.
- ii. The capital allowance available under the CITA will continue to apply to eligible companies. This means that the company can still claim the regular capital allowance on its assets in addition to any GUIA claimed.
- iii. The company is also entitled to other deductions, allowances, and incentives available under the CITA and any other relevant legislation. This ensures that companies can benefit from both the regular tax incentives and the specific GUIA without any reduction in the value of their assets for capital allowance purposes.

e) Order implementation and sunset clause

Paragraph 5.0 of the Implementation Guidelines clarifies the Order's lifespan. The Order will no longer be in effect after the fiscal incentives it provides are included in official legislation. In a similar vein, if first gas production is not reached by January 1, 2029, the Gas Tax Credit provided by the Order will no

longer be valid. In cases where an inevitable accident occurs which prevents a company from achieving first gas production by January 1, 2029, the operator may be eligible for an extension of the Sunset Date granted by the NUPRC.

f) Significance impact of the implementation of the guidelines

The Order and its implementation guidelines are expected to have a significant impact on the Nigerian oil and gas industry. The tax breaks aim to:

- i. **Attract investment:** By lowering tax burdens, the incentives aim to make Nigeria a more attractive destination for investment in gas exploration and development.
- ii. **Boost gas production:** Increased investment in NAG projects can lead to a rise in gas production, which is crucial for domestic gas supply and power generation.
- iii. **Stimulate gas utilisation:** Incentives for gas processing and utilisation infrastructure can encourage companies to invest in this area, reducing gas flaring and promoting efficient gas utilisation.

g) Potential limitations in the implementation of the guidelines

- i. **Overlapping incentives and legislative gaps:** The guidelines restrict companies eligible for GTC from receiving other incentives under the Associated Gas Framework Agreement. However, there is ambiguity around how these restrictions interact with existing and future fiscal regimes.
- ii. **Transition challenges from gas tax credit (GTC) to gas tax allowance (GTA):** The transition mechanism from GTC to GTA is outlined for companies that achieve first gas production on or before January 1, 2029. However, the guidelines lack detailed procedures on how companies should manage this transition, especially regarding the documentation and approvals required for the switch.
- iii. **Inadequate clarity on hydrocarbon liquid content (HCL) measurement:** The guidelines stipulate specific eligibility criteria for gas tax credits (GTC) and gas tax allowances (GTA) based on the hydrocarbon liquid content (HCL) in the produced gas. However, the method for determining HCL is only broadly outlined, relying on a dynamic measurement method unless otherwise approved by the NUPRC.

h) Insufficient monitoring and compliance framework: The current guidelines do not provide detailed mechanisms for regular audits and compliance checks. This oversight can lead to companies exploiting the incentives without adhering to the stipulated conditions, thus undermining the guidelines' objectives.

i) Limited scope for capital and gas utilisation allowance (GUIA): The GUIA applies to specific midstream gas operations but does not cover all potential

capital expenditures that could drive gas utilisation. Additionally, the exemption clauses might inadvertently exclude projects that could significantly benefit from these allowances.

- j) **Bureaucratic complexities and inter-agency coordination:** The implementation of the guidelines requires coordination among multiple agencies, including FIRS and NUPRC. This multi-agency involvement can lead to bureaucratic hurdles, delayed approvals, and inconsistent application of the guidelines.

28.34 Frontier exploration fund

a) Frontier exploration fund administration regulations

The objective of these regulations is to provide the general rules for the administration of the Frontier Exploration Fund pursuant to section 9 of the PIA 2021.

b) Frontier Exploration Fund Escrow Account

- i. The Commission shall, within ninety (90) days of the effective date of these Regulations, establish an escrow account called “Frontier Exploration Fund Escrow Account” (the “Escrow Account”) pursuant to section 9(4) of the Act for the purpose of managing the Frontier Exploration Fund.
- ii. The Commission shall be responsible for the administration of the Escrow Account and ensure that funds from the account are applied for the promotion of exploration and development of oil and gas resources in all the frontier basins of Nigeria.

c) The role of the Commission in respect of the Frontier Exploration Fund and promotion of exploration and development in the frontier basins

- i. The Commission shall, following the establishment of the Escrow Account ensure that NNPC Ltd make contributions of the amounts specified in Section 9(5) of the Act in the following manner:
 - With respect to production sharing contracts the amounts pursuant to subparagraph (1) shall be:
 - 30% of the proceeds from the disposal of profit oil at the fiscal price determined by the Commission.
 - 30% of the proceeds from the disposal of profit gas and the natural gas liquid derived there-from at the fiscal price determined by the Commission.
 - The Contributions by NNPC Ltd pursuant to this paragraph shall be made half yearly quarterly.
 - The Commission shall, within six months of the coming into effect of these regulations commence a Frontier basins exploration and development studies program aimed at achieving the following:
- ii. Establishing information data base of all acreages comprised in the frontier basins indicating the acreages that are licenced and the ones that are open

by collecting all existing geological and geophysical data whether such data is with the National Data Repository, Nigerian Geological Survey Agency, any other governmental or private entity.

- iii. The data base shall provide information of the analysis of all geographical, geological and geophysical data relating to both licenced and un-licenced acreages in the Frontier basins.
- iv. Identifying all prospects and leads in both licenced and unlicenced areas of the frontier basins.
- v. Prioritise the prospects and leads in the frontier basins on the basis of prospectively.
- vi. The Commission may at any time where sufficient information is available request NNPC Ltd to submit a program for the drilling and exploration of the most prospective leads identified from the study, which is not subject of an approved drilling and exploration program pursuant to a licence or lease prior to the commencement of these regulations within a time frame specified by the Commission.
- vii. Any drilling and development program submitted by NNPC Ltd in respect of any prospect or lead pursuant to paragraph 3 shall include:
 - a detailed description of the specific activities to be carried out;
 - the commencement and duration of the activities;
 - the objective and projected outcome of the activities;
 - the budget for the activities to be carried out, including the service fee proposed based on the most cost-effective methodology; and
 - the economic and financial model justifying the economic viability of the project or development of any oil and gas resources discovered as a result of the program.
- viii With respect to any prospect or lead in the Frontier basin that the NNPC Ltd did not provide a program of drilling and development within the time specified, the Commission shall delineate such prospects and leads into licence areas and carry out a licencing round for the allocation of such licences in line with the Act and the Licencing round regulations.
- ix The frontier basin exploration and development studies under this paragraph shall be carried out by the Commission or through the endowment of a research program for the specific purpose of enhancing hydrocarbon exploitation in a Nigerian university with relevant track record of expertise in the area. Such studies shall be financed by the Commission from the Frontier Exploration Fund pursuant to sections 9 (1) (d) and 9 (4), or through a collaboration with the Petroleum Technology Development Fund.
- x The funding for the amounts pursuant to sub-paragraphs (5) and (6) hereof shall be from the Frontier Exploration Fund as proposed by the Commission provided that any sums to be paid from the Fund for this

purpose shall be appropriated by the National Assembly prior to the commencement of the studies to which such payments relate.

28.35 Drilling of prospects or leads by NNPC Limited

- a) Where pursuant to section 9(2) of the Act, and these regulations, the Commission request NNPC Ltd to submit a program for the drilling of any identified prospects or leads in the frontier basin, the Commission shall ensure that prior to the approval of any such program:
 - i) any prior petroleum exploration licence relating to the area containing the prospect or lead has expired or is terminated;
 - ii) the Commission has evaluated all relevant data and interpretations of the data relating to the prospects or leads;
 - iii) there is no prior approval of a drilling program in relation to the prospects or leads; and
 - iv) the funds contained in the Escrow Account are sufficient to cover the estimated budget, including the service fees to be paid to NNPC Ltd under the program.
- b) Where the Commission approves a drilling program by NNPC Ltd pursuant to this paragraph, the Commission shall secure the appropriation of the budget for such program by the National Assembly before the commencement of any activity under the program. Provided that where the programme includes a multi well drilling campaign, the Commission shall reappraise such programme at the conclusion from each drilling exercise to determine whether to continue funding for the programme.
- c) NNPC Ltd prior to the commencement of the programme shall apply for a petroleum exploration licence in accordance with the Act, and shall give NNPC Limited a right of first refusal pursuant to section 9(3) of the Act.
- d) Any service fee payable to NNPC Limited pursuant to these paragraphs shall be in accordance with Section 64(k) of the Act.
- e) The budget for any approved drilling program for NNPC Ltd under this paragraph shall be paid for from the Frontier Exploration Fund consequent on prior appropriation by the National Assembly.
- f) Direct utilisation of funds from the Frontier Exploration Fund by NNPC Limited.
 - i. NNPC Ltd may, pursuant to Section 9(5) of the Act, at any time upon the establishment of the Escrow Account by the Commission present a request to the Commission in a form prescribed for approval to carry out exploration and development activities in an acreage in any of the frontier basins in Nigeria and to fund such activities from the Frontier Exploration Fund.
 - ii. A request for approval by NNPC Ltd pursuant to this paragraph may be for exploration and development activity in a frontier acreage that is not under a licence or lease.

- iii. The Commission may approve such request and grant NNPC Ltd a Petroleum Exploration Licence pursuant to the Act and the Licencing Round Regulations where:
- NNPC Ltd presents a detailed exploration and development program including the geological, geophysical and economic data and analysis justifying the application; and
 - the Commission is satisfied that the request merits approval.
- g) Where NNPC Ltd makes a discovery meriting appraisal pursuant to a petroleum exploration licence granted, the Commission shall require NNPC Ltd to exercise its option of a right of first refusal under the Petroleum Exploration Licence and where NNPC Ltd exercises that option, it shall comply with the requirements of the Act and the Acreage Management, Drilling and Production Regulations in respect of the acquisition of Petroleum Prospecting Licences or Petroleum Mining Leases as the case may be.
- h) Where the NNPC Ltd refuses to exercise its option of right of first refusal, the Commission shall have the right to offer the area to a third party in a licencing round.
- i) Where the Commission grants approval to NNPC Ltd pursuant to this paragraph, NNPC Ltd shall submit to the Commission a report of all of its activities relating to the approval and the Commission shall publish such report annually on its website in order to provide information relating to frontier basins to interested investors.
- j) Any petroleum prospecting licence or petroleum mining lease granted to NNPC Ltd or any third party in respect of frontier basins pursuant to these regulations shall be subject to the fiscal terms for frontier basin acreages in Nigeria under the Act.

28.36 Frontier Basin Exploration and Development Plan Committee

The Frontier Committee shall:

- a) prepare the annual FBED Plan for the approval of the Board of the Commission;
- b) prepare the financial proposal for the funding of the activities contained in the annual FBED Plan, which shall upon approval by the Board of the Commission, be the basis of the appropriation request by the Commission to the National Assembly on funding of activities in the frontier basins for the year;
- c) prepare, where directed by the Board of the Commission, additional financial proposals, which shall be the basis of any supplementary budgetary approval by the National Assembly in the year under review;
- d) prepare the guidelines for the Commission, selection criteria of third party contractors other than NNPC Limited, to perform any activity in the frontier acreages in relation to the functions of the Commission pursuant to section 9 of the Act;

- e) implement the annual FBED Plan;
- f) present to the Board of the Commission, a quarterly report on the implementation of the FBED Plan, including details of every expenditure in the quarter under review; and
- g) carry out quarterly performance review of NNPC Limited's activities and performance in relation to NNPC Limited's work programs for exploration in the frontier basins approved by the Commission.
- h) The Frontier Committee shall comprise of the:
 - i. Commission Chief Executive, who shall be the Chairman;
 - ii. Executive Commissioner, Exploration and Acreage Management;
 - iii. Executive Commissioner, Economic Regulation and Strategic Planning;
 - iv. Executive Commissioner, Development and Production;
 - v. Executive Commissioner, Health, Safety, Environment and Community;
 - vi. Commission's Secretary and Legal Adviser;
 - vii. Head of Exploration;
 - viii. Head of Acreage Management; and
 - ix. any other officer of the Commission that the Commission Chief Executive may designate in writing.

The Frontier Committee may carry out its function under these Regulations through relevant technical committees comprised of officers of the Commission as may be necessary.

- a) The Commission shall, pursuant to section 9 of the Act and these Regulations establish a Frontier Basin Data Catalogue, which shall comprise of:
 - i. existing geophysical and geological data;
 - ii. gravity data;
 - iii. electromagnetic data;
 - iv. full tension gradiometer data;
 - v. aeromagnetic data;
 - vi. non-conventional data; and
 - vii. any other data as the Commission may determine.
- b) The Frontier Basins Data Catalogue shall be hosted in the National Data Repository and shall be in the form prescribed by the Commission.
Any data relating to the frontier basin in the custody of any government agency or acquired by third party under any licence, approval or authorisation before the coming into effect of the Act shall be included in the Frontier Basin Catalogue.
- c) The data catalogue established pursuant to sub-regulation (1) of this regulation shall provide:
 - i. the record of the surveys, logs, well reports, analysis, interpretations, reports, studies, evaluations and any other relevant information obtained on the basis of data sets contained in the catalogue;
 - ii. names of all prospects and leads in both licenced and unlicenced areas within the frontier basins;
 - iii. list of all prospects and leads based on their prospectivity and priority; and

- iv. a technical and commercial basis required for a petroleum exploration licence to be granted to a prospective licensee to carry out exploration activities relating to any of the leads and prospects in the frontier basins.
- d) The Commission shall:
 - i. identify all prospects and leads in both licenced and unlicenced areas within the frontier basins;
 - ii. create a priority list of all the prospects and leads in the frontier acreage, on the basis of their prospectivity; and
 - iii. establish the technical and commercial basis for issuing petroleum exploration licences to prospective licensees to carry out exploration activities in the frontier basins.

28.37 Tax regime applicable to marginal field operators

Section 94 of the PIA 2021 defines a marginal field as a field or discovery which has been declared a marginal field prior to January 1, 2021 or which has been lying fallow without activity for 7 years after its discovery prior to the effective date.

Two categories of marginal fields were identified in PIA. These are:

- (a) Producing marginal fields; and
- (b) Non-producing marginal fields.

Producing marginal fields are fields already producing prior to January 1, 2021. for this type of field, the PIA allows the operators to continue under the original royalty rates and term. Automatic conversion to petroleum mining lease (PML) is required by PIA within 18 months of the enactment of PIA.

Non-productive marginal fields are fields declared marginal fields prior to January 1, 2021, but which are not producing. These fields are required by PIA to be converted to a petroleum producing licence (PPL) for onshore and shallow water acreages and which will be valid for a maximum period of 6 years (that is, initial period of 3 years and an optional extension of 3 years).

The holder of a marginal field with mining lease is expected to transfer to the government within 3 years of coming to effect of PIA, otherwise would have to provide a field development plan or farm-out the field, with the permission of the Commission.

For the field that has been transferred to the government, the Commission has the right to offer a petroleum prospecting licence (PPL) for the surrendered field under a fresh bid round.

However, the PIA no longer provides for new discovery fields to be declared as marginal fields.

28.38 Decommissioning and Abandonment Fund

Section 233 of the PIA mandates every lessee and licensee to set up, maintain and manage a decommissioning and abandonment fund to be exclusively used to pay for decommissioning and abandonment costs. It also provides that the yearly contributions to the fund will be tax deductible expense.

The PIA has committed the supervisory jurisdiction for the regulation of decommissioning and abandonment in the upstream sector to the Nigerian Upstream Petroleum Regulatory Commission (the “Commission”), while decommissioning and abandonment involving midstream and downstream operations will be regulated by the Nigerian Midstream and Downstream Petroleum Regulatory Authority (the “Authority”).

Uses of the fund

- i. The decommissioning and abandonment fund shall be exclusively used to pay for decommissioning and abandonment costs.
- ii. The licensee shall have access to the fund only upon receipt of the written approval from the Authority pursuant to approval to undertake the decommissioning and abandonment programme and shall use such funds only for conducting approved decommissioning and abandonment plan.
- iii. Where there is an excess in the fund after the decommissioning and abandonment has been carried out and approved by the Authority, the excess shall be considered income for production sharing or tax purposes and the amount after the withholding of profit oil and any tax shall be returned to the licensee.
- iv. Where the fund is not sufficient to cover the decommissioning and abandonment expenditure, the licensee shall cover such difference to fulfil the obligations in full.

Notwithstanding the provision of section 233(1) of the Petroleum Industry Act, 2021, in section 86(1) of NTA, 2025, a provision made for decommissioning and abandonment fund shall not be deductible for tax purposes, except:

- (a) the licensee or lessee deposits a minimum of 15% of the decommissioning and abandonment fund with a Nigerian Bank, in the form of an escrow account accessible by the Commission or Authority; and
- (b) the Nigerian bank shall confirm the deposit.
- (c) the above and the provisions of the Petroleum Industry Act, 2021, shall not apply to holders of an oil prospecting licence or oil mining lease who do not enter into a conversion contract until the termination or expiration of the respective oil prospecting licence or oil mining lease.

Sub-section 2 provides that notwithstanding subsection (1) of this section, the provisions of Chapter Two of this Act and paragraph 6 of the Seventh Schedule to the Petroleum Industry Act, 2021, shall apply to licences and leases awarded to indigenous Nigerian companies on a sole risk basis under the Petroleum Industry Act, 2021, on which the Government has successfully exercised its back-in rights prior to the effective date of the Petroleum Industry Act, 2021, but any renewal of an oil mining lease shall be based on the provisions of this Part and the Petroleum Industry Act, 2021.

In sub-section 3, the fiscal provisions of this part are the base terms that are applicable, and the Commission may under section 74 (2) of Petroleum Industry Act, 2021, conduct a licensing round whereby the bid parameter is a higher royalty, profit oil share or other fiscal features in order to ensure that the Government receives the full market value for each block.

28.39 Petroleum royalty

The Petroleum Industry Act, 2021 (PIA) introduces both production-based and price-based royalties for crude oil and condensates, as well as a distinct royalty regime for natural gas. This is also validated by section 89 of the NTA, 2025 and Seventh Schedule to the Act.

Royalties payable shall be determined on a monthly basis in the case of:

- (a) crude oil and condensates: the royalties shall be based on production and by price; and
- (b) Natural gas and natural liquids: the royalties shall be based on production.

Provided that condensates shall be treated as crude oil and natural gas liquids shall be treated as natural gas for the purpose of the Act.

The assessment outlines the applicable rates and illustrates how royalties are calculated under various production and price scenarios.

a) Royalties based on production volumes (for crude oil and natural gas)

This is calculated on a field basis and it shall be a rate per centum of the chargeable volume of the crude oil and condensates produced from the field area in the relevant month on terrain basis as shown below:

Location	Royalty rate
Onshore areas	15%
Shallow waters (up to 200m water depth)	12.5%
Deep offshore (beyond 200m water depth)	7.5%

Frontier basins

7.5%

However, for deep offshore fields with a production during a month of not more than 50,000 bopd, royalty rate shall be 5% and the share of the production above 50,000 bopd shall be at the royalty rate specified above.

b) Royalties based on price

A royalty by price with respect to crude oil and condensates shall be payable as shown below:

Brent price per barrel	Royalty rate
Below \$50	0%
At \$100	5%
At \$150	10%

Between \$50 and \$100 per barrel or \$100 and \$150 per barrel, the royalty by price is to be determined based on linear interpolation.

There shall be no royalty by price for frontier acreages and royalty derived from “royalty by price” shall be for the credit of the Nigerian Sovereign Investment Authority.

28.40 The Establishment, Funding, and Utilisation of the Host Community Fund

a) Introduction

The Petroleum Industry Act, 2021 introduces the Petroleum Host Community Development (PHCD) under Section 234 of the Act. The Host Community Development Trust was introduced by the Act to aid in the development of the economic and social infrastructure of communities in the petroleum-producing areas and this article aims to elaborate on the establishment and procedure for host community development fund. The objectives of the Host Community under **Section 234** of the Act are as follows:

- i. to foster sustainable prosperity within host communities;
- ii. to provide direct social and economic benefits from petroleum operations to host communities;
- iii. to enhance peaceful and harmonious co-existence between licensees or lessees and host communities; and
- iv. to create a framework to support the development of host communities.

b) Regulations of the host communities development trust

The Nigerian Upstream Petroleum Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority are empowered under the PIA, 2021 to make regulations in respect to host communities on areas within their competence and jurisdiction. Such regulation includes a grievance mechanism to resolve disputes between settlers and host communities; the regulations shall include the ability to make the adjustments to reduce expenditures where the available funds for the administration are insufficient to fund the ongoing operations by doing the following:

- i) reduce the number of members of the Board of Trustees and frequency of meetings;
 - ii) not fund the reserve fund nor hire fund manager;
 - iii) reduce the number of members of the management committee and the frequency of meetings; and
 - iv) reduce the frequency of meetings of the host community advisory committee.
- c) The Section 235 of the Act also provides for the incorporation of host communities development trusts by the settler for the benefit of host communities which the settlor is responsible for. For the purpose of setting up the trust, the settler in consultation with the host communities shall appoint and authorise a Board of Trustees to be registered by the Corporate Affairs Commission as a corporate body under the Companies and Allied Matters Act.

d) Timeline for setting up the Trust

Under **Section 236** of the Act, the Trust is required to be incorporated;

- i. within 12 months from the effective date of existing oil mining leases;
- ii. within 12 months from the effective date for existing designated facilities;
- iii. within 12 months from the effective date for existing new designated facilities under construction;
- iv. prior to the application for a field development plan for existing oil prospecting license;
- v. prior to the application for any field development plan under a petroleum prospecting license or product mining lease granted under the Act; or
- vi. prior to the commencement of commercial operations for licenses of designated facilities granted under the Act, etc.

Failure of the holder of a license or lease to comply with its obligations as stated above may be grounds for the revocation of the applicable license or lease as provided under Section 238 of the Act.

e) Objectives of the Host Community Development Trust

Section 239 of the Act provides that the Constitution of the host community development trust shall allow the host communities development trust to manage and supervise the administration of the annual contribution of the settler as contemplated under the Act and any other sources of funding. The objectives

of the Trust as provided under **section 239 (3)** are to be specified in the Constitution and it shall include the following;

- i. to finance and execute projects for the benefit and sustainable development of the host communities;
- ii. undertake infrastructural development of the host communities within the scope of funds available to the Board of Trustees for such purposes;
- iii. facilitate economic empowerment opportunities in the host communities;
- iv. advance and propagate educational development for the benefit of members of the host communities;
- v. support healthcare development for the host communities;
- vi. support local initiatives within the host communities, which seek to enhance the protection of the environment;
- vii. support local initiatives within the host communities which seek to enhance security;
- viii. invest part of the available fund for and on behalf of the host communities; and
- ix. assist in any other developmental purpose deemed beneficial to the host communities as may be determined by the Board of Trustees.

f) Sources of Funding for Petroleum Host Communities Development Trust

- i. **Section 240** of the Act states that the Constitution of each host community shall establish a fund comprising of more than one account ("host communities development trust fund") to be funded under this Act. Each settler through the operator is required to make an annual contribution of 3% of its actual operating expenditure of the proceeding financial year in the upstream petroleum operations affecting the host communities for which the applicable host community's development trust fund was established.
- ii. Each host community's development trust may also receive donations, gifts, grants, or honoraria that are provided to the communities for the attainment of its objectives.
- iii. Profits and interest accruing to the reserve fund of the host communities' development trust shall also be distributed to the applicable host communities' development trust fund.

g) Allocation of Funds for Petroleum Host Communities Development Trust

Under **Section 244** of the Act, the Board of Trustees shall in each year allocate from host communities development trust fund a sum equivalent to:

- i. 75% of the capital fund out of which the Board of Trustees shall make disbursement for projects in each of the host communities as may be determined by the management committee in furtherance of its objectives provided that any sums not utilised in a given financial year will be rolled over and utilised in subsequent years;

- ii. 20% to the reserve fund, which sums shall be invested for the utilisation of the host communities development trust whenever there is a cessation in the contribution payable by the settler; and
- iii. an amount not exceeding 5% to be utilised solely for the administrative cost of running the trust and special projects which shall be entrusted by the Board of Trustees to the settler, provided that at the end of each financial year, the settler shall render a full account of the utilisation of the fund to the Board of Trustees and where any portion of the fund is not utilised in a given year, it shall be returned to the capital fund.

The settler is required to provide to the Board of Trustees a matrix for the distribution of the trust fund to the host communities as provided under **Section 245** of the Act. Fund Managers are also to be engaged to invest in the reserve fund as the fund accrues. The financial year of the host communities' development trust shall commence on January 1, and end of December 31, of each year or date set for the purpose by the Board of Trustees as provided under **Section 253** of the Act.

28.41 Fiscal stabilisation

- (1) Fiscal stabilisation sections contained in a production sharing contract or other contracts entered into after the commencement of the Petroleum Industry Act, 2021, shall not be applicable to the fiscal provisions listed in this part, regardless of whether the changes in fiscal provisions affect the contractor favourably or unfavourably, provided such changes in fiscal provision are being made in a manner that is not discriminatory to the petroleum industry or the contractor.
- (2) The respective fiscal provisions referred to in subsection (1) of this section are:
 - (a) generally applicable taxes, such as income tax, development levy, value added tax, stamp duties, and deduction of tax at source;
 - (b) levies, taxes or payments to comply with modern principles in respect of environment, labour laws, health and safety; and
 - (c) new taxes, levies or duties as may be prescribed by the Climate Change Act, or to implement Nigeria's commitments with respect to climate change under any international agreement.

28.42 Offences and penalties applicable to petroleum companies

The following provisions are applicable for offences and penalties on petroleum operations as stipulated in Chapter IV, Part II of NTAA, 2025.

Failure to file estimated and actual returns on due date

S. 128 (1), provides that a company which fails to file any of the estimated or actual returns under this Act on the due date is liable to pay for late filing for each of the returns not filed, a penalty of:

- (a) ~~₦~~10,000,000 on the first day the failure occurs and ~~₦~~2,000,000 for each subsequent day in which the failure continues; or
- (b) any other sum as may be prescribed by the Minister by order published in the Official Gazette.

(2) Where further returns for estimated tax provided for under section 16 of this Act is not made, the Service shall impose interest at the prevailing Secured Overnight Financing Rate (SOFR) or any other successor rate plus 10% points for the differential of the revised tax over the estimated tax paid by the company.

Late payment of tax (S. 129)

(1) Where any tax, royalty or remittance due from a company involved or engaged in upstream petroleum operations is not paid on the due date, it shall be a debt and:

- (a) a sum equal to 10% of the amount payable shall be added to the tax, royalty or remittance due;
- (b) in the case of a foreign currency transaction, the tax, royalty or remittance due shall incur interest at the prevailing SOFR or any other successor rate plus 10%; or
- (c) in the case of transactions in Naira, the tax, royalty or remittance due shall incur interest at 2% above the prevailing Central Bank Monetary Policy Rate.

