ATSWA

ACCOUNTING TECHNICIANS SCHEME WEST AFRICA

STUDY TEXT

TAXATION

ASSOCIATION OF ACCOUNTANCY BODIES IN WEST AFRICA (ABWA)

ACCOUNTING TECHNICIANS SCHEME WEST AFRICA (ATSWA)

STUDY TEXT FOR

TAXATION

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PREFACE

INTRODUCTION

The Council of the Association of Accountancy Bodies in West Africa (ABWA) recognised the difficulty of students when preparing for the Accounting Technicians Scheme West Africa examinations. One of the major difficulties has been the non-availability of study materials purposely written for the scheme. Consequently, students relied on text books written in economic and socio-cultural environments quite different from the West African environment.

AIM OF THE STUDY TEXT

In view of the above, the quest for good study materials for the subjects of the examinations and the commitment of the ABWA Council to bridge the gap in technical accounting training in West Africa, led to the production of this Study Text.

The Study Text assumes a minimum prior knowledge and every chapter reappraises basic methods and ideas in line with the syllabus.

READERSHIP

The Study Text is primarily intended to provide comprehensive study materials for students preparing to write the ATSWA examinations.

Other beneficiaries of the Study Text include candidates of other Professional Institutes, students of Universities and Polytechnics pursuing undergraduate and post graduate studies in Accounting, advanced degrees in Accounting as well as Professional Accountants who may use the Study Text as reference material.

APPROACH

The Study Text has been designed for independent study by students and as such concepts have been developed methodically or as a text to be used in conjunction with tuition at schools and colleges. The Study Text can be effectively used as a course text and for revision. It is recommended that readers have their own copies.

FOREWORD

The ABWA Council, in order to actualize its desire and ensure the success of students at the examinations of the Accounting Technicians Scheme West Africa (ATSWA), put in place a Harmonisation Committee, to among other things, facilitate the production of Study Texts for students. Hitherto, the major obstacle faced by students was the dearth of Study Texts which they needed to prepare for the examinations.

The Committee took up the challenge and commenced the task in earnest. To start off the process, the existing syllabus in use by some member Institutes were harmonized and reviewed. Renowned professionals in private and public sectors, the academia, as well as eminent scholars who had previously written books on the relevant subjects and distinguished themselves in the profession, were commissioned to produce Study Texts for the twelve subjects of the examination.

A minimum of two Writers and a Reviewer were tasked with the preparation of Study Text for each subject. Their output was subjected to a comprehensive review by experienced imprimaturs. The Study Texts cover the following subjects:

PART I

1 Basic Accounting
2 Economics
3 Business Law
4 Communication Skills

PART II

1 Financial Accounting
2 Public Sector Accounting
3 Quantitative Analysis
4 Information Technology

PART III

1 Principles of Auditing & Assurance
2 Cost Accounting
3 Taxation
4 Management

Although, these Study Texts have been specially designed to assist candidates preparing for the technicians examinations of ABWA, they should be used in conjunction with other materials listed in the bibliography and recommended text.

PRESIDENT, ABWA

STRUCTURE OF THE STUDY TEXT

The layout of the chapters has been standardized so as to present information in a simple form that is easy to assimilate.

The Study Text is organised into chapters. Each chapter deals with a particular area of the subject, starting with a summary and learning objective of sections contained therein.

The introduction also gives specific guidance to the reader based on the contents of the current syllabus and the current trends in examinations. The main body of the chapter is subdivided into sections to make for easy and coherent reading. However, in some chapters, the emphasis is on the principles or applications while others emphasise method and procedures.

At the end of each chapter is found the following:

- Summary;
- Points to note (these are used for purposes of emphasis or clarification);
- Examination type questions; and
- Suggested answers.

HOW TO USE THE STUDY TEXT

Students are advised to read the Study Text, attempt the questions before checking the suggested answers.

ACKNOWLEDGMENTS

The ATSWA Harmonisation and Implementation Committee, on the occasion of the publication of the first edition of the ATSWA Study Texts acknowledges the contributions of the following groups of people. The ABWA Council, for their inspiration which gave birth to the whole idea of having a West African Technicians Programme. Their support and encouragement as well as financial support cannot be overemphasized. We are eternally grateful.

To The Councils of the Institute of Chartered Accountants of Nigeria (ICAN), and the Institute of Chartered Accountants, Ghana (ICAG), Institute of Chartered Accountants Sierra Leone (ICASL), Gambia Institute of Chartered Accountants (GICA) and the Liberia Institute of Certified Public Accountants (LICPA) for their financial commitment and the release of staff at various points to work on the programme and for hosting the several meetings of the Committee, we say kudos.

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We have made every effort to obtain permission for use of intellectual materials in this Study Text from the appropriate sources.

We wish to acknowledge the immense contributions of the writers and reviewers of this manual.

Our sincere appreciation also goes to various imprimaturs and workshop facilitators. Without their input, we would not have had these Study Texts. We salute them.

Chairman
ATSWA Harmonization & Implementation Committee

A new syllabus for the ATSWA Examinations has been approved by ABWA Council and the various PAOs. Following the approval of the new syllabus which becomes effective from the September 2022 diet a team was constitutes to undertake a comprehensive review of the Study Texts in line with the syllabus under the supervision of an editorial board.

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Alloy Silvertein Accountants and Advisors (2018).https://alloysilverstein.com/cloud-accounting-vs-desktop-accounting-comparison-infographic/ 474
Accessible Accounting (2021). https://accessibleaccounting.co.uk/cloud-accounting-systems-are-revolutionary-part-3/ 475
Accounting Today (2021).https://www.accountingtoday.com/tag/technology .475

PAPER 11: TAXATION
NIGERIA

Aim
The aim of this paper is to examine candidates' knowledge and understanding of the various aspects of tax system, computations of tax liabilities of individuals and businesses, as well as issues relating to filing of returns to the relevant tax authorities.

Objectives
On completion of this paper, candidates should be able to:
a. Explain the basic operation and scope of the tax system;
b. Identify and explain the taxes and levies collectible by different tiers of government or relevant tax authorities;
c. File the necessary returns to the relevant tax authorities;
d. Compute value added tax, stamp duties, withholding tax, customs and excise duties, as well as luxury tax.
e. Compute tax on property and investment income;
f. Compute tax liabilities of employees based on Pay-As-You-Earn (PAYE);
g. Compute direct assessment on individuals;
h. Compute adjusted profit or loss for trade and vocations;
i. Compute total profit of companies;
j. Compute companies income tax;
k. Compute tertiary education tax;
l. Compute capital gains tax;
m. Identify and explain ethical issues in real-life situations or any given scenario;
n. Explain the application of information technology in taxation; and
o. Attend to tax queries from State Internal Revenue Service and Federal Inland Revenue Service as applicable in Nigeria.

Structure of paper
The paper will be a three-hour paper divided into two sections:

Section A (50 Marks): This shall consist of 50 compulsory questions made up of 30 multiple – choice questions and 20 short answer questions covering the entire syllabus.

Section B (50 Marks): Six questions, out of which candidates are expected to answer four, each for $12^1/_2$ marks.

Contents

1. Introduction to taxation **10%**

a. Define tax
b. Explain the objectives of taxation.
c. Explain the principles of taxation.
d. Explain the classification of taxes.
e. Explain the sources of Nigerian tax laws.
f. Explain the basic concepts in taxation:
   i. Tax base, tax yield, tax rate, tax incidence; and
   ii. Tax burden, tax impact, tax shift and tax effect.
g. Differentiate between taxes and levies.
h. Explain multiplicity of taxes.

i. Explain tax amnesty in relation to voluntary assets and income declaration scheme (VAIDS) and voluntary offshore assets regularisation scheme (VOARS).
j. Explain the objectives and policy guidelines of the National Tax Policy (NTP), 2017.

2. Administration of taxes **15%**

a. Explain the composition, powers and duties of organs of tax administration:
   i. Joint Tax Board (JTB);
   ii. Federal Inland Revenue Service Board (FIRSB);
   iii. State Board of Internal Revenue (SBIR);
   iv. Joint State Revenue Committee (JSRC);
   v. Local Government Revenue Committee (LGRC);
   iv. Technical Committees of the Boards; and
   v. Tax Appeal Tribunal (TAT).
b. Identify taxes and levies imposed and collectible by each tier of government.
c. Explain the practical procedures for registration of taxpayers.
d. State the documents necessary for filing of tax returns with the relevant tax authorities.
e. Explain the filing of tax returns in respect of:
   i. Individual taxpayers;
   ii. Corporate taxpayers;
   iii. Terms of payment; and
   iv. Due dates of filings.
f. Explain the following types of assessment:
   i. Self assessment;
   ii. Best-of-judgement assessment (BOJ)/administrative assessment;
   iii. Turnover assessment;
   iv. Protective/jeopardy assessment;
   v. Amended/additional assessment;
   vi. Assessment based on dividend paid; and
   vii. Back duty assessment.
g. Explain the collection and enforcement procedures of taxes.
h. Explain the penalties for late payment of taxes.
i. Explain the objections and appeal procedures.
j. Explain the composition of Tax Appeal Tribunal (TAT) and hearing before a TAT.
k. State the taxes and levies (approved list for collection).
l. Explain and differentiate between tax avoidance and tax evasion.
m. Explain the procedure for obtaining a tax clearance certificate (TCC).
n. State the following in respect of a tax clearance certificate (TCC):
   i. Definition and contents;
   ii. The conditions for granting TCC;
   iii. Transactions for which a TCC is required;
   iv. Application for a TCC;
   v. Offences and penalties; and
   vi. Problems of obtaining TCC.
o. Explain the fundamental principles of ethics as specified by the International Ethics Standards Board for Accountants (IESBA):
   i. Integrity;
   ii. Objectivity;
   iii Professional competence and due care;
   iv. Confidentiality; and
   v. Professional behavior.

3. **Value added tax (VAT) and stamp duties** **10%**

a. Value added tax

i. Explain the nature, objectives, and administration of VAT.
ii. Explain the registration and deregistration of tax taxpayers for VAT.
iii State the VAT threshold.
iv. Explain taxable persons, goods and services.
v. Prepare and file of VAT returns.
v. Explain when goods and services shall be deemed to be supplied in Nigeria.
vi. Explain time of supply.
vii. Explain exported services.
viii. State exempted goods and services.
ix. Identify vatable services rendered by financial institutions.
x. Identify income of financial institutions not liable to VAT.
xi. Explain zero-rated supplies.
xii. Explain input and output VAT.
xiii. Compute VAT liability and explain the treatment of opening and closing inventories.
xiv. Explain self-account provision for which VAT was not charged.
xv. Explain the treatment of VAT on sale and transfer of assets amongst related parties in business reorganization and restructuring.
xvi. Explain the treatment of VAT on property, plant and equipment purchased, as well as operating expenses.
xvii. Explain the treatment of VAT on imported and exported goods and services.
xviii. Explain the obligations for records and account keeping, valid VAT invoice, as well as preparation of VAT accounts.
xix. Explain the merits and demerits of VAT.
xx. Explain the process of VAT recovery.
xxi. State the offences and penalties associated with VAT.
xxii. Explain the composition and functions of the VAT Tribunal.
xxiii. Explain the procedure for VAT audit and investigation.

b. Stamp duties

i. Explain the nature, objectives and administration of stamp duties.
ii. Explain the forms of stamp duties and method of computation of each.
iii. State the instruments and receipts liable to stamp duties.
iv. State the instruments exempted from stamp duties.
v. Identify the relevant tax authorities for collection.
vi. Explain the functions of the Commissioner for Stamp Duties.
vii. Explain the modes of denoting stamp duties.
viii. Explain when electronic documents are regarded as received in Nigeria.
ix. Explain duties on loans, credit facilities, and other agreements.
x. Explain electronic money transfer levy.
xi. Explain duties on contracts.
xii. Explain the process of adjudication, the limits, and appeal procedures.
xiii. Explain the consequences for non- compliance with the provisions of the Stamp Duties Act Cap. S8 LFN 2004 (as amended).

4. Withholding tax (WHT), customs and excise duty, and luxury tax 5%

a. Withholding tax (WHT)

i. Explain the nature, objectives, and administration of WHT.
ii. Identify the relevant tax authority for collection of WHT.
iii. State the transactions subject to WHT, exemptions, and applicable rates.
iv. Explain the exemption of "sales in the ordinary course of business from WHT", taking into consideration the judgement of Tax Appeal Tribunal, Lagos, on November 30, 2020.
v. Explain the procedure for filing, contents of WHT return, and remittance to relevant tax authorities.
vi. Explain the treatment of withholding tax receipts/ credit notes.
vii. Explain the procedure relating to WHT refunds.
viii. Explain the merits and demerits of WHT refunds.
ix. Explain the penalty for late remittance and non-deduction of withholding tax from payments to third parties.

b. Customs and excise duties

i. Explain the nature, objectives, and administration of customs and excise duties.
ii. State the rates and basis of computation.
iii. Identify excisable items.
iv. Explain the provisions relating to the furnishing of information by manufacturers and keeping of goods.
v. Explain the offences and penalties.

c. Luxury tax

i. Explain luxury tax.
ii. Identify the relevant goods and services.
iii. State the applicable rate for each of the goods and services.
iv. Explain the benefits of taxation of luxury goods.

5. **Personal income tax (PIT)** **20%**

a. **Taxation of employment income**

i. Explain employment income.
ii. State taxable persons under the enabling Act.
iii. Explain and differentiate between contract of employment and contract for employment.
iv. Differentiate between types of employment:
- Nigerian employment; and
- Foreign employment.

v. Identify the relevant tax authorities.
vi. Explain the importance of residence of a taxpayer.
vii. Explain itinerant worker.
viii. Explain registration of employees for Pay-As-You –Earn (PAYE).
ix. Explain the operation of PAYE.
x. Explain filing of annual returns by employers in respect of emoluments paid to employees in the preceding year.
xi. Explain the basis of assessment of an employee.

xii. Explain the exemption of minimum wage earners from the payment of personal income tax.
xiii. Identify the incomes chargeable as well as allowable and non allowable expenses.
xiv. Explain the general provisions relating to valuation of benefits-in kind (BIK).
xv. Compute gross emoluments/ total income.
xvi. Identify tax exempt deductions.
xvii. Compute gross income.
xviii. Compute consolidated relief allowance (CRA).
xix. Compute chargeable income.
xx. Compute personal income tax payable.
xxi. Compute minimum tax payable.
xxii. State the offences and penalties payable.

b. Taxation of investment income

i. Explain franked investment income.
ii. Explain the basis of assessment.
iii. Identify allowable and non-allowable expenses.
iv. Compute rental income chargeable to tax on property.
v. Explain the tax implications on dividends and interests.

c. Taxation of sole traders /self employed individuals

i. Explain badges of trade, trade and profession.
ii. Explain the basis of assessment.
iii. Identify taxable and non- taxable income.
iv. Identify allowable and non-allowable expenses.
v. Ascertain adjusted profit/(loss).
vi. Explain the rules for commencement, change of accounting date and cessation of business.
vii. Explain the treatment of losses.
viii. Identify qualifying capital expenditure.
ix. Compute capital allowances.
x. Compute balancing adjustments on disposal of qualifying capital expenditure.
xi. Explain the treatment of capital allowances for small companies.
xii. Identify tax exempt deductions.
xiii. Compute gross income.
xiv. Compute consolidated relief allowance (CRA).
xv. Compute chargeable income.
xvi. Compute personal income tax payable.
xvii. Compute minimum tax payable.
xviii. State the offences and penalties.

d. Taxation of partners in partnerships

i. Explain partnership.
ii. State the relevant tax office.
iii. Explain the basis of assessment.
iv. Explain the treatments of admission and retirement of partners, as well as the amalgamation of partnerships.
v. Explain tax treatment of conversion of a partnership to a limited liability company.
vi. Explain the rules of commencement and cessation relating to partnership income.
vii. Identify allowable and non allowable expenses.
viii. Compute the income of a partnership business.

ix. Explain the treatment of partnership loss.
x. Compute capital allowances and explain its treatment in the taxation of partnership business.
xi. Ascertain the computed income of the partners.
xii. Identify the tax exempt deductions.
xiii. Compute the gross income.
xiv. Compute the consolidated relief allowance (CRA).
xv. Compute the chargeable income of partners.
xvi. Compute the personal income tax payable
xvii. Explain taxation of limited liability partnership income.

e. Taxation of trusts, settlements and estates

i. Define trust, settlement and estate.
ii. Identify persons chargeable.
iii. Identify the relevant tax authority.
iv. Explain what constitutes significant economic presence of a non-resident individual, executor, or trustee.
v. Explain the basis of assessment.
vi. Identify and explain allowable and non-allowable expenses.
vii. Determine income from trust, settlement, and estate.
viii. Ascertain computed income.
ix. Compute income liable to tax in the hands of beneficiaries and trustees.
x. State and explain offences and penalties.

6. Companies income tax (CIT) 20%

a Define small, medium-sized and large companies.
b State persons chargeable to CIT.
c Identify taxable and non- taxable income.
d Identify allowable and non – allowable expenses.
e Explain the treatment of expenses incurred in deriving tax exempt income.
f Define gross turnover.
g Compute adjusted/ assessable profit.
h Explain the rules of commencement, change of accounting date and cessation of business.
i Explain the bases of assessment.
j Explain the treatment of losses.
k Identify qualifying capital expenditure.
l State. the rates and conditions for granting capital allowances.
M Compute capital allowances.
N Explain rural investment allowance.
o. Explain local plants and fabrication of spare parts.
p. Explain the restriction on capital allowances, including those of small companies
Q Compute total profit.
R Compute companies income tax by applying the applicable rates of tax to the total profit.
S Compute companies income tax, using other bases, such as dividend and gross turnover
T Compute minimum tax.
U Explain the exemption of small companies from the payment of CIT.

7. Taxation of specialised businesses 5%

a Explain the taxation of enterprises in free trade zones.
b Explain the tax provisions relating to agricultural business and primary agricultural

production.

c Explain the taxation of foreign air and sea transport companies.

d Explain the taxation of foreign companies engaged in cable undertakings (telecommunications).

e Explain the taxation of banks and insurance businesses.

f Explain the taxation of authorised unit trust scheme.

g Explain the tax provisions of the Nigerian Information Technology Development Act (NITDA), 2007 (as amended).

h Explain the tax provisions relating to real estate investment companies which are approved by the Securities and Exchange Commission under the relevant provisions of real estate investment scheme (REIS).

i. Explain the tax implications of the operation of regulated securities lending transactions in Nigeria.

j. Explain the provisions of the National Agency for Science and Engineering Infrastructure (NASENI) Act, 1992, as they relate to taxation add as amended by Finance Act.

k. Identify the legal basis for the taxation of non-governmental organisations (NGOs) in Nigeria as well as other obligations and exemptions as specified under the relevant tax legislations.

L Explain the provisions of the Nigerian Police Trust Fund (Establishment) Act, 2019, as they related to 0.005% of the net profits of companies operating in Nigeria.

m Define and explain e-commerce and e-business.

n Differentiate between e-commerce and e-business.

o Explain the CIT, VAT and WHT implications on e-commerce.

8. Tertiary education tax (TET) 5%

a. Explain the management and administration of the tertiary education trust fund (TET fund).
b. Explain the composition and functions of the Board of Trustees.
c. Explain the exemption of small companies from the payment of TET.
d. Explain the imposition, assessment and collection of tax.
e. Explain the allocation and distribution of the tax amongst different tiers of government.
f. Compute tertiary education tax.
g. State the offences and penalties.

9. Capital gains tax (CGT) 5%

a. Explain the nature, objectives and administration of capital gains tax.
b. Identify the relevant tax authority.
c. Explain the treatment of compensation for loss of office.
d. Explain the responsibility of a taxpayer relating to the remittance of capital gains tax in respect of compensation for loss of office.
e. Explain the conditions that must be met before assets transferred or sold in business reorganisation and restructuring are exempted from capital gains tax.
f. Explain how the gains accruing to a person from disposal by it of Nigerian government securities, and shares of any Nigerian company registered under the Companies and Allied Matters Act, shall be treated for tax purposes.
g. Explain the allowable and disallowable expenses.
h. Identify exempt chargeable gains.
i. Explain artificial and fictitious transactions.
j. Explain roll-over relief.
k. Compute chargeable gains tax.

l. Explain the offences and penalties.

10. Application of information technology in taxation 5%

a. Explain computer applications for tax planning, computations and administration, for example, web portals.

b. Explain the key features of integrated tax administration system (ITAs) of Federal Inland Revenue Service (FIRS) which include:

i. Electronic registration of a taxpayer with the FIRS and validation of tax identification number (TIN);
ii. Online submission of tax returns;
iii. Electronic tax payment to FIRS;
iv. Processing of electronic tax clearance certificate (TCC); and
v. Automated filing and collection system of value added tax (VAT) as it relates to branded shops, super shops, supermarkets and standard restaurants.

c. Explain excel payroll software template for the computations of employees tax.

CHAPTER ONE

INTRODUCTION TO TAXATION

Chapter Contents

a. Learning objectives
b. Introduction
c. Definition of tax
d. Essentials of a good tax system
e. Tax cut
f. The Nigerian tax system
g. Historical background of taxation in Nigeria
h. Objectives of taxation
i. Tax administration in Nigeria
j. Principles of taxation
k. Classification of taxes
l. Sources of tax laws
m. Distinction between taxes and levies
n. Basic concepts in taxation
o. Enabling Acts
p. Multiple taxes
q. Objectives of tax identification number (TIN)
r. Objectives of tax amnesty in relation to voluntary assets and income declaration scheme (VAIDs) and voluntary offshore assets regularization scheme (VOARs)
s. Chapter summary
t. Worked examples

1.0 Learning objectives

At the end of this chapter, readers should understand:

a) The meaning and historical background of taxation;
b) Classification, objectives and principles of taxation;
c) Sources of tax laws; and
d) Objectives of VAIDs and VOARs.

1.1 Introduction / definition of tax

Tax is a compulsory levy or financial charge imposed on a taxpayer or upon his property by the government to provide security, social amenities and other amenities for the well- being of the society. The main purpose of taxation is to raise funds to defray the expenses incurred for the common interest of the country without reference to special benefit conferred.

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

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

However, the Oxford Advanced Learner's Dictionary defines 'tax' as:
"*Money that has to be paid to the government so that it can pay for public services*".

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

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

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

Other definitions can be gleaned from judicial precedents.

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

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

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

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

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

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

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

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

1.2 Essentials of a good tax system

A **good tax system** should however create jobs and a tax rise should lead to arrest of wasteful expenditure. It is important to note that no one pays tax with a smile even though taxation is a means of making the private sector pay for the services rendered by the public sector. It helps in shaping and directing economic activities, stimulating economic activities, redistributing financial resources and using the income generated to finance social welfare.

1.3 Tax cut

Tribute paid in the olden days by the territories conquered in the wars could be likened to tax. The payment of tax has now been institutionalized with the growth of the government's responsibilities to the citizenry. Tax cutting is not about government giving anything back to the people. The term **'Tax Cut'** means that the government takes away less of people's own money, so as to enable them spend more of their money in accordance with their choices, instead of government taking it from them to make the choices for them especially where accountability for taxes collected and spent left much to be desired.

1.4 The Nigeria tax system

The tax system usually involves a tripartite aspect, namely the policy, the tax laws, and the tax administration.

a. **Tax policy**

The tax policies are general statements of intention which guide the thinking and the action of all concerned towards the realization of the set goals. They usually include:

(i) Movement of emphasis from income tax to consumption tax which is less prone to tax evasion;
(ii) Pursuance of a tax law regime with the aim of reducing individual tax burden, widening the tax net and encouraging savings and investments; and
(iii) Introduction of the self-assessment scheme to encourage tax payers' participation in the tax assessment process which is considered to be realistic in approach. The policy can also include movement from coercive method of taxation to voluntary compliance as in the case of Nigeria of recent.

b. **Tax laws**

The tax laws include the following notable tax legislations in Nigeria:

(i) Personal Income Tax Act Cap. C21, LFN 2004 (as amended;
(ii) Companies Income Tax Act Cap C21 LFN 2004 (as amended);
(iii) Capital Gains Tax Act Cap C1 LFN 2004 (as amended);
(iv) Value Added Tax Act Cap V1 LFN 2004 (as amended);
(v) Tertiary Trust Fund (Establishment, etc) Act, 2011 (as amended);
(vi) Stamp Duties Act Cap S8 LFN 2004 (as amended); and
(vii) Petroleum Industry Act, 2021.

In Nigeria, the Constitution vests the legislation of income tax, whether personal or corporate on the Federal Government in order to promote uniformity. However, the administration of the various taxes is shared by the three tiers of government. Tax laws are reviewed periodically in line with the changes in social-political and economic conditions of the country.

The power to impose tax in Nigeria is within the exclusive legislative authority of the federal government. There are various machineries set up by the government to ensure strict compliance of these laws; non-compliance attracts penalties and fines.

c. **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. The tax authorities of these tiers of government derive their formation from the Federal laws which include:

(i) The Federal Inland Revenue Service Board, sections 1, 2, and 3 of the Companies Income Tax Act (CITA) Cap C21 LFN 2004;
(ii) The Board of Internal Revenue (SBIR), sections 85A, B and C of Personal Income Tax Act (as amended); and
(iii) The Local Government Revenue Committee, sections 85D and E of Personal Income Tax (as amended).

1.3 Historical background of taxation in Nigeria

Taxation dated back to 1904 when late Lord Lugard introduced income tax in Nigeria. It started as a community tax which later culminated in the Native Revenue Ordinance in 1917. In 1918, an amended ordinance extended the provisions of 1917 Ordinance to Southern Nigeria. The first ordinance applied to Abeokuta in Ogun State and to Benin City in Edo State and in 1928, it was extended to Eastern Nigeria. The Nigeria income taxation did not start until 1940 when the Native Revenue Ordinances of 1917, 1918 and 1928 were incorporated in the direct taxation under Ordinance No. 4 of 1940 cap. 54, (hereinafter referred to as the Ordinance) which repealed the Native Revenue Ordinance, cap 74 in the 1923 edition and the Native Direct Taxation (Colony) – Ordinance No. 41 of 1937. This Ordinance was however discriminatory as it applied to natives in Nigeria elsewhere, that is, other than in the township of Lagos. However, a more comprehensive Income Tax Ordinance No. 29 of 1943 which came into effect on 1 April 1943, governed the assessment of the income of non-Africans resident outside Lagos as well as Africans and non-Africans resident in Lagos. After the Income Tax Ordinance of 1943, there was no significant change in the tax system until 1956.

The determinant of the taxable income or, better still, the original Inland Revenue Departments was the Resident, who was the officer appointed by the Governor to be in charge of the province, together with any other administrative officer authorized by the resident to perform any duties imposed upon the Resident under the Ordinance; the Chief elders and other persons of influence in each district; any native authority which by native Law and Custom was recognized as the tax-collector.

However, the Northern Region did not pass its own personal income tax law until 1962. All the regional tax laws later formed the basis of personal income taxation in all the States that were created out of the Regions. In the Federal Territory of Lagos, the Income Tax Ordinance, 1943, remained in force until the Personal Income Tax (Lagos) Act 1961 enacted by the Federal Government. It was the 1961 enactment that gave birth to separate laws on income and profit of both individuals and companies namely Income Tax Management Act (ITMA); and Companies Income Tax Act (CITA). The Petroleum Profit Ordinance was passed in 1959 but took effect from 1 January 1958. So many laws have been passed to date on taxation in Nigeria.

1.4 Objectives of taxation

Objectives of taxation include the following:

(a) For revenue generation to meet the needs of government;

(b) To provide fiscal tool for stimulating economic growth and development;

(c) For social function such as redressing the rural-urban population drift, curbing environmental pollution as well as promoting a decent society; and

(d) To redistribute income/wealth in order to reduce inequality. This is achieved mostly through the progressive tax.

1.5 Tax administration in Nigeria

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. The tax authorities of these tiers of government derive their formation from the Federal laws which include:

a) Federal Inland Revenue Service Board, Establishment Act 2007.

b) The State Board of Internal Revenue (SBIR) section 85A, B and C of Personal Income Tax Act (as amended).

c) The Local Government Revenue Committee section 85D and E of Personal Income tax as amended.

1.6 Principles of taxation

These are the guidelines underlying a good tax system. They are:

(a) Certainty

It is important that the taxpayer should know the exact amount he/she is expected to pay, the basis of the taxation and the rate of tax applicable and the relevant tax authority to pay to.

(b) Economy in collection cost

The cost of collecting taxes should be relatively lower than the amount of tax collected.

(c) Convenience

The method and timing of tax payment must be convenient to the taxpayers. It must be easy to locate the taxpayers.

(d) Efficiency

Both the compliance and administrative cost must be kept lower than the revenue raised in order to avoid any resentment from the taxpayers especially those of them with smaller income.

(e) Equity

Taxes should be seen to be fair in order to gain acceptability of the taxpayers. It is important that attention be paid to vertical equity and horizontal equity. Vertical equity involves a system whereby the rich pay higher than the poor whilst horizontal equity is a situation which requires equal treatment to people in similar situations.

(f) Flexibility

The tax system must be flexible for it to serve as a veritable fiscal tool. The rate of tax should be capable of being altered without much difficulty.

(g) Neutrality

A good tax system should not distort the economic choices in any form as to cause excess tax burden. Taxes should be neutral and should not be made to impinge adversely on economic activity.

1.3 Classification of taxes

There are various ways in which taxes can be classified depending on the perspective at which one is looking at taxes. One can classify taxes from the perspective of the tax subject, the tax base or the distribution of the tax burden.

In a nutshell, taxes are classified as follows:

1.9.1 Perspective of tax subject

– direct and indirect taxes

a) Direct tax

This type of tax is levied directly on the taxpayer's income. Examples include Companies Income Tax, Pay-As-You-Earn (PAYE), Capital Gains Tax, etc.

b) Indirect tax

This is levied on goods and services. It could be <u>specific</u>; in which case, a fixed amount is imposed on a commodity per unit or, it could be <u>ad-valorem</u> if the tax levied is a certain percentage of the cost of the commodity. Examples of indirect taxes include Import and Export Duties, Excise Duties, Value Added Tax.

Merits of direct tax

These include but not limited to:

(i) It has lower cost of collection;
(ii) It is more equitable as the tax payer with higher income bears a greater burden; and
(iii) It is easier to ascertain tax incidence.

Demerits of direct taxes

These include but not limited to:
(i) It may discourage hard work;
(ii) It can give room for tax evasion especially if the tax rates are high; and
(iii) It may cause social unrest especially if the tax rates are very high since the tax payers bear the whole burden.

Merits of indirect tax

These include but not limited to:

(i) It is a good source of revenue to government;
(ii) It can be adjusted easily;
(iii) It is a veritable fiscal tool to check pattern of consumption of undesirable goods;
(iv) It can be used to protect infant industries; and
(v) It is more difficult to evade.

Demerits of indirect tax

These include but not limited to:

(i) The cost of collection may be higher;
(ii) Where there is collusion between tax officials and taxpayers to evade tax,

there could be loss of revenue; and

(iii) May discourage investment in local industries especially in the case of high export duties or excise duties.

1.9.2 Perspective of tax base

Tax can also be classified according to what is being taxed. In Nigeria, the following bases are in use:

(a) Capital;

(b) Income; and

(c) Consumption.

Examples of taxes classified on basis of income are Personal Income Tax and Companies Income Tax. For capital, it is Capital Gains Tax. The examples of the case of consumption are Value Added Tax and Excise Duties.

1.9.3 Perspective of distribution of tax burden

The following can be identified:

(a) The proportional tax

The taxpayer, in this case, pays the same percentage of income as tax. Examples are Capital Gains Tax and Companies Income Tax.

(b) Progressive tax

In this case, the more the taxpayer earns, the more he pays, for example, Personal Income Tax (PAYE).

(c) Regressive tax

Here, the taxpayer with smaller income pays a greater percentage of the income as tax compared with a person with higher income. All flat rates are regressive. Example is Value Added Tax (VAT)

1.3 Sources of tax laws

The following are the sources of Nigerian tax and Ghana tax laws:

a) The various income tax laws. In Nigeria, we have the States and Federal laws including the Federal Government Acts and the State Government Laws.

b) Opinion of income tax experts and authors insofar as the courts take judicial notice of them;

c) Court judgments until overruled;

d) Departmental and official circulars;

e) Accepted recommendations of commissions of inquiry;

f) Customary laws;

g) Constitution; and

h) Practices of the Revenue Department.

1.4 Differentiation between taxes and levies

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

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

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

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

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

1.5 Basic concepts in taxation

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

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

(b) It is the return in form of tax revenue derived from the administration of tax on taxpayers.

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

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

(e) Tax burden
This is the amount of income, property or consumption tax levied on an individual or business. Tax burdens vary depending on a number of factors including income level, jurisdiction, and current tax rates. Income tax burdens are typically satisfied by

deductions from an individual's pay slip each time he or she is paid.

(f) Tax impact

This is the effect of a tax on the production or consumption of the product being taxed. For example, the tax impact of raising the levy on tobacco might be a reduction in tobacco sales.

(g) Tax shift

This is also referred to as tax swap. It is a change in taxation that eliminates or reduces one or several taxes and establishes or increases others while keeping the overall revenue the same.

(h) Tax effect

This is a general term that describes the consequences of a specific tax scenario with respect to a particular tax-paying entity.

1.6 Enabling Acts

Enabling Acts are statutes empowering a person or body to take certain action, especially to make regulations, rules, or orders.

An enabling Act is a piece of legislation by which a legislative body grants an entity, which depends on it (for authorisation or legitimacy) the power to take certain actions. For example, enabling Acts often establish government agencies to carry out specific government policies in a modern nation. The effects of enabling Acts from different times and places vary widely.

In Nigeria, the National Assembly is the body saddled with the responsibility for the making of laws amongst other responsibilities.

1.7 Multiple taxes

1.8 Nature of multiple taxes

This is a tax regime under which various and similar types of taxes are imposed on taxpayers by different tiers of government.

For instance, while the Federal Government imposed the value added tax on consumption and made it applicable throughout the federation, some states, notably, Lagos State, introduced the sales tax based on the same principle as the former and made it applicable in Lagos State.

Particularly guilty of the problem of multiplicity of taxes, are the local governments, where all kinds of taxes were introduced. In fact, this tier of government pursued the collection of taxes/levies imposed on taxpayers with reckless abandon, to the extent that it became a national problem and consequently attracted the attention of Federal Authorities.

1.14.2 Types of multiple taxes

The type of taxes introduced and collected by the local governments; vary from one local government to the other. Some of these taxes are:

(a) Entertainment tax;

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

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

1.14.3 Causes of multiple taxation in Nigeria

The causes of multiple taxation in Nigeria include:

(a) Lack of funding, particularly for most states, may result in multiple taxation when the states attempt to source for funds through levying of taxes, without taking into consideration whether or not such taxes are being levied either by the Federal or local governments;

(b) Some state governments deliberately deny their local governments the revenue due to them. Consequently, a local government, as a way of survival, desperately and aggressively focuses on any drive that will generate revenue to it;

(c) Lack of tax education and awareness;

(d) All the tiers of government usually fail to adequately fund their departments and agencies, thus, making them resort to imposing illegal levies and taxes;

(e) Multiplicity of revenue agencies;

(f) Overlapping taxing rights as contained in the Constitution and the Taxes and Levies (Approved List for Collection) Act, Cap. T2 LFN,2004; and

(g) Manual tax administration system and unorthodox tax collection.

1.14.4 Collection of multiple taxes

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

Some of these procedures/methods are:

(a) Mounting of roadblocks

Collection agents mount roadblocks and put spikes on the road to force motorists to stop at the approach to the roadblocks. They demand from the motorists evidence of payment of taxes/levies and in the course of carrying out this function, they impound extra tyres, motor jacks and at times rough handle persons who are unable to pay the taxes/levies demanded for, at such roadblocks on the spot. Such nuisance seriously affects inter-city commerce and slows down economic activities to the detriment of the country.

(b) Use of revenue agents/consultants

The use of revenue agents/consultants was popular with the state and local government tax authorities. While some state tax authorities employ external tax consultants for the audit, assessment and collection of tax under the accelerated revenue generation programmes (ARGP), the local governments collect revenue under the aegis of the Joint Revenue Association (JORA).While under the ARGP, especially under the past military regimes, the collection of taxes from companies was enforced, using the law enforcement agents to coerce taxpayers into paying assessed tax, the local government agents in their own case harassed road users, especially branded vehicles in order to ensure payment of tax/levies.

1.14.5 Federal government's solution to problem of multiplicity of taxes

Following the outcry of the citizenry to the problem of multiplicity of taxes, especially its unorthodox collection procedures, the Federal Military Government of Nigeria in 1998, intervened by the promulgation of Act 21 which is now cited as the Taxes and Levies (Approved List for Collection) Act Cap T2 LFN 2004 (as amended).

The purpose of the Act was to resolve the confusion created by the multiplicity of taxes imposed by the three tiers of government, namely: federal, state and local governments.

It lays down in very clear terms, the types of taxes collectible by each tier of government.

1.14.6 The 1999 Constitution and multiplicity of taxes

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

(a) In the exercise of its powers to impose any tax or duty on:

(i) Capital gains, incomes or profits or persons other than companies; and

(ii) Documents or transactions by way of stamp duties.

The National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it, shall be carried out by the government of a state or other authority of a state.

(b) Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a state in accordance with paragraph 7 thereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one state.

(c) A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the law providing for such collection by a local government council.

(d) Where a law of a House of Assembly provides for the collection of tax, fee or rate or for the administration of such law by a local government council in accordance with the provisions hereof, it shall regulate the liability of persons to the tax, fee or rate in such manner as to ensure that such tax, fee or rate is not levied on the same person, in respect of the same liability by more than one local government council.

1.14.7 Other possible solutions to multiplicity of taxes in Nigeria, include:

(a) Reviewing all the existing taxes in Nigeria and harmonising, where necessary;

(b) Reviewing the Constitution to address the overlap in taxing rights of different tiers of government;

(c) Abolishing any unorthodox method of tax collection and implementing technology for tax administration; and

(d) Limiting the number of revenue agencies.

1.3 Objectives of tax identification number (TIN)

Tax identification number (TIN) is a unique nine-digit number allocated to taxpayers with a view to identifying an individual, business or any other entity in tax returns and other documents filed with the tax authorities.

The major objectives of introducing TIN, as specified in Joint Tax Board Bulletin 2011, include:

(a) Creating closer linkage between tax authorities in Nigeria;

(b) Aiding cooperation and information sharing amongst the tax authorities; and

(c) Increasing revenue generation accruing to all tiers of the government.

1.4 Tax amnesty in relation to voluntary assets and income declaration scheme (VAIDs) and voluntary offshore assets regularization scheme (VOARs)

1.16.1 Tax amnesty, including voluntary assets and income declaration scheme (VAIDS)

The Federal Government of Nigeria approved the voluntary assets income declaration scheme in 2017. The scheme was aimed at providing tax defaulters an opportunity to defray all unsettled tax liabilities.

Under the Scheme, tax defaulters were required to voluntarily disclose any previously undisclosed asset and income relating to the preceding six (6) years of assessment within a 9-month period from July 1, 2017. It has been described as giving tax amnesty to defaulters, albeit for a limited period.

At the expiration of the VAIDS scheme on March 31, 2018, the Federal Government extended the scheme by an additional three months due to a clamour for extension by the public. The VAIDS scheme eventually closed on June 30, 2018.

(a) Objectives

The aim of the Nigerian voluntary assets and income declaration scheme (VAIDS) was to provide taxpayers with a time-limited opportunity to regularise their tax status relating to previous tax periods and pay any taxes due. In exchange for fully and honestly declaring previously undisclosed assets and income, taxpayers benefitted from forgiveness of overdue interest and penalties, and the assurance they would not face criminal prosecution for tax offences or tax investigations.

(b) Eligibility to participate

The scheme was targeted at all persons and entities that were in default of their tax liabilities in any way whatsoever, including those who:

(i) Earned incomes or owned assets but were yet to register with the relevant tax authorities;

(ii) Registered as taxpayers and had additional disclosures to make or needed to amend prior disclosures; and/or were registered but were not filing returns;

(iii) Were not fully declaring their taxable incomes and assets;

(iv) Were underpaying or under remitting;

(v) Were under a process of tax audit or investigation with the relevant tax authority; and/or

(vi) Were engaged in a tax dispute with the relevant tax authority but were prepared to settle the tax dispute out of court.

(c) Requirements for valid declaration

In order for an application pursuant to the scheme to be valid, the following requirements must be met:

(i) The disclosures by the taxpayer should be voluntary;

(ii) The disclosure must be full, frank, complete and verifiable in all material respects;

(iii) The disclosure must be made using the forms designed for VAIDS or in any other form or manner as may be prescribed under the scheme; and

(iv) The assessment of tax payable must be carried out by relevant tax authority.

(d) Reliefs/benefits

A taxpayer who truthfully and voluntarily declared his assets and income, complied with the regulations and guidelines and paid all outstanding taxes, enjoyed the following benefits:

(i) Immunity from prosecution for tax offences;

(ii) Immunity from tax audit;

(iii) Waiver of interest;

(iv) Waiver of penalties; and

(v) Option of spreading payment of outstanding liabilities over a maximum period of three years as may be agreed with the relevant tax authority.

The remission or waiver granted under these regulations shall not prejudicially affect or invalidate any court order or judgement already obtained in respect of any default in payment of tax for which interest and/or penalty have already accrued.

The reliefs mentioned above are available in respect of all taxes administered by the Federal Inland Revenue Service as well as those administered by relevant tax authority in each State.

(e) Consequences of failure to comply

Failure of any defaulting taxpayer to truthfully and promptly take advantage of this scheme shall at the expiration of the scheme, may result in the following consequences:

(i) Liability to pay in full, the principal sum due;
(ii) Liability to pay all interests and penalties arising therefrom;
(iii) Liability to be prosecuted in accordance with relevant extant laws for tax offences;
(iv) Withdrawal of any reliefs, which may have been granted to the participant;
(v) Liability to undergo comprehensive tax audit; and
(vi) Any sum paid in relation to the scheme may be counted as part payment of any further outstanding tax in respect of undisclosed information.

(f) Confidentiality of information

All information provided by the taxpayer under the scheme shall be treated with utmost confidentiality in accordance with the provisions of the relevant laws, save where it is stated otherwise.

Any tax official or persons duly authorised to receive information under the scheme who breaches the confidentiality of the information received or exchanged under the scheme without due authorisation or in breach of relevant laws shall be liable to prosecution under extant Federal and/or State laws.

(g) General

This executive order was valid for a period of nine months (with extension of additional three months), and it relates only to taxpayers who voluntarily declared their assets and income within and outside Nigeria for the purpose of ascertaining their outstanding tax liabilities. Any rights and status properly acquired by any participating taxpayer pursuant to the scheme shall vest to the benefit of the taxpayer to the extent provided for by law.

The executive order took effect from the 1st day of July 2017.

1.16.2 Tax amnesty on offshore assets and incomes: voluntary offshore assets regularisation scheme (VOARS)

(a) Objective

The voluntary offshore assets regularisation scheme (VOARS) was introduced via Presidential Executive Order 008 (VOARS Order) on October 8, 2018. It seeks to provide an incentive for taxpayers who have defaulted in the payment of taxes in respect of their foreign assets and foreign-sourced incomes relating to the preceding thirty years of assessment to voluntarily declare their offshore assets/incomes and regularise their tax matters.

(b) Benefits

Any taxpayer who subscribes to the VOARS is entitled to the following benefits/clemency:

i. Payment of one-time levy of 35 per cent on all offshore assets in lieu of payment of outstanding taxes;
ii. Permanent waiver of criminal prosecution for tax offences and other offences relating

to the offshore assets;

iii. Immunity from tax audit of the declared and regularised offshore assets;

iv. Waiver of interest and penalties on the declared and regularised offshore assets;

v. Receipt of offshore assets regularisation compliance certificate on the declared and regularised offshore assets; and

vi. Freedom to use and invest duly regularised offshore assets in any manner in Nigeria and other parts of the world.

(c) General

The VOARS Order mandates the Attorney-General of the Federation and Minister of Justice to set up the VOARS facility in Switzerland for the benefits of Nigerian taxpayers overseas.

To take advantage of the scheme, taxpayers are required to access the facility by paying 2 per cent facility access fee and making all necessary disclosures.

(d) Failure to comply

Any defaulting taxpayer who fails to take advantage of VOARS will be liable to:

i. The tax due;
ii. The interest;
iii. Investigation charges; and
iv. Enforcement procedures in respect of offshore assets.

(e) Duration of the scheme

The VOARS covered a period of twelve months beginning from October 8, 2018.

1.5 Chapter summary

Tax is a compulsory levy imposed by the government for the purpose of meeting the cost of governance. The benefits accruing to the individual tax payer do not necessarily have to be commensurate to the amount of tax paid by the individual.

Tax system includes the tax laws, tax policy and tax administration.

Taxes can be classified according to the perspectives of the subject, tax base and distribution of tax burden.

1.6 Worked examples

1.18.1 Multiple-choice questions

1. Tax is evaded through the following ways EXCEPT
   A. Submitting false returns
   B. Using fake documents to claim exemption
   C. Failing to pay the tax due
   D. Overstating income and understating expenditure
   E. Refusing to register with the relevant tax authority

2. Which one of the following is NOT an example of a direct tax?
   A. Excise duty
   B. Personal income tax
   C. Companies income Tax

D. Capital gains tax
E. Education tax

3. Tax system includes one of the following
   A. Tax law only
   B. Tax administration only
   C. Tax policy only
   D. Tax policy and tax law
   E. Tax law, tax policy and tax administration

4. Which one of the following is not a principle of a good tax system?
   A. Certainty
   B. Equity
   C. Rigidity
   D. Simplicity
   E. Flexibility

5. The term given to an outright dishonest action whereby a taxpayer seeks to minimise his tax liabilities through an illegal act is tax………
   A. Chargeable
   B. Evasion
   C. Avoidance
   D. Allowances
   E. Deductions

1.18.2 Short answer questions

1. A person who earns livelihood working in more than one place in Nigeria is called _____________
2. A tax system with a flat rate is known as ___________
3. Any compulsory payment by an individual to government which does not result in commensurate or direct economic benefit to the payer is in essence a ______________
4. The technical name given to a tax borne by a person other than the taxpayer is called ________
5. A tax system whereby a higher rate of tax is applied as the income of a taxpayer increases is called__________

1.18.3 Examination type questions

1. Explain briefly the THREE aspects of tax system in Nigeria.
2. List any SEVEN sources of Nigerian tax laws and practices.
3. Identify and explain any FIVE principles of taxation.
4. Taxation is often used for purposes other than the raising of revenue. Enumerate some of these.
5. Explain the merits and demerits of direct and indirect taxes.