(2) In addition to the provisions of subsection (1) of this section, the licensee or lessee shall be liable to:

- (a) ~~₦~~10,000,000 or US Dollar equivalent on the first day of the failure to pay the tax, royalty or remittance; and
- (b) ~~₦~~2,000,000 or US Dollar equivalent for each day in which the failure continues.

(3) Notwithstanding the provisions of subsections (1) and (2), the Service may, with the assistance of the Commission or Authority:

- (a) distraint the licensee or lessee of its oil well, crude oil, condensates, natural gas or natural gas liquid, petroleum products, engines, machinery, tools, implements or other effects; or
- (b) cancel, revoke, seize, distraint or dispose the licenses or rights of the holder.

Failure to comply with the requirement of notice (S. 130)

(1) A person that fails to:

- (a) comply with the requirements of a notice served under Chapter Two of this Act;
 - (b) appear in response to a notice or summons served under this Act, without sufficient cause or having appeared, fails to answer any lawful question; or
 - (c) submit any return required to be submitted under the relevant provisions of this Act, is liable to an administrative penalty of ₦10,000,000 and where the default continues beyond the period stipulated by this Act, the person shall be liable to a further administrative penalty of ₦2,000,000 or such other sum as may be prescribed by the Minister, for each day the default continues.
- (2) Notwithstanding the provisions of subsection (1) of this section, a person who is found guilty of an offence under this section shall on conviction, be liable to a fine of ₦20,000,000 or other sum as may be prescribed by the Minister by an order and where the offence continues beyond the period stipulated by this Act, the person shall be liable to an additional fine of ₦2,000,000 or such other sum as may, by order, be prescribed by the Minister for each day the default continues, or imprisonment for a term of six months.

Incorrect accounts (S. 131)

- (1) A person who without reasonable excuse:
- (a) makes up or causes to be made up any incorrect accounts by omitting or understating any profits or overstating any losses which is required under this Act to make up accounts;
 - (b) prepares or causes to be prepared any incorrect schedule or statement required to be prepared under section 17 of this Act by overstating any expenditure or overstating any royalties or other sums or by omitting or understating any amounts repaid, refunded, waived or released; or
 - (c) gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to tax, is liable to an administrative penalty of ₦15,000,000 and 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or information or would have been so undercharged if the account, schedule, statement or information had been accepted as correct, whichever is higher, and is also liable for the appropriate tax which would have been charged.
- (2) Notwithstanding the provisions of subsection (1) of this section, a person who gives or causes to be given any false or misleading information in relation to any matter or thing affecting his liability to tax, commits an offence and on conviction is liable to a fine of ₦15,000,000 and 1% of the amount of tax which has been undercharged in consequence of such incorrect account, schedule, statement or

information, or would have been so undercharged if the account, schedule, statement or information had been accepted as correct, whichever is higher, and is also liable for the appropriate tax which would have been charged.

False statement and returns (S. 132)

- (1) A person who:
 - (a) for the purpose of obtaining any deduction, refund, rebate, reduction or repayment in respect of petroleum profits tax, hydrocarbon tax or income tax by upstream companies, for himself or for any other person or who in any return, account, particulars or statement made or furnished with reference to tax, knowingly makes any false statement or false representation or forges or fraudulently alters or uses or fraudulently lends or allows to be used by any other person any receipt or token as evidence for payment of the tax under this Act; or
 - (b) aids, abets, assists, counsels, incites or induces any other person:
 - (i) to make or deliver any false return or statement under this Act;
 - (ii) to keep or prepare any false accounts or particulars affecting tax; or
 - (iii) unlawfully refuses or neglects to pay tax, commits an offence and is liable on conviction to a fine of ₦15,000,000 and 1% of the amount of tax for which the person assessable is liable under this Act, whichever is higher, for the accounting period in respect of or during which the offence was committed, or to imprisonment for six months or to both the fine and imprisonment and is also liable for the appropriate tax which would have been assessed and charged.
- (2) Notwithstanding the provisions of subsection (1) of this section, any person who does any of the acts or makes the omissions contained in subsection (1) of this section, is liable to an administrative penalty of ₦15,000,000 or 1% of the amount of tax for which the person assessable is liable under this Act whichever is higher, for the accounting period in respect of or during which the act or omission occurred and shall still be liable for appropriate tax which would have been assessed and charged.

Offences by authorised and unauthorised persons (S. 133)

A person who being a member of the Service charged with the administration of this Act or any assistant employed in connection with the assessment and collection of the hydrocarbon tax who:

- (a) demands from any person an amount in excess of the authorised assessment of the tax payable;
- (b) withholds for his own use or otherwise any portion of the amount of tax collected;

- (c) renders a false return, whether verbal or in writing of the amounts of tax collected or received by him;
- (d) defrauds any person, embezzles money or otherwise uses his position to deal wrongfully with the Service or any other individual; or
- (e) not being authorised under this Act, collects or attempts to collect the tax under this Act, commits an offence and is liable on conviction to a fine equivalent to 200% of the sum in question or to imprisonment for a term not exceeding three years or both fine and imprisonment.

Default in payments of petroleum royalties (S. 134)

Where any petroleum royalty due and payable under this Act remains unpaid for 30 days after the due date, the provisions of section 123 of this Act shall apply.

General penalty in relation to petroleum operations (S. 135)

- (1) Any person that fails to comply with the provisions of this Part, Chapter Three of Nigeria Tax Act, 2025, or any relevant regulations for which no penalty is specifically provided, is liable to an administrative penalty of ₦10,000,000 and where the default continues, beyond a period stipulated by law or regulation, the person is liable to an administrative penalty of ₦2,000,000 for each day the default continues, or such other sum as may, by order be prescribed by the Minister.
- (2) Notwithstanding the provision of this section, a person who is found guilty under this Part of this Act or regulations made thereunder for which no other penalty is specifically provided shall upon conviction be liable to a fine of ₦20,000,000 or such other sum as may, by order, be prescribed by the Minister, or imprisonment for six months or both fine and imprisonment.

Contravention of surcharge provisions (S. 136)

- (1) Any person who contravenes the provisions of section 24 of this Act or fails to comply with provisions made for the administration of surcharge under this Act or the Nigeria Tax Act, 2025, is liable to an administrative penalty of ₦10,000,000.
- (2) A taxable person who fails to pay surcharge as provided in the Nigeria Tax Act, 2025, shall be liable to a sum equal to 10% of the amount payable in addition to the surcharge due, and interest at the prevailing Central Bank Monetary Policy Rate.

Obstruction of an authorised officer and refusal to grant immediate entry (S. 137)

In line with S. 137, a person who refuses to grant immediate access or entry to an authorised officer in the exercise of the powers under section 58 or 59 of this Act, is liable to an administrative penalty of ₦1,500,000 or on conviction, to imprisonment not exceeding one year, or to both penalty and imprisonment.

28.43 Registration and filing of returns by petroleum companies

28.43.1 Income Tax returns for companies

Part I of Chapter 2 of the Nigeria Tax Administration Act (NTAA), 2025 provides that:

Section 11(1): Every company, including a company granted exemption from incorporation, whether or not it is liable to pay tax under Nigeria Tax Act, 2025, or any

other tax law, for a year of assessment, with or without notice from the Service, shall file a self-assessment return with the Service in the prescribed form at least once a year and such return shall contain:

- (a) a duly completed self-assessment form as may be prescribed by the Service;
- (b) the audited financial statements, tax and capital allowances computation for the year of assessment in respect of the profit from each and every source computed:

Provided that the return of a small company may contain a statement of accounts attested to by the taxpayer in place of audited financial statements;

- (i) evidence of payment of the tax due;
- (ii) computation of the effective tax rate and additional tax payable, where applicable; and
- (iii) an attestation of the information contained in the tax returns signed by a principal officer of the company.
- (iv) Where a company permanently ceases operation in Nigeria, the company shall file the returns for the year of cessation and any outstanding return.

28. 43.2 Time of filing returns

Section 11(5) provides that subject to this NTAA, 2025, any tax law or regulation, the time of filing returns shall be:

- (a) in the case of a company that has been in business for more than 18 months, not more than six months after the end of its accounting year;
- (b) in the case of a newly incorporated company, within 18 months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever is earlier; or
- (c) in the case of a company that permanently ceases to carry on trade or business in Nigeria, not later than six months from the date the company permanently ceases to carry on the trade or business in Nigeria.

Section 11(6) further provides that:

- (a) every company shall designate a representative or representatives who shall attend to its tax matters; and
- (b) where a person designated by a company under paragraph (a) is a paid agent, such person shall be an accredited tax agent as provided in this Act.

28.43.3 Estimated income tax returns for companies engaged in liquefied natural gas (section 12, NTAA)

- (1) Not later than two months after the commencement of each accounting period of any midstream company engaged in liquefied natural gas, the company shall submit to the Service an estimated returns of its profits or losses for that accounting period for the purpose of income tax.
- (2) The estimated tax returns shall contain:
 - (a) a computation of its estimated revenue, adjusted profit or loss and estimated assessable profits of that period;
 - (b) a computation of its estimated revenue from all sources including plants condensates, natural gas liquids, liquefied natural gas, liquefied petroleum gas and any other incidental income;
 - (c) a statement of an estimate of amounts to be repaid, refunded, waived or released to it, referred to in section 68 (2) of the Nigeria Tax Act, 2025, during that period;
 - (d) In connection with Part I of the First Schedule to the Nigeria Tax Act, 2025, a schedule showing:
 - (i) the estimated residues at the end of that period in respect of its assets, all estimated qualifying capital expenditure incurred by it in that period;
 - (ii) the values of its assets, estimated by references to the provisions of that schedule, to be disposed of in that period;
 - (iii) the allowances due to it under that schedule for that period; and
 - (iv) a computation of estimated capital allowances for the period;
 - (e) a computation of its estimated total profits of that period;
 - (f) a computation of its estimated tax payable for that period; and
 - (g) a declaration, that the estimate was made to the best of the ability of the person signing the declaration.
- (3) Where, at any time during the accounting period, there is a material change in any of the parameters, the company shall submit a revised return to reflect the change for such period.
- (4) Every return made by a company engaged in liquefied natural gas operations in fulfilment of the provisions of this section shall be subject to review and validation by the Service.

- (5) Where a company does not provide the estimates required under subsection (1), (2) and (3), of this section, the Service may determine the estimates payable by the company on the best of judgement basis.

28.43.4 Estimated returns for upstream petroleum operations (section 16, NTAA, 2025)

- (1) Not later than two months after the commencement of each accounting period of any company engaged in petroleum operations, the company shall submit to the Service an estimated returns of its profits or losses for that accounting period for the purpose of Hydrocarbon Tax, Petroleum Profits Tax and Income Tax, as applicable.
- (2) Any company involved in upstream petroleum operations and subject to Hydrocarbon Tax or Petroleum Profits Tax, shall apply the accounting periods specific to such companies as contained in this Act.
- (3) The estimated tax returns shall in addition to the particulars requested for the purpose of determining estimated tax payable under Parts I and II of Chapter Three of the Nigeria Tax Act, 2025, contain:
- (a) a computation of its estimated revenue, adjusted profit or loss and estimated assessable profits of that period;
 - (b) a computation of its estimated revenue from all sources including crude oil, field condensates and liquid natural gas liquids derived from associated and non-associated gas produced upstream of the measurement points;
 - (c) a statement of an estimate of amounts to be repaid, refunded, waived or released to it, referred to in sections 68 (2) and 91(2) of the Nigeria Tax Act, 2025, during that period;
 - (d) in connection with Parts II and III of the First Schedule to the Nigeria Tax Act, 2025, a schedule showing:
 - (i) the estimated residues at the end of that period in respect of its assets;
 - (ii) all estimated qualifying petroleum expenditure incurred by it in that period;
 - (iii) the values of its assets, estimated by references to the provisions of that schedule, to be disposed of in that period; and
 - (iv) the allowances due to it under that schedule for that period;
 - (e) in connection with the Sixth Schedule of the Nigeria Tax Act, 2025 a schedule showing estimated total production allowance and cost price ratio limits from all its upstream petroleum operations related to crude oil on the two classes of the chargeable profits;

- (f) a computation of its estimated chargeable profits of that period identified in accordance with the Nigeria Tax Act, 2025;
 - (g) a computation of its estimated tax payable for that period; and
 - (h) a declaration, that the estimate was made to the best of the ability of the person signing the declaration.
- (4) Where, at any time during the accounting period, there is a change in price, cost or volume, the company shall submit further returns on a monthly basis containing its revised estimated tax for such period.
 - (5) Every return made by a company engaged in upstream petroleum operations related to crude oil and gas in fulfilment of the provisions of this section shall be subject to review and validation by the Service.
 - (6) Where a company does not provide the estimates required under subsections (1), (2) and (3), of this section, the Service may use its power to determine the estimates on the best of judgement basis and impose such judgement on the company.
 - (7) Notwithstanding the provisions of this section, production allowances under the Sixth Schedule to the Nigeria Tax Act, 2025 shall apply only to Hydrocarbon Tax under Part I of Chapter Three of the Nigeria Tax Act, 2025.

28.43.5 Actual returns for upstream petroleum operations

Section 17 provides as follows:

- (1) Every company engaged in upstream petroleum operations, including companies yet to commence bulk sales or disposal of chargeable oil, shall file with the Service its audited accounts and returns within:
 - (a) 18 months from the date of its incorporation, in the case of a newly incorporated company; and
 - (b) five months after any period ending on December 31, in the case of any other company.
- (2) Every company under subsection (1) of this section, shall for each accounting period of the company make up accounts of its revenue and profits or losses and prepare the following particulars for the purpose of determining its Hydrocarbon Tax, Petroleum Profits Tax and Income Tax under Parts I and II of Chapter Three of the Nigeria Tax Act, 2025:
 - (a) a statement of its revenues from all sources, including lifting details of crude oil, field condensates and liquid natural gas liquids derived from associated gas and produced upstream of the measurement points;
 - (b) computations of its actual revenue adjusted profit or loss and actual assessable profits of that period;
 - (c) a statement of amounts repaid, refunded, waived or released to it, referred to in section 68 (2) and 91(2) of the Nigeria Tax Act, 2025 during that period;

- (d) in connection with the Parts II and III of the First Schedule to the Nigeria Tax Act, 2025 a Schedule showing:
 - (i) the residue at the end of that period in respect of its assets;
 - (ii) all qualifying petroleum expenditure incurred by it in that period;
 - (iii) the values of any of its assets disposed of in that period; and
 - (iv) the allowances due to it under that Schedule for that period;
 - (e) in connection with the Sixth Schedule to the Nigeria Tax Act, 2025, a Schedule showing total production allowance and cost price ratio limit from all its upstream petroleum operations related to crude oil on the two classes of chargeable profits where applicable;
 - (f) a computation of its actual chargeable profits for that period for the two classes of chargeable profits where applicable identified in accordance with Nigeria Tax Act, 2025;
 - (g) a computation of its chargeable tax payable for that period;
 - (h) duly completed self-assessment forms attested to by the principal officer of the company; and
 - (i) evidence of payment of the final instalment.
- (3) Every company engaged in upstream petroleum operations related to crude oil after the expiration of that period, shall deliver to the Service:
- (a) a copy of its audited accounts of that period, in accordance with subsection (1) of this section;
 - (b) copies of the particulars referred to in subsection (2) of this section relating to that period with the copy of the delivered company accounts; and
 - (c) a declaration signed by an authorised officer of the company or by its liquidator, receiver or the agent of the liquidator or receiver, that the information provided is true and complete.

28.43.6 Monthly returns of petroleum royalty (section 18)

- (1) Every licensee or lessee engaged in petroleum operations upon the coming into effect of this law, or upon commencement of production, whichever is earlier, shall file a self-assessment return of royalty with the Service in the prescribed form.
- (2) The returns of royalty for each month shall be filed on or before the 14th day of the following month, whether or not production has taken place, and shall be accompanied by the following:
 - (a) the respective total volumes of crude oil, condensates, natural gas and natural gas liquids produced on a field-by-field basis and where different types of petroleum are produced, the total volumes of each type;
 - (b) the fiscal prices for crude oil, condensates, natural gas and separately produced natural gas liquids;

- (c) computation of royalty based on production;
 - (d) computation of royalty by price;
 - (e) duly completed royalty self-assessment form;
 - (f) evidence of payment of royalty due; and
 - (g) such other information as may be required by the Service.
- (3) The returns referred to in subsection (2) of this section shall be signed by an authorised officer of the company, stating that the returns, schedules, statements, and other information given is correct and complete to the best of the person's knowledge.
- (4) Where marketable natural gas is produced and utilised in-country, the lessee or licensee shall, in addition to subsection (2) of this section, provide the following information:
- (a) the volume of domestic gas delivered;
 - (b) the volume of gas destined for export project;
 - (c) destination certificates based on the related purchase and sales agreements or other relevant information; and
 - (d) destination certificates where the lessee sells natural gas to a supplier or wholesale customer.
- (5) The Service shall review the royalty returns filed and may reassess where necessary the royalty payable and any additional royalty shall be paid within 30 days of service of a notice of assessment of such additional royalty.
- (6) The provisions of this Act as to notice of assessment, additional assessment, appeals and other proceedings, shall apply to an assessment or additional assessment made under this section.

28.43.7 Annual returns of petroleum royalty

Section 19, NTAA, 2025 provides that every licensee or lessee shall file an annual return of actual royalty paid in an accounting period not later than five months from the end of the accounting period in the form prescribed by the Service.

28.43.8 Monthly returns of mineral royalty (section 20)

- (1) Every person engaged in the trade or business of mining, shall upon the coming into effect of this Act or upon commencement of operations, file a monthly self-assessment return of minerals royalty with the Service in the prescribed form.
- (2) Pay the correct royalty due to the government on the minerals sold or used at the prescribed rate in the Ninth Schedule to the Nigeria Tax Act, 2025.
- (3) The returns of royalty for each month shall be filed on or before the 21st day of the following month, and shall be accompanied by the following:
 - (a) registered number of quarrying or mining licences;

- (b) type of mineral and weight;
 - (c) location and labour used;
 - (d) quarriable minerals in metric tons or cubic metres;
 - (e) quantity of mineral won, sold, used and left on hand;
 - (f) buyers of minerals;
 - (g) computation of royalty payable on the mineral won, used or sold;
 - (h) duly completed royalty self-assessment form;
 - (i) evidence of payment of royalty due;
 - (j) a declaration signed by an authorised officer of the company, stating that the returns, schedules, statements, and other information given is correct and complete to the best of the person's knowledge; and
 - (k) such other information as may be required from time to time by the Service.
- (4) The Service shall review the royalty returns filed and may reassess where necessary the royalty payable and any additional royalty shall be paid within 30 days of service of a notice of assessment of such additional royalty.
- (5) The provisions of this Act as to notice of assessment, additional assessment, appeals and other proceedings, shall apply to an assessment or additional assessment made under this section.

28.43.9 Self-assessment of tax payable (section 34)

- (1) Every taxable person shall, on or before the due date, submit a self-assessment tax return with the relevant tax authority in accordance with the relevant provisions of this Act.
- (2) A taxable person who has submitted a self-assessment return in the prescribed form for a reporting period is deemed to have made an assessment of the amount of tax payable, including a negative or nil amount, for the reporting period to which the return relates.
- (3) A tax return in the approved form completed and submitted electronically by a taxable person is a self-assessment, notwithstanding that:
- (a) the form contains pre-entered information supplied by the tax authority; and
 - (b) an estimate of the tax payable is computed electronically as information is being entered into the form.
- (4) Where a taxable person has delivered a tax return, under subsection (1) of this section, the relevant tax authority may:
- (a) accept the tax return without making an additional assessment;

- (b) accept the tax return and make additional assessment; or
 - (c) reject the tax return and, to the best of its judgement, determine the amount of the tax due from the taxable person and make an assessment accordingly.
- (5) Where the taxable person fails to declare the true and correct amount of income or tax payable in its self-assessed tax returns, the taxable person is liable to pay any outstanding tax from the due date of the returns.
- (6) The outstanding tax shall be subject to penalty and interest, in accordance with the provisions of this Act or other relevant tax laws from the date the return becomes due.

28.43.10 Administrative assessments (section 35)

- (1) Where a taxable person has not delivered a tax return as provided under this Act, and the relevant tax authority is of the opinion that such taxable person is liable to pay tax, it may, to the best of its judgement, determine the amount of the tax due from the taxable person and make an assessment accordingly.
- (2) The assessment issued under subsection (1) of this section shall not affect the imposition of any other liability specified in this Act or any other law, incurred by the taxable person by reason of its failure or neglect to deliver a return.
- (3) The relevant tax authority may prescribe the rules, guidelines and procedures for the issuance of administrative assessment under this section.
- (4) The relevant tax authority may make an assessment upon a taxable person for any year before the expiration of the time within which it is required to deliver a return or to give notice under the provisions of this Act, if the relevant tax authority considers such assessment to be in jeopardy.

28.43.11 Additional assessments (section 36)

- (1) Where the relevant tax authority discovers or is of the opinion, at any time, that any taxable person liable to tax has not been assessed or has been assessed at an amount less than that which ought to have been charged, the relevant tax authority may, within six years of an assessment, assess the taxable person at such amount or additional amount, as ought to have been charged.
- (2) The six-year limitation period stipulated in subsection (1) of this section shall not preclude the relevant tax authority from continuing with a tax audit and for raising additional assessment where the tax audit commenced before the expiration of the six-year limit.
- (3) The provisions of this Act as to the notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged.
- (4) Notwithstanding the time limit specified in subsection (1) of this section, where there is a deliberate misstatement by a taxable person in connection with any tax

imposed under the Nigeria Tax Act, 2025 or any other tax law, the relevant tax authority may at any time and as often as may be necessary, assess the taxable person to such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the deliberate misstatement.

- (5) All relevant facts shall be considered in the computation of the amount or additional amount of tax that should have been charged under subsection (1) of this section, even where such facts were not known when a prior assessment or additional assessment was made for the taxable person in the same year.

28.43.12 Making of assessments of tax in upstream petroleum operations (section 37)

- (1) Assessments of tax in upstream petroleum operations shall be made in a form and in such manner as the Service shall prescribe and shall contain the:
 - (a) name and address of the company assessed to tax or of the person in whose name a company has been assessed to tax, provided that the name of the represented company is indicated; and
 - (b) particular accounting period and the amount of the chargeable profits and chargeable tax for that period, in the case of each company for each of its accounting periods.
- (2) Where an assessment is to be amended or revised, a form of an 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 showing the amended or revised amount of the chargeable profits and chargeable tax.
- (3) A copy of each self-assessment, and of each amended or revised assessment shall be filed in a list which shall constitute the assessment list for the purpose of this Act.

28.43.13 Deemed profit assessment or income assessment (section 38)

- (1) Where a business produces either no assessable profit or an assessable profit which is less than expected from that business or the true amount of the assessable profit cannot be readily ascertained, the relevant tax authority may, in the case of:
 - (a) a resident, assess and charge that taxable person on such fair and reasonable percentage of the gross income from the trade or business as the relevant tax authority may determine; or
 - (b) a non-resident, the profits shall be any amount resulting from applying the profit margin of the person to the turnover generated from Nigeria.
- (2) For the purpose of subsection (1) of this section "profit margin" shall be the proportion of the Earnings Before Interest and Tax (EBIT) to income or revenue

in the published audited financial statement of the business, and in the case of persons that are not required to publish financial statements, the profit margin as may be ascertained by the relevant tax authority from financial statements of comparative companies.

28.43.14 Currency of assessment and payment

Section 39, NTAA, 2025 provides that:

- (1) notwithstanding the provisions of any other law, tax shall be assessed in the currency of transaction.
- (2) tax, including royalty, assessed in a currency other than the Nigerian Naira shall be paid in that currency.
- (3) in the case of any return under this Act relating to petroleum operations, all computations shall be in the currency of transaction.

28.43.15 Service of notice of assessment

In accordance with section 40, the relevant tax authority shall cause to be served on, or sent by registered post, courier service or electronic means to each taxable person, or person in whose name a taxable person is chargeable, a notice of assessment in respect of any tax charged including the place at which payment should be made, and setting out the rights of that person as contained in sections 40 and 41 of this Act.

28.43.16 Revision of assessment in case of objection (section 41)

- (1) Where a taxable person disputes a tax assessment, the taxable person may, by a written notice of objection delivered in person, by courier service or via electronic means, apply to the relevant tax authority for the revision and amendment of the assessment made upon it.
- (2) An application under subsection (1) of this section shall only be valid if it:
 - (a) is delivered to the relevant tax authority within 30 days from the date of service of the disputed notice of assessment; and
 - (b) contains the grounds of objection to the assessment, that is the:
 - (i) specific issues disputed or errors observed with their monetary values;
 - (ii) amendment required to be made so as to resolve the dispute or correct the error;
 - (iii) justification for the amendments;

- (iv) amount of assessable and total profits, income or value of transactions admitted by the taxable person for the relevant reporting period; and
 - (v) amount of tax admitted by the taxable person or that no amount of tax is admitted as payable.
- (3) Notwithstanding the provisions of subsection (2) of this section, the relevant tax authority may, for any satisfactory and good cause shown, extend the time for making the application referred to in subsection (1) of this section to such reasonable time in the particular circumstances.
- (4) Upon receipt of the notice of objection referred to in subsection (1) of this section, the relevant tax authority may:
 - (a) require the taxable person to furnish such particulars as it may deem necessary and to produce all books or other documents relating to the profits, income or transactions of the taxable person; and
 - (b) summon any person to give evidence in respect of the assessment to appear for examination before an authorised officer of the relevant tax authority or make a declaration on oath in respect of the assessment.
- (5) Where the taxable person and the relevant tax authority agree as to the amount of tax to be assessed, the disputed assessment shall be amended, and a revised notice of the tax payable shall be served upon the taxable person.
- (6) The relevant tax authority shall respond to the objection notice within 90 days otherwise the objection of the taxpayer shall be upheld.
- (7) Where the relevant tax authority considers the notice of objection submitted by the taxable person as invalid, or where the taxable person and the relevant tax authority do not agree as to the amount of tax to be assessed, the taxpayer may exercise the right of appeal.