1.18.4 Suggestion solutions to short answer questions

1 D
2. A
3. E
4. C

5. B

1.18.5 Suggested solution to short answer questions

1. Itinerant worker
2. Proportional tax
3. Tax
4. Indirect tax
5. Progressive tax

1.18.6 Suggested solutions to examination type questions

1. **Aspects of tax system include:**

(a) Tax policy

This can be described as the general statement of intention which guides the actions of all parties towards the realization of tax objectives.

In Nigeria, low tax regime has been introduced with the aim of reducing individual tax burden and thereby encourage savings and investment. There is also the introduction of the self-assessment scheme to encourage taxpayers' participation in the assessment process. The policy also supports the movement from traditional coercive method of taxation to voluntary compliance.

(b) Tax laws

These are legislations promulgated by the government to address tax problems in the country. In Nigeria, the following are the notable tax legislations:

i. Personal Income Tax Act Cap P8 LFN 2004 (as amended);
ii. Companies Income Tax Act Cap C21 LFN 2004 (as amended);
iii. Petroleum Industry Act, 2021 (as amended);
iv. Capital Gains Tax Act Cap C1 LFN 2004 (as amended);
v. Value Added Tax Act Cap V1 LFN 2004 (as amended);
vi. Education Tax Act Cap E4 LFN 2004 (as amended); and
vii. Stamp Duties Act Cap S8 LFN 2004 (as amended).

(c) Tax administration

This involves practical interpretation and application of the tax laws. The bodies charged with the administration of tax in Nigeria are the Federal, State and Local Governments.

The tax authorities usually derive their creation from the federal laws: these laws include:

i. The Federal Inland Revenue Service Board sections 1,2 and 3 of CITA 1990
ii. The State Board of Internal Revenue section 85A, B and C of personal Income Tax Act as amended by Act No.31 of 1996
iii. The Local Government Revenue Committee section 85D and E of Personal Income Tax as amended.

2. **Sources of Nigerian tax laws and practices**

These are:

a. Practices of the Revenue Department;

b. Constitution of Federal Republic of Nigeria;

c. Department and official circulars;

d. Opinion of income tax experts and authors insofar as the courts take judicial notice of them;

e. Accepted recommendations of commissions of inquiry;

f. Courts judgments which decide income tax cases and establish income tax principles which are binding and must be followed in similar cases until overruled; and

g. The various income tax laws, the State and Federal Laws including the Federal Government Acts and the State Government laws.

3. **The principles of an ideal tax system include the following:**

(a) Simple, certain and convenient

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

(b) Flexible

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

(c) Neutral

A tax is said to be neutral if it does not distort economic choices. Taxes should be neutral and should not be made to impinge adversely on economic activity.

(d) Administratively efficient

The cost administering the tax should not be too high in proportion to the revenue raised. The efficiency of tax includes not only the costs incurred by the tax authorities, that is, administration costs, but also costs incurred by the tax payer in complying with the tax legislation known as compliance cost.

(e) Equitable

Taxes must not only be fair, they must also be seen to be fair. These are two types of equity to be considered:

(i) Horizontal equity:- This requires people in similar situations are treated in a similar way.

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

4. Apart from the fact that taxation is often used to raise revenue, there are other core objectives of a modern tax system which include:

(a) Redistribution of income and wealth

The tax system is a means of ensuring the redistribution of income and wealth in order to reduce poverty and promote social welfare;

(b) Economic regulation

The tax system is a means of promoting economic welfare and creating a sound infrastructure for businesses; and

(c) Harmonization/social function

It can be used to redress the rural-urban population drift, curbing environmental pollution, and also to provide for the free movement of goods/services, capital and people between a geographical area for example, ECOWAS.

5. **Merits of direct taxes**

These include but not limited to:

a) It has lower cost of collection;
b) It is more equitable as the tax payer with higher income bears a greater burden; and
c) It is easier to ascertain tax incidence.

Demerits of direct taxes

These include but not limited to:

a) It may discourage hard work;
b) It can give room for tax evasion especially if the tax rates are high; and
c) It may cause social unrest especially if the tax rates are very high since the tax payers bear the whole burden.

Merits of indirect tax

These include but not limited to:

(i) It is a good source of revenue to government;
(ii) It can be adjusted easily;
(iii) It is a veritable fiscal tool to check pattern of consumption of undesirable goods;
(iv) It can be used to protect infant industries; and
(v) It is more difficult to evade.

Demerits of indirect tax

These include but not limited to:

(i) The cost of collection may be higher;
(ii) Where there is collusion between tax officials and taxpayers to evade tax, there could be loss of revenue; and
(iii) May discourage investment in local industries especially in the case of high export duties or excise duties.

CHAPTER TWO
REVISED NATIONAL TAX POLICY (NTP), 2017

Chapter contents

d. Learning objectives

e. Objectives of this policy

f. Policy guidelines

g. Responsibilities of the stakeholders

h. The administration of the mandates of the three tiers of government

i. The implementation measures

j. Chapter review

k. Worked examples

2.0 Learning objectives

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

a. The policy guidelines as it relates to both the guiding principles of the Nigeria tax system and taxation as a tool for economic management and development;
b. The responsibilities of all the stakeholders;
c. The administration of the mandate of the various tiers of government; and
d. The implementation measures by the various tiers of government and other governmental agencies.

2.1 Objectives of the NTP

The national tax policy provides the fundamental guidelines for the orderly development of the Nigeria tax system. 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 legislations 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.

2.2 Policy guidelines as they relate to:

2.2.1 Guiding principles of Nigeria tax system

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 fulfillment of tax obligations shall take into account the convenience of taxpayers and avoid undue difficulties.

(d) **Low compliance cost:** The financial and economic cost 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 a manner that does not retard economic activities.

(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.

2.2.2 Taxation as a tool for economic management and development

The tax system should support sustainable growth and development at all times. In this regard, the tax system should be geared towards meeting the following goals:

(a) Wealth creation and employment

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

(i) Tax policies shall promote employment, export and local production;

(ii) Tax policies and laws shall not be retroactive; Tax policies and laws should ensure equal investment opportunities and support for businesses whether local or foreign;

(iii) Tax policies and laws on investments should be long term focused and tenured to enable investors plan with reasonable certainty;

(iv) 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;

(v) 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

(vi) Tax policies on investments should not promote monopoly such as entry barriers or otherwise prevent competition.

(b) Taxation and diversification

There should be concerted efforts to attract investments in all sectors of the economy, with more focus on promoting investment in specific sectors as may be identified by government in the overall interest of the country from time to time.

This will boost the revenue base for optimum revenue generation.

(c) Focus on indirect taxation

The tax system should focus more on indirect taxes which are easier to collect and administer and more difficult to evade.

(d) Convergence of tax rates

Tax rates should be progressive and should be designed to promote equality. The tax system should gradually seek a convergence of the highest marginal rate of personal income tax, capital gains tax rates and the general companies' income tax rates to reduce opportunities for tax avoidance.

(e) Special arrangements and other incentives

Special arrangements should be sector based and not directed at entities or persons. Also, special arrangements such as free zones and other tax incentives or waivers should not be arbitrarily terminated except as provided in the enabling legal framework or treaties at the time of creation.

Government may provide tax incentives to specific sectors or for such specific activities in order to stimulate or retain investment in the sector. The process of granting and renewing incentives, waivers and concessions shall be transparent and comply strictly with legislative provisions and international treaties.

(f) Creating a competitive edge

(i) **Reduction in the number of taxes**

Taxes should be few in number, broad-based and high revenue-yielding. The administration of the taxes should also be simplified for ease of enforcement and compliance.

(ii) **Avoidance of multiple taxation**

Taxes similar to those being collected by a level of government should not be introduced by the same or another level of government. The federal, state and local governments shall ensure collaboration in harmonising and eliminating multiple taxation.

(g) International and regional treaties

A wide network of International and regional treaties would be beneficial to the economy. In this regard, Nigeria shall continue to expand its treaty network in the best interest of the Nigerian State. Generally, treaties should prevent double taxation without creating opportunities for non - taxation.

Existing treaties should be reviewed regularly and where necessary renegotiated in line with international best practices. New treaties should consider benefits to Nigeria both in the short, medium but more importantly long term.

Nigeria's model double tax treaty should be regularly reviewed to adequately cater for the best interests of the country. Appropriate measures shall be taken to ensure that all treaties duly signed and ratified are implemented.

Taxation is recognised as a very important tool for national development and growth in most societies. One of the major indices by which development and growth can be measured in any society is the amount of wealth, which is created by economic activities undertaken in that society. Furthermore, one of the means of creation of wealth for citizens is through meaningful employment, so that citizens are able to earn income to cater for their needs and also contribute taxes to the government as part of their contribution to national development.

In this regard, taxes do not only provide sustainable revenue for government to carry out its activities and provide development to its citizens, it also puts citizens in the role of stakeholders, who are directly contributing to national development.

In reciprocation therefore, the Nigerian tax system should be utilised by government as a sustainable platform for ensuring growth in the Nigerian economy. In this way, wealth and employment opportunities can be created for those who are currently outside the tax net, due to low or no income, so that they in turn also earn income on which taxes are paid and the circle of growth and development in the economy is sustained in this manner.

2.3 Responsibilities of the stakeholders

For an orderly and sustainable development of the Nigeria tax system, the federal and state ministries of finance shall have the primary responsibility for tax policy matters, including initiating proposals for amendments to tax laws. Ministries of finance shall collaborate with relevant stakeholders in carrying out their tax policy responsibilities.

The key stakeholders in the Nigeria tax system can be broadly categorised as follows:

2.3.1 The government

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

(a) Implement and regularly review tax policies and laws;

(b) Provide information on all revenue collected on a quarterly basis;

(c) Ensure adequate funding, administrative and operational autonomy of tax authorities; and

(d) Ensure a reasonable transition period of between three and six months before implementation of a new tax.

2.3.2 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:

(a) Relevant information for the discharge of tax obligations;

(b) Receive prompt, courteous and professional assistance in dealing with tax authorities;

(c) Raise objections to decisions and assessments and receive response within a reasonable time;

(d) A fair and impartial appeal; and

(e) Self-representation or by any agent of choice, provided an agent acting for financial reward shall be an accredited tax practitioner.

2.3.3 Revenue agencies

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

(a) Treat the taxpayer as a customer;

(b) Ensure efficient implementation of tax policies, laws and international treaties;

(c) Facilitate inter-agency co-operation and exchange of information;

(d) Undertake timely audits and investigations;

(e) Undertake tax awareness and taxpayers' education, and

(f) Establish a robust process to prevent, detect and punish corrupt tax officials.

2.3.4 Professional bodies, tax practitioners, consultants and agents

They shall:

(a) Act in accordance with professional code of conduct and ethics;

(b) Not aid and abet tax evasion and corrupt practices, and

(c) Actively promote effective tax compliance.

2.3.5 Media and advocacy groups

They shall:

(a) Promote tax education and awareness;

(b) Articulate, protect and advance taxpayers right;

(c) Advance accountability and transparency in the utilisation of tax revenue;

(d) Ensure accurate, objective and balanced reporting in accordance with their professional code of conduct and ethics; and

(e) Ensure that aspiring political office holders clearly understand the tax policy and the Nigeria tax system and are able to articulate their plans for the tax system to which they will be held accountable.

2.4 The administration of the mandates of the three-tiers of government

Tax administration in Nigeria cuts across the three-tiers of government. This tax policy document establishes clear guidelines on crucial tax administration issues.

In the context of the Nigeria tax policy, tax authorities at all levels shall administer their mandates in accordance with the following:

2.4.1 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.

2.4.2 Tax compliance

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

(a) That the option for self-assessment is in place, and the process and procedures are simple;
(b) Development of frameworks for tax amnesty in order to expand the tax net;
(c) Focus on taxpayers' services,
(d) Constant tax education and enlightenment;
(e) The overall performance of the tax system is measured and reported periodically, and
(f) The establishment of a system to recognise and honour compliant taxpayers.

2.4.3 Efficiency of administration

The following are important in ensuring an efficient tax administration:

(a) Payment processing and collection
Collection system shall leverage on modern technology towards advancing ease of payment and prevention of revenue losses.

(b) 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.

(c) 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.

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

(e) 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.

(f) Funding for tax refunds

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

(g) 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.

(h) Revenue autonomy

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

2.4.4 Technology and tax intelligence

Tax authorities shall ensure:

(a) Deployment of technology to aid all aspects of tax administration;
(b) The integrity and regular update of the database; and
(c) A workable and secure structure for intelligence and information gathering.

2.4.5 Dispute resolution

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

2.5 The implementation measures

The effective implementation of the national tax policy is crucial for Nigeria to attain the set goals. 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:

2.5.1 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.

2.5.2 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 Tax 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).

2.5.3 Ministry of Finance

The Ministry of Finance shall:

(a) 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;

(b) Establish a tax policy implementation committee to monitor compliance, regularly review the policy and make appropriate recommendations;

(c) Ensure automation of collection and remittance processes of taxes by all ministries, extra-ministerial departments and agencies;

(d) 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;

(e) Establish an office of tax simplification which shall be responsible for ensuring continuous improvement to tax legislation and administration;

(f) Create a dedicated tax policy website. Apart from sensitising 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;

(g) 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;

(h) 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

(i) Ensure that there is a minimum threshold for VAT registration and compliance in order to protect micro-businesses.

2.5.4 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 sensitising 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.

2.5.5 Tax authorities

To promote tax awareness and a tax culture in Nigeria, the federal and state tax authorities through the Joint Tax Board (JTB) 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.

2.5.1 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.

2.6 Chapter review

This chapter discusses the objectives of the NTP as well as the policy guidelines that future taxes are expected to align with and also highlights responsibilities of the key stakeholders for an orderly and sustainable development of the Nigeria tax system.

It also discusses the guiding principles of Nigeria tax system, the administration of tax by the three-tiers of government and the role of the Federal Ministry of Finance in the development and implementation of the NTP.

2.7 Worked examples

2.5.2 Multiple-choice questions

1. The objectives of the revised National tax policy include the following EXCEPT
   A. Guiding the operation and review of the tax system

B. Providing the basis for future legislation and administration
C. Protecting foreign taxpayers
D. Serving as a point of reference for all stakeholders on taxation
E. Providing the benchmark on which stakeholders shall be held accountable

2. All future and existing taxes are expectedly to align with the following fundamental cannons of taxation EXCEPT
A. Equity and fairness
B. Simplicity
C. Convenience
D. Diversification
E. Flexibility

3. In the context of Nigerian tax policy, tax authorities at all levels shall administer their mandates in according with the following EXCEPT
A. Registration of taxable persons
B. Preparation of accounts for tax purposes
C. Tax compliance
D. Efficiency of administration
E. Dispute resolution.

4. Under the National tax policy (NTP) which of the following is NOT a specific responsibility of all levels and arms of government?
A. Implement and regularly review tax policies and laws
B. Provide information on all revenue collected on a regular basis
C. Ensure adequate funding, administrative and operational autonomy of tax authorities
D. Ensure that aspiring political office holders clearly understand the tax policy and the Nigeria tax system and are able to articulate their plans for the tax system to which they will be held accountable
E. Ensure a reasonable transition period of between three and six months before implementation of a new tax

5. Under the National tax policy (NTP), which of the following is NOT a key stakeholder in the Nigeria tax system?
A. All levels and arms of government, ministries, extra-ministerial departments and agencies
B. A group of persons or an entity that pays or is liable to tax often called the taxpayers
C. Any revenue agency responsible for the collection and administration of revenue
D. Media and advocacy groups
E. Tertiary institutions

2.7.2 Short answer questions

1. For an orderly and sustainable development of the Nigeria tax system, the Federal and ____ shall have the primary responsibility for tax policy matters.
2. In the event of any dispute, the tax authority and relevant stakeholders shall leverage all amicable means of dispute resolution, including arbitration and only resort to judicial determination as a……….
3. Tax administration cuts across the___________ tiers of government in Nigeria.
4. The National tax policy provides for the fundamental guidelines for the

orderly__________ of the Nigeria tax system.

5. Independent National Electoral Commission (INEC) shall mandate political parties to make public their __________ before and during election campaigns.

2.7.3 Examination type questions

(1) The NTP recommended certain fundamental features that all existing and future taxes are expected to align with.

Required:

Explain **five** of the recommended principles by the NTP.

(2) The NTP recommended that the tax system should support sustainable growth and development at all times. To achieve this, therefore, the tax system should be geared towards meeting certain goals.

Required:

Explain **three** of the goals recommended by the NTP which will enable a tax system to support sustainable growth and development.

(3) Explain the responsibilities of the following key stakeholders of the NTP:

a. The government;

b. The taxpayers; and

c. The revenue agencies.

(4) Tax administration in Nigeria cuts across the three-tiers of government. The NTP document establishes clear guidelines on crucial tax administration issues.

Required:

Explain **three** of the tax administrative issues highlighted in the tax policy document:

(5) (a) The national tax policy provides the fundamental guidelines for the orderly development of the Nigerian tax system.

Required:

What are the specific objectives that NTP is expected to achieve.

(b) The effective implementation of the national tax policy is crucial for Nigeria to attain the set goals. The Federal Ministry of Finance has a pivotal role to play in the development and implementation of the tax policy.

Required:

Explain the roles of the following in the effective implementation of the NTP:

(i) The President and Governors; and

(ii) The legislature

2.7.4 Suggested solutions to multiple-choice questions

1. C
2. D
3. B

4. D
5. E

2.7.5 Suggested solutions to short answer questions

1. State Ministry of Finance
2. Last resort
3. Three
4. Development
5. Tax agenda

2.7.6 Suggested solutions to examination type questions

(1) The following are examples of the NTP recommended principles that all existing and future taxes are expected to align with:

(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 fulfillment of tax obligations shall take into account the convenience of taxpayers and avoid undue difficulties.

(d) Low compliance cost: The financial and economic cost 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.

(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.

(2) The following are the goals recommended by the NTP that will enable a tax system to support sustainable growth and development.

(a) **Wealth creation and employment:** The tax system should be designed to promote social, political and economic development. Accordingly,

(i) Tax policies shall promote employment, export and local production;

(ii) Tax policies and laws shall not be retroactive;

(iii) Tax policies and laws should ensure equal investment opportunities and support for businesses whether local or foreign;

(iv) Tax policies and laws on investments should be long term focused and tenured to enable investors plan with reasonable certainty;

(v) Any incentive to be granted should be broad, sector based, tenured and transparent. Implementation should be properly review;

(vi) 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

(vii) Tax policies on investments should not promote monopoly such as entry barriers or otherwise prevent competition.

(b) Taxation and diversification:

There should be concerted efforts to attract investments in all sectors of the economy, with more focus on promoting investment in specific sectors as may be identified by government in the overall interest of the country from time to time. This will boost the revenue base for optimum revenue generation.

(c) Focus on indirect taxation:

The tax system should focus more on indirect taxes which are easier to collect and administer and more difficult to evade. Tax rates should be progressive and should be designed to promote equality. The tax system should gradually seek a convergence of personal income tax and capital gain tax rates with corporate income tax rates to reduce opportunities for tax avoidance.

(d) Convergence of tax rates:

Tax rates should be progressive and should be designed to promote equality. The tax system should gradually seek a convergence of the highest marginal rate of personal income tax, capital gains tax rates and the general companies income tax rates to reduce opportunities for tax avoidance.

(e) Special arrangements and other incentives:

Special arrangements should be sector based and not directed at entities or persons. Also, special arrangements such as free zones and other tax incentives or waivers should not be arbitrarily terminated except as provided in the enabling legal framework or treaties at the time of creation. Government may provide tax incentives to specific sectors or for such specific activities in order to stimulate or retain investment in the sector.

The process of granting and renewing incentives, waivers and concessions shall be transparent and comply strictly with legislative provisions and international treaties.

(f) Creating a competitive edge

(i) Reduction in the number of taxes: Taxes should be few in number, broad-based and high revenue-yielding. The administration of the taxes should also be simplified for ease of enforcement and compliance.

(ii) Avoidance of multiple taxation: Taxes similar to those being collected by a level of government should not be introduced by the same or another level of government. The federal, state and local governments shall ensure collaboration in harmonizing and eliminating multiple taxation.

(g) **International and regional treaties:** A wide network of International and Regional treaties would be beneficial to the economy. In this regard, Nigeria shall continue to expand its treaty network in the best interest of the Nigerian State. Generally, treaties should prevent double taxation without creating opportunities for non- taxation.

Existing treaties should be reviewed regularly and where necessary renegotiated in line with international best practices. New treaties should consider benefits to Nigeria both in the short, medium but more importantly long term. Nigeria's model double tax treaty should be regularly reviewed to adequately cater for the best interests of the country. Appropriate measures shall be taken to ensure that all treaties duly signed and ratified are implemented.

(3) (a) **The government:** The following are the responsibilities of the government:

(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:** The following are the responsibilities of the taxpayers:

(i) Provide 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:** The revenue agencies have the following responsibilities:

(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.

(4) The following are the tax administrative issues highlighted in the tax policy document:

(a) **Registration of taxable persons:** All taxable persons shall be registered and issued with taxpayer identification number (TIN) applicable nationwide.

(b) 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.

(c) **Tax compliance:** Government shall apply all available resources and tools at their disposal to ensure that taxpayers voluntarily comply with their tax obligations. In order to improve voluntary compliance, the relevant authorities should ensure:

(d)

(i) That the option for self-assessment is in place, and the process and procedures are simple.

(ii) Development of frameworks for tax amnesty in order to expand the tax net,

(iii) Focus on taxpayers' services, constant tax education and enlightenment.

(iv) The overall performance of the tax system is measured and reported periodically, and

(v) The establishment of a system to recognize and honour compliant taxpayers.

(e) **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) Aworkable and secure structure for intelligence and information gathering.

(5) (a) The following are the specific objectives of the national tax policy (NTP):

(i) Guide the operation and review of the tax system;

(ii) Provide the basis for future tax legislation and administration;

(iii) Serve as a point of reference for all stakeholders on taxation;

(iv) Provide benchmark on which stakeholders shall be held accountable; and

(v) Provide clarity on the roles and responsibilities of stakeholders in the tax system.

(b) (i) **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.

(ii) **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 tax 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).

CHAPTER THREE
TAX ADMINISTRATION IN NIGERIA

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Learning objectives

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

(a) Organs of tax administration: federal, states and local governments.
(b) Composition, jurisdiction and functions of the tiers of tax authority and the joint tax board.
(c) Taxes imposed and collected by the tiers of government.
(d) Registration of taxpayers and filing of returns.

3.1 Nature of tax administration

The administration of taxation in Nigeria is vested in various tax authorities depending on the type of tax under consideration.
Broadly, there are three tax authorities, namely;

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

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

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

(i) Companies Income Tax Act Cap C21 LFN 2004 (as amended), which imposes tax on the incomes of companies other than corporation soles and companies engaged in petroleum operations (upstream operations).

(ii) Petroleum Industry Act, 2021, which imposes tax on the profits of companies, engaged in petroleum operations.

(iii) Tertiary Education Trust Fund (Establishment) Act, 2011 (as amended), which imposes Tertiary education tax on the assessable profits of companies registered in Nigeria.

(iv) Personal Income Tax Act, Cap. P8 LFN 2004 (as amended), which imposes tax on incomes of individuals and unincorporated soles.

(v) Value Added Tax Act, Cap. V1, LFN 2004, (as amended), which imposes tax on the supply of goods and services (except those specifically exempted), made by incorporated companies and other business organisations.

(vi) Stamp Duties Act, Cap. S8 LFN 2004 (as amended), which charges duties on specified instruments listed in the Act.

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

3.2 Organs of tax administration

3.2.1 Joint Tax Board (JTB)

The Joint Tax Board (JTB) is established by Section 86 of the Personal Income Tax Act, Cap P8 LFN 2004 (as amended).

(a) **Composition**

The JTB comprises:

(i) The Chairman of the Federal Inland Revenue Service Board, appointed pursuant to Establishment Act, 2007, shall be the Chairman of the JTB;

(ii) One member from each state, being a person appointed pursuant to section 86(2)(a) of the Personal Income Tax Act (as amended), and a nomination shall be evidenced by a notice in writing delivered to the Secretary to the Board by the Governor;

(iii) The JTB shall appoint an officer who is experienced in income tax matters to be the Secretary to the Board, and may, in accordance with existing laws, appoint such other staff, from time to time, including secondment or transfer from the public service in Nigeria; and

(iv) The Legal Adviser of the FIRS shall be in attendance at meetings of the JTB and shall serve as adviser to the Board.

(b) **Quorum**

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

(c) **Functions of the JTB**

The board shall:

(i) Exercise the powers or duties conferred on it by the PITA and other acts;

(ii) Advise the federal government, on request, in respect of double taxation arrangement with any other country;

(iii) Advise the federal government, on request, in respect of rates of capital allowances and other taxation matters, having effect throughout Nigeria in respect of any proposed amendment to PITA;

(iv) Promote uniformity, both in the application of PITA and in the incidence of tax on individuals throughout Nigeria; and

(v) Impose its decisions, on matters of procedure and interpretation of PITA, on any State, for purposes of conforming with agreed procedures or interpretations.

3.2.2 State Board of Internal Revenue (SBIR)

Section 87 of PITA, 2004 (as amended), established the State Board of Internal Revenue whose operational arm is known as the State Internal Revenue Service (SIRS).

(a) **Composition**

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

(i) The Chairman of the State Internal Revenue Service as Chairman of the State Board who shall be a person experienced in taxation and a member of a relevant recognised professional body, appointed by the State Governor, subject to confirmation by the State House of Assembly;

(ii) The Directors from within or outside the State Service;

(iii) A Director from the State Ministry of Finance;

(iv) The Legal Adviser to the State Internal Revenue Service;

(v) Three other persons appointed by the State Governor on their personal merit, one each representing a Senatorial District in the State; and

(vi) The secretary of the State Internal Revenue Service, who shall be an ex-officio member.

(b) **Quorum**

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

(c) **Functions of the State Board of Internal Revenue**

The State Board of Internal Revenue shall be responsible for:

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

(ii) Doing all such things as may be deemed necessary and expedient, for the assessment and collection of the tax and shall account for all sums so collected, in a manner to be prescribed by the commissioner;

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

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

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

(d) **Other issues relating to delegation of functions**

The state board may, by notice in the gazette or in writing, authorise any person to:

(i) Perform or exercise on behalf of the state board, any function, duty or power conferred on the state board; and

(ii) Receive any notice or other document to be given or delivered to it or in consequence of this act or any subsidiary legislation made under it. However, the state board shall not delegate any power conferred on it under the following sections of PITA to any person:

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

In order to assist the State Board of Internal Revenue in the performance of its duties, PITA also established a committee of the board, known as “the technical committee”.

(e) Technical Committee of the State Board of Internal Revenue

(i) Composition

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

- The Chairman of the State Board as Chairman;
- The Directors within the State Service;
- The Legal Adviser to the State Service; and
- The Secretary of the State Service.

(ii) Functions

The Technical Committee shall:

- Have powers to co-opt additional staff from within the state service, in the discharge of its duties.
- Consider all matters that require professional and technical expertise and make recommendations to the State Board.
- Advise the State Board on all its powers and duties.
- Attend to such other matters as may, from time to time, be referred to it, by the Board.

3.2.3 Federal Inland Revenue Service Board

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

(a) **Composition of the FIRSB**

The Federal Inland Revenue Service Board comprises:

(i) Executive Chairman – who shall be a person experienced in taxation, to be appointed by the President and subject to confirmation of the Senate;

(ii) Six members with relevant qualifications and expertise, to be appointed by the president to represent each of the six geo-political zones;

(iii) A representative of the Attorney General of the Federation;

(iv) The Governor of the Central Bank of Nigeria or his representative;

(v) A representative of the Minister of Finance not below the rank of a Director;

(vi) The Chairman of the Revenue Mobilisation, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 states of the Federation;

(vii) The Group Managing Director of the N.N.P.C. or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent;

(viii) The Comptroller-General of the Nigerian Customs Service or his representative, not below the rank of Deputy Comptroller-General;

(ix) Registrar-general of the Corporate Affairs Commission or his representative not below the rank of a Director;

(x) The Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.

The members of the board, other than the executive chairman, shall be part-time members. Also, the chairman and other members of the board, other than ex-officio members shall each hold office:

- For a term of 4 years renewable once only.
- On such terms and conditions as may be specified in the letter of appointment.

(b) **Powers and functions of the Board and the Service**
The Board shall:

(i) Provide the general policy guidelines relating to the functions of the service;

(ii) Manage and superintend the policies of the service, on matters relating to the administration of the revenue assessment, collection and accounting system under this act or any enactment or law;

(iii) Review and approve the strategic plans of the service;

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

(v) Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the national salaries, income and wages commission; and

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

(c) **Duties of the secretary to the FIRSB (Section 12)**
There shall be a secretary to the Board who shall be appointed by the board within the FIRS whose duties are to:

(i) Issue notices of meetings of the board;
(ii) Keep records of the proceedings of the board; and
(iii) Carry out such duties as the executive Chairman or the Board may, from time to time, direct.

(d) **The Service shall:**

(i) Assess persons including companies enterprises chargeable with tax

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

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

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

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

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

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

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

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

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

(xi) Establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;

(xii) Provide and maintain access 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 purposes of efficient, effective and correct tax administration and to prevent tax evasion or fraud;

(xiii) 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 waivers, fraud or evasion;

(xiv) Undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters that affect effective tax administration and make recommendations to the Government on appropriate intervention and prevention measures;

(xv) Collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;

(xvi) Liaise with the office of the Attorney-General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences;

(xvii) Issue taxpayer identification number to every taxable person in Nigeria in collaboration with State Boards of Internal Revenue and Local Government Councils;

(xviii) Carry out and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria;

(xix) Carry out oversight functions over all taxes and levies accruable to the Government of the Federation and as may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the Federation;

(xx) Provide 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 or other persons or bodies as may be deemed necessary in that regard; and

(xxi) Carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under this Act.

(e) **Composition of the Technical Committee of the FIRSB**

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

The Technical Committee shall consist of:

(i) The Executive Chairman of FIRS as Chairman of the Committee;
(ii) All Directors and heads of departments of the FIRS;
(iii) The Legal Adviser to FIRS; and
(iv) Secretary to FIRSB.

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

(f) **Functions of the Technical Committee**

The Technical Committee shall:

(i) Consider all tax matters that requires professional and technical expertise and make recommendations to the board;
(ii) Advise the board on any aspect of the functions and powers of the FIRS; and
(iii) Attend to such other matters as may from time to time be referred to it by the board.

3.2.4 Joint State Revenue Committee (JSRC)

Section 92 of PITA, 2004 (as amended) established the Joint State Revenue Committee for each state of the Federation.

(a) Composition

It comprises:

(i) The Chairman of the State Internal Revenue Service as the chairman;

(ii) The Chairman of each of the Local Government Revenue Committee;

(iii) A representative of the bureau on 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 Internal Revenue Service; and

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

(b) Functions

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

(i) Implement the decisions of the Joint Tax Board;

(ii) Advise the Joint Tax 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 Tax Board.

3.2.5 Local Government Revenue Committee

Section 90 of Personal Income Tax Act, 2004 established Local Government Revenue Committee (LGRC), for each local government area of a state.

It should be noted that many local governments in Nigeria are against this provision, as they claim that it contravenes the provisions of the 1999 Constitution of Nigeria, which vests the local government administration in the state house of assembly, as against this federal law. This is one of the constitutional issues that should be addressed, especially under a federal system of government.

(a) Composition

The revenue committee (LGRC) shall comprise:

(i) The 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 governments on their personal merits.

(b) Functions

The revenue committee (LGRC) shall be responsible for the assessment and collection of all taxes, fines and rates, under its jurisdiction and shall account for all amounts so collected, in a manner to be prescribed by the chairman of the local government.

The revenue committee shall be autonomous of the local government treasury department and shall be responsible for the day-to-day administration of the department, which forms its operational arm.

3.3 Tax jurisdictions

For incorporated companies, the FIRS is the relevant tax authority, while the State Board of Internal Revenue is the relevant tax authority for unincorporated entities, individuals and body of individuals.

To determine which state's board is the relevant tax authority for a particular taxable person, the question of residence of such a person must be settled first.

3.4 Taxes and levies imposed and collected by each tier of government

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

Tier of government	No of taxes collectible
Federal	8
State	11
Local	20

3.4.1 Taxes to be collected by the Federal Government

(a) Companies income tax;
(b) Withholding tax on companies and non-resident individuals;
(c) Petroleum profits tax;
(d) Value added tax;
(e) Tertiary education tax;
(f) Capital gains tax on companies and non-resident individuals;
(g) Stamp duties on corporate bodies; and
(h) Personal income tax on:
  (i) Members of the armed forces of the federation of Nigeria;
  (ii) Members of the Nigerian police force; and
  (iii) Staff of the Ministry of External Affairs and non-resident individuals.

3.4.2 Taxes and levies to be collected by state governments

(a) Personal income tax in respect of
   (i) Pay as you earn (PAYE); and
   (ii) Direct taxation (self-assessment)

(b) Withholding tax on individuals;

(c) Capital gains tax on individuals;

(d) Stamp duties on investments executed by individuals;

(e) Pools betting, lotteries, gaming and casino taxes;

(f) Road taxes; and

(g) Business premises registration fees, for:
   (i) Urban areas - as defined by each state:
   - ₦10,000.00 (maximum) for registration
   - ₦5,000.00 for annual renewal of registration.

   (ii) Rural areas as defined by each state:
   - ₦2,000.00 for registration; and
   - ₦1,000 for annual renewal of registration.

(h) Development levy (individuals only), not more than N100.00 per annum on all taxable individuals;

(i) Naming of street registration fees in state capital;

(j) Right of occupancy fees on lands owned by the state in urban cities of the state; and

(k) Market taxes and levies where state finance is involved.

With the enactment of Federal Capital Territory Internal Revenue Service (FCT-IRS) Act 2015, the FCT-IRS is now responsible for the collection of the following taxes:

(i) Personal income tax:
- Pay as You Earn (PAYE) in respect of all individuals resident in FCT under employment in both public and private sectors;
- Direct assessment in respect of self-employed individuals and enterprises;

(ii) FCT property tax;

(iii) Stamp duties in respect of individuals and enterprises resident in FCT;

(iv) Withholding tax in respect of individuals and enterprises resident in FCT; and

(iv) Capital gains tax in respect of individuals and enterprises resident in FCT.

3.4.3 Taxes and levies to be collected by local governments

(a) Shops and kiosks rates;
(b) Tenement rates;
(c) Marriage, birth and death registration fees;
(d) Slaughter slab fees;
(e) On and off liquor license fees;
(f) Street naming registration fee except in state capital;
(g) Right of occupancy fees on lands in rural areas (exclusive of those collectable by federal and state governments);
(h) Market taxes and levies excluding any market where state finance is involved;
(i) Motor park fees;
(j) Domestic animal license fees;
(k) Bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck;
(l) Cattle tax-payable by cattle farmers only;
(m) Road closure levy;
(n) Radio and television license fees (other than radio and television transmitter);
(o) Radio license fees (to be imposed by the local government of the state in which the car is registered);
(p) Illegal parking fees;
(q) Public convenience sewage and refuse disposal fees;
(r) Customary burial ground permit fees;
(s) Religious places establishment permit fees; and
(t) Signboard and advertisement permit fees.

It is pertinent to note that the Federal Government expanded the taxes and levies which the tiers of government can impose through the Schedule to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order, 2015. In this Order made by the Minister of Finance, several new tax/levy heads, such as infrastructure maintenance/development levy, wharf landing charge/fee, consumption tax, the National Information Technology Development levy, etc were introduced.

However, on May 8, 2020, the Federal High Court sitting in Lagos, delivered judgment in Suit Number: FHC/L/CS/1082/2019 between ***The Registered Trustees of Hotel Owners and Managers Association of Lagos*** (suing for itself and on behalf of all its members) Vs. ***The Attorney-General of the Federation & Others*** and held that the ***Ministerial Order 2015 is unconstitutional, null and void***.

The Court submitted that the Constitution vests the legislature with the power to make laws. The Court further stated that schedules to a law are part and parcel of that law and as such, ***only the legislature can amend schedules to a law***. The implication of this ruling is that all the taxes and levies that were added to those ones in the Taxes and Levies (Approved List for Collection) Act Cap. T2 LFN 2004, via the Ministerial Order 2015, are illegal and cannot be enforced.

3.4 Registration of taxpayers

An incorporated company is expected to register with the FIRS while unincorporated entities and individuals are to register with the relevant tax authority of the State, in which they are resident. Incorporated entities are also required to register with relevant tax authorities of the States where their employees and suppliers are resident for PAYE and withholding tax purposes.

3.4.1 Incorporated companies

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

(a) Nature of the company's business;
(b) The company's adopted year-end;
(c) The date the company commenced business and if yet to commence, company is expected to state that it is yet to commence and would notify the FIRS as soon as it commence operation.
(d) The names and addresses of shareholders, directors; and details of allotments;
(e) The appointed auditor and tax consultants, if already appointed;
(f) The registered and business addresses of the company;
(g) The appointed bankers, if any;
(h) Certified true copies of the certificate of incorporation; and
(i) Certified true copies of the memorandum and articles of association.

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

3.4.2 Others

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

3.5 Tax Appeal Tribunal

3.5.1 Establishment of Tax Appeal Tribunal

(a) Pursuant to Section 59 (1) of the Federal Inland Revenue Service (Establishment) Act, 2007, there shall be established a Tax Appeal Tribunal (hereinafter referred to as "the Tribunal") to exercise the jurisdiction, powers and authority conferred on it by or under this Schedule.

(b) The Minister may by notice in the Federal Gazette specify the number of zones, matters and places in relation to which the Tribunal may exercise jurisdiction.

3.5.2 Composition of the Tribunal

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

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

(c) A Chairman shall preside at every sitting of the tribunal and in his absence; the members shall appoint one of them to be the Chairman.

(d) The quorum at any sitting of the tribunal shall be three members.

3.5.3 Qualifications for appointment as a Tax Appeal Commissioner

(a) A person shall not be qualified for appointment as a Tax Appeal Commissioner unless he is knowledgeable about the laws, regulations, norms, practices and operations of taxation in Nigeria as well as persons that have shown capacity in the management of trade or business or a retired public servant in tax administration.

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

(c) **Resignation and removal**
A Tax Appeal Commissioner may by notice in writing under his hand addressed to the Minister resign his office. The Tax Appeal Commissioner shall, unless he is permitted by the Minister to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor assumes his office or until the expiry of his term of office, whichever is earlier.

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

3.5.4 Salary, allowances and conditions of service of Tax Appeal Commissioners

The salary and allowances payable to and the terms and conditions of service of Tax Appeal Commissioners shall be determined by the Revenue Mobilisation Allocation and Fiscal Commission and shall be prescribed in their letters of appointment.

Neither the salary and allowance nor the other terms and conditions of service of a

Tax Appeal Commissioner shall be varied to his disadvantage after appointment.

3.5.5 Jurisdiction of the Tribunal, etc.

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

(i) Companies Income Tax Act CAP C21 LFN 2004 (as amended)

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

(iii) Petroleum Profits Tax Act CAP P13 LFN 2004 (as amended)

(iv) Value Added Tax Act CAP V1 LFN 2004 (as amended)

(v) Capital Gains Tax Act CAP C1 LFN 2004 (as amended)

(vi) Any other law contained in or specified in the first Schedule to this Act or other laws made from time to time by the National Assembly.

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

3.5.6 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 this Schedule, have power to:

(i) Summon and enforce the attendance of any person and examine him on oath;

(ii) Require the discovery and production of documents;

(iii) Receive evidence on affidavits;

(iv) Call for the examination of witnesses or documents;

(v) Review its decisions;

(vi) Dismiss an application for default or deciding matters exparte;

(vii) Set aside any order or dismissal of any application for default or any order passed by it exparte; and

(viii) Do anything which in the opinion of the tribunal is incidental or ancillary 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.

3.7 Other relevant provisions of Federal Inland Revenue Service (Establishment) Act, 2007 (as amended)

(a) Section 50 of FIRSEA, 2007 (as amended)

Section 21 of Finance Act 2021, amended this section which states that "every person in an official duty or being employed for the administration of this Act or otherwise, that has access to taxpayer's information shall regard and deal with such information as secret and confidential".

(b) Section 65 of FIRSEA, 2007 (as amended)

The Service shall be the primary agency of the Federal Government of Nigeria responsible for the administration, assessment, collection, accounting and enforcement of taxes and levies due to the Federation and the Federal Government or any of its agencies, except as may be authorised by the Minister responsible for finance by regulation as approved by the National Assembly.

It shall be an offence for any person to carry out or authorised another to carry out the function of administering, assessment, collection, accounting or enforcement of taxes and levies stated above.

For the avoidance of doubt, for the purposes of enforcing compliance with the provisions of the relevant tax laws, and preventing tax revenue loss, the Service may collaborate with relevant Ministries, Departments, Agencies or institutions of the Federal Government.

Any person or agency of the Federal Government that becomes aware of any incidence requiring tax investigation, enforcement or compliance, in the course of the performance of its functions, shall refer same to the Service for necessary action and the Service may in accordance with the provisions of this Act, collaborate with such person or agency in carrying out required investigation, enforcement or compliance measures.

Any person who commits an offence under this section or contravenes any of the provisions of this section is liable on conviction to imprisonment for a term not exceeding five years or to a fine of N10,000,000 or both.

3.8 The role and relationship between tax policy, tax legislation and administration

Tax policy, tax laws and tax administration are important components of a good tax system. Having defined these aspects of a tax system in the preceding chapter, it is pertinent to state that one of the roles of tax administrators is to render quality services to taxpayers. Additionally, they should also ensure that taxpayers comply with tax laws. Revenue authorities need to seek the opinions of taxpayers when the need arises with a view to incorporating same into the development of new tax laws or improvements to subsisting tax legislations. The foregoing usually facilitates taxpayers' compliance with relevant tax laws.

Tax administrators come up with tax policy by deciding how tax legislations are applied.

3.9 Chapter review

This chapter identifies the organs of tax administration as well as the composition and functions of the Federal Inland Revenue Service, State Internal Revenue

Service, Joint Tax Board, federal and state technical committees.

It also discusses taxes being imposed and collected by the 3-tiers of government and issues relating to registration of taxpayers and filing of returns.

3.10 Worked examples

3.10.1 Multiple-choice questions

1. Any ……. members of the State Board of Internal Revenue of whom one shall be the Chairman or a Director, shall constitute a quorum.
   A. Five
   B. Six
   C. Seven
   D. Nine
   E. Ten

2. Which tier of government collects tenement rates and slaughter slab fees?
   A. Local government
   B. Federal government
   C. State government
   D. Municipal government
   E. Provincial government

3. Which of the following is NOT a levy collectible by a state government?
   A. Personal income tax
   B. Naming of streets registration fee in a state capital
   C. Marriage, birth, death, registration fee in a state capital
   D. Market taxes and levies, where state finance is involved
   E. Right of occupancy fee on land owned by a state government.

4. Which one of the following taxes is not collectible by the Federal Government?
   A. Companies income tax
   B. Value added tax
   C. Tertiary education tax
   D. Petroleum profits tax
   E. Capital gains tax on companies and non-resident individuals
   F. Pools betting, lotteries, gaming and casino taxes

5. The relevant tax authority for incorporated companies in Nigeria is…....
   A. Federal Inland Revenue Service
   B. State Board of Internal Revenue
   C. Joint Tax Board
   D. Federal Capital Territory
   E. Joint State Revenue Committee

3.10.2 Short answer questions

1. Who presides over the Joint Tax Board?
2. The responsibility for making recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemptions as may be required, from time to time, is a function of a…………
3. What is the maximum number of years that a Tax Appeal Commissioner can serve?
4. The relevant tax authority for members of the Nigeria Police Force is __________
5. An aggrieved taxpayer who is not satisfied with the decision of the Revenue after an

objection, can appeal to __________

3.10.3 Examination type questions

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

(2) In respect of Act 21 of 1998, now cited as Taxes and Levies (Approved List for Collection) Act Cap T2 LFN 2004 (as amended), **explain briefly** the following taxes and levies and the authorities responsible for their assessments and collection:

  (a) Tenement rate
  (b) Pools betting and lotteries, gambling and casino taxes
  (c) Tertiary education tax
  (d) Personal income tax on members of the Armed Forces

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

(4) (a) State the composition of the Technical Committee of the Federal Inland Revenue Service Board.
  (b) List three powers and duties of the Technical Committee of the Federal Inland Revenue Service Board.
  (c) List five taxes and levies that are usually imposed and collected by local governments.

3.10.4 Suggested solutions to multiple-choice questions

1. A
2. A
3. A
4. E
5. A

3.10.5 Suggested solutions to short answer questions

1. The Chairman of the Federal Inland Revenue Service Board
2. State Board of Internal Revenue
3. 6 years
4. Federal Inland Revenue Service
5. Tax Appeal Tribunal

3.10.6 Suggested solutions to examination type questions

(1) (a) **Composition of the FIRSB**

The Federal Inland Revenue Service Board comprises:

(i) Executive Chairman – who shall be a person experienced in taxation, appointed by the President and subject to confirmation of the Senate;

(ii) Six members with relevant qualifications and expertise, to be appointed by the President to represent each of the six geo-political zones;

(iii) A representative of the Attorney-General of the Federation;

(iv) The Governor of the Central Bank of Nigeria or his representative;

(v) A representative of the Minister of Finance not below the rank of a Director;

(vi) The Chairman of the Revenue Mobilisation Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 states of the Federation;

(vii) The Group Managing Director of the N.N.P.C. or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent;

(viii) The Comptroller-General of the Nigerian Customs Service or his representative, not below the rank of Deputy Comptroller-General;

(ix) Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director; and

(x) The Chief Executive Officer of the National Planning Commission or his representative not below the rank of a Director.