28.43.17 Errors and defects in assessment and notice (section 42)

- (1) An assessment, notice, warrant or other proceeding purporting to be made in accordance with this Act shall not be invalidated for want of form or be affected by reason of a mistake, defect or omission, if the:
 - (a) substance and effect of the assessment is in conformity with the provisions of this Act; and
 - (b) company assessed or intended to be assessed or affected is designated according to common intent and understanding.
- (2) An assessment shall not be invalidated or affected by reason of:
 - (a) a mistake as to the:
 - (i) name of a company liable or of a person in whose name a company is assessed,
 - (ii) the description of any profits, or
 - (iii) amount of the tax charged; or

- (b) any variance between the assessment and the notice, if in cases of assessment, the notice:
 - (i) is duly served on the company intended to be assessed or on the person in whose name the assessment was to be made; and
 - (ii) contains, in substance and effect, the particulars on which the assessment is made.

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28.43.18 Assessments to be final and conclusive (section 43)

- (1) Where:
 - (a) no valid objection or appeal has been lodged within the time stipulated under this Act, against an assessment as regards the amount of the total income or profits assessed;
 - (b) the amount of the total income or profits has been agreed to under section 40(5) of this Act;
 - (c) the amount of such total profits has been determined on objection or revised under the provision of section 41 (5) of this Act; or
 - (d) the assessment as made, has been agreed to, revised or determined on appeal; such assessment shall be final and conclusive for all purposes of this Act as regards the amount of such total profits.
- (2) Where the full amount of tax in respect of any final and conclusive assessment is not paid within the period prescribed in this Act, the provisions relating to the recovery of tax, and to any penalty under sections 64 and 66 of this Act, shall apply to the collection and recovery.
- (3) The provision of subsection (2) of this section shall be subject only to the set-off of the amount of any tax repayable under any claim, made under the relevant provisions of this Act which has been agreed to by the relevant tax authority or determined on any appeal against a refusal to admit any such claim.
- (4) The provisions of section 40 of this Act shall not prevent the tax authority from making any assessment or additional assessment for any year which does not involve re-opening any issue on the same facts, which has been determined for that year of assessment under section 40(5) of this Act by agreement or on appeal.

28.44 Artificial transactions (section 46)

- (1) Where a relevant tax authority 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, as regards liability to tax, as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would be affected by the transaction and any taxable person concerned shall be assessed accordingly.
- (2) For the purpose of this section, transactions between persons who are connected in accordance with section 193 of the Nigeria Tax Act, 2025, shall be deemed to be artificial or fictitious, if in the opinion of the relevant tax authority 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.

- (3) A person in respect of which any direction is made under this section shall have a right of appeal as if such direction were an assessment under this Act.
- (4) The relevant tax authority may issue guidelines or regulations for the purpose of specifying rules for the taxation of connected persons, transactions that are not at arm's length, or for the purpose of implementing other provisions of this section.
- (5) In this section, "disposition" includes any trust, grant, covenant, agreement or arrangement.

28.45 Prohibited tax avoidance arrangement (section 47)

- (1) The relevant tax authority may counteract a prohibited tax avoidance arrangement by way of adjustments, disregarding, or re-characterising the arrangement through an assessment, the modification of an assessment, amendment or disallowance of a claim or otherwise, in part or whole, unless the taxable person proves, to the satisfaction of the relevant tax authority, that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Act or any other tax law.
- (2) For the purpose of this section prohibited tax avoidance arrangement means any arrangement where, having regard to the facts and circumstances, it is reasonable to conclude that:
 - (a) the main purpose of the arrangements was to obtain a tax benefit or advantage;
 - (b) obtaining the tax advantage is contrary to the object and purpose of the provisions of this Act or any other tax law;
 - (c) it results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act or any other tax law; or
 - (d) it lacks commercial substance or coherence in whole or in part.

28.46 Payment of tax for companies engaged in upstream petroleum operations and midstream liquefied natural gas operations (section 50)

In accordance with section 50:

- (1) Without prejudice to section 16 of this Act, the tax due for any accounting period shall be payable in equal monthly instalments together with a final instalment as provided in subsection (4) of this section.
- (2) The first monthly payment shall be due and payable not later than the third month of the accounting period and shall be in an amount equal to one-twelfth or where the accounting period is less than a year, in an amount of equal monthly proportions of the amount of tax estimated to be chargeable for such accounting period in accordance with this Act.

- (3) Each of the remainder of monthly payments to be made subsequent to the payment under subsection (2) of this section shall be:
 - (a) due and payable not later than the last day of the month under consideration; and
 - (b) in an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted by the company in accordance with section 16 of this Act, less so much as has already been paid for such accounting period divided by the number of the monthly payments remaining to be made in respect of such accounting period.
- (4) A final instalment of tax shall be due and payable on or before the due date of filing of the self-assessment of tax for such accounting period and shall be the amount of the tax assessed for that accounting period less so much as has already been paid under subsections (2) and (3) of this section.
- (5) Any instalments on account of tax estimated to be chargeable shall be treated as tax charged and assessed for the purpose of sections 64 and 53 of this Act.
- (6) This section covers income tax on gas income under Part II of Chapter Three of the Nigeria Tax Act, 2025.

The payment of petroleum profits tax by a petroleum producing company is as shown below:

Petroleum Profits Tax payment dates

Instalment	Payment dates
1st	Due and payable by March 31 of the accounting period
2nd	Due and payable by April 30 of the accounting period
3rd	Due and payable by May 31 of the accounting period
4th	Due and payable by June 30 of the accounting period
5th	Due and payable by July 31 of the accounting period
6th	Due and payable by August 31 of the accounting period
7th	Due and payable by September 30 of the accounting period
8th	Due and payable by October 31 of the accounting period
9th	Due and payable by November 30 of the accounting period
10th	Due and payable by December 31 of the accounting period
11th	Due and payable by January 31 of the next accounting period
12th	Due and payable by February 28 or 29 of the next accounting period

28.47 Enforcement

The following provisions in respect of enforcement are stated in sections 57 – 137 of Chapter 2, Part II of the NTAA, 2025:

28.47.1 Call for returns, books, documents and information (section 57)

Section 57 provides that:

- (1) For the purpose of obtaining information in respect of the tax liability of a taxable person or for performing any function conferred on the relevant tax authority by this Act or any other tax law, the relevant tax authority may give notice or further notice to any taxable person to:
 - (a) complete and deliver to the tax authority any return specified in such notice or further notice, whether or not the person is liable to pay tax, and whether or not a return had been previously filed under this Act for a year of assessment;
 - (b) appear personally before an officer of the tax authority for examination with respect to a matter to which such notice or further notice relates;
 - (c) produce or cause to be produced for examination, books, documents, records or information relating to any assets, at the place and time stated in the notice or further notice, which time may be from day-to-day, or for such period as the tax authority may deem necessary;
 - (d) provide orally or in writing, any information specified in such notice or further notice; and
 - (e) grant the tax authority access to records, data or information stored or residing in computers or other electronic devices, including magnetic media or cloud computing facilities maintained, operated, controlled or owned by the individual, company or person.
- (2) The time specified in the notice or further notice under subsection (1) of this section shall not be less than seven days from the date of service.
- (3) Notwithstanding the provisions of this Act, the tax authority shall not be precluded from verifying, by tax audit or investigation, any matter relating to a return or entry in a book, document, accounts, including those stored on a computer, cloud computing facilities, in digital, magnetic, optical or electronic media as may be specified in any guideline by the relevant tax authority.
- (4) A person may apply in writing to the relevant tax authority for an extension of time within which to comply with the provisions of this section, and other relevant provisions of this Act, provided that the person:
 - (a) makes the application before the expiration of the time stipulated in the notice or further notice; and
 - (b) shows good cause for inability to comply with this provision.
- (5) If the relevant tax authority is satisfied with the cause shown in the application under subsection (4)(b) of this section, it shall, in writing, grant the extension of the time or limit the time as it may consider appropriate.
- (6) Any return or information delivered under this section shall be accompanied by a declaration or an attestation stating that the information supplied is true and correct.

28.47.2 Power to assess lands, buildings, books and documents (section 58)

- (1) Notwithstanding anything to the contrary in any other enactment or law, an authorised officer of the relevant tax authority shall at all reasonable times have free access to all land, buildings, places, books and documents, in the custody or under the control of a person, public officer, or institution, for the purpose of inspecting the books or documents, including those stored or maintained in computers, servers, billing systems or on digital, magnetic, optical or electronic media, and any property, process or matter which the officer considers necessary or relevant for the purpose of collecting any tax under any of the relevant enactments or laws.
- (2) Where the hard copies of any of the books or documents mentioned in subsection (1) of this section are not immediately available because they are stored in a computer, servers, billing system or on digital, magnetic, optical or electronic media, the relevant tax authority shall take immediate possession of such removable media and the related removable equipment or computer used to access the stored documents on the media in order to prevent the accidental or intentional destruction, removal or alteration of records and documents, especially where such may be needed as potential evidence in investigation or criminal proceedings.
- (3) Where the relevant tax authority is able to obtain in place of taking physical possession of such equipment, computer or storage media under subsection (2) of this section, and the relevant tax authority possesses the ability, equipment and computer software to make exact duplicate copies of all information stored on the computer hard drive and preserve all the information exactly as it is on the original computer, the relevant tax authority shall make such copy and use it as digital evidence during investigation or criminal proceedings.
- (4) The occupier of a land, building or place that is entered or proposed to be entered by an authorised officer, shall:
 - (a) provide the officer with all reasonable facilities and assistance for the effective exercise of powers under this section; and
 - (b) answer questions relating to the exercise of the powers under this section orally, or if required by the authorised officer, in writing or by statutory declaration.
- (5) Notwithstanding subsection (1) of this section, the authorised officer shall not enter any private dwelling, except with the consent of an occupier or pursuant to an authorisation issued under subsection (6) of this section.
- (6) A judicial officer upon an application by an officer of the relevant tax authority may authorise the officer by warrant to enter into any premises.
- (7) Every authorisation issued under subsection (6) of this section shall:

- (a) be in the form prescribed in the Second Schedule to this Act;
 - (b) be directed to a named officer of the tax authority;
 - (c) be valid for a period of three months from the date of its issue or such lesser period as the judicial officer considers appropriate;
 - (d) state its period of validity, or the date on which it expires; and
 - (e) be renewable by the judicial officer on application.
- (8) An officer exercising the power of entry conferred by an authorisation issued under subsection (6) of this section shall produce the written authorisation and evidence of identity:
- (a) on first entering the private dwelling; and
 - (b) whenever subsequently reasonably required to do so.

28.47.3 Power to remove books and documents (section 59)

- (1) An officer of the relevant tax authority authorised by the Chief Executive Officer, may remove books or documents or any item accessed under section 58 of this Act to make copies.
- (2) Any copy of the books or documents removed shall be made, and the books or documents returned as soon as practicable.
- (3) A copy of a book or document or digital evidence certified by or on behalf of the Chief Executive Officer of the relevant tax authority is admissible in evidence in court as if it were the original.
- (4) The owner of a book or document or any item that is removed under this section is entitled to inspect and obtain a copy of the book or document at the expense of the owner, at the premises to which the book or document is moved to:
 - (a) at the time the book or document is moved to the premises; and
 - (b) at reasonable times subsequently.
- (5) A person shall bear any cost incurred for the purpose of removing any book, information, document or item under subsection (1) of this section.
- (6) Where an officer removes any book, documents or items he shall provide the owner with a written receipt containing the description of the books, documents or items removed and the location and time of removal.

28.47.4 Revocation of petroleum or mining licence or lease (section 63)

Where any petroleum or mineral royalty or tax due and payable by any company engaged in petroleum or mining operations under this Act, is unpaid after a demand notice has been issued to the company, the Service shall notify the Commission or the relevant ministry or agency of such default for the revocation of the licence or lease under the relevant Act.

28.47.5 Tax investigation (section 64)

- (1) Notwithstanding the provision of any other law, the tax authority shall have the power to investigate or cause an investigation to be conducted to ascertain any violation of any tax law, whether or not such violation has been reported to the relevant tax authority.
- (2) The relevant tax authority may employ Special Purpose Tax Officers for the purpose of subsection (1) to carry out investigation of any offence under this Act and may seek the assistance of any relevant law enforcement agency.
- (3) Where an investigation under this section reveals the commission of any tax offence or an attempt to commit any offence, the relevant tax authority shall, under section 139 of this Act, undertake the prosecution of the offences.
- (4) Where a relevant tax authority is satisfied that any property is a subject matter in a tax investigation under this Act or evidence in relation to the commission of a tax offence, is under the custody, control or possession of any person, it may upon an order of a judicial officer, direct the person not to part with, deal in, or dispose of such property or any part of it, pending the conclusion of the investigation.
- (5) The person or any of their employee or agent shall not on account of the compliance in subsection (4), be liable to any legal proceedings.

28.47.6 Penalty and interest for non- payment of tax (section 65)

- (1) Where any tax is not paid within the period prescribed under this Act:
 - (a) a sum equal to ten percent of the amount of the tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of the sum;
 - (b) in the case of Naira remittances, the tax due shall carry interest at the prevailing monetary policy rate of the Central Bank of Nigeria plus spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of this Act relating to collection

and recovery of tax shall apply to the collection and recovery of the interest; and

- (c) in the case of foreign currency remittance, the tax due shall incur interest at the prevailing Secured Overnight Financing Rate (SOFR) or any successor rate, plus spread to be determined by the Minister from the date when the tax becomes payable until it is paid, and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest.
- (2) The relevant tax authority shall serve a demand notice upon the company or person in whose name a tax is chargeable and where payment is not made within 30 days from the date of the service of such demand notice, the relevant tax authority may proceed to enforce payment under this Act.
- (3) The penalty and interest imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act or any other tax law.

28.47.7 Remission of penalty (section 66)

The relevant tax authority may, for any good cause shown, remit the whole or any part of penalty or interest due under this Act or any other tax law, and make a monthly report to the Minister or Commissioner responsible for finance containing details of the taxpayers, circumstances and the amounts waived.

28.47.8 Recovery of tax (section 67)

- (1) Without prejudice to any other provision of this Act or any other relevant law, any tax due shall constitute a debt due to the relevant tax authority.
- (2) Where the tax due is not paid within 30 days, the relevant tax authority may issue demand notice for the payment of the tax plus the penalty and interest due.
- (3) Where the tax plus the penalty and interest is not paid on the date indicated in the notice, the relevant tax authority may exercise any of the powers under this Act for the recovery of the amount due, including by a legal action brought against the taxable person.
- (4) Where any tax has been:
 - (a) under-assessed, the taxable person who should have paid the amount under-assessed, shall on demand by the relevant tax authority, pay the amount under-assessed; or

- (b) erroneously repaid, the taxable person to whom the repayment has erroneously been made, shall on demand by the relevant tax authority, pay the amount erroneously repaid.
- (5) The amount referred to in subsection (1) of this section may be recovered by the relevant tax authority as if it were tax to which a person to whom the amount was so under-assessed or erroneously repaid were liable.
- (6) The relevant tax authority shall not make any demand after six years from the date of under-assessment or erroneous repayment, unless the under-assessment or erroneous repayment was caused by the production of a document or the making of a statement which was found to be untrue.

28.47.9 Assignment of tax debts (section 68)

- (1) The relevant tax authority may assign outstanding tax debts, in whole or in part, to an accredited third party who shall assume responsibility for recovering the tax debts in accordance with the provisions of this Act or regulations issued by the Service.
- (2) The relevant tax authority shall only assign outstanding tax debts to a third party where:
 - (a) all legal steps for tax debt recovery under this Act have been exhausted, including notifications, payment demands and enforcement actions; and
 - (b) the debt to be recovered is deemed to be of significant value and has been outstanding for a period considered appropriate by the relevant tax authority.
- (3) A taxpayer whose debt is assigned to a third party shall be notified in writing, the details of the third party responsible for recovering the tax debt.
- (4) Notwithstanding subsection (1), the relevant tax authority may reverse the assignment of the tax debt at any time and resume responsibility for recovery where necessary.

28.47.10 Power to pay reward (section 69)

- (1) The relevant tax authority may pay a reward to any person, not being a person employed or a person related to the person employed in the relevant tax authority, in respect of any information which may be of assistance to it in the performance of its duties under this Act on such conditions and quantum of reward as may be determined by the relevant tax authority.

(2) The identity of the person who gave information to the relevant tax authority shall be kept confidential and any person that discloses the identity of such person shall be dealt with in accordance with the provisions of section 114 of this Act.

(3) The tax authority may partner with a relevant agency to verify the information supplied and such verification shall not compromise the identity of the person referred to in subsection (1) of this section.

28.48 Dispute resolution mechanisms provided in the PIA, 2021

With respect to disputes, the Act prescribes two distinct fora for resolving disputes arising from the operations of the Act –the Federal High Court [FHC] and the Tax Appeal Tribunal (TAT). In addition, both the Nigerian Upstream Regulatory Commission (Commission) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority [Authority] have powers to resolve certain disputes arising from the operations of the Act.

(a) By virtue of section 251, particularly 251(1) (n) of the Nigerian Constitution, the Federal High Court (FHC) has exclusive jurisdiction in relation to matters/disputes arising from mines and minerals (including oil fields, oil mining, geological surveys and natural gas). Therefore, the general rule is that any dispute arising from the operations of the Act should be submitted to the FHC for adjudication.

(b) The Tax Tribunal

The second forum of resolving disputes is the TAT which is specific to tax disputes with FIRS. This is a novelty under the Act as under the PPTA, tax disputes should, in the first instance, be resolved by the Body of Appeal Commissioners [BAC], the predecessor to the TAT. However, the Court of Appeal in *Cadbury v. FBIR* held that the BAC was unconstitutional because it usurped the jurisdiction of the FHC, under section 251 of the Constitution, because appeals from the BAC went directly to the Court of Appeal². The BAC was subsequently replaced by the TAT via the Federal Inland Revenue Service (Establishment) Act (FIRSEA).

So, before the introduction of the PIA, taxpayers filed appeals to the TAT in line with FIRSEA. Section 288 of the Act now reflects current practice since there is no longer a BAC.

Specific examples under the Act

PwC (2021) specifies the following examples:

Disputes arising from ownership and compensation to legal occupier / owner of land

One of the instances in which an aggrieved person may file an action at the FHC is under section 101. The section precludes licensees and lessees from entering,

occupying or exercising any rights conferred by their licenses / leases over certain sacred, protected or previously occupied land without the written permission of the Commission. Licensees and leases who intend to enter or occupy such land must first write to the Commission specifying the land proposed to be occupied, the purpose for such occupation and amount of compensation paid or proposed to be paid to the legal occupier of the land.

Section 101(1) (d) further provides that in the event of any dispute arising from who the legal occupier is and / or the amount of the compensation payable, the licensee /lessee would be required to deposit with the FHC (within the jurisdiction of the location of the land) a sum to be determined by FHC as reasonable compensation payable to the rightful owner or occupier of the land.

The Petroleum Industry Act (PIA) of 2021 outlines a dispute resolution framework primarily focused on the oil and gas sector in Nigeria. This framework includes both Alternative Dispute Resolution (ADR) methods like mediation and arbitration, as well as the establishment of the Alternative Dispute Resolution Centre (ADRC) to administer these processes. In essence, the PIA's dispute resolution mechanism aims to provide a comprehensive and efficient system for handling disputes in the Nigerian oil and gas sector, prioritizing ADR methods to reduce the burden on the courts and promote quicker, more cost-effective resolutions.

Disputes arising from refusal to grant, renew, modify or extend applications

Another instance in which the Act prescribes the FHC as the court of competent jurisdiction is with respect to matters relating to license applications. Under section 111, the Authority is vested with powers to grant, renew, modify or extend individual permits and licences. Where an applicant is not satisfied with the reasons for the refusal of its application, it may appeal to the FHC for judicial review. As distinct from an appeal, in a judicial review, the court's remit is to review the process, rather than the decision itself, by which a decision was reached to assess whether that decision was wrong by some flaw. The court will not impose what it thinks is the "correct" decision. Whilst there is no similar provision relating to the grant of licenses by the Commission, such powers may also be subject to judicial reviews.

Disputes between licensees, lessees or permit holders and the Commission or Authority

Section 218(7) vests the FHC with exclusive jurisdiction over disputes between licensees, lessees or permit holders and the Commission or Authority. This is in line with the exclusive jurisdiction of the FHC under the Constitution.

28.49 Charge of petroleum profits tax

Section 89 (1) of the Nigerian Tax Act (NTA), 2025 provides that this Part of the Act shall apply to oil prospecting licences and oil mining leases that are yet to convert to the provisions of the Petroleum Industry Act, 2021.

28.50 Petroleum activities

28.50.1 Upstream activities

These activities are related to the acquisition of licences, exploration, development and production of crude oil and gas; treatment of oil and processing of gas as well as transportation and delivery to export terminals refineries or other processing plants. These activities are taxed under the Nigerian Tax Act, 2025.

28.50.2 Downstream activities

These are those activities that take place from receipt of crude oil into crude oil tanks or gas into petro chemical tanks to the transportation of refined products to the final user or of processed products to secondary industries. These activities encompass transporting, refining, liquefaction of natural gas, distributing and marketing of refined petroleum products, gas and derivatives. Companies engaged in downstream operations are subject to tax under the Nigeria Tax Act, 2025.

28.51 Definition of terms

All terms relate to companies engaged in petroleum operations.

(a) Accounting period

- (i) This is a period of one year commencing on 1st January and ending on 31st December of the same year; or
- (ii) 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 December 31 of the same year; or
- (iii) Any period of less than a year being a period commencing on January 1 of any year and ending on the date in the same year, when the company ceases to be engaged in petroleum operations.

(b) Revenue Service

Nigeria Revenue Service

(c) Casing head 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.

(d) 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;

(e) Chargeable oil

Casing head petroleum spirit and crude oil won or obtained by a company from petroleum operations.

(f) Company

Any body corporate incorporated under any law in force in Nigeria or elsewhere.

(g) 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 there from but before any such oil is refined or otherwise treated.

(h) Disposal or disposed of

In relation to chargeable oil owned by a company, disposal or disposed of connotes respectively:

- (i) Delivery, without sale, of chargeable oil to; and
- (ii) Chargeable oil delivered, without sale to, a refinery or to an adjacent storage tank for refining by the company.

(i) G-Factor

Gas production cost adjustment factor.

(j) High court

The High Court in Nigeria within whose jurisdiction is the place:

- (i) In relation to any offence under the NTA 2025 where such offences deemed to have occurred;
- (ii) 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 maybe;
- (iii) 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
- (iv) 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.

(k) 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:

- (i) determination of well locations, geological studies and topographical and geophysical surveys preparatory to drilling;
- (ii) drilling, shooting, testing and cleaning wells;
- (iii) cleaning, draining and leveling land, road-building and the laying of foundations;

- (iv) 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.
- (l) **Liquefied natural gas**
Natural gas in its liquid state at approximately atmospheric pressure
- (m) **Minister**
Minister is charged with responsibility for matters relating to taxes on incomes and profits.
- (n) **Natural gas**
Gas obtained in Nigeria from bore holes and wells consisting primarily of hydrocarbons.
- (o) **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.
- (p) **Oil mining lease (OML)**
A lease granted to a company under the Minerals Act, for the purpose of winning petroleum, or any assignment of such lease.
- (q) **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.
- (r) **Petroleum**
Any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in Nigeria, but does not include liquefied natural gas, coal, bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.
- (s) **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.
- (t) **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.
- (u) **Royalties**
 - (i) 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

- (ii) (ii) The amount of any royalties payable under any such licence or lease less any such rent deducted from those royalties.

(v) 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;

(w) 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.

28. 52 Administration of petroleum profits tax

The administration of the petroleum profits tax is under the charge and management of the Nigeria Revenue Service (NRS). The NRS 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 by the Federal Minister of Finance.

Whenever the NRS 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. The NRS may sue and be sued in its official name.

28.53 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.

28.53.1 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 capitalized 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, when land 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.

28.53.2 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 depends 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.

28.53.3 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.

28.53.4 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.

28.53.5 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.

28.53.6 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 amortisation 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.

28.54 Petroleum profits tax

Ascertainment of adjusted profits and imposition of tax for petroleum producing companies.

For 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/actual year basis. For example, assessment for the 2025 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 January 1, 2025 and ending on December 31, 2025.

28.55 The revenue of an accounting period

Section 90(1) of the NTA, 2025 provides that the revenue of a company in an accounting period shall be the aggregate of:

- (a) the proceeds of sale of all chargeable oil sold by the company in that period;
- (b) the value of all chargeable oil disposed by the company in that period;
- (c) all income of the company of that period incidental to and arising from any one or more of its petroleum operations; and
- (d) gains arising from the disposal of assets accruing to the company in any accounting period, ascertained in accordance with the relevant provisions of Part VIII of Chapter Two of this Act.

For the purposes of Section 90(1)(b), the value of any chargeable oil disposed shall be taken to be the value of that oil as determined, for the purpose of royalty, in accordance with the provisions of the Seventh Schedule to this Act and any applicable legislation.

28.56 Concepts and computations of posted prices and adjusted posted prices

Posted price in relation to any crude oil exported from Nigeria by a company means the price free on board (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. 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 instance, if every degree of API above the standard API for the crude oil stream, the posted price is increased by \$0.03 per barrel and every degree API below the standard, the posted price is decreased by \$0.03 per barrel. Nigeria’s crude is of a maximum API of 40°.

Illustration 28.3

If the posted price of a crude oil of 37° gravity is \$31.70 and there is an adjustment of \$1.15 for each degree fall in gravity below 37°, if the actual gravity is 33°, the posted price shall be adjusted to accommodate the short fall. The net result is the adjusted posted price as demonstrated below.

Calculation of adjusted posted price (APP):

	\$
Posted price	31.70
Adjustment: $1.15 \times (37^\circ - 33^\circ)$	<u>(4.60)</u>
Adjusted posted price [APP]	27.10
	=====

28.57 Adjusted profit

In section 90(3), NTA, 2025, the adjusted profit of an accounting period shall be the profits of that period after the deductions allowed under section 91(1) of this Act and any adjustment to be made in accordance with the provisions of sections 91(2), (5) and 95 of this Act.