Duties of FIRSB

The Board shall:

- Provide the general policy guidelines relating to the functions of the Service;
- Manage and superintend the policies of the Service, on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;
- Review and approve the strategic plans of the service;
- Employ and determine, the terms and conditions of service including, disciplinary measures of the employees of the service;
- Stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the national salaries, income and wages commission; and
- Do such other things, which in its opinion, are necessary to ensure the efficient performance of the functions of the service under the act.

(b) Composition of SBIR

The SBIR for each state comprises:

(i) The Chairman of the State Internal Revenue Service as Chairman of the State Board, who shall be a person experienced in taxation and a member of a relevant recognised professional body, appointed by the State Governor, subject to confirmation by the State House of Assembly;

(ii) The Directors within or outside the State Service;

(iii) A Director from the State Ministry of Finance;

(iv) The Legal Adviser to the State Internal Revenue Service;

(v) Three other persons nominated by the State Governor, on their personal merit, one each representing a Senatorial District in the State; and

(vi) The secretary of the State Internal Revenue Service, who shall be an ex-officio member.

Functions of the State Board of Internal Revenue

The State Board of Internal Revenue shall be responsible for ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws;

(i) Doing all such things as may be deemed necessary and expedient, for the assessment and collection of the tax and shall account for all sums so collected, in a manner to be prescribed by the Commissioner;

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

(iii) Generally controlling, the management of the state Service on matters of policy, subject to the provisions of the law setting up the state internal revenue service; and

(iv) Appointing, promoting, transferring and imposing discipline on employees of the state internal revenue service.

(2) **(a) Tenement rate**

It is the tax paid on the rateable value of any property situated in a local government area.

It is collectible by the local government where the property is situated.

(b) Pools betting and lotteries, gaming and casino taxes

These taxes are payments made by owners of casino and gambling centres for engaging in such activities.

The taxes are collectible by the state government in which the office is situated.

(c) Tertiary education tax

It is tax imposed on assessable profits of companies registered in Nigeria.

The tax is 2½ % of assessable profit of the company.

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

(d) Personal income tax on members of the armed forces

This is the tax payable by members of the armed forces on their income.

The tax is collectible by the Federal Inland Revenue Service on behalf of the Federal Government.

(3) **Composition of the JTB**

The JTB is composed of:

(a) The Chairman of the Federal Inland Revenue Service Board, appointed pursuant to Establishment Act, 2007, shall be the Chairman of the JTB;

(b) One member from each state, being a person appointed pursuant to section 86(2)(a) of Personal Income Tax Act (as amended), and a nomination shall be evidenced by a notice in writing delivered to the Secretary to the Board by the Governor;

(c) The JTB shall appoint an officer who is experienced in income tax matters to be the Secretary to the Board, and may, in accordance with existing law, appoint such other staff, from time to time, including secondment or transfer from the public service in Nigeria; and

(d) The Legal Adviser of the FIRS shall be in attendance at meetings of the JTB and shall serve as adviser to the Board.

Quorum

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

Functions of the JTB

The board shall:

(a) Exercise the powers or duties conferred on it by the PITA and other Acts;

(b) Advise the Federal Government, on request, in respect of double taxation arrangement with any other country;

(c) Advise the Federal Government, on request, in respect of rates of capital allowances and other taxation matters, having effect throughout Nigeria in respect of any proposed amendment to PITA;

(d) Promote uniformity, both in the application of PITA and in the incidence of tax on individuals throughout Nigeria; and

(e) Impose its decisions, on matters of procedure and interpretation of PITA, on any state, for purposes of conforming to agreed procedures or interpretations.

(4) **(a) Composition of the Technical Committee of FIRSB**

The Committee comprises:

(i) The Executive Chairman of FIRS as Chairman of the Committee;

(ii) All Directors and heads of departments of the FIRS;

(iii) The Legal Adviser to FIRS; and

(iv) Secretary to FIRSB.

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

(b) Powers and duties of the Technical Committee of Federal Inland Revenue Service Board

The powers and duties of the committee are:

(i) To consider tax matters that require professional and technical expertise and make recommendations to the board;

(ii) To advise the Board on any aspect of the functions and powers of the FIRS; and

(iii) To attend to such other matters as may from time to time be referred to it by the Board.

(c) Taxes and levies to be collected by local governments

These include:

(i) Shops and kiosks rates;
(ii) Tenement rates;
(iii) Marriage, birth and death registration fees;
(iv) Slaughter slab fees;
(v) On and off liquor licence fees;
(vi) Street naming registration fee except in state capital;
(vii) Right of occupancy fees on lands in rural areas (exclusive of those collectable by federal and state governments);
(viii) Market taxes and levies excluding any market where state finance is involved;
(ix) Motor park fees;
(x) Domestic animal license fees;
(xi) Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck;
(xii) Cattle tax - payable by cattle farmers only;
(xiii) Road closure levy;
(xiv) Radio and television license fees (other than radio and television transmitter);
(xv) Radio license fees (to be imposed by the local government of the State in which the car is registered);
(xvi) Illegal parking fees;
(xvii) Public convenience sewage and refuse disposal fees;
(xviii) Customary burial ground permit fees;
(xix) Religious places establishment permit fees; and
(xx) Signboard and advertisement permit fees.

CHAPTER FOUR

BASIC ETHICAL ISSUES IN TAXATION

Chapter contents

a) Learning objectives

b) The five fundamental principles of ethics as specified by the International Ethics Standards Board for Accountants (IESBA)

c) The conditions when information on taxpayers may be disclosed

d) What a tax practitioner should do when there is a conflict of interest

e) Chapter review

f) Worked examples

4.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Explain the fundamental principles of ethics: integrity; objectivity; professional competence and due care; confidentiality; and professional behaviour, as specified by the International Ethics Standards Board for Accountants (IESBA);

(b) Understand the conditions when information on taxpayers may be disclosed; and

(c) Explain what a tax practitioner should do when there is a conflict of interest.

4.1 The five fundamental principles of ethics as specified by the International Ethics Standards Board for Accountants (IESBA)

4.1.1 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. (Paragraph 111.1)

Integrity implies fair dealing and truthfulness. (Paragraph 111.1 A1).

A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information (paragraph 111.2):

(a) Contains a materially false or misleading statement;

(b) Contains statements or information provided recklessly; or

(c) Omits or obscures required information where such omission or obscurity would be misleading.

If a professional accountant provides a modified report in respect of such a report, return, communication or other information, the accountant is not in breach of paragraph R111.2.

(Paragraph 111.2 A1)

When a professional accountant becomes aware of having been associated with information described in paragraph R111.2, the accountant shall take steps to be disassociated from that information. (Paragraph 111.3)

4.1.2 Objectivity

A professional accountant shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgement because of bias, conflict of interest or undue influence of others. (Paragraph 112.1)

A professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the accountant's professional judgement regarding that activity. (Paragraph 112.2)

4.1.3 Professional competence and due care

A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to:

(a) 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

(b) Act diligently and in accordance with applicable technical and professional standards. (Paragraph 113.1).

Serving clients and employing organisations with professional competence requires the exercise of sound judgement in applying professional knowledge and skill when undertaking professional activities. (Paragraph 113.1 A1).

Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment. (Paragraph 113.1 A2).

Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis. (Paragraph 113.1 A3).

In complying with the principle of professional competence and due care, a professional accountant shall take reasonable steps to ensure that those working in a professional capacity under the accountant's authority have appropriate training and supervision. (Paragraph 113.2).

Where appropriate, a professional accountant shall make clients, the employing organisation, or other users of the accountant's professional services or activities, aware of the limitations inherent in the services or activities. (Paragraph 113.3).

4.1.4 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.

An accountant shall:

(a) Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member;

(b) Maintain confidentiality of information within the firm or employing organisation;

(c) Maintain confidentiality of information disclosed by a prospective client or employing organisation;

(d) Not disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organisation without proper and specific authority, unless there is a legal or professional duty or right to disclose;

(e) Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the accountant or for the advantage of a third party;

(f) Not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended; and

(g) Take reasonable steps to ensure that personnel under the accountant's control, and individuals from whom advice and assistance are obtained, respect the accountant's duty of confidentiality. (Paragraph 114.1)

Confidentiality serves the public interest because it facilitates the free flow of information from the professional accountant's client or employing organisation to the accountant in the knowledge that the information will not be disclosed to a third party. Nevertheless, the following are circumstances where professional accountants are or might be required to disclose confidential information or when such disclosure might be appropriate:

(a) 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;

(b) Disclosure is permitted by law and is authorised by the client or the employing organisation; and

(c) There is a professional duty or right to disclose, when not prohibited by law:

  (i) To comply with the quality review of a professional body;

  (ii) To respond to an inquiry or investigation by a professional or regulatory body;

  (iii) To protect the professional interests of a professional accountant in legal proceedings; or

  (iv) To comply with technical and professional standards, including ethics requirements. (Paragraph 114.1. A1)

In deciding whether to disclose confidential information, factors to consider, depending on the circumstances, include:

(a) Whether the interests of any parties, including third parties whose interests might be affected, could be harmed if the client or employing organisation consents to the disclosure of information by the professional accountant;

(b) Whether all the relevant information is known and substantiated, to the extent practicable. Factors affecting the decision to disclose include:

(i) Unsubstantiated facts.
(ii) Incomplete information.
(iii) Unsubstantiated conclusions.

(c) The proposed type of communication, and to whom it is addressed; and

(d) Whether the parties to whom the communication is addressed are appropriate recipients. (Paragraph 114.1 A2)

A professional accountant shall continue to comply with the principle of confidentiality even after the end of the relationship between the accountant and a client or employing organisation. When changing employment or acquiring a new client, the accountant is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship. (Paragraph 114.2)

4.1.5 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. (Paragraph 115.1)

Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession. (Paragraph 115.1 A1)

When undertaking marketing or promotional activities, a professional accountant shall not bring the profession into disrepute. A professional accountant shall be honest and truthful and shall not make:

(a) Exaggerated claims for the services offered by, or the qualifications or experience of, the accountant; or

(b) Disparaging references or unsubstantiated comparisons to the work of others. (Paragraph 115.2)

If a professional accountant is in doubt about whether a form of advertising or marketing is appropriate, the accountant is encouraged to consult with the relevant professional body. (Paragraph 115.2 A1).

4.2 The conditions when information on taxpayers may be disclosed

The need to comply with the principle of confidentiality continues even after the end of relationships between a tax practitioner and a client. When a tax practitioner engagement with a client ends or is engaged by a new client, the tax practitioner is entitled to use prior experience. However, he shall not use or disclose any confidential information either acquired or received as a result of a professional relationship with the previous client because doing so may tantamount to professional misdemeanor and consequence could be very costly.

Nonetheless, 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, CITN, etc.;
   (ii) To protect the professional interests of a professional body, that is, ICAN, CITN, etc. in legal proceedings; or
   (i) To comply with technical standards and ethics requirements.

4.3 What a tax practitioner should do when there is conflict of interest

A tax practitioner may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the 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.

A tax practitioner may be required to resolve a conflict in complying with the fundamental principles.

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.

If a significant conflict cannot be resolved, a tax practitioner may consider obtaining professional advice from the relevant professional body, that is, ICAN and 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.

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.

4.4 Chapter review

This chapter discusses the five fundamental principles of ethics: integrity; Objectivity; professional competence and due care; confidentiality; and professional behaviour, as specified by the International Ethics Standards Board for Accountants (IESBA).

It also discusses the conditions when information on taxpayers may be disclosed as well as what a tax practitioner should do when there is a conflict of interest.

4.5 Worked examples

4.5.1 Multiple-choice questions

1) Which of the following is **NOT** a fundamental principle of ethics as specified by the International Ethics Standards Board for Accountants (IESBA)?
   A. Integrity
   B. Objectivity
   C. Literacy
   D. Professional competence and due care
   E. Confidentiality

2) The following are circumstances where a tax consultant may disclose information on a taxpayer **EXCEPT**
   A. Disclosure is permitted by law
   B. Disclosure is authorised by the client, that is, the taxpayer
   C. Disclosure to the appropriate public authorities of infringements of the law that come to light
   D. There is a professional duty or right to disclose, when not prohibited by law
   E. Disclosure is required by a pressure group

3. When undertaking promotional activities, a professional accountant shall not
   A. Hold too many meetings with clients
   B. Charge professional fees
   C. Make disparaging references or unsubstantiated comparisons to the work of others
   D. Send audit queries to client
   E. Consult with the relevant professional body on any issue

4. Which one of the following reports, returns, communications or other information should a

professional accountant be associated with?

A. Reports containing a materially false statement
B. Reports containing a misleading statement
C. Reports containing statements or information provided recklessly
D. Reports omitting required information where such omission would be misleading
E. Reports containing vital information for the users of the accounts

5 Given the principle of confidentiality, all professional accountants are expected to adhere strictly to the following **EXCEPT**

A. Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member
B. Maintain confidentiality of information within the firm or employing organisation
C. Maintain confidentiality of information disclosed by a prospective client or employing organisation
D. Disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organisation without proper and specific authority
E. Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the accountant or for the advantage of a third party

4.5.2 Short answer questions

1) The principle of ………… requires an accountant not to compromise professional or business judgement because of bias, conflict of interest or undue influence of others.
2) Which principle requires a professional accountant to act diligently and in accordance with applicable technical and professional standards?
3. Where appropriate, a professional accountant shall make clients, the employing organisation, or other users of the accountant's professional services or activities, aware of the …………. inherent in the services or activities.
4. A professional accountant should not use …………….information acquired as a result of professional and business relationships for the personal advantage of the accountant or for the advantage of a third party;
5. A tax consultant may disclose information on a …….. when disclosure is permitted by law.

4.5.3 Examination type questions

(1) Explain the following fundamental principles of ethics as specified by IESBA.
(a) Integrity.
(b) Objectivity.

(2) According to paragraph 114.1 of IESBA, the principles of confidentiality imposes an obligation on all professional accountants and expects them to refrain from taking certain action with respect to handling of confidential information or documents of their clients.

Required:

Briefly describe the obligations imposed on professional accountants by paragraph 114.1 of IESBA.

(3) Briefly describe the circumstances when a tax consultant may disclose information on a taxpayer.

(4) What should a tax practitioner do when faced with a conflict of interest?

(5) Write short notes on the following fundamental principles of ethics as specified by IESBA:

(a) Confidentiality
(b) Professional behaviour
(c) Professional competence and due care

4.5.4 Suggested solutions to multiple-choice questions

1. C
2. E
3. C
4. E
5. D

4.5.5 Suggested solutions to short answer questions

1. Objectivity
2. Professional competence and due care
3. Limitations
4. Confidential
5. Client

4.5.6 Suggested solutions to examination type questions

(1) (a) **Integrity:** A professional accountant shall comply with the principle of integrity, which requires an accountant to be straightforward and honest in all professional and business relationships. (Paragraph 111.1)

Integrity implies fair dealing and truthfulness. (Paragraph 111.1 A1).

A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the accountant believes that the information (Paragraph 111.2):

(i) Contains a materially false or misleading statement;
(ii) Contains statements or information provided recklessly; or
(iii) Omits or obscures required information where such omission or obscurity would be misleading.

If a professional accountant provides a modified report in respect of such a report, return, communication or other information, the accountant is not in breach of paragraph R111.2. (Paragraph 111.2 A1)

When a professional accountant becomes aware of having been associated with information described in paragraph R111.2, the accountant shall take steps to be disassociated from that information. (Paragraph 111.3)

(b) **Objectivity:** A professional accountant shall comply with the principle of objectivity, which requires an accountant not to compromise professional or business judgement because of bias, conflict of interest or undue influence of others. (Paragraph 112.1)

A professional accountant shall not undertake a professional activity if a circumstance or relationship unduly influences the accountant's professional judgement regarding that activity. (Paragraph 112.2)

(c) Paragraph 114.1 of IESBA on the principle of confidentiality imposes the following obligations on all professional accountants:

i. Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member;

ii. Maintain confidentiality of information within the firm or employing organisation;

iii. Maintain confidentiality of information disclosed by a prospective client or employing organisation;

iv. Not disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organisation without proper and specific authority, unless there is a legal or professional duty or right to disclose;

v. Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the accountant or for the advantage of a third party;

vi. Not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended; and

vii. Take reasonable steps to ensure that personnel under the accountant's control, and individuals from whom advice and assistance are obtained, respect the accountant's duty of confidentiality.

(2) The following are the instances when a tax practitioner may disclose information on a taxpayer:

(a) Disclosure is permitted by law;

(b) Disclosure is authorised by the client i.e. 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, CITN, etc.;

(ii) To protect the professional interests of a professional body, that is, ICAN, CITN, etc. in legal proceedings; or

(iii) To comply with technical standards and ethics requirements.

(3) A tax practitioner may be faced with a conflict of interest when undertaking a professional activity. A conflict of interest creates a threat to objectivity and may create threats to the other fundamental principles. Such threats may be created

when:

(a) The tax practitioner undertakes a professional activity relating 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 relating to that matter are in conflict.

A tax practitioner may be required to resolve a conflict in compliance with the fundamental principles.

It may be in the best interests of a tax practitioner to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.

If a significant conflict cannot be resolved, a tax practitioner may consider obtaining professional advice from the relevant professional body, that is, ICAN and/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 adviser under the protection of legal privilege.

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.

(4) (a) **Confidentiality**

A professional accountant shall comply with the fundamental principle of confidentiality, which requires an accountant to respect the confidentiality of information acquired as a result of professional and business relationships.

A professional accountant shall continue to comply with the principle of confidentiality even after the end of the relationship between the accountant and a client or employing organisation. When changing employment or acquiring a new client, the accountant is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship.

(b) **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. (Paragraph 115.1)

Conduct that might discredit the profession includes conduct that a reasonable and informed third party would likely conclude to adversely affect the good reputation of the profession. (Paragraph 115.1 A1).

When undertaking marketing or promotional activities, a professional accountant shall not bring the profession into disrepute. A professional accountant shall be honest and truthful and shall not make:

(i) Exaggerated claims for the services offered by, or the qualifications or experience of, the accountant; or

(ii) Disparaging references or unsubstantiated comparisons to the work of others. (Paragraph115.2)

If a professional accountant is in doubt about whether a form of advertising or marketing is appropriate, the accountant is encouraged to consult with the relevant professional accountancy body. (Paragraph 115.2 A1).

(c) Professional competence and due care

A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to:

(i) 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 legislations; and

(ii) Act diligently and in accordance with applicable technical and professional standards. (Paragraph 113.1)

Serving clients and employing organisations with professional competence requires the exercise of sound judgement in applying professional knowledge and skill when undertaking professional activities. (Paragraph 113.1 A1)

Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments.

Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment. (Paragraph 113.1 A2)

Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis. (Paragraph 113.1 A3)

In complying with the principle of professional competence and due care, a professional accountant shall take reasonable steps to ensure that those working in a professional capacity under the accountant's authority have appropriate training and supervision. (Paragraph 113.2)

Where appropriate, a professional accountant shall make clients, the employing organisation, or other users of the accountant's professional services or activities, aware of the limitations inherent in the services or activities. (Paragraph 113.3)

CHAPTER FIVE
FILING OF RETURNS, ASSESSMENTS, COLLECTION AND APPEAL PROCEDURES

Chapter contents

a) Learning objectives

b) Registration and filing of tax returns

c) Assessment procedures

d) Collection procedures

e) Tax avoidance and tax evasion

f) Tax clearance certificate

g) Chapter review

h) Worked examples

5.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Know the registration and filing procedures for tax returns;

(b) Understand assessment procedures for companies;

(d) Know the timing and currency of payment of tax, including applicable penalties and enforcement procedure;

(e) Know the transactions that could be regarded as tax avoidance and tax evasion; and

(f) Understand the meaning, content, procedure, relevance, penalties and related problems of tax clearance certificates.

5.1 Registration and filing of tax returns

5.1.1 Need for tax registration and the display of tax identification number (TIN) on all documents

Finance Act 2019 - section 10, CITA (as amended), emphasizes the importance of TIN, inter alia, as follows:

Section 10(1) states that "every company shall have a tax identification number (TIN), which shall be displayed by the company on all business transactions with other companies and individuals and on every other document, statement, returns, audited account and correspondence with revenue authorities, including the Federal Inland Revenue Service, Ministries and all Government Agencies"; and

Section 10(2) states that "every person engaged in banking or other financial services in Nigeria shall require all companies to provide their TIN as a precondition for opening a bank account or, in the case of an account already opened within three months of the passage of the Finance Act 2019, the bank shall require such TIN to be provided by all companies as a precondition for the continued operation of their bank accounts".

5.1.2 Nature of tax returns

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

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

(b) Audited accounts;

(c) Tax and capital allowances computations; and

(d) Evidence of payment of the whole or part of the tax due into a bank designated for the collection of the tax.

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

(a) The return contains a true and correct statement of the company's profits computed in accordance with the provisions of CITA and rule made hereunder; and

(b) Particulars given in the return are true and complete.

Section 55(1A) of CITA (as amended) provides that:

(a) Where a non-resident company derives profit from or is taxable in Nigeria under section 13(12) of the Act, such company shall be required to submit a return for the relevant year of assessment, which contains:

(i) The company's full audited financial statements and the financial statements of the Nigerian operations, authenticated by an independent qualified or certified accountant in Nigeria;

(ii) Schedules of tax computation based on the profits attributable to its operations in Nigeria;

(iii) A true and correct statement, in writing, indicating the amount of profits from each and every source in Nigeria; and

(iv) Duly completed Companies Income Tax Self-assessment Forms.

In any year of assessment, where a company other than a Nigerian company only earns income on which withholding tax is the final tax under the Act, the obligation to file a tax return in the manner prescribed shall not apply to such company in that year of assessment.

Section 55(7) of CITA (as amended) provides that the Service may by notice specify the form of the accounts to be included in a tax return, in respect of small companies instead of audited accounts as specified above.

5.1.3 Time within which to register

By virtue of Section 8 of the Value Added Tax Act Cap V1 LFN 2004 (as amended), every company is required to register for tax purposes with the FIRS within 6 months of commencement of business.

5.1.4 Registration requirements and processes

Every company registering with the FIRS for tax purposes are required to submit two letters of registration – one for registration for income tax and the other letter for VAT.

The **registration letter for income tax** shall disclose the following information on the company:

(a) Name of the company;

(b) Registered office;

(c) Business address;

(d) Precise nature of business;

(e) Date of commencement of business;

(f) Name and address of bankers; and

(g) Particulars of major shareholders.