28.58 Allowable deductions

Section 91 of the NTA, 2025, provides that, in computing the adjusted profit of a company for an accounting period from its petroleum operations, there shall be deducted all outgoings and expenses wholly and exclusively incurred, during the period by the company for the purpose of its operations, as follows:

- (a) rents incurred by the company for that period 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 incurred by the company during that period;
- (c) all royalties incurred by the company during that period in respect of natural gas sold and actually delivered to the Nigerian National Petroleum Company Limited, or sold to any other buyer or customer or disposed in any other commercial manner;
- (d) all royalties incurred by the company during the period in respect of crude oil or of casinghead petroleum spirit won in Nigeria;
- (e) customs or excise duty or other like charges in respect of machineries, equipment and goods used in the company's petroleum operation incurred by the company to the Federal Government of Nigeria during the period;
- (f) any expense incurred for repair of premises, plant machinery, or fixtures employed for the purpose of carrying on petroleum operations, or for the renewal, repair or alteration of any implement, utensils or articles employed;
- (g) interest incurred on money borrowed by such company where the Service is satisfied that the interest was payable on capital employed in carrying on its petroleum operations, subject to the provisions of the Third Schedule to this Act and the Transfer Pricing Regulations;
- (h) any expenditure being intangible drilling costs directly incurred in connection with drilling and appraisal of a development well;
- (i) any expenditure (tangible or intangible) directly incurred in connection with the drilling of an exploration well and the next two appraisal wells in the same field whether the wells are productive or not, provided that where a deduction is made under this section in respect of any such expenditure, that expenditure shall not

be treated as qualifying drilling expenditure for the purposes of Part III of the First Schedule to this Act;

- (j) any contributions to pension, provident or other society, scheme or fund, which may be approved, under the Pension Reform Act, provided that the sum received by or the value of any benefit obtained by such company, from any approved pension, provident or other society, scheme or fund, in any accounting period of that company shall, for the purpose of subsection (1)(c) of section 90 of this Act, be treated as income of the company for that accounting period;
- (k) customs and excise duties, stamp duties, or any other rate, fee or other like charges, other than any tax on income, incurred by the company during the period to the Federal Government, a State or Local Government;
- (l) any amount contributed to a fund, scheme or arrangement approved by the Commission for the purpose of decommissioning and abandonment, subject to the production of the statement of account of the decommissioning and abandonment Fund:

Provided that the surplus or residue of the fund after decommissioning and abandonment of the field shall be subject to tax under this Part;

- (m) debts directly incurred to the company and proved to the satisfaction of the Service to have become bad or doubtful in the accounting period for which the adjusted profits is being ascertained, notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of that period, provided that:
 - (i) the debt was included as a profit from petroleum operations in the accounting period in which they were incurred or advances made in the normal course of carrying on petroleum operations not being advances on account of any item under section 97 of this Act,
 - (ii) the deduction to be made in respect of a doubtful debt shall not exceed that portion of the debt which is proved to have become doubtful during that accounting period, and shall not include any amount deducted under the provisions of this paragraph in determining the adjusted profit of a previous accounting period, and
 - (iii) all sums recovered by the company during that accounting period on account of amounts previously deducted in respect of bad or doubtful debts shall be treated as income of the company for that period;
- (n) development levy paid under section 59 of this Act; and
- (o) such other deductions as may be prescribed by any rule made under this Part.

However, liability waived, released or recovered shall be treated under this Part in accordance with section 194 of the Act.

28.59 Non-allowable deductions

Section 94(1) stipulates that, for the purposes of ascertaining the adjusted profit of any company for any accounting period from its petroleum operations, no deduction shall be allowed in respect of:

- (a) any capital withdrawn or any sum employed or intended to be employed as capital;
- (b) any capital employed in improvements as distinct from repairs;
- (c) any sum recoverable under an insurance or contract of indemnity;
- (d) rent of or cost of repairs to any premises or part of premises not incurred for the purposes of those operations;
- (e) any amount incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere;
- (f) the depreciation of any premises, buildings, structures, works of a permanent nature, plant, equipment, machinery, furniture or fixtures;
- (g) any payment to any pensions, provident, savings widows' and orphans' or other society scheme or fund, except such payments as are allowed under subsection 91 (1)(j) of section 91 of this Act;
- (h) customs 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 imported are produced in Nigeria and are available for sale to the public at a price lower or equivalent to the cost of the imported goods at the time the imported goods were ordered by the company;
- (i) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits;
- (j) any qualifying expenditure for the purposes of Part III of the First Schedule to this Act, and any expense or deduction in respect of a liability incurred which is deductible under any other provision of this Act;
- (k) any tax or penalty borne on behalf of another person; and
- (l) any expense on which Value Added Tax is due under this Act but not charged, or in the case of imported items, any expense on which the applicable import duty or levy was not paid.

Notwithstanding the provisions of section 91(1) of this Act, in computing the adjusted profit of any company of any accounting period, deduction shall not be allowed in

respect of any sum incurred to a related party where the cost is not in accordance with the Transfer Pricing Regulations.

28.60 Assessable profit/ loss relief

The assessable profits of a company for any accounting period, according to section 96(1) of NTA, 2025, shall be the amount of the adjusted profit of that period after the deduction of:

- (a) the amount of any loss incurred by that company during any previous accounting period; and
- (b) in a case of a business restructuring, the amount of any loss which is allowed for deduction by the new company under section 191 of this Act in its trade or business during its first accounting period.

The loss referred to in subsection (1) of this section shall be deducted to the extent possible from the amount of the adjusted profits of the accounting period immediately succeeding the accounting period in which the loss was incurred, and in subsequent accounting periods, until the loss is fully recouped.

Subject to the approval of the Service, a company may, within five months after the end of an accounting period, or such further time as the Service may permit, elect in writing, that a deduction to be made under this section, or part of the deduction, be deferred to succeeding accounting periods.

28.61 Chargeable profits and capital allowance

The following provisions of the NTA, 2025 applies to chargeable profits and deduction of capital allowances:

In section 98 (1) the chargeable profits of a company of any accounting period shall be the amount of the assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section:

There shall be computed the aggregate amount of all allowances due to the company under the provisions of Part III of the First Schedule to this Act for the accounting period {section 98(2)}.

Section 97(3) provides that In calculating the amount of the deduction to be allowed under this section for an accounting period, the limitation imposed by subsection (4) of this section shall be applied to ensure that the tax chargeable on the company for that period is not less than 15% of the tax chargeable for the period, where no deduction is made under this section.

In section 98(4), the amount to be allowed as a deduction under this section shall be, the lower of:

- (a) the aggregate amount computed under subsection (2) of this section; or
- (b) a sum equal to 85% of the assessable profits of the accounting period less 170% of the total amount of the deduction allowed as petroleum investment allowance computed under Part III of the First Schedule to this Act for the period.

Where the total amount of the allowances computed under subsection (2) of this section cannot be deducted under subsection (1) of this section due to insufficiency of or no assessable profits for the accounting period or to the limitation imposed by subsection (4) of this section, the total amount or the part which has not been deducted, shall be:

- (a) added to the aggregate amount to be computed under subsection (2) of this section for the succeeding accounting period of the company; and
- (b) deemed to be an allowance due to the company, under the provisions of Part III of the First Schedule to this Act for that succeeding accounting period.

Where value added tax is due under this Act but not charged on an asset, or in the case of an imported item, the applicable import duty or levy was not paid, the relevant expenditure shall not be eligible as a qualifying capital expenditure under the provisions of Part III of the First Schedule to this Act.

28.62 Conditions for granting capital allowances

- (a) The capital expenditure must be a qualifying expenditure.
- (b) The qualifying expenditure must be wholly and exclusively used for the purposes of petroleum operations carried on by the company.
- (c) 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 (QCE) 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.

28.63 Annual allowance

In line with the First Schedule to the NTA, 2025, capital allowance is granted annually on cost determined on straight line basis. The intent is that the amount of any qualifying expenditure is amortised over a period of five years in equal amounts that is, rate of 20% for each of the five years.

<u>Year of use</u>	<u>AA%</u>
1st Year	20%
2nd Year	20%

3rd Year	20%
4th Year	20%
5th Year	20%

Illustration 28.4

The following information were extracted from the accounts of Chukwu Oil Company Limited for the year ended 31/12/2026.

<u>Year</u>	Cost of QCE ₦'million
2021	6400
2023	" 8,900
2024	" 7,600
2025	" 9,000
2026	" 5,400

Required: Calculate annual allowance for 2026 assessment year.

Suggested solution to illustration 28.4

Chukwu Oil Company Ltd.

Calculation of annual allowance

For 2026 assessment year

Year	QCE ₦'000	Rate %	₦' m
2023	8,900	20	1,780
2024	7,600	20	1,520
2025	9,000	20	1,800
2026	5,400	20	1,080

Annual allowance on QCE = ₦6,180 million

28.64 Petroleum investment allowance

It is similar to investment allowance under the repealed CITA 2004, since it is not taken into account in arriving at the residue of an asset. 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 Act, 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. Petroleum Investment Allowance is made available at the appropriate rate per cent set forth in Table 1 to schedule 2 stated below:

Location of QCE	Rate (%)
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

Illustration 28.5

Dagunduro Petroleum Company incurred a QCE in 2026 accounting period up to ₦210m. Of this, on shore expenditure is ₦150m while off-shore expenditure is as stated below:

Up to and including 100m of water depth	₦30m
Between 100 and 200m of water depth	₦20m
Above 200m of water depth	₦10m

Required:

Calculate:

- Annual allowance
- Petroleum investment allowance.

Suggested solution to illustration 28.5. Dagunduro Petroleum Company
Calculation of Annual Allowance

(a) Annual allowance:	20% of ~~₦~~ 210m	=	<u>₦42m</u>
(b) Petroleum Investment Allowance:			<u>₦m</u>
On-shore at 5% (~~₦~~ 150m x 5/100)			7.5
Off-shore:			
- 100m of water depth at 10%			3
- 100 - 200m of water depth at 15%			3
- Above 200m of water depth at 20%			2
Petroleum Investment Allowance			<u>₦15.5</u>

28.65 Assessable petroleum profits tax {section 97(1)(2)}

In section 97(1), the assessable tax for an accounting period of a company shall be an amount equal to 85% of its chargeable profits of that period.

Where a company has not commenced a sale or bulk disposal of chargeable oil under a programme of continuous production, its assessable tax for an accounting period during which it has not fully amortised all its pre-production capitalised expenditure, shall be 65.75% of the chargeable profits for that period:

Provided that:

- the period of the tax rate under this subsection shall not be more than five years, commencing from the first accounting period of the company, notwithstanding any other incentive as may be granted to the company; and
- where a company is granted a licence or lease or acquires an interest in an oil and gas asset that has enjoyed the provision of this subsection, the company shall be subject to tax under the provision of subsection (1) of this section from its first accounting period.

28.66 Additional chargeable tax payable in certain circumstances

In section 100(1), where, for any accounting period of a company, there is a sale of chargeable oil between connected persons, or disposal of chargeable oil between connected or unconnected persons, and the amount of the chargeable tax for that period, calculated in accordance with the provisions of this Part other than this section, is less than the amount prescribed in subsection (2) of this section, the company shall pay an additional amount of chargeable tax for that period, equal to the difference between those two amounts.

The amount referred to in subsection (1) of this section is, for any accounting period of a company, the amount which the chargeable tax for that period, calculated in accordance with the provisions of this Part, shall be, if the reference in section 90 (1) (a) and (b) of this Act to the proceeds of sale were a reference to the amount obtained by multiplying the number of barrels of that crude oil determined at the measurement point by the fiscal oil price per barrel.

For the purpose of this section, the total value of the chargeable oil for a company shall be the sum of the multiplications of volume and fiscal oil price as established by the Commission at the measurement point.

The whole of any additional chargeable tax for crude oil payable by a company under this section for any accounting period shall be payable concurrently with the final instalment of the chargeable tax payable for that period.

Where there is no fiscal oil price established for a crude oil stream, the Commission shall establish fiscal price for such stream and the fiscal oil price per barrel established shall bear a fair and reasonable relationship:

- (a) to the established fiscal oil price of Nigerian crude oil streams of comparable quality and specific gravity; or
- (b) where there are no such Nigerian crude oil streams of comparable quality and specific gravity, it shall bear a fair and reasonable relationship to the official selling prices at main international trading centres for crude oil of comparable quality and gravity, due regard being had in either case to freight differentials and other relevant factors.

Notwithstanding any other provision in this Part, where a particular company's chargeable oil is exported from Nigeria or sold locally by another company, that chargeable oil for the purpose of this Part shall be deemed to be exported from Nigeria or sold by that particular company.

28.67 Partnership

In accordance with Section 101, NTA, 2025, partnership is deemed to be constituted as follows:

A person, other than a company, who engages in petroleum operations either on his own account or jointly with any other person or in partnership with any other person with a view to sharing the profits arising from those operations shall be guilty of an offence {section 101(1)}.

Where the person referred to in subsection (1) of this section has benefitted from any profits on upstream petroleum operations, the person shall be subject to tax under this

Part on the profits and shall pay a penalty provided under Nigeria Tax Administration Act {section 101(2)}.

Where two or more companies are engaged in petroleum operations either in partnership, in a joint venture or in concert under any scheme or arrangement, the Service may make regulations for the ascertainment of the tax to be charged and assessed upon each company so engaged {section 101(3)}.

Such regulations may:

- (a) modify the provisions of this Part in such manner as the Service may deem fit;
- (b) provide for the apportionment of any profits, outgoings, expenses, liabilities, deductions, qualifying expenditure and the tax chargeable on each company;
- (c) provide for the computation of any tax as if the partnership, joint venture, scheme or arrangement were carried on by one company and apportion that tax between the companies concerned;
- (d) accept other basis of ascertaining the tax chargeable on each of the companies, which may be put forward by those companies; or
- (e) contain provisions which have regard to any circumstance whereby such operations are partly carried on for the companies by an operating company whose expenses are reimbursed by those companies.

Regulations made under this section may be of general application for the purposes of this section and this Part or of particular application to a specified partnership, joint venture, scheme or arrangement.

The regulations made under this section shall not impose a greater burden of tax on any company engaged in any partnership, joint venture, scheme or arrangement than would have been imposed on that company under this Part, if all things enjoyed, done or suffered by such company had been enjoyed, done or suffered by the company in the proportion in which it enjoys, does or suffers those things under that partnership, joint venture, scheme or arrangement.

28. 68 Incentives for utilisation of associated gas (Section 94)

Section 94(1) prescribes that the following incentives shall apply to a company engaged in the utilisation of associated gas:

- (a) investment required to separate crude oil and gas from the reservoir into usable products shall be considered as part of the oil field development;
- (b) capital investment on facilities or equipment to deliver associated gas in usable form at utilisation or designated custody transfer points shall be treated for tax purposes, as part of the capital investment for oil development;

- (c) capital allowances, operating expenses and basis of tax assessment shall be subject to the provisions of this part and the tax incentives under the revised memorandum of understanding.

The incentives specified under subsection (1) of this section shall be subject to the following conditions:

- (a) 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;
- (b) the company shall pay the minimum amount charged by the Minister of Petroleum Resources for any gas flared by the company;
- (c) the company shall, as far as practicable, keep the expenses incurred in the utilisation of associated gas separate from those incurred on crude oil operation and expenses that cannot be separated shall be allowable against the crude oil income of the company under this Act;
- (d) expenses identified as incurred exclusively in the utilisation of associated gas shall be regarded as gas expenses and be allowable against the gas income and profit to be taxed under Chapter Two of this Act;
- (e) 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 utilisation projects shall benefit from the incentives;
- (f) all capital investments relating to the gas-to-liquids facilities shall be treated as chargeable capital allowance and recovered against the crude oil income; and
- (g) gas transferred from the natural gas liquid facility to the gas-to-liquid facilities shall be at zero per cent tax and zero per cent royalty.

Where a company has enjoyed any incentive under this section, the company shall not claim similar incentive under any law in Nigeria regarding the same investment or project, including economic development tax incentive and gas pipeline investment incentive under section 80 of this Act.

Application of incentives to utilisation of non-associated gas

In accordance with Section 93, all incentives granted in respect of investments in associated gas shall be applicable to investments in non-associated gas

28.69 Format for computation of petroleum profits tax

Ibiam Petroleum Limited Computation of petroleum profits tax For 20xx assessment year

	₦'million	₦'million
Revenue:		x
Export sales		x
Local sales		x
Other income		<u>x</u>
Total income		<u>XX</u>
Deduct: Allowable expenses:	x	
Production expenses	x	
Intangible drilling expenses	x	
Salaries and other emoluments	x	
Exploration and appraisal wells	x	
Royalties- export sales	x	
Royalties- local sales	x	
Customs duty	x	
Harbour dues	x	
General expenses	x	
Finance charges	x	
Donations	x	
Power	x	
Host community fund	x	
State Government land use charge	x	
Development levy	<u>x</u>	
Other allowables	<u>x</u>	<u>(xx)</u>
Adjusted profit		xx
Less: Loss b/f relieved		<u>(xx)</u>
Assessable profit		xx
Less: Capital allowances:		
The lower of:		
Actual capital allowances:		
For the year	x	
B/f	x	
Petroleum investment allowance (PIA)	<u>x</u>	
	<u>x</u>	

or		
85% of assessable profit	x	
Less: 170% of PIA	<u>(x)</u>	
	<u>x</u>	
Capital allowance claimable is restricted to		<u>(x)</u>
Chargeable profit		XX
Assessable tax/ chargeable tax (@ 85% of chargeable profit)		XX

Illustration 28. 6

Warri Energies Limited is engaged in petroleum business for over fifteen years. The company is yet to convert to the Petroleum Industry Act, 2021 regime.

You have been given the following information in respect of the company for the year ended December 31, 2026.

	₦million	₦million
Revenue:		
Export sales		9,200
Local sales		<u>2,600</u>
		11,800
Other income		<u>300</u>
		12,100
Deduct:		
Production expenses	2,400	
Intangible drilling expenses	1,550	
Salaries and other emoluments	1,750	
Exploration and appraisal wells	800	
Royalties- export sales	420	
Royalties- local sales	80	
Customs duty	10	
Harbour dues	20	
General expenses	175	
Depreciation	650	
Finance charges	20	
Donations	50	
Power	125	
Host community fund	180	
State Government land use charge	<u>60</u>	<u>8,290</u>
Profit before tax		<u><u>3,810</u></u>

Additional information:

- (i) Other income included ~~₦~~25 million, being profit from disposal of a non-current asset, on for which appropriate approval has been obtained.
- (ii) Development levy as agreed with the tax authority was ~~₦~~175 million.
- (iii) Capital allowances included:

	₦'million
For the year	400
Unutilised b/f	30

- (iv) Production investment allowance agreed with the NRS was ~~₦~~45 million.
- (v) Unrelieved loss brought forward from previous year was ~~₦~~22 million.

Required:

Compute the company's chargeable tax for the relevant assessment year.

Suggested solution to illustration 28.6

Warri Energies Limited
Computation of petroleum profits tax
For 2026 assessment year

	₦'million	₦'million
Revenue:		
Export sales		9,200
Local sales		<u>2,600</u>
		11,800
Other income (~~₦~~ 300m - ~~₦~~ 25m)		<u>275</u>
		12,075
Deduct:		
Production expenses	2,400	
Intangible drilling expenses	1,550	
Salaries and other emoluments	1,750	
Exploration and appraisal wells	800	
Royalties- export sales	420	
Royalties- local sales	80	
Customs duty	10	
Harbour dues	20	
General expenses	175	
Finance charges	20	
Donations	50	

	N'million	N'million
Power	125	
Host community fund	180	
State Government land use charge	60	
Development levy	<u>175</u>	<u>7,815</u>
Adjusted profit		4,260
Less: Loss b/f relieved		<u>22</u>
Assessable profit		4,238
Less: Capital allowances:		
The lower of:		
Actual capital allowances:		
For the year	400	
B/f	30	
Petroleum investment allowance (PIA)	<u>45</u>	
	<u>475</u>	
or		
85% of assessable profit (0.85 x N4,23 m)	3,602.3	
Less: 170% of PIA (1.7 x N45m)	<u>807.5</u>	
	<u>2,794.8</u>	
Capital allowance claimable is restricted to		<u>(475)</u>
Chargeable profit		<u>3,763</u>
Assessable tax/ chargeable tax (@ 85% of chargeable profit) (0.85 x N3,763m)		<u>3,198.55</u>

28.70 Memorandum of understanding (MOU)

With effect from January 1, 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:

- Enhancing crude oil exports;
- Encouraging investments in exploration and development activities;
- Encouraging investments in the area of enhanced oil recovery projects;
- Encouraging investments in gas utilisation projects;
- Encouraging increased lifting and sale of NNPC's equity crude; and
- 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 incentives 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.

Format for granting MOU

	~~N~~
Chargeable profit	xx
Assessable tax@85%	xx
MOU	<u>(xx)</u>
Chargeable tax	<u>xx</u>

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; and
- (b) To carry out a work programme mutually agreed upon between NNPC and each of the oil companies.

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.

28.71 Production sharing contracts (section 101)

Section 101 of the Nigeria Tax Act, 2025 affirmed that notwithstanding anything to the contrary contained in this Act or any other law, the provisions of this Part shall apply to deep offshore and inland basin production sharing contracts that are yet to convert under the provisions of the Petroleum Industry Act, 2021 or have been renegotiated in accordance with the provisions of the Petroleum Industry Act, 2021.

28.72 Duration of oil prospecting licence (section 102)

In accordance with section 102 of the NTA, 2025, the duration of an oil prospecting licence relating to production sharing contracts in the deep offshore and inland basin shall be determined by the Minister charged with responsibility for matters relating to petroleum and shall be for a minimum period of five years and not exceeding ten years.

28.73 Determination of petroleum profits tax (section 103)

The provision of the NTA, 2025 in relation to the determination of Petroleum Profits Tax as stated in section 103 are as follows:

- (1) The petroleum profits tax payable under a production sharing contract shall be determined in accordance with Part II of Chapter Three of this Act, provided that the petroleum profits tax rate applicable to the contract area as defined in the production sharing contracts shall be 50% of chargeable profits for the duration of the production sharing contracts.
- (2) Nothing contained in this Part shall be construed as having exempted any holder or contractor from the payment of any other tax, duty or levy imposed by any Federal, State or Local Government, or Area Council Authority.

28.74 Determination of investment tax credit and investment tax allowance

Where a holder and a contractor have incurred any qualifying capital expenditure wholly and exclusively for the purposes of petroleum operations carried out under the terms of a production sharing contract in the deep offshore or inland basin, the parties shall be entitled to investment tax allowance at a rate of 50% of the qualifying expenditure in accordance with the provisions of existing applicable legislation for the accounting period in which that asset was first used for the purposes of such operations.

28.75 Royalty payable in respect of deep offshore production sharing contracts

Royalty shall be determined and payable in accordance with the provisions of the Seventh Schedule to the Petroleum Industry Act, 2021.

28.76 Computation of petroleum profits tax (section 106)

Computation of estimated and final petroleum profits tax as stipulated in section 106 of NTA, 2025 shall be made in US dollars on the basis of the US dollar returns filed.

28.77 Allocation of royalty oil (section 107)

In line with section 107 of the NTA, 2025, Royalty Oil shall be allocated to the Commission or the holder, in such quantum as shall generate an amount equal to actual royalty payable during each month and the concession rental payable annually in accordance with the production sharing contract terms.

28.78 Allocation of cost oil (section 108)

The provisions stated in section 108 of the NTA, 2025 in respect of allocation of cost oil are:

- (1) Cost oil shall be allocated to the contractor in such quantum as shall generate an amount sufficient for the recovery of operating costs in oil prospecting licences

as defined in the production sharing contract and any oil mining leases derived therefrom.

- (2) All operating costs shall be recovered in US Dollars through cost oil allocations in accordance with the terms of the production sharing contract.

28.79 Allocation of tax oil (section 109)

In accordance with section 109 of the NTA, 2025 tax oil shall be allocated to the Commission or the holder, in such quantum as shall generate an amount equal to the actual petroleum profits tax liability payable during each month.

28.80 Allocation of profit oil (section 110)

As per section 110 of the NTA, 2025 profit oil, being the balance of available crude oil after deducting royalty oil, tax oil and cost oil, shall be allocated to each party in accordance with the terms of the production sharing contract.

28.81 Payment of royalty (section 111)

The provision of the Act as stated in section 111 on the payment of royalty are as follows:

- (1) The holder shall pay all royalty, concession rentals and petroleum profits tax on behalf of itself and the contractor out of the allocated royalty oil and tax oil.
- (2) The Service shall issue separate tax receipts in the names of the holder and the contractor for the respective amounts of petroleum profits tax paid on behalf of the holder and contractor in accordance with the terms of the production sharing contract.

28.82 Chargeable tax petroleum operations (section 112)

In line with section 112 of the NTA, 2025 the chargeable tax on petroleum operations in the contract area under the production sharing contracts shall be split between the holder and the contractor in the same ratio as the split of profit oil as defined in the production sharing contract between them.

28.83 Use of realisable price in determining royalty and petroleum profits tax in respect of crude oil (section 113)

The provision of section 113 of the Act on this is stated in two subsections as follows:

- (1) The realisable price as defined in the production sharing contract established by the holder in accordance with the provisions of the production sharing contract, shall be used to determine the amount payable on royalty and petroleum profits tax in respect of crude oil produced and lifted under the production sharing contract.

- (2) The parameters for new crude oil streams produced from the contract area shall also be determined in accordance with the provisions of the production sharing contract.

28.84 Submission of receipts (section 114)

In respect of submission of receipts, section 114 affirmed that the holder shall make available to the contractor, copies of the receipts issued by the Service bearing the names of each party as defined in the production sharing contract in accordance with each party's tax oil allocation for the payment of petroleum profits tax under the provisions of the production sharing contract.

28.85 Adaptation of laws (section 115)

According to section 115 of the NTA, 2025 the relevant provisions of all existing laws, including the Petroleum Industry Act, 2021 and Part II of Chapter Three of the NTA, 2025 shall be read with such modifications as to bring them into conformity with the provisions of this Part.

28.86 Review of the production sharing contract (section 116)

The Minister charged with responsibility for matters relating to petroleum shall cause the Commission to call for a review of production sharing contracts every eight years.

28.87 Administration of royalties {section 117 (1)(2)}

The administration of royalties is provided for in section 117(1)(2) of the NTA as follows:

- (1) The Service shall administer royalties payable under this Act in accordance with the provisions of the Nigeria Tax Administration Act, 2025;
- (2) Notwithstanding any other provision of this Act and any other law:
 - (a) the Service shall, in collaboration with the Commission:
 - (i) conduct joint quarterly review of records of royalties, concession rental and other payments;
 - (ii) exchange relevant information and records for the purpose of facilitating each other's functions under the relevant laws; and
 - (iii) facilitate the collection or remittance of the Commission's revenue;
 - (b) the Commission shall, not later than 12 months after the coming into effect of this Act, provide to the Service:
 - (i) relevant records to facilitate the review of the royalties and other revenue collection due to the Federation Account;
 - (ii) access to all accounts into which revenue due to the Federation is remitted; and

- (iii) relevant officers for the purposes of joint oversight, mutual assistance and collaboration with the Service.

28.88 Chapter review

Having read through this chapter, readers must have appreciated the administrative procedure of Nigeria's oil and gas sector. In addition, profits as specifically defined for oil and gas, the computations of adjusted profits, assessable profit, chargeable profit, assessable tax, chargeable tax, petroleum investment allowance, investment tax credit, memorandum of understanding, upstream/downstream matters, gas and process of taxing natural gas, petroleum profits tax under the NTA, 2025 regime, and administration of the deep offshore and inland basin production sharing contracts must have been fully understood.

28.89 Worked examples

28.89.1 Questions

1. Dopemu Petroleum Limited was granted an oil mining lease (OML) in January 2001 for exploration of oil and gas in onshore and shallow water operations for twenty years and a further renewal of twenty years, if application is made.

At the expiration of the initial license in December 31, 2021, the company decided not to apply for extension of its current license under the Petroleum Profits Tax regime and opted for automatic conversion on January 1, 2022, to the petroleum mining lease (PML) as enshrined in the Petroleum Industry Act 2021.

The following details were extracted from the financial statements of the company for the year ended December 31, 2022:

(i) Revenue:

Category	Type	Quantity Actual		Fiscal	
		(million barrels)	Price \$	Price \$	
Crude oil sold	Bonny light	7.5	75	77	
	Forcados				
	medium	5.2	69	70	
Condensate from associated gas sold	ABC condensate	4	55	54	

Gas liquid from associated gas sold	XYZ liquid	3.8	48	50

(ii) **Expenses/expenditure:**

Item	<u>N'million</u>
Royalty incurred and paid for	118,900
Production cost	112,660
Concession rentals	25,200
Repairs of plant, machinery and fixtures	2,680
First exploration well costs	2,770
Repairs of production implement utensils	1,850
Cost of gas reinjection wells	1,250
NDDC charge	200
Purchase of information on existence of petroleum deposits	305
Customs duties	106
First two appraisal wells costs	3,900
Decommissioning and abandonment	1,500
Depreciation	2,820
Environmental remediation fund	1,800
State government ground rent fee	22
Finance costs	25
Host community costs	1,400
Miscellaneous expenses	1,129
Administrative costs	1,980

The following additional information was also made available:

- (i) First two appraisal wells costs consisted of 60% tangible costs and 40% intangible costs.
- (ii) Expenditure for the purchase of information on existence of petroleum deposits included:

	<u>N'million</u>
Acquisition of geophysical information	100
Geological data and information	120

Others	<u>85</u>
	<u>305</u>

(iii) Miscellaneous expenses were:

	N'million
Gas flare fee	720
Donations to orphanage homes	132
Terminalling cost	169
Stamp duty	18
Signature bonus paid for the acquisition of petroleum deposits	<u>90</u>
	<u>1,129</u>

(iv) Agreed capital allowances for the year was ~~N~~4,500 million.

(v) Production allowances after commencement of the Act:

	N'million
Onshore operations	800
Shallow water operations	<u>1,100</u>
	<u>1,900</u>

(vi) Assume that ~~N~~440 is equivalent to US \$1 and tax liabilities payable will be in local currency (Naira).

Required:

Compute the following for the relevant assessment year:

- Hydrocarbon tax liability
- Income tax liabilities

2. Dada Petroleum Company Limited has been operating in the onshore and shallow water areas of the Niger Delta region for over fifteen years. The company was granted a petroleum mining lease licence in January 2021.

In its bid to improve profitability, the company's management intends to apply for licence to operate in the deep sea area as from 2025. The decision of the management is expected to be laid before the members of the company at the 2023 annual general meeting, which comes up in the second half of 2024.

The following was extracted from the book of accounts of the company for the year ended December 31, 2023:

Income:	N' million	N' million
Fiscal value of crude oil sold (note 1)		191,100
Value of condensate from associated gas sold (note 1)		84,474
Value of natural gas liquid from associated gas sold (note 1)		55,328
Other incidental income		151
Realised exchange gain		38
Gross total income		331,091
Expenses/deductions:		
Royalty incurred and paid	86,200	
First exploration wells cost	6,800	
First two appraisal wells costs	0	
Joint cost- terminalling	18,700	
Gas reinjection wells cost	12,000	
Salaries and wages	3,420	
Power cost	0	
NDDC charge	9,300	
Concessional rentals	0	
Depreciation of assets	1,650	
Allowance for doubtful debts (note 3)	0	
Host community trust fund contribution	125	
Stamp duty	60,430	
Staff welfare	13,860	
Travelling	2,400	
Donations and subscription (note 4)	4,800	
Decommissioning and abandonment	16	
Environment remediation fund contribution	350	
General expenses (note 5)	180	
Finance costs	6	
Net profit	1,300	<u>225,037</u>
	1,250	<u>106,054</u>
	500	
	<u>1,750</u>	

The following additional information was also provided:

- (i) Data on crude oil; condensate from associated gas sold; and natural gas liquid from associated gas sold;

Category	Quantity	Actual	Fiscal price
Crude oil	5.25	70	72
Condensate from associated gas	3.61	45	44
Natural gas liquid from associated gas	2.80	38	40

- (ii) Omitted from the records was a balancing charge of ₦1, 500,000 made from disposal of an old oil equipment platform;

- (iii) Allowance for doubtful debts:

	₦ million
Specific provisions	900
General provisions	<u>1,500</u>
	2,400

- (iv) Donations and subscription:

	₦ million
Recognised orphanage homes	3.0
Host community's cultural group	2.0
Subscription to oil and gas association	<u>1.0</u>
	<u>6.0</u>

- (v) General expenses:

	₦ million
Penalty for gas flare	250
Printing of stationery items	140
State government levy	<u>110</u>
	<u>500</u>

(vi) Agreed capital allowances:

	N' million
Brought forward	167
For the year	<u>2,105</u>
	<u>2,272</u>

(vii) Production allowance:

	N' million
Onshore operations	900
Shallow water operation	<u>1,700</u>
	<u>2,600</u>

(viii) The exchange rate averaged N520 to 1 USD during the year.

(ix) Assume the tax liabilities are to be paid in domestic (Naira) currency.

Required:

As the company's Tax Manager, you are to advise the management, in accordance with the provisions of Petroleum Industry Act 2021, on:

- (a) Hydrocarbon tax payable in the relevant assessment year
- (b) The tax implications, if the company decides to involve or invest in deep offshore areas

3. Okpala Petroleum (Nigeria) Limited is a subsidiary company of a foreign oil and gas company. The company has been involved in petroleum prospecting and exploration (upstream) for both local and foreign sales for over twenty years.

As a corporate board policy, the management meets and considers the report in respect of its operations on quarterly basis. The results for the first quarter (January – March) 2024 of the company, as prepared by the Finance Controller, revealed the following:

	N'000	N'000
Income:		
Value of oil sold (export)		900,380
Value of oil sold (local)		
Value of gas sold		430,100
Other income		<u>7,200</u>
Gross revenue		1,560,980
Expenses:		
Production cost	210,730	
Tangible drilling cost for the first appraisal well	18,800	
Intangible drilling cost for the first appraisal well	17,600	
Cost of gas reinjection wells	4,000	
Cost of drilling 3 appraisal wells	24,000	
Rent	13,000	
Royalties on export sales	69,300	
Royalties on local sales	9,800	
Salaries and wages	170,500	
Head office shared costs	62,000	
Repairs and maintenance	8,930	
Customs duty on essentials	2,900	
Depreciation	66,000	
Interest on loans	4,400	
Allowance for doubtful debts	34,000	
Administrative expenses	79,200	
Stamp duties on increase in share capital	1,000	
Bank charges	900	
Miscellaneous expenses	22,500	
Income tax provision	90,000	
Tertiary education tax provision	<u>6,000</u>	<u>915,560</u>
Net profit		<u>645,420</u>

The following additional information was provided:

- (i) The monthly fiscal oil and gas prices at each measurement point have been approved on an export parity basis by the Nigerian Upstream Petroleum Regulatory Commission.

(ii) Head office shared costs included:

	N'000
Research and development costs	12,000
Indirect production costs	<u>50,000</u>
	<u>62,000</u>

(iii) Repairs and maintenance expenses were made up of:

	N'000
Repairs of oil pipelines and storage tanks	6,000
Repairs of plant	1,500
Improvement to the company's building	<u>1,430</u>
	<u>8,930</u>

(iv) Allowance for doubtful debts included:

	N'000
Specific provision	10,000
General provision	20,000
Bad debt written off	<u>4,000</u>
	<u>34,000</u>

(v) Administrative expenses consisted of:

	N'000
Natural gas flare fees	10,000
Transport cost	13,200
Cost of obtaining information on existence of oil	7,300
Expenditure for acquisition of geological information	14,900
Other allowable expenses	<u>33,800</u>
	<u>79,200</u>

(vi) Miscellaneous expenses included:

	N'000
Tenement levy paid to the local government	2,000
Contribution to Niger Delta Development fund	5,500
Contribution to Host Community Development fund	12,000
Donation made to widows and orphans association	<u>3,000</u>
	<u>22,500</u>

(vii) Unabsorbed losses brought forward from previous years were N35,000.

Required:

As the company's Assistant Tax Manager, you have been asked by the Tax Manager to submit a report to him for review in the next three days as the Management Committee meeting is slated for next week. The report should specify:

- a) The adjusted profit and assessable profit of the company for the first quarter of 2024 in line with the provisions of Petroleum Industry Act 2021.
 - b) Comments on the cost-price ratio of the company in view of the provisions of the Sixth Schedule to Petroleum Industry Act, 2021.
4. In the last three years, some major oil producing companies had decided to divest their investments from the Nigerian oil and gas sector. One of the reasons for this might be the new global energy order, which seems to favour the evolution of "green environment" as against the present use of hydrocarbons with its inherent environmental degradation and pollution.

Similarly, in response to the yearnings of various stakeholders in the oil and gas sector, the Federal Government had enacted the Petroleum Industry Act (PIA) 2021. Generally, the Act provides the legal, governance, regulatory and fiscal framework for the Nigerian petroleum industry, the development of host communities and for related matters.

Notable commentators and professionals in the sector did suggest that the divestment of major oil and gas operators in Nigeria could be beneficial to the local investors if funds are sourced and deployed to businesses in the sector. Mergers and Acquisition of indigenously-owned oil producing companies had been noted as one of valuable options in this regard.

Required:

- a) In respect of Petroleum Industry Act 2021, identify the expenses allowable in the computation of adjusted profit of a company in upstream petroleum operations?
 - b) Identify and explain SIX implications of mergers and acquisitions in respect of a situation where a new company takes over an existing company.
5. Kaduna Petroleum Company Limited has been in oil prospecting business since 2012. the company still operates within the petroleum profits tax regime as provided for in Chapter Three, Part II of the Nigeria Tax Act, 2025.

Projected statement of accounts for the year ending December 31,2026:

	N'million	N'million
Revenue:		
Fiscal value of oil sold (export sales)		77,200
Fiscal value of oil sold (local sales)		<u>35,600</u>
		112,800
Other income		<u>900</u>
		113,700
Less:		
Royalties	8,100	
Production cost	56,500	
Intangible drilling expenses	430	
Salaries	7,100	
Rent	3,500	
Bad and doubtful debts written off	2,050	
Depreciation	520	
Repairs and maintenance	110	
Consumables	170	
Customs duty	350	
Harbour dues	140	
Administrative expenses	1,200	
Pension fund contribution	850	
Finance charges	250	
Host community fund	<u>500</u>	<u>81,770</u>
Profit before tax		<u>31,930</u>

Additional information:

(i) Royalties of ~~N~~8,100 million include royalties in locally disposed oil of ~~N~~1,100 million.

(ii) Bad and doubtful debts written off included:

	N'million
Specific allowance	980
General allowance	1200
Recovered	<u>(130)</u>
	<u>2,050</u>

(iii) The amount of ~~N~~3,500 million expended on rent included ~~N~~740 million on non-productive rent.

- (iv) Pension fund contribution was made to an institution approved by the Joint Revenue Board.
- (v) Development levy of ₦1,340 million was agreed with the Nigeria Revenue Service.
- (vi) Capital allowances record reveals:

	₦'million
Capital allowance b/f	80
Capital allowance for the year	<u>320</u>
	<u>400</u>

- (vii) Production investment allowance of ₦110 million was agreed with the relevant authority.

Required:

Compute the petroleum profits tax liability of the company for the relevant tax year.

28.89.2 Suggested solutions to questions

1. (a)

Dopemu Petroleum Limited Computation of hydrocarbon tax liability For 2022 assessment year

	N'million	N'million
Revenue:		
Value of crude oil sold:		
Bonny light (7.5m barrels x \$77 x ~~N440~~)		254,100
Forcados medium (5.2m barrels x \$70 x ~~N440~~)		160,160
Value of condensate from associated gas sold(4m barrels x \$55 x ~~N440~~)		96,800
Value of gas liquid from associated gas sold(3.8m barrels x \$50 x ~~N440~~)		<u>83,600</u>
Gross revenue		594,660
Balancing charge		=
Total gross income		594,660
Allowable deductions (Section 263):		
Royalty incurred and paid for	118,900	
Production cost	112,660	
Concession rentals	25,200	
Repairs of plant, machinery and fixtures	2,680	
First exploration well	2,770	
Repairs of production implement utensils	1,850	
Cost of gas reinjection wells	1,250	
NDDC charge	200	
Purchase of information (~~N305~~ – ~~N85~~)	220	
First two appraisal wells cost	3,900	
Decommissioning and abandonment	1,500	
Environmental remediation fund	1,800	
State government ground rent levy	22	
Host community costs	1,400	
Misc. (~~N1,129~~ – ~~N720~~ – ~~N132~~ – ~~N90~~)	<u>187</u>	
Total allowable cost	<u>274,539</u>	(274,539)
Total costs subject to CPR limit (Wk 1)	<u>279,039</u>	

Excess allowable cost carried forward		
Adjusted profit	Nil	
Less: Loss relief		<u>320,121</u>
Assessable profit		=
Less: Section 266 and 6 th Schedule deductions: Capital allowances		<u>320,121</u>
		<u>4,500</u>
Less: Production allowances:		315,621
Onshore operations	800	
	<u>1,100</u>	
Shallow water operations		<u>1,900</u>
Chargeable profit		<u>313,721</u>
Hydrocarbon tax @30% of ₦313,721m		94,116.30

Workings on cost price ratio

	<u>₦'million</u>	<u>₦'million</u>
A. Gross revenue		594,660
(i) Maximum allowable @ 65%		<u>386,529</u>
Total operating cost		274,539
Capital allowances		<u>4,500</u>
B. Total eligible costs		279,039
Less: Exempted costs incurred (Section 263(1)):		
Royalty paid	118,900	
NDDC charge	200	
Concession rentals	25,200	
Host community funds	1,400	
Environmental remediation fund	<u>1,800</u>	
C1. Total exempted cost		<u>147,500</u>
(ii) Net total costs to be subject to CPR (B -C1)		<u>131,539</u>

C2. Maximum allowable cost is the lower of (i) and (ii), which is N131,539

D, Total allowable cost (in line with the practice of FIRS)
 = C1 + C2 (that is, exempted cost + CPR restricted cost)
 = N147,500 + N131,539 = **N279,039.**

(b)

Dopemu Petroleum Limited
Companies income tax liabilities
For 2023 assessment year

	<u>N'million</u>	<u>N'million</u>
Gross total income		594,660
Less:		
Section 263 allowable deductions		
CITA allowable deductions:	274,539	
Administrative cost	1,980	
Finance costs	25	
Donations to orphanage	<u>132</u>	<u>2,137</u>
Assessable profit		317,984
Add: Balancing charge		<u>Nil</u>
		317,984
Less: Loss relief		<u>Nil</u>
		317,984
Less: Capital allowances		<u>4,500</u>
Total profit		<u>313,484</u>
Companies income tax @ 30% of total profit		94,045.20
Tertiary education tax @ 2.5% of Assessable profit		<u>7,949.60</u>
		<u>101,994.80</u>

2.

Dada Petroleum Company Limited
Computation of hydrocarbon tax
For the year ended December 31, 2023

	N' million	N' million
Income/Revenue:		
Value of crude oil sold (5.25m barrels x \$72 x N520)		196,560
Value of condensate from associated gas sold (3.61m barrels x \$45 x N520)		84,474
Value of natural gas liquid from associated gas sold (2.8m barrels x \$40 x N520)		<u>58,240</u>
Gross revenue		339,274
Balancing charge		<u>1.5</u>
Total gross income		339,275.5
Allowable deductions (Section 263):		
Royalty incurred and paid	86,200	
First exploration wells cost	6,800	
First two appraisal wells cost	18,700	
Joint cost-terminalling	12,000	
Gas reinjection wells cost	3,420	
NDDC charge	125	
Concessional rents	60,430	
Host community trust fund contribution	4,800	
Stamp duty	16	
Decommissioning and abandonment	1,300	
Environment remediation fund contribution	1,250	
General expenses- State government levy	<u>110</u>	
Total allowable costs	<u>195,151</u>	<u>(195,151)</u>
Total cost subject to CPR limit (W1)	<u>197,423</u>	
Excess allowable cost carried forward	<u>Nil</u>	

	<u>N' million</u>	<u>N million</u>
Adjusted profit		144,124.5
Less: Loss relief		<u>Nil</u>
Assessable profit		144,124.5
Less: Section 66 and 6 th Schedule deduction		
Capital allowances:		
Brought forward	167	
For the year	<u>2,105</u>	<u>2,272</u>
		141,852.5
Less: Production allowances:		
Onshore operations	900	
Shallow water operations	<u>1,700</u>	<u>2,600</u>
Chargeable profit		<u>139,252.5</u>
Hydrogen tax @30% of ₦139,252.5		<u>41,775.75</u>

Workings 1: Cost-profit-ratio (CPR)		<u>N' million</u>	<u>N' million</u>
A.	Gross revenue		<u>339,274</u>
(i)	Maximum allowable @65% of gross revenue		<u>220,528.10</u>
	Total operating cost		195,151
	Capital allowances		<u>2,272</u>
B.	Total eligible costs		197,423
	Less: exempted cost incurred (Section 263):		
	Royalty paid	86,200	
	NDDC charge	125	
	Concessional rentals	60,430	
	Host community fund	4,800	
	Environmental remediation fund	<u>1,250</u>	
C1	Total exempted cost		<u>152,805</u>
(i)	Net total cost to be subject to CPR (B – C1)	<u>44,618</u>	
C2	Maximum allowable cost is the lower of (i) and (ii), which is ₦44,618,000.		
D.	Total allowable cost (in line with the practice of FIRS)		
	= C1 +C2 (that is, exempted cost + CPR restricted cost		
	= ₦152,805 million + ₦44,618 million		
	= ₦197,423 million.		

b. The tax implications on the profit/activities of the company, if it invests in deep offshore areas are:

- (i) Hydrocarbon tax will not apply to companies with investments in the deep offshore areas; and
- (ii) The company will need to incorporate a separate company to take care of the deep offshore activities. This means that onshore/shallow water operations cannot be merged with deep offshore activities.

3. Okpala Petroleum (Nigeria) Limited

Internal Memo

Date:

From: Assistant Tax Manager

To: Tax Manager

RE: Report on the Company's Adjusted Profit and Assessable Profit for the 2024 Year of Assessment and Comments on Cost-price Ratio

I refer to your request on computations of adjusted profit and assessable profit for the first quarter of 2024 and wish to comment on the company's cost-price ratio for the period under review. I hereby present a report for your perusal before same is presented at the next management committee meeting.

(a) Computation of adjusted profit and assessable profit

The provisions of section 262 (ascertainment of crude oil revenue, adjusted profit, assessable profit and chargeable profits), 263 (allowable deductions) and 264 (disallowable deductions) were complied with in the computations of adjusted profit and assessable profit of the company. Using two formats (as shown in appendices 1 and 2), the company's adjusted profit revealed ₦941,350,000. When the unabsorbed loss of ₦35,000 was relieved, the assessable profit for the year was ₦941,315,000.

(b) Comments on cost - price ratio

The Petroleum Industry Act 2021 provides that all costs presented under Section 263 and under the Sixth Schedule to the Act in an accounting period, the sum of which is eligible for deduction under the hydrocarbon tax shall be subject to a cost-price ratio limit of 65% of gross revenue determined at the measurement points.

However, certain costs such as rent, royalty and contributions to the environmental remediation fund, host community fund, Niger Delta Development

Commission fund and other similar contributions are excluded from this provision.

Any such cost not deductible shall be carried forward to subsequent years for deduction provided the amount to be deducted shall not exceed the total cost incurred.

Thank you.

Festus Akintola

Appendix 1: Computation of adjusted profit and assessable profit for the first quarter of 2024 (Format 1)

	N'000	N'000
Net profit as per accounts		645,420
Add back: Disallowable deductions (Section 264)		
Cost of drilling appraisal wells (1/3 of N24,000)	8,000	
Head office shared costs	62,000	
Repairs and maintenance (building improvement)	1,430	
Customs duty on essentials	2,900	
Depreciation	66,000	
Interest on loans	4,400	
Allowance for bad debts	34,000	
Administrative expenses:		
Natural gas flare fees	10,000	
Cost of obtaining information on oil	7,300	
Bank charges	900	
Miscellaneous expenses:		
Donation to widows and orphans	3,000	
Income tax provision	90,000	
Tertiary tax provision	<u>6,000</u>	<u>295,930</u>
Adjusted profit		941,350
Less: Unabsorbed losses b/f		(35)
Assessable profit		<u>941,315</u>

Appendix 2: Computation of adjusted profit and assessable profit for the first quarter of 2024 (Format 2)

	N'000	N'000
Gross income		1,560,980
Less: Allowable expenses (Section 263 deductions)		
Production cost	210,730	
Tangible drilling cost	18,800	
Intangible drilling cost	17,600	
Cost of gas reinjection wells	4,000	
Cost of drilling appraisal wells (2/3 of N24,000)	16,000	
Rent	13,000	
Royalties:		
Export sales	69,300	
Local sales	9,800	
Salaries and wages	170,500	
Repairs and maintenance (N8,930 – N1,430)	7,500	
Administrative expenses (N13200 + N14,900 +N33,800)	61,900	
Stamp duties on increase in share capital	1,000	
Miscellaneous expenses (N22,500 – N3,000)	<u>19,500</u>	<u>619,630</u>
Adjusted profit		941,350
Less: Unabsorbed losses b/f		<u>(35)</u>
Assessable profit		<u>941,315</u>

4.(a) Section 263(1) of Petroleum Industry Act 2021 provides that in computing the adjusted profit of a company in upstream petroleum operations related to crude oil for any accounting period, the following expenses are allowable:

- (i) Rents incurred by the company for the period pursuant to a petroleum mining lease or petroleum prospecting licence;
- (ii) All royalties the liability for which was incurred and were paid by the company during the period in respect of crude oil and associated gas and where a petroleum mining lease includes payment to the Federation Account related to production sharing, profit sharing, risk service contracts or other contractual features under a model contract and the company has incurred liability for such payments in kind or in cash;
- (iii) Expenses directly incurred for repair of plant, machinery or fixtures employed for the purpose of the business;
- (iv) An expenditure tangible or intangible directly incurred in connection with the drilling of the first exploration well and the first two appraisal wells in the same field;

- (v) Any amount contributed to a fund, scheme or arrangement approved by the Commission for the purpose of decommissioning and abandonment, provided that the surplus or residue of the fund shall be subject to tax under this Act at the end of the life of the field, where such surplus is returned to the lessee;
 - (vi) All sums the liability of which was incurred by the company to the Federal Government or any State or Local Government Council by way of levies, stamp duties and fees;
 - (vii) Costs of gas re-injection wells, which are re-injecting natural gas that otherwise would be flared, subject to ratification by the Commission; and
 - (viii) Any amount contributed to any fund, scheme or arrangement approved by the Commission pursuant to the establishment of host communities development trusts, Environmental Remediation Fund, Niger Delta Development Commission and other similar contributions.
- (b) Implications of mergers and acquisitions in respect of a situation when a new company takes over an existing company are:
- (i) Filing of annual returns: The new company that emerges from a merger process is expected to file the audited accounts and returns with the FIRS within 18 months from the date of its incorporation or not later than 6 months after the end of its first accounting period, whichever is earlier.
 - (ii) Basis of assessment: The commencement rules will apply to the new company.
 - (iii) Claim of capital allowances: No initial or investment allowance will be claimed on the transferred assets. The annual allowance claimable will be based on the tax written down value of the transferred assets.
 - (iv) Unabsorbed losses and capital allowance brought forward: The unrelieved losses and unabsorbed capital allowances of the individual merging companies will not be allowed to be carried forward and set off against the assessable profits of the new company after the merger. However, the unutilised capital allowances may be added to the tax written down value of the assets taken over for annual allowance purposes in the enlarged entity.
 - (v) Stamp duties: Stamp duty payment will arise on the share capital of the new company. If a merger also results in increase in share capital, stamp duty will be paid on the increase in share capital.
 - (vi) Merger cost: The ~~FIRS~~ NRS may seek to disallow expenses (legal and professional fees) incurred in the process of merger on the basis that they are capital in nature and as such not tax deductible

- (vii) Value added tax and withholding tax: The fees paid to the professionals for services rendered in connection with the merger will attract value added tax and withholding tax at the appropriate rates.
- (viii) Guarantee or security for payment of tax: The FIRS may require the new company to guarantee or give security to the satisfaction of the FIRS for the payment in full of all tax due or to become due by any of the ceased companies.
- (viii) End of service award: When companies merge, the services of some employees may no longer be needed. The new company may have to pay benefits such as gratuity, compensation for loss of employment and other retirement benefits. These expenses will be treated as allowable for the new company (but subject to statutory limit, for instance, for compensation for loss of employment is N100 million-Finance Act 2020).

5.

Kaduna Petroleum Company Limited
Computation of petroleum profits tax
For 2026 assessment year

	₦million	₦million
Revenue:		
Fiscal value of oil sold (export sales)		77,200
Fiscal value of oil sold (local sales)		<u>35,600</u>
		112,800
Other income		<u>900</u>
		113,700
Less:		
Royalties	8,100	
Production cost	56,500	
Intangible drilling expenses	430	
Salaries	7,100	
Rent	3,500	
Bad and doubtful debts written off	980	
Repairs and maintenance	110	
Consumables	170	
Customs duty	350	
Harbour dues	140	
Administrative expenses	1,200	
Pension fund contribution	850	

	N'million	N'million
Finance charges	250	
Host community fund	500	
Deveopment levy	<u>1,340</u>	<u>81,520</u>
Adjusted profit		32,180
Less: Unrelieved loss b/f		Nil
Assessable profit		32,180
Less: Capital allowances:		
Lower of:		
Actual capital allowance incurred:		
Capital allowance b/f	800	
Capital allowance for the year	320	
Petroleum investment allowance	<u>110</u>	
	<u>510</u>	
Or		
85% of assessable profit (0.85 x N32,180 m)	27,353	
Less: 170% of PIA (1.7 x N110m)	<u>187</u>	
	<u>27,540</u>	
Capital allowance claimed		(510)
Chargeable profit		<u>31,670</u>
Chargeable tax @ 85% of chargeable profit		<u>26,919.5</u>

MINING TAXATION

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29 Mining Taxation

29.0 Learning objective

The objective of this chapter is to enhance readers' understanding of mining taxation in Nigeria.