Also, the registration letter shall be accompanied with the following documents:

(a) Certificate of incorporation;

(b) Memorandum and articles of association;

(c) Form CAC 2; and

(d) Form CAC 7.

The **registration letter for VAT** shall be accompanied with the following documents:

(a) Completed copy of VAT form 001, that is, VAT registration form; and

(b) Certificate of incorporation.

5.1.5 Contents of a tax return

Section 55 of CITA Cap C21 LFN 2004(as amended) provided that all companies (including companies granted exemption from incorporation) to at least once a year without notice or demand from the Federal Inland Revenue Service (FIRS), file a return with the FIRS in a prescribed form and containing prescribed information together with the following documents:

(a) Audited financial statements;

(b) Income tax and capital allowance computation schedules;

(c) Completed copy of Companies Income Tax (Form IR3C-4Coy);

(d) Completed copy of Tertiary education tax (Form 4D EDT);

(e) Evidence of payment of companies income tax liability; and

(f) Evidence of payment of Tertiary education tax liability.

Section 55(1A) provides that where a company other than a Nigerian company derives profit from or is taxable in Nigeria under section 13(2) of this Act, such company shall be required to submit a return for the relevant year of assessment containing:

a) The company's full audited financial statements and the financial statement of the Nigerian operations, attested by an independent qualified or certified accountant in Nigeria;

b) Tax computation schedules based on profits attributable to its Nigerian operations;

c) A true and correct statement, in writing, containing the amount of profits from each and every source in Nigeria; and

d) Duly completed Companies Income Tax Self-Assessment Forms -

Provided that in a year of assessment where a company other than a Nigeria company only earns income on which withholding tax is the final tax under this Act, the obligation to file a tax return in the manner prescribed, shall not apply to such company in that year of assessment.

5.1.6 Due date for filing of tax returns

Section 55 (2), CITA specifies the statutory timeline for filing of audited accounts and income tax returns by all companies (new or existing). Section 55 (2) provides as follows:

(a) In the case of an existing company, that is, a company that has been in business for more than eighteen months, the due date for filing tax returns is six months after the end of the company's accounting year; and

(b) In the case of a newly incorporated company, the due date for filing tax returns is within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period.

5.1.7 Time within which to pay tax assessed

The time limit for payment of tax assessment raised by the FIRS on a company is within 30 days after the service of the notice upon the company.

However, where the 30 days period expires after the 14th day of December of the assessment year for which the tax is charged, any outstanding balance shall become payable not later than that day, that is, 14th day of December of the assessment year.

5.1.8 Penalty for non–compliance

Section 55(3) of CITA makes provision for payment of penalty by any company that fails to comply with the requirements for filing of tax returns.
A defaulting company shall pay:

(a) N25,000 in the first month in which it fails to file its annual returns; and

(b) N5,000 for each subsequent month in which the failure continues.

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

Any company which fails to comply with the provisions of subsection (2) of section 55 of CITA (as amended) and claims the minimum tax relief under section 33(2) of CITA shall be liable to pay as penalty for late filing, an amount equivalent to the relief sought – section 55(8) of CITA (as amended).

5.1.9 Other returns

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

(a) Banks

A company engaged in banking business is required to submit to FIRS a quarterly return not later than the seventh day after the date of the return, the names and addresses of its new customers.

Section 28 of the Federal Inland Revenue Service (Establishment) Act, 2007 (as amended), requires banks to deliver information to the FIRS in the form of quarterly returns in relation to deposits exceeding N5,000,000 and N10,000,000 for individual and corporate customers, respectively.

Based on section 19 of the Finance Act, 2021, the administrative penalty for non-filing or filing of incorrect quarterly returns is N1,000,000 for quarterly return.

(b) Stock broking companies

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

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

(i) Transactions involving an offer in the primary market which include:

- Type of offer;
- Services rendered;
- Amount of tax deducted at source; and
- Amount of value added tax payable.

(ii) Transactions involving operations in the secondary market which include:

- Number and value of transactions carried out for relevant calendar month;
- Commission received or paid;
- Amount of tax deducted at source; and
- Amount of value added tax payable.

5.1.10 Maintenance of books of accounts and penalty for failure to provide any record or book – section 63 of CITA (as amended)

This section provides the requirements and penalty in each of the subsections as follows:

(a) "**Subsection 1** – Every company, including a company granted exemption from incorporation, shall, whether or not, the company is liable to pay tax under this Act, maintain books or records of accounts, containing sufficient information or data of all transactions;

(b) **Subsection 2 -** The books and records required to be maintained under subsection (1) shall be in the English language, and shall, for the purposes of tax account, be consistent with the format that may be prescribed by the Service;

(c) **Subsection 3 -** Where a record of a company is maintained in a language other than the English language, the company shall, on demand by the Service, produce, at its own expense, a translation in English language, which shall be certified by a sworn translator;

(d) **Subsection 4 -** Any company that on request by the Service, fails to provide any record or book prescribed under subsections (1) – (3) shall be liable to pay as penalty;

(i) N100,000 in the first month in which the failure occurs; and

(ii) N50,000 for each subsequent month in which the failure continues.

(e) **Subsection 5 -** Where, in the opinion of the Service, a company fails or refuses to maintain books or records of accounts that are consistent with the provisions of subsections (1), (2) and (3) or adequate for the purposes of tax, the Service may, by notice in writing, require it to maintain such records, books and accounts as the Service considers adequate, in such form and language as may be specified in the notice;

(f) **Subsection 6 -** Any direction of the Service made under subsection (5) shall be subject to objection and appeal in like manner as an assessment; and

(g) **Subsection 7 -** Any book or record required to be kept under this section shall be kept for a period of at least six years after the year of assessment in which the income relates."

5.1.11 Powers of FIRS to access the records of a company

Section 25(4) of the Federal Inland Revenue Service (Establishment) Act, 2007, having been amended by section 51 of the Finance Act, 2021, the FIRS has powers to deploy technology for the administration and information gathering. The FIRS is required to give 30-day notice to the taxpayer where the Revenue intends to access the taxpayer's information system.

Based on the amended section by the Finance Act, 2021, a daily administrative penalty of N25,000 is payable by a taxpayer who prevents the FIRS in accessing its records and this penalty will accrue each day the failure continues.

The taxpayer has the right to inform the FIRS of the reason for not granting it access to its records and if the Service is satisfied that the reason(s) given are tenable, it may withdraw the notice to the taxpayer.

5.1 Assessment procedures

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

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

5.2.1 Self-assessment

The self-assessment is a system of tax administration in which the taxpayer is granted the right, by law, to compute his own tax liability, pays the tax due and files his tax returns with evidence of payment of the tax paid on or before the due date.

The relevant tax authority (FIRS) shall accept all tax returns submitted by the taxpayer and carryout necessary checks to ensure that all required information have been appropriately entered into the tax return forms.

A company that files a self-assessment return is required to pay the tax due in one lump sum on the due date of filing the return or in such number of monthly instalments, not exceeding six, as the FIRS may approve.

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

5.2.2 Additional assessment

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

(a) Has not been assessed; or

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

5.2.3 Best of judgement (BOJ) / administrative assessment

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

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

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

5.2.4 Jeopardy/protective assessment

This assessment is usually raised on the ground of expediency. When the need arises, the relevant tax authority will raise the assessment to ensure that taxes are not evaded in urgent situations, for example:

(a) Impending sale or transfer of trade/business of a company to another;
(b) Where a taxpayer wants to escape to foreign countries;
(c) Intended remittances to foreign partners; or
(d) Imminent liquidation of a company.

5.2.5 Assessment on turnover

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

(a) No assessable profits; or

(b) Assessable profits which in the opinion of the FIRS, are less than might be expected to arise from that trade or business; or

(c) The true amount of the assessable profit cannot be readily ascertained.

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

5.2.6 Assessment based on dividend paid

Where a dividend is paid out of profit on which no tax is payable due to:
(a) No assessable profits; or

(b) Assessable profits being less than the dividend paid or proposed, the company paying the dividend shall be charged to income tax at the appropriate tax rate on the dividend paid/proposed as if it were its total profit for the assessment year to which the accounts from which the dividend was declared relate.

Section 19 (2) of CITA as amended by Finance Act, 2019, excludes the following classes of dividend from the same treatment as those stated above:

(a) Dividends paid out of retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under Companies Income Act (CITA), Petroleum Profits Tax Act (PPTA) or the Capital Gains Tax Act (CGTA);

(b) Dividends paid out of all tax-exempt incomes pursuant to the CGTA, PPTA and Industrial Development (Income Tax Relief) Act or any other legislation;

(c) All franked investment income under CITA; and

(d) Distributions made by a Real Estate Investment Company to its shareholders from rental or dividend income received on behalf of those shareholders.

It should be noted that the exemption still applies whether or not the profits that generated such dividend accrued in a year other than the year in which the dividend was paid.

5.2.7 Back duty assessment

Where a taxpayer or its representative has committed fraud, wilful default or neglect in connection with the tax assessed on it, the FIRS is empowered to assess such company to additional tax in order to make good any loss attributable to the fraud, wilful default or neglect.

The additional tax referred to above can be raised by the Revenue at any time or as often as it may consider necessary without a time limit, but the decision of TAT, Benin zone, has restricted the powers of the tax authorities to assess taxpayers to back-duty except where fraud, wilful default or neglect on the part of the taxpayers has been established by a tribunal or a court of competent jurisdiction.

5.2.8 Service of notice of assessment

The FIRS shall arrange to serve or send by registered post, courier service, email or any other electronic means as directed by the Service to any company or person in whose name a company is chargeable, a notice of assessment showing:

(a) Amount of total profits;

(b) The tax payable; and

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

5.2.9 Final and conclusive assessment

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

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

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

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

5.3 Collection procedures

5.3.1 Time limit for paying tax

The time limit for payment of income tax as provided in section 77 of CITA (as amended), depends on whether or not the tax payable has been determined by:

(a) An assessment raised by the FIRS on the company; or

(b) Self–assessment filed by the company.

Section 18 of Finance Act 2019 amended section 77 (5) of CITA 2004, by providing that:

"Every company shall make payment of tax due on or before the due date of filing, in one lump sum or in instalments:

Provided that, where the taxpayer pays in instalments-

(a) The taxpayer shall first write, with evidence of payment of the first instalment, and obtain the approval of the Service to pay in such number of instalments as may be approved by the Service; and

(b) The final instalment must be paid on or before the due date of filing".

Companies that wish to make piecemeal payments are expected to have applied in writing before the due date of filing, with the receipts evidencing full payment of tertiary education tax (TET) and first instalment of the companies income tax (CIT).

It is pertinent to state that the last instalment must be paid on or before the due date for filing tax returns, failing which, penalty and interest will accrue after the due date.

Based on the provisions of section 55(8) of CITA (as amended), any company that claims the minimum tax relief of 0.25% rate under section 33(2) of CITA, but filed its returns late, shall be liable to pay as penalty for late filing, an amount equivalent to the benefits or reduction claimed.

Assessment raised by FIRS

Where companies income tax becomes payable by a company on the basis of an assessment notice served on it by the FIRS, such tax should be paid at the place stated on the notice within 30 days after the service of the notice upon the company.

However, where the 30 days period expires after the 14th day of December of the assessment year for which the tax is charged, any outstanding balance shall become payable not later than that day, that is, 14 December of the assessment year.

Where notice of objection or appeal has been given by the company, the collection of the tax assessed shall remain in abeyance until the determination of the objection or appeal. In this situation, the company is liable to pay the provisional tax or the tax not in dispute, whichever is higher.

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

Self- assessment

A company that files a self-assessment return is required to pay the tax due in one lump sum on the due date of filing the return or in such number of monthly instalments, not exceeding six, as the FIRS may approve.

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

5.3.2 Bonus on timely payment of tax

Section 77 (5) – as amended, provides that where a company pays its tax 90 days before the due date as provided under section 55 of CITA, such company shall be entitled to a bonus of –

(a) 2%, if such company is a medium-sized company; or

(b) 1% for any other company; on the amount of tax paid, which shall be available as a credit against of its future taxes.

In section 77 (6) – as amended, any balance of taxes unpaid as at the due date shall attract interest and penalties as provided in CITA or any other relevant law for failure to pay on the due date.

5.3.3 Currency of payment of tax

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

5.3.4 Penalty for late payment of tax

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

(a) Penalty of an amount equal to ten percent per annum of the amount of tax payable; and

(b) Interest at the bank lending rate from date when the tax becomes due until it is paid.

The penalty and interest are payable not later than one month after the date of service of demand notice, otherwise, failure to pay within this period is deemed to be an offence against the provisions of CITA.

5.3.5 Enforcement procedures

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

(a) Distrain on the taxpayer's goods, other chattels, bonds or other securities; and

(b) Distrain upon land, premises, or places owned by the taxpayer.
The goods, properties, etc., distrained above may be sold by the tax authority and tax due and incidental costs recovered there from;

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

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

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

The certificate is an authority to the Nigerian Customs Service to deny clearance to the company until the tax due is paid.

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

In order to exercise this power, the tax due:

(i) Must have become final and conclusive;

(ii) Assessment notice must have been served on the company;

(iii) A demand notice must have been duly served on the company; and

(iv) The company must have failed or refused or neglected to pay the tax within the time statutorily allowed for that purpose.

5.4 Tax avoidance and tax evasion

5.4.1 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 minimize tax.

It should be noted that to a very large extent, tax avoidance is legal once it is done within the limits permissible by the tax laws. The dictum established by the lord President (Lord Clyde) in the case Ayrshire Pullman Motor Services and David M. Ritchie v. C.I.R. several years ago still holds good. The lord President's statement is reproduced as follows:

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

In Federal 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 organize 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 particular loophole. 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 effective 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.

5.4.2 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 achieves minimization 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 returns 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.

5.4.3 Tax avoidance and tax evasion compared

Tax avoidance and tax evasion can be compared as follows:

	Tax avoidance		Tax evasion
(i)	Legal	(i)	Illegal
(ii)	Achievable through exploiting loopholes in tax laws.	(ii)	Achievable through deliberate action of fraud and deceit.
(iii)	Results in taxpayer paying minimum tax possible without breaking the law.	(iii)	Results in taxpayer not paying correct tax or paying minimum tax through the breaking of tax laws.
(iv)	Supported by the courts in decided cases.	(iv)	No support by the courts.
(v)	No criminal liability.	(v)	Tax evader could be charged to court for criminal offences with the consequent fines, penalties and, at times, imprisonment.
(vi)	When stretched to the extreme, the scheme could be disregarded.	(vi)	At any level, Revenue Service will frown at tax evasion.
(vii)	No Revenue Service investigation. Prior years assessments will not be reopened.	(vii)	Revenue Service investigation will be instituted. Revenue Service has the power to open prior assessments beyond the six-year statute of limitation, subject to Court approval.

5.5 Tax clearance certificate (TCC)

5.5.1 Definition and contents

A tax clearance certificate is a document issued by the Federal Inland Revenue Service in respect of Companies and the States Boards Internal Revenue in respect of individuals showing that the applicant's tax affairs are in order.

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

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

A tax clearance certificate shall disclose in respect of the last three years of assessment:

(a) TCC number, tax office, date of issue, name of company, RC number, date of incorporation, taxpayer's identification number (TIN), effective business address;

(b) Revenue /Turnover;

(c) Assessable profit/loss;

(d) Total profit;

(e) Tax payable;

(f) Tax paid – Companies income tax receipt number and date;

(g) Tax outstanding (if any);

(h) Source of income;

(i) Other comments; and

(j) Expiration date.

5.5.2 The conditions for granting a TCC

The following are the conditions for granting TCC:

(a) Taxes have been paid up to date;

(b) Penalties and interest raised have been paid;

(c) Returns have been filed up to date; and

(d) There are no outstanding tax queries, audit or investigation.

5.5.3 Transactions for which a TCC is required

Section 101 (4) of CITA provides that tax clearance certificate shall apply in relation to the following transactions:

(a) Application for government loan for industry or business;

(b) Registration of motor vehicle;

(c) Application for firearms licence;

(d) Application for foreign exchange or exchange control permission to remit funds outside Nigeria;

(e) Application for certificate of occupancy;

(f) Application for award of contracts by government, its agencies and registered companies;

(g) Application for approval of building plans;

(h) Application for trade licence;

(i) Application for transfer of real property;

(j) Application for import or export licence;

(k) Application for agent licence;

(l) Application for pools or gaming licence;

(m) Application for registration as a contractor;

(n) Application for distributorship;

(o) Confirmation of appointment by government, as chairman or member of public board, institution, commission, company or to any other similar position made by the government;

(p) Stamping of guarantor's form for Nigerian passport;

(q) Application for registration of a limited liability or of a business name;

(r) Application for allocation of market stalls;

(s) Appointment or election into public office;

(t) Change of ownership of vehicle by vendor;

(u) Application for plot of land;

(v) Stamping of statement of the nominal share capital of a company to be registered and any increase in the registered share capital of the company; and

(w) Stamping of statement of the amount of loan capital.

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

5.5.4 Procedure for processing tax clearance certificate (TCC)

A TCC is a document issued the Federal Inland Revenue Service to company and stating that the company's tax affairs are in order at the date of issue of the certificate.

A TCC is a very important document necessary for various corporate transactions in Nigeria. Therefore, a company that carries out a taxable transaction is eligible to register for issuance of TCC. Furthermore, registration for TCC issuance shall be dependent on whether the applicant is a new company or an existing company:

A new company
The following is the procedure for obtaining a TCC by a new company:

(a) Register with the FIRS for tax identification number (TIN).

A company can choose to either engage the service of a consultant or carryout the registration by itself through an employee. Notwithstanding who the company chooses for this exercise, the company will need to write a formal application letter (in a prescribed format) which shall be accompanied with the following documents and information:

Documents to be submitted shall include:

(i) Certificate of incorporation;

(ii) Memorandum and articles of association;

(iii) Form CAC 2 and CAC 7;

Information contained in the registration letter shall include:

(i) Name of company;

(ii) Registered office;

(iii) Business address;

(iv) Precise nature of business;

(v) Date of commencement of business;

(vi) Name and address of bankers; and

(vii) Particulars of major shareholders.

(b) Register with FIRS for VAT

This registration is to be done concurrently with TIN registration. A formal application letter (in a prescribed format) is also required and shall be accompanied with the following documents:

(i) Completed copy of VAT form 001; and

(ii) Certificate of incorporation.

It is important to highlight that following the recent introduction of the electronic solution (e-service) by the FIRS, the above process can now be done on-line.

(i) Validation of the issued TIN at the FIRS office

As a consequence of the e-service solution introduced by the FIRS, all companies are now required to validate their TINs at their local FIRS office so as to transact all their business with the FIRS electronically. Therefore, once the FIRS has validated a company's TIN, the company can then apply for the issuance of TCC electronically on the FIRS web portal.

(ii) **Application for TCC**

As soon as a company has uploaded and has submitted copies of its statement of affairs and the evidence of payment of the POL at the FIRS office, the company can then apply for TCC electronically via the FIRS online application portal.

(iii) **Processing and issuance of TCC**

As soon as a company has filed its application for TCC electronically, the FIRS would then commence processing. However, FIRS shall approve TCC within two weeks of application. Once the TCC is approved, an electronic email confirmation shall be sent to the company and the company can subsequently download a copy of the TCC.

An existing company:

The procedure for obtaining a TCC by an existing company is as follows:

- Payment of income tax and filing of income tax returns

  An existing company that requires TCC shall first ensure payment and filing (both electronically and hard copies of returns submission at the FIRS office) of companies income tax returns within the statutory timeline, that is, six months after end of its financial year.

- Application for TCC
  As soon as a company has uploaded and has also submitted copies of its returns and the evidence of payment of income tax at the FIRS office, the company can then apply for TCC electronically via the FIRS online application portal.

- Processing and issuance of TCC
  As soon as a company has filed an application for TCC electronically, the FIRS would then commence processing. However, FIRS shall approve TCC within two weeks of application. Once the TCC is approved, an electronic email confirmation shall be sent to the company and it can subsequently download a copy of the TCC.

5.5.5 Penalties

A person who:

(a) For the purpose of obtaining a tax clearance certificate, gives incorrect information in relation to any matter or thing affecting his liability to tax; or

(b) Counterfeits or falsifies any document which is required by or for the transaction of any business under the Act or any law listed in the First Schedule to the Act commits an offence and shall be liable on conviction to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 3 years or both such fine and imprisonment (section 43 of the Federal Inland Revenue Service (Establishment) Act 2007).

5.5.6 Problems of obtaining TCC

Although, a tax clearance certificate is issued based on tax compliance for the preceding year, the tax authorities sometimes require that taxpayers comply with tax payments to date of application for the certificate. This often poses a challenge, as the Revenue could use the opportunity to issue additional assessments and demand payment before issuing the certificate.

The certificate, also, often takes a long period to be issued, notwithstanding the two weeks' limit stated in the tax legislation. A taxpayer could therefore lose an opportunity to win a major contract or be unable to clear imported goods, where such taxpayer is unable to obtain a tax clearance certificate on time.

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

5.5.7 Abolition of pre-operational levy - section 40 of CITA (as amended)

Companies that are yet to commence business will no longer be required to pay pre-operational levy (POL) before the issuance of tax clearance certificate.

5.6 Chapter review

In this chapter, the need for incorporated companies to file tax returns, the nature/ composition of such returns as well as the time limits prescribed by the Act, for filing the returns are discussed.

This chapter also discussed in detail, assessment and collection procedures, including the time limit for the payment (depending on the basis of assessment), currency of payment, tax avoidance and tax evasion, penalties for late payment and Revenue authority's enforcement procedures, and other issues comprehensively addressed.

It also discusses issues relating to the issuance and importance of a tax clearance certificate.

5.7 Worked examples

5.7.1 Multiple-choice questions

1. Which of the following is not disclosed in a tax clearance certificate?
   A. Tax identification number of the taxpayer
   B. Expiry date
   C. Tax paid
   D. Tax identification number of the Managing Director
   E. Name of the taxpayer

2. A company engaged in banking business is required to submit to FIRS a quarterly return not later than the …… day after the date of the return.
   A. Tenth
   B. Ninth
   C. Seventh
   D. Sixth
   E. Third

3. The time limit allowed for payment of undisputed tax liabilities raised by FIRS, is …. from the date of service of notice of assessment.
   A. 30 days
   B. 45 days
   C. 60 days
   D. 90 days
   E. 120 days

4. Section 77(5) of CITA (as amended), provides that where a company pays its tax 90 days before the due date as provided under section 55 of CITA, such a company shall be entitled to a bonus of 2%, if such company is a…………..
   A. Medium-sized company
   B. Large company
   C. Small company
   D. New company that is not up to six months in business
   E. Liquidated company

5. The Finance Act 2021, provides that a daily administrative penalty of ……….. is payable by a taxpayer who prevents the FIRS in accessing its records and this penalty will accrue each day the failure continues.
   A. N 50,000
   B. N 40,000
   C. N 25,000
   D. N20,000
   E. N 5,000

5.7.2 Short answer questions

1. If a company's transactions are in a foreign currency, tax shall be payable in that__________.
2. The assessment raised by the Revenue where the taxpayer has neither filed returns nor registered for tax purposes and the FIRS is of the opinion that it is liable to tax, is called __________.
3. Section 101(4) of CITA (as amended), provides that ………… is required to be tendered by an applicant for the registration of motor vehicles.
4. What type of assessment will a tax authority raise if a taxpayer wants to escape to foreign countries?
5. The system of tax administration that allows a taxpayer to compute his tax payable for the year of assessment, file the returns and pay the tax is known as ___________.