29.1 Learning outcomes

At the end of this chapter, students are expected to know:

- a. the administration procedure of mining business in Nigeria;
- b. the incentives available for mining operation in Nigeria;
- c. the minerals titles;
- d. the environmental considerations and rights of host communities;
- e. the mining royalties;
- f. the offences and penalties;
- g. the computation of capital allowances;
- h. the process of computing total profits;
- i. the treatment of losses; and
- j. the scope and administration of the Nigeria Extractive Industries; and Transparency Initiative (NEITI).

29.2 Administrative structure

The administrative structure of Nigeria's mining industry has undergone significant changes, particularly with the split of the Ministry of Mines and Steel Development into two separate ministries: the Ministry of Solid Minerals Development (MSMD) and the Ministry of Steel Development (MSD).

a) Ministry of Solid Minerals Development (MSMD)

i) Introduction

The MSMD is responsible for unlocking the economic potential of the solid minerals sub-sector in Nigeria. Its key responsibilities include:

- Policy formulation: Advising the government on laws and regulations guiding prospecting, quarrying, and mining.
- Regulation: Issuing permits, licenses, and leases, and collecting rents, fees, and royalties.
- Information and knowledge: Providing data to enhance investment in the sector

ii) Departments under MSMD

Some of the departments under MSMD include:

- Mines Inspectorate Department: Ensures compliance with mining regulations.
- Mines Environment and Compliance: Oversees environmental issues related to mining.
- Mining Cadastre Office: Manages the registration and licensing of mining

claims.

- Artisanal and Small-scale Mining Department: Supports small-scale miners.
- Human Resources: Manages personnel and staffing needs.
- Finance and Accounts: Handles financial matters.

iii) Parastatals under MSMD

The MSMD has several parastatals, including:

- Nigerian Geological Survey Agency (NGSA): Provides geological data and information.
- Nigerian Institute of Mining and Geo-Sciences: Offers training and research in mining and geosciences.
- Council of Nigerian Mining Engineers and Geo-scientist (COMEG): Regulates mining professionals.
- National Raw Materials Exploration Agency (NSRMEA): Explores and develops raw materials.

b) Ministry of Steel Development (MSD)

The MSD focuses on accelerating the development of Nigeria's steel industry. However, the specific departments and parastatals under MSD are not well-defined, its primary mandate is to Nigeria's steel industry has significant potential for economic growth and industrialisation,

The administrative system of steel development in Nigeria involves various government agencies, parastatals, and private sector organisations. Here's an overview:

- i) Ministry of Steel Development: The government ministry responsible for formulating policies and strategies to promote the development of the steel industry.
- ii) Steel Development Parastatals: Organisations like the Nigerian Steel Development Authority (NSDA) may be responsible for implementing policies, regulating the industry, and promoting steel development.
- iii) Steel Companies: Public and private steel companies, such as Ajaokuta Steel Company and Delta Steel Company, play a crucial role in steel production and development.
- iv) Administrative Structure. This may include:
 - Policy formulation: The Ministry of Steel Development formulates policies to guide the steel industry's growth and development.
 - Regulation: Regulatory bodies ensure compliance with industry standards, safety protocols, and environmental regulations.
 - Industry promotion: Government agencies and parastatals promote the steel industry through initiatives like investment promotion, research and development, and human capacity building.

- **Monitoring and evaluation:** The government tracks progress, identifies challenges, and evaluates the impact of policies and programs.

29.3 Regulatory framework and administration of Nigerian minerals

The administration and regulation of all aspects of the exploration and exploitation of solid minerals in Nigeria and related purposes are governed by the Nigerian Minerals and Mining Act, 2007 (as amended). This Act repealed the Minerals and Mining Act, Number 34 of 1999.

Section 1 of the Nigerian Minerals and Mining Act, 2007 provides that the entire property and control of all mineral resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams, and water courses throughout Nigeria, any area covered by its territorial waters or constituency and the exclusive economic zone is and shall be vested in the Government of the Federation for and on behalf of the people of Nigeria.

The administrative structure and functions of principal stakeholders in the mining sector are as below:

a) Functions of the Minister

Subject to the provision of the mining Act, the Minister shall:

- i) ensure the orderly and sustainable development of Nigeria's mineral resources;
- ii) develop a well-planned and coherent programme of exploitation of mineral resources taking into account the economic development, ecological and environmental factors;
- iii) monitor compliance with community development agreements by industry operators;
- iv) establish the procedure for monitoring developments in the solid minerals sector and encourage the private sector investment in mineral resources development;
- v) ensure that in the exploitation of the mineral resources, an equitable balance is maintained between foreign and indigenous interest;
- vi) create an enabling environment for the private investors, both foreign and domestic by providing adequate infrastructure for mining activities, and identify areas where government intervention is desirable in achieving policy goals and proper perspective in mineral resources development;
- vii) accelerate the development of technical and professional manpower required in the mineral sector;
- viii) establish environmental procedures and requirements applicable to mining operations;
- ix) maintain liaison between investors and government departments and agencies set up for the purpose of development of mineral resources and allied projects; and collaborate with other ministries and agencies of the Federal Government whose functions relate to the objectives of this Act;
- x) prescribe measures for the general welfare and safety of workers engaged in mineral resources operations;
- xi) develop a geo-scientific databank, and collate detailed data concerning the identity, quantity of Nigeria's mineral resources;

- xii) assist the private sector in identifying specific mining projects;
- xiii) initiate, organise and participate in promotion activities in mineral resources development, such as exhibitions, conferences, seminars and workshops geared towards the stimulation of investments in mineral resources;
- xiv) provide and disseminate up to date information on incentives in mineral resources available to investors under this Act;
- xv) register and keep records of all enterprises and companies established and pursuing activities in mineral resources and allied projects;
- xvi) cause to be created, such departments and agencies as are necessary for the effective administration of this Act;
- xvii) introduce investment-friendly local contents measures for mining projects;
- xviii) facilitate the development of indigenous technical and professional manpower required in the mineral resources sector;
- xix) co-operate on behalf of the Federal Government with other governments and international agencies in respect of matters relating to Nigeria's mineral resources;
- xx) do such other things as are reasonably necessary or expedient for the performance of his functions under this Act; and
- xxi) have the power to designate a mineral as a radio-active mineral and by radioactive regulations make special provisions for the exploration, exploitation, possession, export or otherwise dealing in the radio-active mineral.

b) Establishment of the Mining Cadastre Office

There shall be established within six (6) months of the coming into effect of this Act a Mining Cadastre Office with the responsibility for the administration of mineral titles and the maintenance of the cadastral registers.

- i) The Mining Cadastre Office:
 - shall be a body corporate with perpetual succession and a common seal;
 - may sue and be sued in its corporate name; and
 - may acquire, hold and dispose of property, whether movable or immovable.
- ii) The Mining Cadastre Office shall be administered by a Director- General who shall be assisted by such officers as shall be required for the efficient functioning of the cadastre system.
- iii) In order to fulfil its functions under this Act the Mining Cadastre Office shall operate as the sole agency responsible for the administration of mineral titles.
- iv) The Mining Cadastre Office shall in addition to any other functions prescribed by or under this Act perform the following:
 - consider applications for mineral titles and permits, issue, suspend and upon the written approval of the Minister, revoke any mineral title;
 - receive and dispose of applications for the transfer, renewal, modification, relinquishment of mineral titles or extension of areas;
 - maintain a chronological record of all applications for mineral title in;

- a priority book which is to be specifically used to ascertain the priority and registration of applications for exclusive rights on vacant areas;
- a general registry book which is to be used for all other types of applications where registration of the priority is not required; and
- undertake such other activities reasonably necessary for the purpose of carrying out its duties and responsibilities under the provisions of this Act.

(c) Central and Zonal Offices of the Mining Cadastre Office

A Central Mining Cadastre Office with exclusive authority and jurisdiction over the whole of the country shall be established in Abuja as the headquarters of the Mining Cadastre Office. The Mining Cadastre Office shall, according to administrative convenience, maintain an appropriate number of Zonal offices.

(d) Mining Cadastre Registers

The Mining Cadastre Office shall open a series of files to be known as Mining Cadastre Office Registers for the purposes of this Act, comprising of:

- i) a register of reconnaissance permits;
- ii) a register of exploration licences;
- iii) a register of mining leases;
- iv) a register of small-scale mining leases;
- v) a register of the water use permits; and
- vi) a register of quarry leases.

(e) Priority

- i) Where several applications are received on the same area or for overlapping areas from two or more persons on the same business day the application which is first received in the proper form shall be deemed to have priority over the others.
- ii) The criteria of first come, first served, as evidenced by registration with the issuing authority according to an established procedure, which in the case of the Mining Cadastre Office shall be registration in the priority register established by this Act, shall be strictly applied by the Mining Cadastre Office in case of competing applications for the same exclusive area.
- iii) The Mining Cadastre Office shall provide a receipt to an applicant for mineral title evidencing:
 - all documents and fees received from the applicant in respect of the application; and
 - the date and time of the application.

(f) Competitive bidding

- i) The Minister shall by regulations determine areas wherein an exploration licence and a mining lease shall be granted based on competitive bidding requirements.
- ii) The Mining Cadastre Office shall consider competing bids and shall, through an open and transparent method, select the bid which will promote the expeditious and beneficial development of the mineral resources of the area having regard to:

- the programme of exploration and mining operations which the applicant proposes to carry out and the commitments as regards expenditure which the applicant is prepared to make;
- the financial and technical resources of the applicant; and
- the previous experience of the applicant in the conduct of reconnaissance and mining operations.
- The successful application shall be treated as an application under section 59 or 65.

(g) Fees payable to the Mining Cadastre Office

The Mining Cadastre Office shall collect:

- i) a fee for processing of applications for mineral titles; and
- ii) an annual service fee established at a fixed rate per square cadastral unit for administrative and management services rendered by the Cadastre Office.

(h) Revocation of mineral title for failure to pay fees

A mineral title shall become liable to revocation where the holder thereof has failed to pay the prescribed fees.

(i) Process for revocation when mineral titleholder fails to pay fees

In case of default of payment of the annual service fee due to the Mining Cadastre Office, the Mining Cadastre Office shall give a thirty-day written default notice to the defaulting party and, if payment is not effected during that period, the Mining Cadastre Office shall record the default and revoke the mineral title.

(j) Determination of fees payable

The amount of the fees payable under section 10, administration and modalities for their payment shall be determined in the regulations issued by the Minister.

(k) Notice to applicant

Any notice required to be sent by the Mining Cadastre Office to an applicant for, or holder of a mineral title shall be sent by courier service or registered mail to the last known address in Nigeria of the mineral titleholder or given in person to an authorised representative of the applicant or holder of the mineral title in Nigeria or published in the Gazette. The notice shall for all purposes be sufficient notice of the subject-matter of the notice to the applicant for or holder of a mineral title.

(l) Relationship between the Minister and the Mining Cadastre Office (MCO)

In the execution of his functions and relationship with the Mining Cadastre Office, the Minister shall, at all times ensure the independence of the Mining Cadastre Office in regard to the discharge of its functions and operations under this Act.

(m) Establishment of departments

For the purposes of carrying out his functions under this Act, the Minister shall establish in the Ministry:

- i) a Mines Inspectorate Department;

- ii) a Mines Environmental Compliance Department;
- iii) such other departments as he may consider expedient for the proper administration of this Act;
- iv) such inspectors, officers and other employees as may be considered necessary or carrying out the objectives of this Act shall be appointed into the departments and agencies established pursuant to subsection (1) of this section; and
- v) the powers and duties of the inspectors, officers, or other employees appointed under subsection (1) of this section shall be those assigned to them respectively under this Act, its regulations and in accordance with the provisions of the Public Service Rules in force.

(n) Functions of the Mines Inspectorate Department

The Mines Inspectorate Department shall in addition to any other functions prescribed by this Act and subject to the direction of the Minister:

- i. exercise general supervision over all reconnaissance, exploration and mining operations to ensure their compliance with this Act;
- ii. supervise and enforce compliance by mineral titleholders with all mine health and safety regulations prescribed under this Act and any other law in force;
- iii. prepare and render records, reports and returns as required by the Minister or as prescribed by Regulations;
- iv. take custody of mineral resources required by any Court to be forfeited to the government;
- v. with the prior approval of the Minister, dispose of any mineral resources forfeited to the government;
- vi. carry out investigations and inspections necessary to ensure that all conditions relating to mineral titles and the requirements of this Act are complied with;
- vii. discharge such other duties as may be assigned from time to time, by the Minister; and
- viii. review and recommend to the Minister, programmes for controlling mining operations.

(o) Functions of the Mines Environmental Compliance department

The Mines Environmental Compliance Department shall in addition to any other function prescribed by this Act and subject to the direction of the Minister:

- i. review all plans, studies and reports required to be prepared by holders of mineral title in respect of their environmental obligations under this Act;
- ii. monitor and enforce compliance by holders of mineral title with all environmental requirements and obligations established pursuant to this Act, its regulations and by any other law in force;
- iii. periodically audit the environmental requirements and obligations established pursuant to this Act, its regulations and by any other law in force and make recommendations thereon to the Minister; and
- iv. liaise with relevant agencies of Government with respect to the social and environmental issues involved in mining operations, mine closure and reclamation of land.

(p) Establishment of State Mineral Resources and Environmental Management Committee

- i. There is hereby established for each State of the Federation a committee to be known as the Mineral Resources and Environmental Management Committee, in this section referred to as “the Committee”.
- ii. The Committee in each state shall consist of:
 - a representative of the Mines Environmental Compliance Department in the Ministry who shall be the chairman of the Committee;
 - a representative of the Ministry responsible for land matters or mineral related matters in the state;
 - the Mines Officer responsible for the state;
 - a representative of the Ministry of Agriculture or Forestry in the state;
 - a representative of the Surveyor-General of the state;
 - a representative of the Local Government Council when matters affecting the said Local Government Area are being considered by the Committee;
 - a representative of the State Environmental Department or Agency; and
 - a representative of the Federal Ministry of Environment in the State.

(q) Functions of the Mineral Resources and Environmental Management Committee

The Committee is to:

- i. consider and advise the Minister on issues affecting returns of necessary reports affecting grants of mining titles;
- ii. consider issues affecting compensation and make necessary recommendations to the Minister;
- iii. discuss, consider and advise the Minister on the matters affecting pollution and degradation of any land on which any mineral is being extracted;
- iv. consider such other matters relating to mineral resources development within the State as the Minister may, from time to time, refer to the Committee;
- v. advise the Departments established in accordance with the provisions of this Act for the supervision of mineral exploitation and the implementation of social and environmental protection measures;
- vi. advise the Local Government Areas and communities on the implementation of programs for environmental protection and sustainable management of mineral resources;
- vii. advice and other necessary assistance required by holders of mineral titles in their interaction with State Governments,
- viii. Local Government Councils, communities, civil institutions, and other stakeholders;
- ix. advise the Minister in resolving conflicts between stakeholders; and
- x. advise the Minister in respect of matters connected with the implementation of this Act.

r) The Committee shall:

- i) meet at least once every three months and at such times as the Minister may deem necessary;
- ii) regulate its own procedure;
- iii) the Chairman shall appoint a competent officer from the Mines Inspectorate Unit in the state to be the secretary of the Committee. The secretary shall have no right to vote at any meeting of the Committee;
- iv) the Committee shall forward its report to the Minister after each meeting;
- v) where the Committee desires to obtain the advice of a host community or any other person on a particular matter, the Committee may co-opt a representative of the relevant host community or any person as a member for such period as it thinks fit, but such a person shall not be entitled to vote in any meeting of the Committee and his attendance shall not count towards a quorum;
- vi) the Chairman and three other members shall form a quorum at a meeting of the Committee;
- vii) every meeting of the Committee shall be presided over by the Chairman or, in his absence, by the Mines Officer for the state;
- viii) if on any question to be determined there is an equality of votes, the Chairman shall have a casting vote; and
- ix) the Committee shall have the power to determine its own procedure.

s) Delegation of powers by the Minister

- i. The Minister may, by notification in the Gazette, delegate to any department or
- ii. Officer of the Ministry the exercise or performance, subject to such conditions and restrictions as may be prescribed in the notification, of any function conferred on the Minister under this Act provided that it shall not apply to any function of the Minister to make regulations.
- iii. An officer authorised in writing by the officer in charge of the Mines Inspectorate Department may enter any mineral title area where mining operations are being carried out under this Act, or which is within the general area of the mineral title for the purposes of inspecting such operations and he shall be provided by the mineral titleholder with any information reasonably requested for the purpose of making a report.
- iv. The failure of the mineral titleholder to provide access to an officer for the purposes of inspection under subsection (2) shall constitute an offence.

t) Regulations

The Minister shall subject to the provisions of this Act make regulations in respect of any matter required to be prescribed by regulations under this Act and generally for giving full effect to the provisions of this Act, including prescribing, amending or withdrawing any form that may be required under this Act.

u) Use of land for mining a priority

- i) The use of land for mining operations shall have a priority over other uses of land and be

considered for the purposes of access, use and occupation of land for mining operations as constituting an overriding public interest within the meaning of the Land Use Act.

- ii) In the event that a mining lease, a small-scale mining lease or a quarry lease is granted over land subject to an existing and valid statutory or customary right of occupancy, the Governor of the State within which such rights are granted shall within sixty days of such grant or declaration revoke such right of occupancy in accordance with the provisions of section 28 of the Land Use Act.

29.4 Mining incentives

The key incentives available to companies engaged in mining operations in line with the provisions of the Nigerian Minerals and Mining Act, 2007 are summarised below:

- i) Tax holiday for an initial period of 3 years from commencement of operations and renewable for additional 2 years. Any dividend recorded during the tax holiday period will not be subject to withholding tax upon distribution to shareholders.
- ii) Exporters of mineral products may be permitted to retain part of their foreign exchange earning in a domiciliary account for the purpose of acquiring spare parts and other mining inputs.
- iii) Exemption from customs and import duties in respect of plant, machinery equipment and accessories imported exclusively for mining operations. However, the plant and equipment can only be disposed of locally upon payment of the applicable customs and import duties.
- iv) Free transferability of foreign currency through the Central Bank of Nigeria (CBN) for the following:
 - payment for servicing of certified foreign loan; and
 - remittance of foreign capital in event of sale or liquidation of the business.
- v) Grant of personal remittance quota for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.
- vi) Accelerated capital allowance on mining expenditure (95% initial allowance and retention of 5% until asset is disposed).
- vii) Grant of investment allowance of 10% on qualifying plant and machinery.
- viii) All infrastructure cost provided by the mining company and approved by the MCO to be capitalised and capital allowance claimed at 95% in the first year of operation.
- ix) A company may also be entitled to claim an additional rural investment allowance on its infrastructure cost, depending on the location of the company and the type of infrastructure provided.
- x) Annual indexation of unutilised capital allowance carried forward by 5% for mines that commenced production within five (5) years from the date of enactment of the Act. Whilst the period for new companies to enjoy this incentive lapsed in 2012, new producers may apply to the Minister of Finance, through the Minister of Mines and Steel Development, to enjoy this incentive. Such application may be considered on a case by case basis.
- xi) The Minister may grant a concession for the royalty payable on any mineral to be deferred for a number of years, subject to the approval of the Federal Executive council.
- xii) Actual amount incurred out of reserves made for environmental protection, mine

rehabilitation, reclamation and mine closure cost shall be tax deductible, subject to certification by an independent.

29.5 Minerals titles

A mining title can be granted to an individual, a company or a co- operative. The grant of exploration licence or mining lease could be by competitive bidding or on individual request. In a competitive bid, the government consolidates various mineral locations into blocks, and offer the blocks for sale to all investors with sufficient financial and technical capabilities to carry on mining operations.

a) According to Section 46 of the Nigerian Minerals and Mining Act:

The right to search for or exploit mineral resources is obtained through one of the following mineral titles in the form of:

- i. a reconnaissance permit;
 - ii. an exploration licence;
 - iii. a small-scale mining lease;
 - iv. a mining lease;
 - v. a quarry lease; and
 - vi. a water use permit.
- b) Subject to the exceptions provided in this Act, any person that undertakes or is involved in the search for or exploitation of mineral resources without the requisite mineral title or authority shall be guilty of an offence.
- c) Any mineral title issued under this Act shall be subject to such conditions as may be prescribed in the licence or lease or by regulation made under this Act.
- d) The form of all mineral titles shall be prescribed.

29.6 Possession and purchase of minerals

- a) According to section 92 of the Act “The provisions of this part do not apply to bona fide specimens of mineralogical, geological, or educational interest or to the receipt by an employer of minerals from his tributes.
- b) According to section 93 “No person, other than an officer of the Ministry authorised in that behalf by the Minister and acting in the execution of his duty shall possess any mineral unless:
- i) the mineral is Won from mineral title area of which the person is the holder and which entitles him to explore and exploit the minerals; or
 - ii) the person holds a permit to possess or purchase that mineral issued under the provisions of this Act; or
 - iii) the person is in respect of that mineral within the meaning of regulations made under this Act, a duly authorised agent or employee of any person permitted by paragraphs (a) and (b) of this subsection to possess that mineral”.
- c) According to section 94 “No person shall purchase any mineral unless he holds a licence to purchase minerals issued under this Act”.
- d) According to section 95 “proceeds recovered under a small scale mining Lease shall be sold to a licensed mineral procurement centre, hereinafter referred to as a “mineral buying centre” and

valid, sales receipts obtained and when “mineral buying centre” and valid sales receipts obtained and when centres required shall be produced for inspection by an authorised officer of the Cadastre Office”.

- e) According to section 96 (1) the requirements for a buying centre shall be in accordance with this Act. (2) All buying centres, so registered shall be required to keep an up to date record of all purchases and sales of minerals acquired with details as to which mine within the country the minerals were won: and obtained.

29.7 Environmental considerations and rights of host communities

- a) According to section 120 (1), the environmental protection and rehabilitation programme required under the provisions of the Act shall:
 - i. provide for specific rehabilitation and reclamation actions, inspections, annual reports;
 - ii. a reasonable estimate of the total cost of rehabilitation;
 - iii. cost estimates for each specific rehabilitation and reclamation action; and
 - iv. a timetable for the orderly and efficient rehabilitation and reclamation of the Mineral title area to a safe and environmentally sound condition suitable for future economic development or recreational use.
- b) The Mines Environmental Compliance Department shall exercise all its powers in respect of environmental protection and rehabilitation programs provided for in section 119 in consultation with the State Mineral Resources and Environmental Management Committee established pursuant to Section 19 of this Act.
- c) The Mines Environmental Compliance Department may approve or reject an Environmental Protection and Rehabilitation Program submitted by a Mineral title Holder and shall notify the holder of the mineral title of its decision thereon within sixty days of the submission of the environmental protection and rehabilitation Programme.
- d) If the Mines Environmental Compliance Department does not notify the holder of a mineral title within the period specified under subsection (3) of this section, the environmental protection and rehabilitation programme shall be deemed to have been approved as submitted.
- e) In the case of a rejection of the environmental protection and rehabilitation programme by the Mines Environmental Compliance Department, the mineral title holder may:
 - i. submit such other number of environmental protection and rehabilitation programmes as may be necessary in order to obtain the approval of the Mines Environmental Compliance Department; or
 - ii. if its application is rejected twice, the holder may submit the matter to arbitration within thirty days of notification of the, decision under subsection (3) of this section.
- f) In the case of its approval, the Mines Environmental Compliance Department shall ensure the implementation of the environmental protection and rehabilitation programme.

29.8 Allowable and disallowable expenses

29.8.1 Allowable expenses

- a) All direct cost of mining and transportation are allowable expenses.
- b) All allowable expenses as specified in section 20 of Nigeria Tax Act (NTA), 2025 for mining operators, such as:
 - i. any sum payable by way of interest on debt employed in generating the income of the trade, business, profession or vocation;
 - ii. rent and premium incurred during the period, in respect of land or building occupied for the purposes of generating the income;
 - iii. any outlay or expenses incurred in respect of salary, wages or other remuneration paid to employees and cost to the company of any benefit or allowance provided to its employees;
 - iv. any expense incurred for repairs of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewals, repair or alteration of any implement, utensil or articles so employed;
 - v. any amount of expenditure incurred for establishing, preserving or defending title to or rights over an asset;
 - vi. any contribution to any staff pension, provident or other retirement benefits fund, society or scheme approved under the Pension Reform Act or any similar enactment in Nigeria;
 - vii. any expense proven to the satisfaction of the relevant tax authority to have been incurred, being damage to or loss of stock or inventory of the trade, business, profession or vocation;
 - viii. specific bad or doubtful debts;
 - ix. research and development expenditure;
 - x. donations to approved bodies;
 - xi. any other expense incurred during any previous period for the purpose of such trade or business, or specifically for the period which the profits are being ascertained, provided that any expenditure incurred within 6 years prior to commencement of business which would have been deductible if incurred after commencement of business, shall be deemed to have been incurred on the first day of commencing the trade or business;
 - xii. all sums recovered on account of sums previously written off or allowed for deduction in respect of bad or doubtful debts shall be added to the profits of the trade, business, profession or vocation in the period of recovery;
 - xiii. liability waived, released or recovered shall be included in the assessable profits or chargeable gains; and
 - xiv. any other expenses that are wholly and exclusively incurred for the purpose of the business.

29.8.2 Disallowable expenses

Section 21 of NTA 2025 provides that a deduction shall not be allowed for the purposes of ascertaining the profits or income from any trade, business, profession or vocation in respect of:

- i. capital repaid or withdrawn from a trade, business, profession or vocation;
- ii. any expenditure of a capital nature;
- iii. domestic or private expense, or expenditure on assets not used for the purpose of the trade, business, profession or vocation;

- iv. any sum recoverable under an insurance or contract of indemnity;
- v. taxes on profit or incomes levied in Nigeria or elsewhere;
- vi. any payment to a savings, widows and orphans, pension, provident or other retirement benefit fund, society or scheme not approved under the Pension Reform Act or any similar enactment;
- vii. depreciation or impairment of any fixed asset (non-current asset), investment or an unrealised exchange difference on any item denominated in foreign currency;
- viii. any sum reserved out of profits subject to the provisions of section 20(1)(h) of NTA 2025;
- ix. any payment to a connected person that is not consistent with the Transfer Pricing Regulations issued by the Nigeria Revenue Service;
- x. any expense incurred in deriving an income that is exempt from income tax;
- xi. any expense allowable as a deduction in determining Chargeable gains;
- xii. penalty or fine imposed under any law;
- xiii. any tax or penalty borne on behalf of another person; and
- xiv. any expense on which value added tax is due but not charged, or in case of imported items, any expense on which the applicable import duty or levy was not paid;

29.9 Rate of capital allowances

The following are the capital allowance rates (as they affect mining business) as provided under the First Schedule to the Nigeria Tax Act, 2025:

Class	Rate	Qualifying Capital Expenditure
1	10%	(i) Building expenditure (ii) Heavy transportation expenditure
2	20%	(i) Plant expenditure (ii) Furniture and fittings expenditure (iii) Mining expenditure (iv) Other equipment expenditure
3	25%	(i) Motor vehicle expenditure (ii) Other capital expenditure

29.10 Total profits

The concept of total profits is as stated under section 27(1) of the Nigeria Tax Act, 2025. It is the process of assessing limited liability companies to tax. It involves computation of adjusted profit, loss relief and capital allowance. Company income tax is computed on total profit and Tertiary education tax on assessable profit as stated earlier.

29.11 Treatment of losses

Under the Nigeria Tax Act, 2025, losses incurred in a year of assessment can be carried forward and set-off against the assessable profits of the subsequent tax years (if any).

29.12 Assessment of tax liability

Tax shall be computed on the total profit for the relevant tax year on preceding basis at companies income tax rate of 30%..

29.13 Special tax provisions for mining operators

Section 64 (1) of Nigeria Tax Act, 2025 provides that trade or business engaged in mining operations is subject to tax under the relevant provisions of Chapter Two of this Act.

Section 64(2) states that for the purposes of computing the assessable profits of a company engaged in mining operations, any amount contributed to any fund, scheme or arrangement approved by the relevant authority for the purposes of providing for environmental protection, environmental remediation, mine rehabilitation, land reclamation and mine closure shall be tax deductible:

Provided that the amount so contributed is cash-backed and invested in a dedicated account or trust fund managed by independent trustees or funds.

29.14 Mining royalties

Section 64(3) provides that royalty is imposed on any mineral obtained in the course of exploration or mining operations at a rate prescribed under the Eighth Schedule to the Nigeria Tax Act, 2025 subject to the relevant provisions of the Nigeria Tax Administration Act, 2025.

The royalty shall be tax deductible in determining the assessable profits from the trade or business.

The Nigeria Revenue Service (NRS) shall be the relevant tax authority for the administration of the royalty imposed.

The solid minerals royalties shall be computed at the rates specified in the table of the Eighth Schedule to the Nigeria Tax Act, 2025 on the value of the solid mineral resource.

The value of each solid mineral resource extracted shall be determined using the official selling price specified by the Federal Ministry of Solid Minerals or ruling prices on an international trading platform or market for solid minerals.

S/N	Minerals	Ad Valorem (%)
1	Antimony ore	7.5
2	Amethyst	10
3	Aquamarine	10
4	Barytes	10

S/N	Minerals	Ad Valorem (%)
5	Bauxite	7.5
6	Bentonite	10
7	Beryllium	10
8	Bismuth	7.5
9	Bitumen/tar sand	7.5
10	Chalcopyrite	7.5
11	Chromite	10
12	Clay	10
13	Coal	7.5
14	Columbite ore (<10% Nb ₂ O ₅)	7.5
15	Columbite concentrate (>10% Nb ₂ O ₅)	7.5
16	Copper ore	7.5
17	Corundum	10
18	Crystal quartz	10
19	Diatomite	10
20	Dolomite	10
21	Emerald	10
22	Feldspar	10
23	Flourite	10
24	Garnet	10
25	Gold concentrate	15
26	Granite blocks	10
27	Granite aggregates	10
28	Granite dust	10
29	Graphite	10
30	Gypsum	10
31	Ilmenite	7.5
32	Industrial quartz	10
33	Iron ore	7.5
34	Kaolin (crude)	10
35	Kaolin (pulverized)	10
36	Laterite	10
37	Lead zinc ore (<55%Pb) (<30% Zn)	7.5
38	Lead zinc concentrate (>55%Pb) (>30% Zn)	7.5
39	Limestone (crude)	10
40	Lithium ore	10
41	Magnesite	7.5
42	Marble aggregates	10
43	Marble blocks	10
44	Manganese	7.5
45	Molybdenum	7.5

S/N	Minerals	Ad Valorem (%)
46	Monizite	10
47	Mica	10
48	Nickel	10
49	Phosphate	10
50	Pyrite	7.5
51	Ruby	10
52	Rutile	7.5
53	Salt	10
54	Sand	10
55	Sapphire	10
56	Shale	10
57	Silica sand	10
58	Silver ore	7.5
59	Soda ash/trona	10
60	Spodumene	10
61	Talc	10
62	Tantalite (crude) (<30 Ta2O5)	7.5
63	Tantalite concentrate (>30 Ta2O5)	7.5
64	Tin ore (<50 Sn)	7.5
65	Tin concentrate (>50 Sn)	7.5
66	Topaz	10
67	Tourmaline (green)	10
68	Tourmaline (pink and blue)	10
69	Wolframite	7.5
70	Zircon	10
71	Zircon sand	10
72	Moganite	10
73	Any other mineral	10

Source: Eighth Schedule to the NTA, 2025

29.15 Offences and penalties

- a) According to section 131 of the Nigerian Minerals and Mining Act, 2007, a person who:
 - i. conducts exploration or mines minerals or carries out quarrying operations otherwise than in accordance with the provisions of the Act;
 - ii. in making application for mineral title, knowingly makes a statement which is false or misleading in any material particular;
 - iii. in any report, return or affidavit submitted in pursuance of the provisions of this Act, knowingly gives an information which is false or misleading or fails to declare in any material particular; and
 - iv. removes, possesses or disposes of any mineral contrary to the provisions of this Act

commits an offence.

- b) According to section 132 (1), no loan granted pursuant to Part III of this Act shall be applied to any loans purpose other than that for which the loan was granted.
 - i) Any person who applies a loan granted pursuant to Part III of this Act in contravention of subsection (1) of this section commits an offence and is liable on conviction to a fine of an amount not less than the amount of the loan and interest accruing thereof in respect of which the offence was committed or imprisonment for a term of not less than five years.
 - ii) Where an offence under this section is committed by a body corporate is 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 of the body corporate (or any person purporting to act in any such capacity) he as well as the body corporate shall be deemed to be guilty of the offence and may be proceeded against and punished in accordance with subsection (2) above.
- c) According to section 133, a mineral title holder who is guilty of an offence under section 131 is liable to have his licence revoked and on conviction at the first instance, to a fine not less than ₦20,000,000.00; and imprisonment of not less than five years, if the offence is a continuing one, whether or not it is a first offence, the person convicted shall, in addition, be liable to a fine of ₦20,000.00 in respect of each day during which the offence continues.
- d) According to section 134, a person who:
 - I. places or deposits, or causes to be placed or deposited in a place any minerals, with the intention to mislead any other person as to the mineral possibilities of the place; or
 - II. mingles or causes to be mingled, with samples or ore, any substances which may enhance the value or in any way change the nature of the ore, with the intention to cheat, deceive or defraud; or engages in the business of milling, leaching, sampling, concentrating, reducing, assaying, transporting, or dealing in ores, metals or minerals, contrary to the provisions of this Act commits an offence under this Act and is liable on conviction to a fine of not less than ₦500,000.00 or to imprisonment for a term not exceeding 2 years or to both fine and imprisonment.
- e) According to section 135, a "person who keeps or uses any false or fraudulent scale or weight for weighing ores, metals or minerals, or uses any false or fraudulent assay scale or weight or enriched fluxes used for ascertaining the assay value of minerals, knowing them to be false or fraudulent commits an offence under this Act, and is liable on conviction to a fine of not less than ₦100,000.00 or more than ₦1,000,000 or to imprisonment for a term not less than 1 year or both fine and imprisonment.
- f) According to section 136 (1), a person who falsely represents that he obtained, the grant of an exploration licence, temporary title mining or other mining title and by that representation induces or attempts to induce any person to invest capital in a company or syndicate connected with the company before he actually obtains the grant of the mining title, shall forfeit any claim to the grant of the mining title:
 - i. Where a person who makes a false representation as in subsection of this section is a

- holder of another mining title, that mining title shall be revoked.
- ii. Nothing in this section shall be construed as a person who makes a false representation from liability to civil action or a criminal prosecution in respect of the representation.
 - g) According to section 137, a person who without lawful authority wilfully breaks, defaces or removes or in any other way interferes with any boundary mark, beacon pillar or post erected for any of the purpose of this Act or the regulations made under it without necessary approval or authority under this Act commits an offence.
 - h) According to section 138 (1), any person who without lawful cause;
 - i. interferes with or obstructs any mining or quarrying operation authorised by or under this Act; or
 - ii. interferes with any machinery, plant work or property on, in under or over land in exercise of a right conferred by or under this Act commits an offence.
 - i) A person who commits an offence under section 137 and subsection (a) of this section is liable on conviction:
 - i. at the first instance, to a fine not exceeding N500,000.00 or imprisonment for a term not exceeding 2 years or both the fine or imprisonment; and
 - ii. at a second or subsequent offence, to imprisonment for a term not exceeding 5 years or below 2 years.
 - iii. If the offence is continuing one whether or not it is a first offence, the person convicted shall, in addition, be liable to a fine of N10,000.00 in respect of each day or part of a day during which the offence continues.
 - j) According to section 139 (1), where an offence under this Act or under the regulations made there under is committed by a body of persons:
 - (i) in the case of a body corporate other than a partnership, every director of the body who took part in the management of the body shall, be deemed to be guilty of that offence; and;
 - (ii) in the case for a partnership, every partner or officer of that body shall be deemed to be guilty of that offence.
- Nothing in this section shall be construed as exempting any person who actually committed an offence, under this Act from the penalties provided for the offences committed by him.
- k) According to section 140 (1), where an offence under this Act has been committed by a body corporate or firm or other association of individuals, a person who at the time the commission of the offence was an officer thereof or was purporting to act in such capacity is severally guilty of that offence and liable to be prosecuted 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.
 - l) In this section and the other provisions of this Act, officers:

- i) in relation to a body corporate, includes a director, chief executive, manager and secretary; and
 - ii) in relation to a firm, includes a partner and other officer thereof; and in relation to any other association of individuals, includes a person concerned in the management of the affairs of such association.
- m) According to section 141:
 - i) any dispute arising between the holder of a mineral title and the Government in respect of the interpretation and application of this Act, its regulations and the terms and conditions of mineral titles shall be resolved, in the first instance, on an amicable basis;
 - ii) where the dispute is in the nature of a bona fide investment dispute, and such dispute is not amicably settled as provided under subsection (1) of this section, it shall be resolved in accordance with the provisions of the Nigerian Investment Promotions Commission Act, Cap. N 117 Laws of the Federation of Nigeria, 2004;
 - iii) any other dispute between the holder of a mineral title and the Government shall be resolved in the Federal High Court, if not settled in accordance with the provisions of subsection (1) or (2) of this section; and
 - iv) according to section 142, an offence under this Act and the regulations made.

29.16 The Nigeria Mineral Resources Decision Support System (NMDSS)

This is a framework designed to support informed decision-making in the solid minerals sector.

29.16.1 Overview/key features

- a) Data management: NMDSS collects, stores, and manages data on mineral resources, exploration, mining, and related activities.
- b) Data analysis: The system analyses data to provide insights on mineral potential, mining activities, and industry trends.
- c) Decision support tools: NMDSS provides tools and models to support decision-making on mineral exploration, mining, and investment.
- d) Stakeholder engagement: The system facilitates collaboration and information sharing among stakeholders, including government agencies, mining companies, and local communities.

29.16.2 Benefits

- a) Informed decision-making: NMDSS provides accurate and timely data to support informed decision-making in the solid minerals sector.
- b) Improved transparency: The system promotes transparency in mineral resource management and mining activities.

- c) Increased efficiency: NMDSS streamlines data management and analysis, reducing the time and cost associated with decision-making.
- d) Better resource management: The system helps optimise mineral resource utilisation and management.

29.16.3 Components

These are as follows:

- a) Geospatial data: NMDSS incorporates geospatial data on mineral resources, geology, and mining activities;
- b) Mining cadastre: The system includes a mining cadastre to manage mining licenses, permits, and other regulatory information;
- c) Economic analysis: NMDSS provides economic analysis tools to evaluate the financial viability of mining projects;
- d) Environmental impact assessment: The system assesses the environmental impact of mining activities.

29.16.4 Objectives

- a) Promote sustainable mining: NMDSS aims to promote sustainable mining practices and responsible mineral resource management.
- b) Attract investment: The system provides a transparent and efficient framework to attract investment in the solid minerals sector.
- c) Improve governance: NMDSS enhances governance and accountability in the solid minerals sector.

In conclusion, the Nigeria Mineral Decision Support System is designed to support the growth and development of the solid minerals sector, while promoting sustainable mining practices and responsible resource management.

29.17 Scope and administration of the Nigeria Extractive Industries Transparency Initiative (NEITI) Act No 17, 2007

The detailed administrative structure is as stated under sub-heads below;

29.17.1 Establishment of the national stakeholders working group

- a. The governing body of the NEITI shall be the National stakeholders working group (in this Act referred to as “the NSWG”).
- b. The NSWG shall be responsible for the formulation of policies, programmes and strategies for the effective implementation of the objectives and the discharge of the functions of the NEITI.
- c. Without prejudice to subsection (2) of this section, the NSWG shall have powers to

recommend the annual budget and work-plan of the NEITI and ensure the periodic review of programmes performance by the NEITI.

29.17.2 Composition of the NSWG

The NSWG shall be constituted by the President and shall consist of a chairman and no more than 14 other members, one of whom shall be an Executive Secretary.

- a) In making appointment into the NSWG, the President shall include:
 - (i) representative of extractive industry companies;
 - (ii) representative of civil society;
 - (iii) representative of labour unions in the extractive industries;
 - (iv) experts in the extractive industry; and
 - (v) one member from each of the six geo-political zones.
- b) The Chairman and other members of NSWG other than the Executive Secretary shall serve on part-time basis.

The appointment of Executive Secretary shall be for 5 years and no more.

29.17.3 Tenure of Office of NSWG

A person appointed as a member of the NSWG shall hold Office for 4 years and no more.

29.17.4 Payment of the allowances to the NSWG

The members of the NSWG as well as any person appointed to any of its special committees under section 2 may be paid such allowances out of the funds of the NEITI as the National Revenue Mobilisation and Fiscal Commission may approve.

29.17.5 Meetings of the NSWG

- a. The NSWG shall ordinarily meet quarterly for the dispatch of business at such times and places as it may determine, but not less than four times in a year.
- b. At every meeting of the NSWG, the Chairman shall preside and, in his absence, a member of the NSWG appointed by the members from among themselves shall preside.
- c.. Questions proposed at a meeting of NSWG shall be determined by a simple majority of members present and voting and in the event of an equality of votes, the person presiding shall have a casting vote.
- d. The NSWG may at any time co-opt any person to act as an adviser at any of its meetings but no person so co-opted shall be entitled to vote at any meeting.
- e. The validity of the proceedings of the NSWG shall not be affected by the absence of any member, vacancy among its membership or by any defect in the appointment of any of the members.

29.17.6 Quorum

The quorum of the NSWG at any meeting shall be 8 members.

29.17.7 Special committees

The NSWG may constitute such special committees as it considers fit to deal different aspects of its responsibilities.

29.17.8 Appointment of Executive Secretary, consultants and other staff of the NSWG

- a) The NSWG may create departments and engage the services of such staff and consultants as it may consider necessary for the NEITI.
- b) The NEITI shall have an Executive Secretary who shall:
 - be appointed by the President upon the recommendation of the NSWG provided he is a graduate with relevant qualifications and at least 10 years cognate experience; be responsible for the day to day administration of the NEITI; and
 - serve as Secretary to NSWG.
- c) The staff and consultants of the NEITI may be engaged on such terms and conditions as the NSWG may determine.
- d) The NSWG shall fix the remunerations, allowances and benefits of the staff and consultants of the NEITI.
- e) The NSWG shall recommend to the President for appointment, qualified validators in line with NEITI guidelines as contained in second schedule to this Act.
- f) NSWG shall fix the remunerations, allowances and benefits for the validators.

29.18 Benefits and challenges for companies adopting sustainability practices

Companies adopting sustainability practices in Nigeria can reap several benefits and may also face some unique challenges.

a) Benefits

- i. Long-term competitive advantage: companies that prioritise sustainability tend to enjoy a competitive edge in the market.
- ii. Improved employee motivation: sustainability practices can boost employee morale and productivity.
- iii. Increased profitability: sustainable companies can experience increased profitability through cost reduction and improved reputation.
- iv. Enhanced reputation: adopting sustainability practices can improve a company's reputation, attracting investors and customers.
- v. Better resource management: sustainability practices promote efficient use of resources, reducing waste and environmental impact.

b) Challenges

- i. Inconsistent regulations: Nigeria's regulatory environment can be unpredictable, making it challenging for companies to implement sustainability practices.
- ii. Limited awareness: Some companies may lack awareness about the benefits and importance of sustainability practices.

- iii. Financial constraints: Implementing sustainability practices can require significant investment, which can be a challenge for some companies.
- iv. Infrastructure deficiencies: Nigeria's infrastructure challenges, such as power supply and transportation, can hinder sustainable practices.
- v. Varied industry practices: Sustainability reporting and practices can vary across industries, making it essential for companies to develop sector-specific strategies.

c) Industry-specific observations

- i. Banking and oil and gas sectors: These sectors tend to prioritise sustainability reporting more than other industries in Nigeria.
- ii. Company size and profitability: Larger and more profitable companies are more likely to adopt sustainability practices.
- iii. Auditor type: Companies audited by Big-4 audit firms tend to have a more significant positive relationship with sustainability reporting.

29.19 Environmental, social, and governance (ESG) considerations

ESG issues are crucial in Nigeria's extractive industry, particularly in oil, gas, and solid minerals. Thematic areas include:

a) Environmental aspects

- i. Pollution control: Managing pollution from extractive activities, such as oil spills and chemical contamination.
- ii. Biodiversity conservation: Protecting ecosystems and biodiversity in areas where extractive activities occur.
- iii. Climate change Mitigation: Reducing greenhouse gas emissions and promoting sustainable practices.
- iv. Waste management: Properly managing waste generated from extractive activities.

b) Social aspects

- i. Community engagement: Engaging with local communities, respecting their rights, and addressing their concerns.
- ii. Human rights: Respecting human rights, including those of indigenous peoples and vulnerable groups.
- iii. Social impact assessment: Conducting assessments to identify potential social impacts and developing mitigation strategies.
- iv. benefit Sharing: Ensuring that local communities benefit from extractive activities.

c) Governance aspects

- i. Transparency and accountability: Promoting transparency in extractive industry operations and ensuring accountability for actions.
- ii. Corruption prevention: Preventing corruption and ensuring that revenues from extractive activities are managed transparently.
- iii. Regulatory framework: Establishing and enforcing a robust regulatory framework to govern extractive industry activities.
- iv. Stakeholder engagement: Engaging with stakeholders, including government, civil society, and local communities.

d) Challenges

- i. Environmental degradation: The extractive industry can lead to environmental degradation, including pollution and habitat destruction.
- ii. Social conflicts: Extractive activities can lead to social conflicts, including disputes over land rights and benefit sharing.
- iii. Corruption: Corruption can undermine governance and accountability in the extractive industry.
- iv. Lack of transparency: Lack of transparency can make it difficult to track revenues and ensure accountability.

e) Opportunities

- i. Sustainable development: The extractive industry can contribute to sustainable development if managed responsibly.
- ii. Economic growth: The industry can generate significant economic benefits for Nigeria.
- iii. Job creation: Extractive activities can create jobs and stimulate local economies.
- iv. Improved governance: Implementing strong ESG practices can improve governance and accountability in the industry.

f) Best Practices

- i. Implementing ESG Standards: Companies should implement robust ESG standards and practices.
- ii. Stakeholder engagement: Regular engagement with stakeholders, including local communities and civil society.
- iii. Transparency and reporting: Transparent reporting on ESG performance and progress.
- iv. capacity building: Building capacity within government and local communities to manage extractive activities.

By prioritising ESG considerations, Nigeria's extractive industry can contribute to sustainable development, economic growth, and improved governance.

29.20 Chapter review

This topic is relatively new as it has just been given emphasis. Readers, after studying this chapter are expected to understand the administrative procedure required to go into mining, the incentives available, list of mineral titles, environmental considerations, process of tax computation, the peculiar capital allowance computation, mining royalties, and the Nigeria Extractive Industries Transparency Initiative (NEITI).

29.21 Worked examples

29.21.1 Questions

1. Nigeria, as a nation, is immensely endowed with mineral resources spread across its land, many of which remain untapped. However, the extraction and development of these deposits require substantial capital investment. Access to foreign funding, advanced technical expertise, and modern technology is essential, yet often limited and difficult to obtain.

Apart from foreign investment, another viable funding option is long-term financing through special or term loans designed for large-scale projects. The Central Bank of Nigeria occasionally supports such arrangements by providing guarantees through financial institutions. It is important to note, however, that repayment must be assured. The fundamental principle is that any project financed should be capable of servicing both the principal and interest as they fall due. Consequently, lenders or investors will carefully assess key factors that ensure the success and reliability of the project before committing funds.

Required:

Discuss the incentives available to would-be investors in the mining industry in Nigeria.

2. In Nigeria extractive industry (oil, gas and solid minerals), the relevance of the environmental, social and governance (ESG) cannot be over emphasised. It deals with those matters of interest to all the stakeholders and promotes the basis for good relationship amongst all concerned.

Required:

Discuss those specific relevant matters that make up the ESG.

3. Better Life Mining and Exploration Limited is in the business of mining solid minerals which it has been exporting to Europe for over fifteen years. For the year ended December 31, 2026, the following financial records were presented:

	N'000	N'000
Export		856,000
Local sales		<u>136,700</u>
Gross turnover		992,700
Mining cost	256,950	
Transportation cost	63,240	
Rent	108,800	
Bad debt	133,560	
Directors fees	80,000	
Auditors remuneration	50,000	
Insurance	35,000	
Balance of preliminary expenses	25,000	
Income tax provision	78,000	
Donations and subscription	20,000	
Depreciation	101,930	
Motor vehicle expenses	<u>45,560</u>	<u>(998,040)</u>
Net loss		<u>(5,340)</u>

The following additional information was provided:

- i) it has been established that both the mining and transportation cost are relevant direct cost.
- ii) included in the donation is ~~N~~8,500,000 given to a religious women society of which the General Manager's wife is the chairperson.
- iii) analysis of the bad debt account shows the following:

	N' 000
General allowance for doubtful debt cf.	83,560
Specific allowance for doubtful debt cf	48,000
Bad debt written off	20,000
Bad debt written off recovered	<u>(18,000)</u>
	<u>133,560</u>

- iv) Capital allowances agreed with relevant tax authorities were:

	N'000
Brought forward	38,500
For the year	95,000

Required:

- (a) Compute the tax liability for the relevant tax year.
- (b) Discuss the significant tax incentives being enjoyed by operators in the Nigerian mining sector.

4. Nonye Mining Company Limited was granted a licence for extracting solid minerals in the Nigerian middle belt region in 2010.

The extract of the income statement of the company for the year ended December 31, 2026 is as presented below:

Revenue: ₦2,617,500,000

Operating cost: ₦1,430,000,000

Other administrative expenses: ₦25,200,000

Additional information:

- i. Revenue comprised of:
 - Tin ore (<50 Sn): 25,000 metric tonnes extracted and sold at official selling price of ₦42,000 per tonne
 - Tin ore (>50 Sn): 15,000 metric tonnes extracted and sold at official selling price of ₦42,500 per tonne
 - Granite aggregates: 30,000 tonnes extracted and sold at official selling price of ₦31,000 per tonne.
- ii. The operating cost excluded royalty payable.
- iii. Assuming other expenses were incurred wholly and exclusively for the purposes of the business.

Required:

- a. Compute the royalty payable for the period
- b. Compute the assessable profit for the period. (Ignore effective tax provisions)

29.21.2 Suggested solutions to questions

1. The key incentives available to companies engaged in mining operations - Part III of the Nigerian Minerals and Mining Act, 2007 are:
 - (a) tax holiday for an initial period of 3 years from commencement of operations and renewable for additional 2 years. Any dividend recorded during the tax holiday period will not be subject to withholding tax upon distribution to shareholders.
 - (b) exporters of mineral products may be permitted to retain part of their foreign exchange earnings in a domiciliary account for the purpose of acquiring spare parts and other mining inputs.
 - (c) exemption from customs and import duties in respect of plant, machinery equipment and accessories imported exclusively for mining operations. However, the plant and equipment can only be disposed of locally upon payment of the applicable customs and import duties.
 - (d) free transferability of foreign currency through the central bank of Nigeria (CBN) for the following:
 - i. payment for servicing of certified foreign loan; and
 - ii. remittance of foreign capital in event of sale or liquidation of the business.
 - (e) grant of personal remittance quota for expatriate personnel free from any tax imposed by

any enactment for the transfer of external currency out of Nigeria.

- (f) accelerated capital allowance on mining expenditure (95% initial allowance and retention of 5% until asset is disposed).
- (g) grant of investment allowance of 10% on qualifying plant and machinery.
- (h) all infrastructure cost provided by the mining company and approved by the MCO to be capitalised and capital allowance claimed at 95% in the first year of operation.
- (i) a company may also be entitled to claim an additional rural investment allowance on its infrastructure cost, depending on the location of the company and the type of infrastructure provided.
- (j) annual indexation of unutilised capital allowance carried forward by 5% for mines that commenced production within five (5) years from the date of enactment of the Act. Whilst the period for new companies to enjoy this incentive lapsed in 2012, new producers may apply to the Minister of Finance, through the Minister of Mines and Steel Development, to enjoy this incentive. Such application may be considered on a case by case basis.
- (k) the Minister may grant a concession for the royalty payable on any mineral to be deferred for a number of years, subject to the approval of the Federal Executive Council.
- (l) actual amount incurred out of reserves made for environmental protection, mine rehabilitation, reclamation and mine closure cost shall be tax deductible, subject to certification by an independent.