5.7.3 Examination type questions

(1) The powers to assess the incomes of corporate organisations to taxes are vested in the Federal Inland Revenue Service as entrenched in the Companies Income Tax Act, Cap C21, LFN 2004 (as amended).

To comply with the statutory provisions, corporate organisations are required to file tax returns within a specified period of time to the relevant tax authority.

You are required to state:

(a) Documents/information required to be forwarded to the relevant tax authority when registering with the nearest integrated tax office

(b) The time lag for filing the first set of returns and subsequent ones

(c) The penalty for late filing of returns at the due dates

(2) When does an assessment become final and conclusive?

(3) The self-assessment system was introduced with effect from 1 January 1996, to run parallel and in conjunction with the existing government assessment for both individual and corporate taxpayers. How does it operate and what are its benefits?

(4) In relation to the assessment procedures in Nigerian taxation administration, write on the following:

(a) Types of assessments available to companies

(b) Penalty for late payment of tax

(c) Back duty assessment

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

Required:
List any ten transactions in respect of which tax clearance certificate must be produced.

5.7.4 Suggested solutions to multiple-choice questions

1. D
2. C
3. A
4. A
5. C

5.7.5 Suggested solutions to short answer questions

1. Currency
2. Best of Judgement assessment
3. Tax clearance certificate
4. Jeopardy/ protective assessment
5. Self-assessment

5.7.6 Suggested solutions to examination type questions

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

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

(a) Documents required to be forwarded to the relevant tax authority when registering with the nearest integrated tax office include:

(i) Copy of the certificate of incorporation;

(ii) Certified true copy of the memorandum and articles of association;

(iii) Certified copy of form CAC 7 (Particulars of directors);

(iv) Letter of appointment of external auditors and tax representatives;

(v) Letter of acceptance by the external auditors and tax representatives; and

(viii) Answers to the questionnaires which include the following information:

- Date of commencement of operations;
- Accounting year end;
- Registered address of the company;
- Business address of the company if different from the registered office; and
- Any other relevant information.

(b) The time lag for filing the first set of returns and subsequent ones:

(i) First set of returns

Within 18 months from the date of incorporation or 6 months after the end of its first accounting period, whichever is earlier.

(ii) Subsequent returns

Within 6 months from the accounting year end of the business entity.

(c) Penalty for late filing of returns at the due dates:

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

A defaulting company shall pay:

(i) ₦25,000 in the first month in which it fails to file its annual returns; and

(ii) ₦5,000 for each subsequent month in which the failure continues.

In addition, any director, manager, secretary, servant or agent of a defaulting company who is proved to be guilty of connivance, neglect or acquiescence to the commission of the offence, of non–compliance with the above provision, shall be liable to a fine of ₦100,000 or imprisonment for 2 years or both.

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

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

(b) The amount of total profit has been agreed by the tax payer after his objection has been determined by FIRS; or

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

(3) **Self-assessment scheme** is a system in which a taxpayer is required to make a return of his income and the tax liability based on such income. The taxpayer is expected to forward the returns with the cheque or in such number of monthly instalments, not exceeding six to the tax authority. An application by a company to FIRS for instalment payment of tax shall be accompanied by proof of payment of the first instalment to a designated bank.

The following are the benefits of the scheme:

(a) There is reduction in time taken to raise assessment by the tax authority;

(b) The taxpayer can pay the current tax due in 6 equal instalments, if approved by the tax authority;

(c) It gives a measure of confidence to the taxpayer to willingly submit himself to be assessed; and

(4) (a) **Types of assessment are:**

(i) Self-assessment

Self-assessment is a system of tax administration in which the taxpayer is granted the right, by law, to compute his own tax liability, pays the tax due and files his tax returns with evidence of payment of the tax paid on or before the due date.

The relevant tax authority (FIRS) shall accept all tax returns submitted by the taxpayer and carry out necessary checks to ensure that all required information have been appropriately entered into the tax return forms.

A company that files a self-assessment return is required to pay the tax due in one lump sum on the due date of filing the return or in such number of monthly instalments, not exceeding six, as the FIRS may approve.

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

(ii) Additional assessment

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

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

(iii) Best of judgement (BOJ)/administrative assessment

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

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

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

(iv) Jeopardy/protective assessment

This assessment is usually raised on the ground of expediency. When the need arises, the relevant tax authority will raise the assessment to ensure that taxes are not evaded in urgent situations, for example:

- Impending sale or transfer of trade/business of a company to another;
- Where a taxpayer wants to escape to foreign countries;
- Intended remittances to foreign partners; or
- Imminent liquidation of a company.

(v) Assessment on turnover

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

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

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

(vi) Assessment based on dividend paid

Where a dividend is paid out of profit on which no tax is payable due to:

- No assessable profits; or
- Assessable profits being less than the dividend paid or proposed, the company paying the dividend shall be charged to income tax at the appropriate tax rate on the dividend paid/proposed as if it were its total profit for the assessment year to which the accounts from which the dividend was declared relate.

Section 19(2) of CITA as amended by the Finance Act, 2019, excludes the following classes of dividend from the same treatment as those stated above:

- Dividends paid out of retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under Companies Income Act (CITA), Petroleum Profits Tax Act (PPTA) or the Capital Gains Tax Act (CGTA);

- Dividends paid out of all tax-exempt incomes pursuant to the CGTA, PPTA and Industrial Development (Income Tax Relief) Act or any other legislation;
- All franked investment income under CITA; and
- Distributions made by a Real Estate Investment Company to its shareholders from rental or dividend income received on behalf of those shareholders.

It should be noted that the exemption still applies whether or not the profits that generated such dividend accrued in a year other than the year in which the dividend was paid.

(vii) Back duty assessment

Where a taxpayer or its representative has committed fraud, wilful default or neglect in connection with the tax assessed on it, the FIRS is empowered to assess such company to additional tax in order to make good any loss attributable to the fraud, wilful default or neglect.

The additional tax referred to above can be raised by the Revenue at any time or as often as it may consider necessary without a time limit, but the decision of TAT, Benin zone, has restricted the powers of the tax authorities to assess taxpayers to back-duty except where fraud, wilful default or neglect on the part of the taxpayers has been established by a Tribunal or a Court of competent jurisdiction.

(b) Penalty for late payment of tax

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

(i) Penalty of an amount equal to ten percent per annum of the amount of tax payable; and

(ii) Interest at the bank lending rate from date when the tax becomes due until it is paid.

The penalty and interest are payable not later than one month after the date of service of demand notice, otherwise, failure to pay within this period is deemed to be an offence against the provisions of CITA.

(c) **Back duty assessment**

Where a taxpayer or its representative has committed fraud, wilful default or neglect in connection with the tax assessed on it, the FIRS is empowered to assess such company to additional tax in order to make good any loss attributable to the fraud, wilful default or neglect.

The additional tax referred to above can be raised by the Revenue Service at any time or as often as it may consider necessary without a time limit, but the decision of TAT, Benin Zone, has restricted the powers of tax authorities to assess taxpayers to back-duty except where fraud, wilful default or neglect on the part of the taxpayer has been established by a tribunal or a court of competent jurisdiction.

(5) The transactions in respect of which tax clearance certificate must be produced are as follows:

(a) Application for government loan for industry or business;

(b) Registration of motor vehicle;

(c) Application for firearms licence;

(d) Application for foreign exchange or exchange control permission to remit funds outside Nigeria;

(e) Application for certificate of occupancy;

(f) Application for award of contracts by government, its agencies and registered companies;

(g) Application for approval of building plans;

(h) Application for trade licence;

(i) Application for transfer of real property;

(j) Application for import or export licence;

(k) Application for agent licence;

(l) Application for pools or gaming licence;

(m) Application for registration as a contractor;

(n) Application for distributorship;

(o) Confirmation of appointment by government, as chairman or member of public board, institution, commission, company or to any other similar position made by the government;

(p) Stamping of guarantor’s form for Nigerian passport;

(q) Application for registration of a limited liability or of a business name;

(r) Application for allocation of market stalls;

(s) Appointment or election into public office;

(t) Change of ownership of vehicle by the vendor;

(u) Application for plot of land;

(v) Stamping of statement of the nominal share capital of a company to be registered and any increase in the registered share capital of the company; and

(w) Stamping of statement of the amount of loan capital.

CHAPTER SIX
OBJECTIONS AND APPEAL PROCEDURES

Chapter contents

a) Learning objectives
b) Time limit for objection and appeal
c) Contents of a notice of objection
d) Amendment of assessment and refusal to amend
e) Hearing before the Tax Appeal Tribunal
f) Appeal before the Federal High Court
g) Appeal before Court of Appeal and Supreme Court
h) Chapter review
i) Worked examples

6.0 Learning objectives

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

(a) The procedures available to a taxpayer for raising objections to tax assessments;

(b) How to file an appeal before the Tax Appeal Tribunal;

(c) How the hearing of an appeal is conducted; and

(d) The other appeal options available.

6.1 Time limit for objection and appeal

If any company disputes a tax assessment raised on it by the tax authority, it may give a notice of objection, to the Federal Inland Revenue Service, seeking a review or revision of the assessment. However, the time limit for objection is within thirty days from the date of service of the notice of assessment.

Also, a company aggrieved by an assessment or demand notice made upon it by the FIRS or aggrieved by any action or decision of the FIRS, may appeal against such decision or assessment or demand notice within thirty days from the date on which a copy of the order or decision which is being appealed against is made, or deemed to have been made by the FIRS.

6.2 Contents of a notice of objection

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

(a) Be in writing, delivered in persons, by courier service or via electronic mail and addressed to the Chairman, Federal Inland Revenue Service;

(b) State the grounds of objection, namely:

  (i) Amount of assessable and total profits of the company for the relevant assessment year; and

  (ii) Amount of tax which the taxpayer claims is payable for the year of assessment.

(c) Be raised within thirty days of the date of service of the notice of assessment.

6.3 Amendment of assessment and refusal to amend

If any company disputes an assessment raised on it by the FIRS, it may apply to the FIRS, by notice of objection in writing, delivered in person, by courier service, email or any other electronic means, as directed by the Service, to review and revise the assessment made upon it. Therefore, the company must ensure that its objection:

(a) Is made within thirty days from the date of service of the notice of assessment; and

(b) Contains the ground of objection to the assessment, that is:

i. The amount of assessable and total profits of the company for the relevant year of assessment; and

ii. The amount of tax payable for the year, which the company claims should be stated on the notice of assessment.

On receipt of the notice of objection referred to above, the FIRS may require the company giving the notice of objection to furnish such particulars as the FIRS may deem necessary and to produce all books or other documents relating to the profits of the company, and may summon any person who may be able to give evidence relating to the assessment to attend for examination by an officer of the FIRS on oath or otherwise.

In the event of any company assessed, which has objected to an assessment made upon it, agreeing with the FIRS as to the amount at which it is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such company.

However, if the company fails to agree the amount at which the company is liable to be assessed with the FIRS, the FIRS shall give notice of refusal to amend the assessment as desired by such company and may revise the assessment to such amount as the FIRS may, according to the best of its judgement, determine and give notice of its revised assessment and of the tax payable together with the notice of refusal to amend the revised assessment.

6.4 Hearing before the Tax Appeal Tribunal

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

(a) The Tax Appeal Tribunal gives seven (7) days notice to the appellant and FIRS of the date and place fixed for hearing of the appeal,

(b) An appeal should be heard by not less than three members of the tax tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding;

(c) A member with vested interest in any matter before the Tax Appeal Tribunal must disclose such interest and abstain from attending any sitting, at which the matter is to be heard.

(d) 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 Act, 2020

(e) All appeals before the Tax Appeal Tribunal are heard in public;

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

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

(h) If the representative of the FIRS can prove to the Tax Appeal Tribunal that:

(i) Appellant failed to file returns, audited accounts etc. as required by CITA; or

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

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

- The Tax Appeal Tribunal may make an order that the appellant pay deposit to the tax authority on account of tax being disputed, before the matter could be heard.
- The deposit payable, is the lower of: (1) tax paid in the immediately preceding year; or (2) half of the tax charged (which is on appeal), plus 10% of the deposit.

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

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

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

(l) Notice of the amount of tax chargeable, as determined by the Tax Appeal Tribunal, shall be served on the company by FIRS.

The tax payable as determined by the Tax Appeal Tribunal is payable within one month of the date of notice of assessment, notwithstanding that an appeal may be pending on same, before the Federal High Court.

6.5 Appeals before the Federal High Court (FHC)

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

a) Amount involved must not be less than N400;
b) The appeal must be on points of law;
c) Notice of appeal must be given to the Tax Appeal Tribunal within 30 days after the date of the judgement of the Tax Appeal Tribunal; and
d) The grounds of law on which the decision of the Tax Appeal Tribunal is being challenged should be stated.

6.6 Appeals before the Court of Appeal and Supreme Court

An appeal against the decision of the Federal High Court shall lie with the Court of Appeal and finally with the Supreme Court. However, for such appeal to be valid, the following conditions must be satisfied, namely:

a) Amount involved must not be less than N1,000;
b) The appeal must be on the points of law;
c) Notice of appeal against the decision of the Federal High Court must be given within 30 days after the judgement of the FHC.
d) The grounds of law on which the decision of the FHC is being challenged should be stated.

6.7 Chapter review

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

The options available to an aggrieved appellant are: Appeal to the Tax Appeal Tribunal, and if no respite or relief, appeal to the Federal High Court. The chapter also highlights procedures for the hearing under both options.

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

6.8 Worked examples

6.1.1 Multiple-choice questions

1) If any company disputes a tax assessment raised on it by a tax authority, the time limit for objection is within
   - A. 7days from the date of service of the notice of assessment
   - B. 15 days from the date of service of the notice of assessment
   - C. 30 days from the date of service of the notice of assessment
   - D. 40 days from the date of service of the notice of assessment
   - E. 60 days from the date of service of the notice of assessment

2) The Tax Appeal Tribunal's decisions are recorded in writing, by the Chairman, and a certified true copy is supplied to the appellant or the FIRS on request, within ……… of the decision.
   - A. 3 months
   - B. 6 months
   - C. 12 months
   - D. 18 months
   - E. 24 months

3) Where an appeal is not discontinued, one of the following is the procedure for hearing the appeal before the Tax Appeal Tribunal
   - A. The Tax Appeal Tribunal gives seven (7) day-notice to the appellant and the tax authority of the date and place fixed for hearing of the appeal
   - B. The Tax Appeal Tribunal gives fifteen (15) day-notice to the appellant and the tax authority of the date and place fixed for hearing of the appeal
   - C. The Tax Appeal Tribunal gives twenty one (21) day-notice to the appellant and the tax authority ofthe date and place fixed for hearing of the appeal
   - D. The Tax Appeal Tribunal gives thirty five (35) day- notice to the appellant and the tax authority of the date and place fixed for hearing of the appeal
   - E. The Tax Appeal Tribunal gives forty (40) day-notice to the appellant and the tax authority of the date and place fixed for hearing of the appeal

4) An appeal should be heard by not less than
   - A. Two members of the tax tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding
   - B. Three members of the tax tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding
   - C. Five members of the tax tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding
   - D. Six members of the tax tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding
   - E. Seven members of the tax tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding

5) The deposit payable by an appellant to a tax authority on account of tax being disputed, before the matter could be heard is

A. The lower of: (i) tax paid in the immediately preceding year; or (ii) half of the tax charged (which is on appeal), plus 10% of the deposit

B. The lower of: (i) tax paid in the immediately preceding year; or (ii) one- third of the tax charged (which is on appeal), plus 10% of the deposit

C. The lower of: (i) tax paid in the immediately preceding year; or (ii) one-quarter of the tax charged (which is on appeal), plus 10% of the deposit

D. The lower of: (i) tax paid in the immediately preceding year; or (ii) half of the tax charged (which is on appeal), plus 15% of the deposit

E. The lower of: (i) tax paid in the immediately preceding year; or (ii) half of the tax charged (which is on appeal), plus 20% of the deposit

6.1.2 Short answer questions

1. One of the conditions for the appeals before the Federal High Court to be valid is that notice of appeal must be given to the Tax Appeal Tribunal within …….. after the date of the judgment of the Tax Appeal Tribunal
2. The Fifth Schedule of CITA as amended by section 57 of the Finance Act, 2020, allows a tribunal to conduct its hearing ………. via virtual means, using such technology or application as mat be necessary to ensure fair hearing.
3. Appeals before the Federal High Court (FHC) must be on points of ……….
4. Notice of appeal against the decision of the Federal High Court must be given within ……… after the judgement of the Federal High Court.
5. Beyond the Federal High Court, an appellant still has two appeal options left; proceed to the …………..and ultimately to the Supreme Court.

6.1.3 Examination type questions

(1) What are the specific particulars to be included in a notice of appeal against an assessment pending before the Tax Appeal Tribunal?

(2) Explain the procedure for an appeal against the decision of a Tax Appeal Tribunal.

(3) As a tax consultant, the Managing Director of your client brought an assessment notice served on the company by the Federal Inland Revenue Service complaining that the assessment was outrageous. You observed that the amount assessed was higher than on the basis of documents you submitted.

Required:

Explain what could be done in this circumstance.

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

6.1.4 Suggested solutions to multiple-choice questions

1. C
2. A
3. A
4. B
5. A

6.1.5 Suggested solutions to short answer questions

1. 30 days
2. Remotely
3. Law
4. 30 days
5. Court of Appeal

6.1.6 Suggested solutions to examination type questions

(1) Notice of appeal shall specify the following specific particulars:

(a) The official number of the assessment and the year of assessment for which it was made.

(b) The amount of the tax charged by such assessment.

(c) The amount of the total profit upon which such tax was charged as appearing in the notice of assessment.

(d) The date upon which the appellant was served with notice of refusal by the FIRS to amend the assessment as desired.

(e) The precise grounds of appeal against the assessment, but such grounds shall be limited to the grounds stated by the appellant in its notice of objection.

(f) An address for service of any notices, receipts or other documents to be given by the Secretary to the Tax Appeal Tribunal. Provided that at any time the appellant may give notice to such Secretary and to the FIRS, by delivering the same by registered post, of a change of such address but any such notice shall not be valid until delivered or received.

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

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

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

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

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

(c) The tax consultant will expect the FIRS to see reasons and amend the assessment, which if satisfactorily would be remitted. On the other hand, where the FIRS refuses to amend the assessment, a notice of refusal to amend should be written and sent to the company (the taxpayer); and

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

(4) Objection and appeal procedures

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

In line with the provision of Section 69 of Companies Income Tax Act CAP C21 LFN 2004 (as amended), for instance, for a notice of objection to be valid it must

(a) Be in writing and addressed to the Chairman, Federal Inland Revenue Service;

(b) State the grounds of objection, namely:
   (i) Amount of assessable and total profits of the company for the relevant assessment year; and
   (ii) Amount of tax which the taxpayer claims is payable for the year of assessment.

(c) Be raised within thirty (30) days of the date of service of the notice of assessment. On receipt of the notice of objection, the tax authority has the following options:
   (i) Review and revise the assessment to an amount that is mutually agreeable to the taxpayer and the tax authority. If this occurs, the tax authority will amend the assessment and serve on the taxpayer a notice of revised tax payable; or
   (ii) Review and refuse to revise the assessment to the amount claimed by the taxpayer.

   In a situation where the taxpayer fails to agree with the tax authority on the amount of tax payable, and the tax authority does not see any reason to further revise the assessment, then it will issue a notice of refusal to amend its assessment.

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

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

An appeal would be heard by not less than three members of the tax tribunal in attendance with the Chairman or any other member, (in the absence of the Chairman), presiding;

A member with vested interest in any matter before the Tax Appeal Tribunal must disclose such interest and abstain from attending any sitting, at which the matter is to be heard.

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

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

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

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

(a) Appellant failed to file returns, audited accounts etc. as required by CITA; or

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

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

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

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

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

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

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

Notice of the amount of tax chargeable, as determined by the Tax Appeal Tribunal, shall be served on the company by FIRS.

The tax payable as determined by the Tax Appeal Tribunal is payable within one month of the date of notice of assessment, notwithstanding that an appeal may be pending on same, before the Federal High Court.

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

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

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

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

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

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

CHAPTER SEVEN
VALUE ADDED TAX

Chapter contents

a) Leaning objectives
b) The nature, objectives, and administration of VAT
c) Registration and deregistration of taxpayers for VAT
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l) Zero-rated supplies
m) Input and output VAT
n) VAT liability and explain the treatment of opening and closing inventories
o) Self-account provision for which VAT was not charged
p) The treatment of VAT on sale and transfer of assets amongst related parties in business reorganization and restructuring
q) The treatment of VAT on property, plant and equipment purchased, as well as operating expenses
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s) The obligations for records and accounts keeping, preparation of VAT accounts, and valid VAT invoice
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x) The offences and penalties associated with VAT
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7.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Understand the nature, objectives and administration of VAT in Nigeria;

(b) Understand the basic terms and terminologies of VAT;

(c) Understand the regulatory framework of VAT in Nigeria;

(d) Appreciate the structure of the VAT model in Nigeria; and

(e) Compute VAT payable and prepare VAT account.

7.1 Nature, objectives and administration of VAT

(a) **The nature of VAT**

The advent of the VAT concept in the very earlier part of the twenty first century brought about a global acceptance by many countries. This was due largely to the ease of administration and high collection yield.

VAT as a consumption tax is a multi-stage levy collected at every stage of production and sale of goods and rendition of services.

(b) **Objectives of VAT**

The following are the objectives of VAT:

(i) To increase government revenue;

(ii) To make the tax system more transparent;

(iii) To avoid cascading effect;

(iv) To reduce tax evasion practices;

(v) To increase exports;

(vi) To simplify tax collection procedure; and

(vii) To check income tax evasion by concealment of actual income by taxpayers.

(c) **Administration of VAT**

Section 7 of the Act specifically states that the VAT shall be administered and managed by the Federal Inland Revenue Service Board (formerly FBIR). The Board may do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in accordance with the provisions of the Act.

Rate of tax – Section 4 of VAT Act (as amended)

Effective February 1, 2020, the standard VAT rate applicable on all vatable goods and services is 7.5% except those goods and services listed under Part III of the First Schedule to the Act.

7.2 Registration and deregistration for value added tax (VAT)

(a) **Registration for VAT**

(i) Section 8 of the VAT Act, having been amended, all taxable persons are mandated to register immediately for the tax upon commencement of business.

(ii) Government ministries, etc., as agents of the board

Every government ministry, statutory body and other agency of government shall register as agents of the FIRS for the purpose of collection of tax under this Act.

Every contractor transacting business with a government ministry, statutory body and other agency of the federal, state or local government shall produce evidence of registration with the FIRS as a condition for obtaining a contract.