2. Specific relevant matters that make up the environment, social and governance (ESG)

a) Environmental aspects

- i. Pollution control: Managing pollution from extractive activities, such as oil spills and chemical contamination.
- ii. Biodiversity conservation: Protecting ecosystems and biodiversity in areas where extractive activities occur.
- iii. Climate change mitigation: Reducing greenhouse gas emissions and promoting sustainable practices.
- iv. Waste Management: Properly managing waste generated from extractive activities.

b) Social aspects

- i. Community engagement: Engaging with local communities, respecting their rights, and addressing their concerns.
- ii. Human rights: Respecting human rights, including those of indigenous peoples and vulnerable groups.
- iii. Social impact assessment: Conducting assessments to identify potential social impacts and developing mitigation strategies.
- iv. Benefit sharing: Ensuring that local communities benefit from extractive activities.

c) Governance aspects

- i. Transparency and accountability: Promoting transparency in extractive industry operations and ensuring accountability for actions;
- ii. Corruption prevention: Preventing corruption and ensuring that revenues from extractive activities are managed transparently;
- iii. Regulatory framework: Establishing and enforcing a robust regulatory framework to govern extractive industry activities;
- iv. Stakeholder engagement: Engaging with stakeholders, including government, civil society, and local communities.

d) Environmental considerations and rights of host communities

- i. According to section 120 (1), the environmental protection and rehabilitation program required under the provisions of the Act includes:
 - provision for specific rehabilitation and reclamation actions, inspections, and annual reports;
 - reasonable estimate of the total cost of rehabilitation;
 - cost estimates for each specific rehabilitation and reclamation action; and
 - a timetable for the orderly and efficient rehabilitation and reclamation of the Mineral title area to a safe and environmentally sound condition suitable for future economic development or recreational use.
- ii. The Mines Environmental Compliance Department shall exercise all its powers in respect of environmental protection and rehabilitation programmes provided for in section 119 in consultation with the State Mineral Resources and Environmental Management Committee established pursuant to section 19 of this Act;
- iii. The Mines Environmental Compliance Department may approve or reject an environmental protection and rehabilitation program submitted by a mineral title holder and shall notify the holder of the mineral title of its decision thereon within sixty days of the submission of the environmental protection and rehabilitation programme;
- iv. If the Mines Environmental Compliance Department does not notify the holder of a mineral title within the period specified under subsection (3) of this section, the environmental protection and rehabilitation programme shall be deemed to have been approved as submitted.
- v. In the case of a rejection of the environmental protection and rehabilitation programme by the Mines Environmental Compliance Department, the mineral title holder may:
 - * submit such other number of environmental protection and rehabilitation programmes as may be necessary in order to obtain the approval of the Mines Environmental Compliance Department; or

- * if its application is rejected twice, the holder may submit the matter to arbitration within thirty days of notification of the decision, under subsection of this section; and
- vi. In the case of its approval, the Mines Environmental Compliance Department shall ensure the implementation of the environmental protection and rehabilitation programme.

3(a)

Better Life Mining and Exploration Limited Computation of tax liabilities For 2027 assessment year

	N'000	N'000
Net loss per accounts		(5340)
Add back:		
Donation to religious group	8,500	
Bad debt excess provision (W1)	42,560	
Preliminary expenses	25,000	
Income tax provision	78,000	
Depreciation	<u>101,930</u>	<u>255,990</u>
Adjusted profit		50,650
Less: Capital allowances:		
Brought forward	38,500	
For the year	<u>95,000</u>	<u>133,500</u>
Total profit		<u>117,150</u>
Companies income tax at 30% of total profit		<u>35,145</u>
Development levy @ 4% of assessable profit		<u>2026</u>

b) Tax incentives available to a mining company in Nigeria

- i. Such companies enjoy generous capital allowance i.e. 95% initial allowance.
- ii. They are exempted from tax in the first three years of operations.
- iii. Provided the company's turnover does not exceed ₦25 million, they enjoy all the benefits of small businesses.

4a.

Nonye Mining Nigeria Limited
Computation of royalty payable
For the year ending December 31, 2026

Mineral	Value (N'000)	Rate (%)	Royalty (N'000)
Tin ore (<50 Sn)	1,050,000 (W1)	7.5	78,750
Tin ore (>50 Sn)	637,500(W2)	7.5	47,812.5
Granite aggregate	<u>930,000 (W3)</u>	10	<u>93,000</u>
Total	<u>2,617,500</u>		<u>219,562.5</u>

b. Computation of assessable profit

	N'000	N'000
Revenue		2,617,500
Less:		
Operating cost	1,430,000	
Administrative expenses	25,200	
Royalty payable	<u>219,562.5</u>	<u>(1,674,762.5)</u>
Assessable profit		<u>942,737.5</u>

Workings

1. Value of tin ore (<50 Sn) = 25,000 tonnes x ~~N~~42,000 per tonne =
~~N~~1,050,000,000

2. Value of tin ore (>50 Sn) = 15,000 tonnes x ~~N~~42,500 per tonne = ~~N~~637,500,000

3. Value of granite aggregate = 30,000 tonnes x ~~N~~31,000 per tonne =
~~N~~930,000,000.

ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) IN EXTRACTIVE INDUSTRY

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30 Environmental, Social, and Governance (ESG) in Extractive Industry

30.0 Learning objective

The learning objective of this chapter is for readers to know and appreciate the importance of environmental, social, and governance (ESG) in extractive industry.

30.1 Learning outcomes

On successful completion of this chapter, readers should be able to explain the:

- (a) background and the need for ESG;
- (b) relevance of ESG compliance;
- (c) challenges and opportunities;
- (d) benefits of ESG compliance;
- (e) history of events that necessitated ESG;
- (f) penalties for noncompliance to government directives on ESG; and
- (g) standards of the Extractive Industries Transparency Initiatives (EITI).

30.2 Background and need for environmental, social, and governance (ESG)

Environmental, social, and governance (ESG) considerations have become increasingly important in the business world due to growing concerns about sustainability, social responsibility, and good governance. A brief background and need for ESG are as discussed below.

3.2.1 Background

Growing awareness of environmental issues: Climate change, pollution, and resource depletion have raised concerns about the impact of business activities on the environment.

Social and human rights concerns: Issues like labour exploitation, human rights abuses, and community displacement have highlighted the need for businesses to prioritise social responsibility.

Governance failures: corporate scandals and governance failures have emphasised the importance of transparency, accountability, and good governance practices.

30.2.2 Regulatory bodies

- (a) National Environmental Standards and Regulations Enforcement Agency (NESREA): Responsible for enforcing environmental regulations.
- (b) Department of Petroleum Resources (DPR): Regulates the oil and gas industry.
- (c) Nigerian Extractive Industries Transparency Initiative (NEITI): Promotes transparency and accountability in the extractive industry.

30.2.3 Need for ESG

- a) Risk management: ESG considerations can help businesses identify and manage risks related to environmental, social, and governance issues.
- b) Long-term sustainability: ESG practices can contribute to long-term sustainability and resilience; ensuring businesses remain viable and successful over time.
- c) Stakeholder expectations: Investors, customers, employees, and communities increasingly expect businesses to prioritise ESG considerations and demonstrate responsible practices.
- d) Regulatory requirements: Governments and regulatory bodies are implementing ESG-related laws and regulations, making compliance essential for businesses.
- e) Reputation and brand value: Strong ESG practices can enhance a company's reputation and brand value, while poor practices can lead to reputational damage and financial losses.

30.3 Relevance of ESG compliance

ESG compliance is crucial in Nigeria's extractive industry, which includes oil and gas, mining, and other natural resource extraction activities. A comprehensive overview is discussed below.

30.3.1 Environmental compliance

- a) Regulatory framework: Nigeria has laws and regulations governing environmental protection, such as the Environmental Impact Assessment (EIA) Act, the National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, and the Petroleum Industry Act.
- b) Environmental impact assessments (EIA): Companies must conduct EIAs to identify potential environmental risks and develop mitigation strategies.
- c) Waste management: Proper disposal of waste, including hazardous materials, is essential to prevent environmental pollution.
- d) Oil spill response: Companies must have plans in place to respond to oil spills and mitigate their impact on the environment.
- e) Biodiversity conservation: Companies must take steps to protect and conserve biodiversity in areas where they operate.

30.3.2 Social compliance

Community engagement: Companies must engage with local communities, respect their rights, and address their concerns.

- (a) Human rights: Companies must respect human rights, including the rights of indigenous peoples and vulnerable groups.
- (b) Livelihood restoration: Companies must restore livelihoods affected by their operations, providing fair compensation and support.
- (c) Social investment: Companies are expected to invest in social projects that benefit local communities, such as education, healthcare, and infrastructure development.
- (d) Cultural heritage protection: Companies must take steps to protect and preserve cultural heritage sites and artefacts.

30.3.3 Governance compliance

- a) Transparency and accountability: Companies must be transparent in their operations, financial reporting, and decision-making processes.
- b) Corruption prevention: Companies must have anti-corruption policies and procedures in place to prevent bribery and other forms of corruption.
- c) Regulatory compliance: Companies must comply with relevant laws, regulations, and industry standards.
- d) Stakeholder engagement: Companies must engage with stakeholders, including government agencies, civil society organisations, and local communities.
- e) Board oversight: Companies must have effective board oversight to ensure ESG compliance and responsible business practices.

30.4 Benefits and challenges of sustainable practices for companies

The benefits of sustainable practices for companies include the following:

- (a) Enhanced reputation: Companies that prioritise sustainability often enjoy a positive public image, attracting customers and investors who value environmental and social responsibility;
- (b) Cost savings: Sustainable practices can lead to reduced operational costs through energy efficiency, waste reduction, and resource conservation;
- (c) Increased innovation: Embracing sustainability can drive innovation, leading to the development of new products, services, and business models;
- (d) Risk management: Companies that proactively address environmental and social issues can mitigate risks related to regulatory compliance, supply chain disruptions, and reputational damage;
- (e) Access to capital: Investors are increasingly considering environmental, social, and governance (ESG) factors in their decisions, making it easier for sustainable companies to access funding;
- (f) Talent attraction and retention: Employees are more likely to be attracted to and remain with companies that demonstrate a commitment to sustainability, fostering a motivated and engaged workforce; and
- (g) Mitigating greenwashing: Greenwashing is a concept used to describe a situation where an organisation spends more time and money on advertising themselves as being environmentally friendly when they are not. Involving in true

sustainable practices will provide the organisation the opportunity to report the exact steps or actions they are taking or have taken to protect the environment.

The challenges of sustainable practices for companies include:

- a) High initial costs: Implementing sustainable practices often requires significant upfront investment in technology, infrastructure, and training;
- b) Complexity of supply chains: Ensuring sustainability across complex global supply chains can be challenging, particularly in industries with multiple tiers of suppliers;
- c) Regulatory compliance: Navigating varying regulations and standards across different regions can be complex and resource-intensive;
- d) Stakeholder alignment: Achieving alignment among diverse stakeholders, including investors, customers, employees, and regulators, can be difficult;
- e) Measuring impact: Accurately measuring and reporting on sustainability initiatives can be complex, requiring robust data collection and analysis systems; and
- f) Balancing short-term and long-term goals: Companies may face pressure to balance short-term financial performance with long-term sustainability objectives.

The above challenges can be mitigated through the following:

- (a) Strategic planning: Develop a clear sustainability strategy aligned with business goals.
- (b) Stakeholder engagement: Engage with stakeholders to understand their expectations and concerns.
- (c) Investment in technology: Leverage technology to improve efficiency and reduce costs.
- (d) Collaboration and partnerships: Collaborate with suppliers, industry peers, and NGOs to share best practices and drive industry-wide change.
- (e) Continuous monitoring and evaluation: Regularly assess and report on sustainability performance to identify areas for improvement.
- (f) By understanding the benefits and challenges of sustainable practices, companies can make informed decisions and develop effective strategies to drive long-term success while contributing to a more sustainable future.

30.5 Benefits of ESG compliance

- a) Improved reputation: ESG compliance can enhance a company's reputation and build trust with stakeholders.
- b) Increased investment: Companies that demonstrate strong ESG practices may attract more investment and funding.
- c) Reduced risk: ESG compliance can help companies manage risks and avoid costly fines and penalties imposed by relevant regulatory agencies.
- d) Sustainable development: ESG compliance can contribute to sustainable development and improve the well-being of local communities.

- e) By prioritising ESG compliance, companies in Nigeria's extractive industry can reduce their environmental footprint, promote social responsibility, and ensure good governance.
- f) Improved financial performance: Studies have shown that companies with strong ESG practices tend to perform better financially in the long term.
- g) Increases companies goodwill: ESG practices can build trust and credibility with stakeholders, enhancing a company's reputation and brand value.
- h) By prioritising ESG considerations, businesses can ensure long-term sustainability, build trust with stakeholders, and contribute to a more equitable and environmentally conscious world.

30.6 Best practices

International Standards: Companies can adopt international standards, such as the Extractive Industries Transparency Initiative (EITI), the International Finance Corporation's (IFC) Performance Standards, and the United Nations Guiding Principles on Business and Human Rights.

Stakeholder engagement: Regular engagement with stakeholders can help companies understand their concerns and expectations.

Capacity building: Building capacity within companies and government agencies can improve ESG compliance and enforcement.

Reporting and disclosure: Companies should publish regular reports on their ESG performance and disclose information on their operations, financial performance, and sustainability initiatives.

30.7 History of events that necessitated ESG

The history of ESG considerations is a rich and evolving narrative that spans several decades. A brief overview is discussed below:

30.7.1 Early beginnings

1960s- Environmental Movement: The publication of Rachel Carson's book "The Silent Spring" in 1962 marked the beginning of the environmental movement, highlighting the detrimental effects of pesticides on the environment and human health. This sparked a growing awareness of corporate accountability for environmental and social impacts.

1970s - Socially Responsible Investing (SRI): SRI emerged as a way for investors to align their portfolios with their values, focusing on social issues like human rights and supply chain ethics. The Pax World Funds, established in 1971, was the first publicly

available mutual fund in the US to consider social and environmental factors in investment decisions.

30.7.2 Key milestones

1987- Brundtland Commission: The United Nations' World Commission on Environment and Development (WCED) defined sustainable development as "meeting the needs of the present without compromising the ability of future generations to meet their own needs."

1992- Rio Earth Summit: The United Nations Environment Program (UNEP) issued the Statement of Commitment by Financial Institutions on Sustainable Development, recognising the role of the financial sector in promoting sustainability.

1994- Triple Bottom Line (TBL): John Elkington introduced the TBL concept, a sustainability framework balancing people, planet, and profit.

1997- Global Reporting Initiative (GRI): The GRI was founded to address environmental concerns, later broadening its scope to social and governance issues.

30.7.3 Modern ESG era

2004 - "Who Cares Wins" Report: The UN Global Compact released a report illustrating how to integrate ESG factors into company operations, officially coining the term "ESG."

2006 - Principles for Responsible Investment (PRI): The PRI was launched to understand investment implications of ESG factors and promote sustainable investments.

2010s - ESG Reporting and Standardisation: Efforts to standardize ESG reporting and metrics gained momentum, with organisations like the Sustainability Accounting Standards Board (SASB) developing industry - specific accounting rules.

2023 - ISSB IFRS S1: General requirements for disclosure of sustainability-related financial information. This was issued by the International Sustainability Standard Board (ISSB) and the IFRS Foundation. This is to require entities to disclose information about their sustainability-related risks and opportunities that are useful to users of general purpose financial reports in making informed decisions about providing resources to the entity. The information should however be material to the entity's cash flows and long-term viability, particularly those arising from ESG factors.

2023 - ISSB IFRS S2: Climate-related disclosures. The primary objective of this standard is to require entities to disclose relevant information in respect of their climate-related risks and opportunities that is useful to users of general-purpose financial reports for making informed resource allocation decision, particularly in the area of access to capital and overall business model.

Since the activities of companies in the extractive industry (such as oil and gas, mining of solid minerals) have significant impact on environment and climate-related issues in areas of their operations, it is expected that these companies comply with various reporting standards that are necessary for stakeholders to take informed decision.

30.8 Penalties for non-compliance to government directives on ESG

Penalties for non-compliance with government directives on Environmental, Social, and Governance (ESG) can be significant and varied. Here are some potential consequences:

(a) Financial penalties

- (i) Monetary fines: These can vary based on company size and type.
- (ii) SEC fines: In the developed countries non-compliance with ESG disclosures is a serious crime. In the USA for instance, the Securities and Exchange Commission (SEC) has imposed significant fines for ESG-related non-compliance.
- (iii) In Nigeria, the Climate Change Act 2021 establishes a legal framework to address climate change, including achieving net-zero emissions by 2050-2070. The Act also introduces a carbon tax. It imposes obligations on businesses to provide for reduction in carbon missions and also designate an environmental sustainability officer. Failure to comply can result in fines. Also, non-compliance with data protection regulations while processing ESG data can lead to fines and penalties.

(b) Legal consequences

- (i) Litigation risks: Non-compliance can lead to costly legal battles and potential settlements.
- (ii) Regulatory scrutiny: Companies may face stringent audits and investigations, potentially resulting in operational disruptions.
- (iii) Loss of operating licenses: In severe cases, non-compliance can lead to loss of operating licenses or restrictions on business operations

(c) Reputational damage

- (i) Loss of trust: Stakeholders, including investors and customers, may lose trust in companies that fail to comply with ESG regulations, leading to reputational damage.

- (ii) Negative publicity: Non-compliance can result in negative media coverage, further damaging a company's reputation.
- (iii) Competitive disadvantage: Companies that prioritise ESG compliance may gain a competitive edge over non-compliant businesses.

(d) Operational challenges

- (i) Inefficiencies: Non-compliance can lead to operational inefficiencies and reduced innovation.
- (ii) Supply chain disruptions: Companies may face supply chain disruptions if their partners or suppliers are not ESG-compliant.
- (iii) Future business opportunities: Non-compliance can limit future business opportunities, as many government bodies and large corporations require ESG compliance from their partners.

30.9 The standards of the Extractive Industries Transparency Initiative (EITI)

30.9.1 EITI principles and requirements

The Extractive Industries Transparency Initiative (EITI) Standard is a global benchmark for transparency and accountability in the extractive industry (oil, gas, and mining sectors). The standards outline requirements for countries implementing EITI and cover several key areas:

- (a) EITI principles: Fundamental aims and commitments agreed upon by all stakeholders, focusing on transparency, accountability, and good governance;
- (b) Disclosure requirements: EITI implementing countries must disclose information along the extractive industry value chain, including:
 - (i) Revenue collection: Disclosing revenue collected from extractive activities;
 - (ii) Revenue allocation: Transparent allocation of revenues to different government entities and projects;
 - (iii) Contracts and licenses: Disclosure of contracts, licenses, and beneficial ownership information;
 - (iv) Production: Information on production levels and volumes;
 - (v) Social and economic spending: Disclosure of social and economic expenditures, including quasi-fiscal expenditures;
 - (vi) Beneficial ownership: Disclosure of beneficial owners of extractive companies to prevent corruption and ensure transparency;
 - (vii) State-owned enterprises: Strengthening accountability of state participation in extractive industries;
 - (viii) Commodity trading: Transparency in commodity trading transactions;
 - (ix) Open data policy: Recommendations for publishing open data to facilitate public access and analysis;

- (x) Governance and oversight: Establishing clear roles and responsibilities for multi-stakeholder groups, boards, and secretariats; and
- (xi) Validation and compliance: Regular assessments to ensure countries meet EITI requirements and maintain high standards of transparency and accountability

30.9.2 The 2023 EITI Standard

The 2023 EITI Standard includes new and refined provisions to address pressing challenges, such as:

- (i) Energy transition: Improving understanding of the impact of the energy transition on extractive industries;
- (ii) Corruption risks: Addressing corruption risks and promoting transparency;
- (iii) Gender equity: Promoting gender equity and inclusion in extractive industries; and
- (iv) Revenue collection: Strengthening revenue collection and management.

30.10 Chapter review

This chapter discusses the integration of environmental, social, and governance (ESG) principles within the extractive industry, which includes mining, oil, and gas sectors. It emphasises the growing importance of ESG as a framework for responsible resource development, risk management, and long-term sustainability. The chapter explains that ESG is not merely a compliance tool but a strategic imperative that shapes corporate reputation, investor confidence, and community relations.

30.11 Worked examples

30.11.1 Questions

1. Environmental, social and governance (ESG) is a concept that is increasingly important in business world due to growing concerns about sustainability and good governance.

Required:

Discuss the salient points relating to the three different aspects of ESG, its challenges and opportunities.

2. The need for environmental, social and governance (ESG) evolved overtime. The reality of its importance can no longer be overemphasised. It is a world-wide concept such that the governments of developing nations have to incorporate it as an important policy matter.

Required:

Discuss the following in relation to ESG:

- (a) Regulatory authorities
- (b) The need for ESG

3. Despite the lofty ideas and high expectations of having ESG in place, it faces some basic challenges.

Required:

Discuss the benefits associated with having effective ESG in place.

4. It is a common practice to have disobedient persons – corporate or individual – irrespective of the advantages and merits of any particular programme or idea. Also, it is customary to have disciplinary measures in place for disobedience to constituted authority, rules and regulations.

Required:

Discuss the possible penalties and other costs for non-compliance with government directives on ESG.

30.10.2 Suggested solutions to questions

1. The salient points relating to the three different aspects of ESG, its challenges and opportunities

(a) Environmental compliance

Environmental impact assessments: Companies must conduct EIAs to identify potential environmental risks and develop mitigation strategies.

Waste management: Proper disposal of waste, including hazardous materials, is essential to prevent environmental pollution.

Oil spill response: Companies must have plans in place to respond to oil spills and mitigate their impact on the environment.

Biodiversity conservation: Companies must take steps to protect and conserve biodiversity in areas where they operate.

(b) Social compliance

Community engagement: Companies must engage with local communities, respect their rights, and address their concerns.

Human rights: Companies must respect human rights, including the rights of indigenous peoples and vulnerable groups.

Livelihood restoration: Companies must restore livelihoods affected by their operations, providing fair compensation and support.

Social investment: Companies are expected to invest in social projects that benefit local communities, such as education, healthcare, and infrastructure development.

Cultural heritage Protection: Companies must take steps to protect and preserve cultural heritage sites and artefacts.

(c) Governance compliance

Transparency and accountability: Companies must be transparent in their operations, financial reporting, and decision-making processes.

Corruption prevention: Companies must have anti-corruption policies and procedures in place to prevent bribery and other forms of corruption.

Regulatory compliance: Companies must comply with relevant laws, regulations, and industry standards.

Stakeholder engagement: Companies must engage with stakeholders, including government agencies, civil society organisations, and local communities

Board oversight: Companies must have effective board oversight to ensure ESG compliance and responsible business practices.

(d) Challenges and opportunities

Challenges: Corruption, lack of transparency, and inadequate regulatory enforcement hinder ESG compliance in Nigeria's extractive industry.

Opportunities: Implementing ESG best practices can enhance the industry's reputation, improve relationships with stakeholders, and contribute to sustainable development.

2 (a) Regulatory authorities in relation to ESG

- i. National Environmental Standards and Regulations Enforcement Agency (NESREA): Responsible for enforcing environmental regulations;
- ii. Department of Petroleum Resources (DPR): Regulates the oil and gas industry;

- iii. Nigerian Extractive Industries Transparency Initiative (NEITI): Promotes transparency and accountability in the extractive industry.

(b) Need for ESG

- i. Risk management: ESG considerations can help businesses identify and manage risks related to environmental, social, and governance issues.
 - ii. Long-term sustainability: ESG practices can contribute to long-term sustainability and resilience; ensuring businesses remain viable and successful over time.
 - iii. Stakeholder expectations: Investors, customers, employees, and communities increasingly expect businesses to prioritise ESG considerations and demonstrate responsible practices.
 - iv. Regulatory requirements: Governments and regulatory bodies are implementing ESG-related laws and regulations, making compliance essential for businesses.
 - v. Reputation and brand value: Strong ESG practices can enhance a company's reputation and brand value, while poor practices can lead to reputational damage and financial losses.
3. The major challenges facing successful implementation of ESG in Nigeria are: Corruption, lack of transparency, and inadequate regulatory enforcement. These hinder ESG compliance in Nigeria's extractive industry.

Benefits of ESG compliance

- a. Improved reputation: ESG compliance can enhance a company's reputation and build trust with stakeholders.
- b. Increased investment: Companies that demonstrate strong ESG practices may attract more investment and funding.
- c. Reduced risk: ESG compliance can help companies manage risks and avoid costly fines and penalties.
- d. Sustainable development: ESG compliance can contribute to sustainable development and improve the well-being of local communities.
- e. By prioritising ESG compliance, companies in Nigeria's extractive industry can reduce their environmental footprint, promote social responsibility, and ensure good governance.
- f. Improved financial performance: Studies have shown that companies with strong ESG practices tend to perform better financially in the long term.
- g. Increases companies goodwill: ESG practices can build trust and credibility with stakeholders, enhancing a company's reputation and brand value.

- h. By prioritising ESG considerations, businesses can ensure long-term sustainability, build trust with stakeholders, and contribute to a more equitable and environmentally conscious world.

4. Penalties and other possible costs for non-compliance with government directives on environmental, social, and governance (ESG)

a. Financial penalties

- i. Monetary fines: These can vary based on company size and type.
- ii. SEC fines: In the developed countries, non-compliance with ESG disclosures is a serious crime. In the USA for instance, the Securities and Exchange Commission (SEC) has imposed significant fines for ESG-related non-compliance.
- iii. In Nigeria, the Climate Change Act 2021 establishes a legal framework to address climate change, including achieving net-zero emissions by 2050-2070. The Act also introduces a carbon tax. It imposes obligations on businesses to provide for reduction in carbon emissions and also designate an environmental sustainability officer. Failure to comply can result in fines. Also, non-compliance with data protection regulations while processing ESG data can lead to fines and penalties.

b. Legal consequences

- i. Litigation risks: Non-compliance can lead to costly legal battles and potential settlements.
- ii. Regulatory scrutiny: Companies may face stringent audits and investigations, potentially resulting in operational disruptions.
- iii. Loss of operating licenses: In severe cases, non-compliance can lead to loss of operating licenses or restrictions on business operations

c. Reputational damage

- i. Loss of trust: stakeholders, including investors and customers, may lose trust in companies that fail to comply with ESG regulations, leading to reputational damage.
- ii. Negative publicity: Non-compliance can result in negative media coverage, further damaging a company's reputation.
- iii. Competitive disadvantage: Companies that prioritise ESG compliance may gain a competitive edge over non-compliant businesses

d. Operational challenges

- i. Inefficiencies: Non-compliance can lead to operational inefficiencies and reduced innovation.
- ii. Supply chain disruptions: Companies may face supply chain disruptions if their partners or suppliers are not ESG-compliant.
- iii. Future business Opportunities: Non-compliance can limit future business opportunities, as many government bodies and large corporations require ESG compliance from their partners.

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STUDY TEXT

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