(iii) Non-resident companies – section 10 of VAT Act (as amended)

Section 10(1)
A non-resident person that makes a taxable supply to Nigeria, shall register for tax with the Service and obtain tax identification number (TIN).

Section 10(2)
A non-resident person shall include the tax on its invoice for all taxable goods or services.

Section 10(3)
The taxable person to whom a taxable supply is made in Nigeria, or such other person as may be appointed by the Service shall withhold or collect the tax as the case may be, and remit same to the Service.

Section 10(4)
Where a person appointed under subsection (3) has made a taxable supply to a taxable person in Nigeria, the taxable person shall not have the obligation to withhold the tax, except where the person so appointed has failed to collect the tax.

Section 10(5)
A non-resident person that makes a taxable supply to Nigeria may appoint a representative for the purpose of compliance with tax obligations.

Section 10(6)
The Service may issue a guideline for the purposes of giving effect to the provisions of this section, including the form, time and procedure for filing returns and payment by non-resident suppliers appointed by the Service under subsection (3).

(b) **Deregistration for VAT – section 8 (3) of VAT Act (as amended)**

A taxpayer who permanently ceases business is expected to notify the Service of such cessation within 90 days for the purposes of deregistration.

Where taxable supplies are made after the date of cessation, such supplies will be deemed to have been made on the day immediately preceding cessation.

Where the taxpayer fails to notify the Service on cessation of business, penalties for failure to file returns will continue to apply.

7.3 VAT compliance threshold – section 15(1) of VAT Act (as amended)

Based on the provisions of the Finance Act, 2019, only taxable persons with taxable supplies of N25million and above are required to charge, collect, remit the tax and file monthly returns to the Federal Inland Revenue Service.

Any taxpayer who made N25million and above in respect of taxable supplies before the introduction of the Act shall continue to charge, collect and remit the tax even though it has not achieved the N25million threshold in the current year.

Any taxable person who did not achieve the N25million threshold for taxable supplies before the introduction of the Act, that is, February 1, 2020, shall commence to charge, collect, remit and file returns immediately it achieves the N25million threshold in respect of taxable supplies any time within the year.

It should be noted that any taxable person can voluntarily register, charge, collect, remit the tax and file monthly VAT returns if it has not achieved the 25million threshold in respect of taxable supplies but such a person needs to notify the Federal Inland Revenue Service.

Any taxable person who expects to achieve the N25million threshold at a future date within the calendar year is at liberty to immediately commence to charge, collect, remit the tax and file monthly VAT returns.

Where a taxable person achieves taxable supplies of N25million and above in a year, he is expected to file monthly VAT returns even though part or whole of same is exempt from VAT.

It should be noted that taxable supplies exclude capital assets, which are capitalised in the books of the taxable person and the sale of the whole or part of the business. It is pertinent to state that this exemption shall not apply to companies engaged in upstream petroleum operations as described in the Petroleum Industry Act and Petroleum Profits Tax Act – section 15(3) of the VAT Act as amended by the Finance Act 2021.

Illustration 7.1

A taxable person achieved taxable supplies of N48million in 2019. When should he collect tax and file monthly VAT returns?

Solution to Illustration 7.1

The taxable person having achieved taxable supplies of N48 million in 2019, should charge, collect tax and file monthly VAT returns in January 2020.

Illustration 7.2

A taxable person commenced business in February 2020 and made taxable supplies of N10 million in the month. In March 2020, he did not make any taxable supply. In April 2020, he was awarded a contract for taxable supplies worth N40 million.

When should the taxable person approach the FIRS, collect tax and file monthly returns?

Solution to Illustration 7.2

The taxable person should approach the FIRS immediately the contract is awarded. He is expected to issue a tax invoice on N40 million, collect VAT, remit and file returns with effect from May 21, 2020.

7.4 Taxable persons, goods and services

7.4.1Taxable persons

A taxable person is a person who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of services, wholesaler, supplier of goods including mining and other related activities or person exploiting tangible or intangible property for the purpose of obtaining income there from by way of trade or business or includes a person and an agency of government acting in that capacity.

7.4.2 Goods

Goods have been defined by section 46 of Value Added Tax Act – as amended by Finance Act, 2020, to mean "all forms of tangible properties, movable or immovable, but does not include land and building, money or securities"

7.4.3 Taxable supplies

Section 46 of VAT Act (as amended) states that "any transaction for sale of goods or the performances of a service for a consideration in money or money's worth" is regarded as taxable supplies.

Taxable supplies of goods and services are goods and services other than those goods and services listed under the first schedule of the VAT Act 2004 (as amended). Essentially, these are goods and services liable to value added tax at the prescribed rate.

7.4.4 Services

(a) **Definition - section 46 of VAT Act (as amended)**

"Services" means:

(i) "Anything, other than goods or services provided under a contract of employment; and

(ii) Includes any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security".

(b) **Exported service**

A service will be regarded as exported service under the following conditions:

i. The service must be provided by a Nigerian resident to a non-resident; and

ii. The non-resident person to whom the service is provided must be outside Nigeria when the service is consumed.

The following are to be noted:

(i) Where the service is consumed in Nigeria by a non-resident who is in Nigeria, VAT is payable on such service;

(ii) Where a third party is contracted to provide a service on behalf of a non-resident to its permanent establishment or fixed base within Nigeria, such a service attracts VAT;

(iii) Where a fixed base of a non-resident person is used to provide a service in Nigeria, such service will not be regarded as exported service; and

(iv) Where a service is provided to a person in Nigeria by a non-resident company, such a service is not as exported service.

A person is deemed to have consumed a service where the service is "provided to" such a person who is the actual consumer of the service in Nigeria. Put differently, where a service is provided to a consumer in Nigeria "for" or on behalf of a non-resident, such a service is not an exported service.

7.5 Requirements for filing of VAT returns, and remittances of VAT liability – section 16 of VAT Act (as amended)

A taxable person shall render to the FIRS, on or before the 21^{st} day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner, as the Federal Inland Revenue Service (FIRS) may, from time to time determine. A person who imports taxable goods into Nigeria shall render returns on all the taxable goods imported by him into Nigeria.

A taxable person shall, on rendering a return:

(a) If the output tax exceeds the input tax, remit the excess to the FIRS; or

(b) If the input tax exceeds the output tax, be entitled to a refund of the excess tax from the FIRS, on production of such documents, as may be required of him from time to time. An importer of taxable goods shall, before clearing those goods, pay to the FIRS the tax due on those goods.

The Nigerian Customs Services shall, before releasing taxable goods to its importer, demand the Value Added Tax Compliance Certificate issued by the FIRS on those goods.

Limitation of the scope of input tax

The input tax allowed as deduction from output tax is limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product, on which the output tax is charged.

Consequently, input tax:

(a) On any overhead, service, and general administration of any business which otherwise can be expended through the statement of profit or loss; and

(b) On any capital item and asset, which is to be capitalized along with cost of the capital item and asset are not allowed as a deduction from output tax.

Every ministry, statutory body or any other agency of government and oil & gas companies shall, at the time of making payment to a contractor, remit the tax charged on the contract to the FIRS.

The remission shall be accompanied with a schedule, showing the name and address of the contractor, invoice number, gross amount of invoice, amount of tax and the month of return.

7.6 When goods and services shall be deemed to be supplied in Nigeria in accordance with section 2 of VAT Act – as amended by Finance Act, 2020

Goods and services shall be deemed to be supplied in Nigeria if:

(a) In respect of goods:

(i) These goods shall be physically present in Nigeria at time of supply, imported into Nigeria, assembled in Nigeria, or installed in Nigeria; or

(ii) The beneficial owner of the rights in or over the goods is a taxable person in Nigeria and the goods or right is situated, registered or exercisable in Nigeria.

(b) In respect of services:

(i) The service is rendered in Nigeria by a person physically present in Nigeria at the time of providing the service;

(ii) The service is provided to and consumed by a person in Nigeria, regardless of whether the service is rendered within or outside Nigeria or whether or not the legal or contractual obligation to render such service rests on person within or outside Nigeria; and

(iii) The service is connected with existing immovable property (including the services of agents, experts, engineers, architects, valuers, etc) where the property is located in Nigeria)

(c) In respect of an incorporeal:

(i) The exploitation of the right is made by a person in Nigeria;

(ii) The right is registered in Nigeria, assigned to or acquired by, a person in Nigeria regardless of whether the payment for its exploitation is made within or outside Nigeria; or

(iii) The incorporeal is connected with a tangible or immovable asset located in Nigeria.

It is pertinent to state that:

(i) Services rendered to and consumed by a Nigerian resident while physically outside Nigeria, is not liable to VAT in Nigeria;

(ii) Services rendered remotely, online or by other virtual means to Nigerian residents or persons, is liable to VAT in Nigeria;

(iii) Regardless of the medium of delivery of the service, services provided to persons while in Nigeria, shall be liable to VAT in Nigeria; or

(iv) Services performed in Nigeria to persons in Nigeria is liable to VAT irrespective of the residence status of the service provider.

7.7 Time of supply – section 2A of VAT Act, 2004 (as amended)

Supply shall be deemed to take place at the time an invoice or receipt is issued by the supplier, or payment of consideration is due to, or received by the supplier in respect of that supply, whichever occurs first.

A taxable supply shall be deemed to take place where the supplier and recipient are connected persons and invoices are not raised, in the case of:

(a) A supply of goods which are to be removed, the time of removal of goods; or
(b) A supply of goods which are not to be removed, at the time when they are available to the recipient; or
(c) Furnishing of a service, upon the furnishing of service; or
(d) An incorporeal, when such incorporeal becomes available for the use of the recipient.

Notwithstanding the provisions stated above;

(a) Where goods are supplied under any rental agreement or where such services are furnished under any agreement or law which provides for periodic payments, they shall be deemed to be successively supplied for successive parts of the periods of the agreement or as determined by such law, and each of the successive supplies shall be deemed to occur when payment becomes due or is received, whichever is earlier;

(b) Where, and to the extent that, supply of taxable goods and services are:

 (i) Progressively or periodically made under any agreement or law which provides for the consideration for that supply to be paid in instalments or periodically and in relation to the progressive or periodic supply; or

 (ii) Made in relation to any construction, erection, assembly, manufacturing, alteration, improvement or repair activity under any agreement or law which provides for the consideration for that supply to become due and payable in instalments or periodically in relation to the progressive nature of the work, those supplies shall be deemed to be successively made, and each such successive supply shall be deemed to take place whenever any payment becomes due or is received or an invoice relating to only that payment is issued, whichever occurs first; and

 (iii) Where goods are supplied under an instalment credit agreement, that supply shall be deemed to take place at the time the goods are delivered or the time any payment of consideration is received by the supplier in respect of the supply, whichever occurs first.

7.8 Exempted goods and services

The following goods and services are exempted from VAT:

(a) **Goods exempt**

These include:

 (i) All medical and pharmaceutical products;

 (ii) Basic foods items;

 (iii) Books and educational materials;

 (iv) Baby products;

 (v) Plant, machinery and goods imported for use in the export processing zone or free trade zone; provided that 100% production of such company is for export otherwise tax shall accrue proportionately or the profits of the company;

 (vi) Plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations;

(vii) Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes;

(viii) Oil exports erroneously written as “All exports”;

(ix) Fertilizers locally produced, agricultural and veterinary medicine;

(x) Vegetable oil;

(xi) Motorcycle (CKD) / Bicycle (SKDs) and their spare parts;

(xii) Life insurance;

(xiii) Locally manufactured sanitary towels, pads or tampons;

(xiv) Commercial aircrafts, commercial aircraft engines and commercial aircraft spare parts; and

(xv) Commercial and residential rent.

(b) **Services exempt**

These include:

(i) Medical services which means healthcare related services for both humans and animals rendered by a qualified health practitioner, excluding cosmetology, spa, gymnasium and similar services;

(ii) Services rendered by micro-finance banks, people’s banks and mortgage institutions;

(iii) Plays and performances conducted by educational institutions as part of learning;

(iv) All exported services;

(v) Shared passenger- transport service which is made available for public use but this does not include hired or rented vehicles or transportation apparatus for private use;

(vi) Training and education organized by not- for- profit or public educational institutions;

(vii) Tuition relating to nursery, primary, secondary and tertiary education;

(viii) Airline transportation tickets issued and sold by commercial airlines registered in Nigeria; and

(ix) Hire, rental or lease of tractors, ploughs and other agricultural equipment for agricultural purposes.

Notes:

(a) Items exempted from VAT based on Value Added Tax (Modification Order), 2020

The Order which was gazetted on February 4, 2020, modified the First Schedule of the Value Added Tax Act, by expanding the list of items exempted from VAT and providing clarity on the interpretation of goods exempt by the VAT Act.

(b) VAT on rent on commercial or residential buildings

On September 9, 2020, a Tax Appeal Tribunal (TAT) sitting in Benin, ruled in the case of Chief J.W. Ellah, Sons and Company Limited vs FIRS, that rent on commercial buildings should be liable to VAT, given the fact that the First Schedule to the VAT Act did not expressly exempt rent on buildings.

On September 10, 2020, a TAT sitting in Lagos, in the case of Ess-Ay Holdings Limited vs FIRS, ruled that rent on both commercial and residential buildings is not liable to VAT. In reaching its decision, the TAT took into consideration the fact that real properties by their nature cannot be classified as goods, hence any transaction relating to them cannot be described as a supply of goods.

Given the conflicting judgements by the two TATs, this controversial tax issue will be further reviewed when there is an appeal to the Federal High Court.

Fortunately, the Finance Act, 2020, resolved the controversial tax issue by exempting commercial or residential rent from VAT.

7.9 Vatable services rendered by financial institutions

7.9.1 Introduction

The FIRS provided clarification on how services rendered by financial institutions are liable to value added tax (VAT). Given the fact that services rendered by microfinance banks, people's banks and mortgage institutions are specifically VAT exempt, hence services provided by other financial institutions are liable to VAT.

7.9.2 Definition of financial institutions

"Financial institution" means any bank, individual, body, association or group of persons whether corporate or unincorporated, licensed under Banks and other Financial Institutions Act (BOFIA) and any other related Act which carries on the business of a discount house, finance company, money brokerage and those whose principal objects include factoring, project financing, equipment leasing, debt administration, fund management, private ledger services, investment management, local purchases, order financing, export finance, project consulting, financial consultancy, pension fund management and such other business as the Central Bank of Nigeria, Nigeria Deposit Insurance Corporation, Pension Commission and any other regulatory body may, from time to time designate.

7.9.3 Services rendered by financial institutions that are liable to VAT

Commissions, fees or other charges for services rendered by financial institutions to their customers are liable to VAT.

It should be noted that loans and advances granted to customers and interests chargeable on such transactions are not liable to VAT. However, additional services, such as documentation and perfection of loan or overdraft agreements are subject to VAT.

Where insurance companies brokers, agents loss adjusters, surveyors, and other service providers in the insurance industry (including staff of the financial institution) each fee or commission for services rendered to insurance companies, such income is liable to VAT. Premium received on policies is not vatable.

7.9.4 Services rendered by financial institutions that are vatable

In the consideration of services of financial institutions, that are vatable, it is apposite to differentiate between activities that constitute return on investment and consumption of services rendered by financial institutions.

Charges which arise from services rendered by financial institutions attract VAT and these include:

(a) Commissions charged on forex trading or remittance;
(b) Commissions on sale of bank drafts/certified cheques;
(c) Commissions paid to brokers, reinsurers, underwriters and other insurance agents by an insurer;
(d) Commission on asset trading;
(e) Account maintenance fees, ledger fee, etc;
(f) Legal and other fees chargeable on lease arrangements;
(g) Fees charged for advisory services, for example, mergers and acquisitions, financial strategy counselling, etc;
(h) Fees chargeable on public/private issues;
(i) Debt conversion fees;
(j) Fees on asset trading;
(k) Fees earned on fund management;
(l) Fees earned on letters of credit/documentary collection to finance import/export;
(m) Fee chargeable on stock-brokerage and trust services;
(n) Fees charged on electronic banking, POS and ATM charges;
(o) Fees charged on electronic bill payments; and
(p) Fees chargeable on mobile money transactions and other like transactions.

7.9.5 Registration for VAT and rendition of returns

Financial institutions are expected to register for VAT and obtain tax identification number (TIN).

VAT is expected to be remitted to the relevant tax office within twenty-one days of the month following the month of transaction.

7.9.6 -Treatment of input tax

Input tax is treated in line with the provisions of section 17 of VAT Act (as amended), that is VAT paid on any capital item shall be capitalised along with the cost of acquisition and shall not be allowed as input tax. In addition, VAT paid on any overhead, service and general administration of a business outfit which otherwise can be expensed through the statement of profit or loss, shall not be allowed as input tax.

In a case where a financial institution pays VAT on goods supplied to customers, the input tax paid on the goods will be allowed against the output tax on same.

7.9.7 Duty to account for VAT

It is the responsibility of the service provider to charge and remit VAT to the relevant tax office, though the duty may change on the following occasions:

(a) The duty to charge and remit VAT is that of the agent or broker where they act as intermediaries between the service provider, and the customers in a case of agency or broker arrangements;

(b) A financial institution is expected to self-account and remit VAT to the FIRS where the agent or broker fails to charge VAT; and

(c) A financial institution has the responsibility to self-account and remit VAT to the FIRS where the agent or broker cannot charge VAT due to being either individuals or being a person below the VAT threshold.

7.10 Non-vatable income of financial institutions

In order to ascertain income subject to VAT, it is necessary to identify those that relate to return on investment or consideration for risk, etc. which are different from those that constitute supply of services.

Income that relate to return on investment or consideration for risk etc. are not vatable and these include:

(a) Interest on loans and advances, including overdraft facilities;
(b) Interest on savings accounts;

(c) Interest on bank deposits;
(d) Interest on interbank placements;
(e) Premium on insurance policies;
(f) Dividends; and
(g) Profit or gain on disposal of securities.

7.11 Zero-rated supplies and services

Certain goods and services are classified as zero-rate. These goods and services are within the ambit of VAT Act, but the applicable rate is 0%.
These include:

(a) Non-oil exports;
(b) Goods and services purchased by diplomats; and
(c) 'Humanitarian donor funded project includes project undertaken by non- government organisations, religious and social clubs or societies recognised by law whose activity is not for profit and in the public interest.

7.12 Input tax and output VAT

7.12.1 Input tax

Tax paid by a taxable person to the supplier of taxable goods and a service purchased or supplied to him is known as **input tax**.

7.12.2 Output tax

Tax collected by a taxable person on the supply of taxable goods and services to his accredited distributor, agent, client or customer, as the case may be, is known as **output tax**.

7.13 Computation of VAT liability, including the treatment of opening and closing inventories

Effective February 1, 2020, in computing VAT liability, the VAT output is first determined by applying VAT rate of 7.5% on the total sales net of allowable sales adjustments (see VAT form 002). Thereafter, VAT input is determined by applying VAT rate of 7.5% on purchases net of allowable purchases adjustments (see VAT form 002). VAT liability for the period is then the Output VAT less Input VAT.

However, the VAT liability for the current period can further be adjusted if there are VAT reverse charges already deducted by third parties (i.e. oil & gas, governmental agencies such as MDA's, etc.) during the same period. Also, a further adjustment may be made if there was a VAT credit (i.e. excess of Input VAT over Output VAT) in a previous period.

The net VAT after the above adjustment may either result in VAT credit or VAT payable. Nonetheless, if VAT liability computation includes inventories (i.e. stocks), then, there would be need to further adjust the input VAT. To do this, the period purchases is first adjusted by adding cost of opening inventory and thereafter cost of closing inventory is then deducted. The net result is then further adjusted as earlier explained. Input VAT is then computed by applying the VAT rate of 7.5%.

It is important to note that inventories are measured at the lower of cost and net realisable value. The cost of inventories shall comprise all costs of purchase; costs of conversion and other costs incurred in bringing the inventories to their present location and condition (see IAS2).

For a better understanding for the computation of VAT, see VAT form 002 below.

VALUE ADDED TAX RETURN FORM 002

This returns covers M M Y Y | Beginning D D M M Y Y | Ending D D M M Y Y

Company Name | TIN

Company Physical Address | Doc No

Postal Address (Including Postal Code) | Tel. No

E-Mail Address | Corporate Website

Currency: Naira | USD | GBP | Euro

Line No	A- SALES/ INCOME	Schedule	Amount
10	Total Sales/Income Exclusive of VAT		
15	Less: Goods and Services Exempted Included in Line 10	A1	
20	Less: Zero Rated Goods & Services Included in line 10	A2	
22	Less: Sales Adjustments	B	
25	Sales/Income Subject to VAT		
35	**TOTAL OUTPUT TAX**		
	B- PURCHASES EXPENSES		
40	Domestic Purchases used for Sales other than Zero Rated and Exempted Goods and services		
45	Purchases not wholly used in making VATable Supplies	C	
55	VAT Suffered on VATable Domestic Supplies		
60	Domestic Purchases for Zero Rated Sales		
65	Purchases not Wholly used in making Zero-Rated Supplies	C	
75	VAT Suffered on Zero-Rated Supplies		
85	Purchased Imports	D	
90	Total Purchases Subject to VAT Incurred		
95	**TOTAL INPUT TAX**		
100	**VAT Balance for Current Period**		
105	Input Tax on VAT Withheld by MDAs & Oil and Gas	E	
110	Automatic VAT Payment in Current Period	F	
115	Net VAT Balance for Current Period		
120	VAT Credit Brought Forward		
130	VAT Credit for the Current Period		
135	Total VAT Credit		
140	Relieved VAT Credit		
145	VAT Credit Carry Forward		
150	**VAT Payable**		

Note: LATE FILING & PAYMENT SHALL BE PENALISED

DECLARATION: I declare that the particulars in this return and the accompanying Schedules (input, output and other adjustments) are correct and complete in accordance with the provisions of Value Added Tax CAP VI LFN, 2004.

FULL NAME: | DESIGNATION:

SIGNATURE: | DATE:

FOR FIRS USE ONLY

NAME: | IR NO. | SIGNED: | DATE:

Illustration 7.3

XYZ Nigeria Limited was incorporated many years ago and it commenced business in February 2015. The company is engaged in the importation and sale of chemical products.

The Chief Accountant of the company resigned in May 2020, and in a chance meeting with the Managing Director, he intimated you that the management of the company would want to ascertain the VAT remittable to the relevant tax authority based on the following financial transactions which took place in June 2020:

		₦
(i)	The total value of taxable supplies (goods and services), including exempted/zero – rated supplies and VAT	18,600,000
(ii)	Value of exempted/zero – rated supplies included in (a) above	4,800,000
(iii)	VAT on domestic supplies/purchases for which invoicing requirements have been met	110,300
(iv)	VAT on import	285,600
(v)	VAT on purchases not wholly used in making vatable supplies	62,000
(vi)	VAT paid on equipment	97,500
(vii)	VAT on professional fees paid	48,000
(viii)	Bank charges (VAT inclusive)	93,000

All the goods were received and sold during the month.

Required:
Compute the VAT remittable to the relevant tax authority in July, 2020

Solution to Illustration 7.3

XYZ Nigeria Limited
VAT remittable to FIRS in July 2020

	₦	₦
Value of taxable supplies including exempted/zero rated supplies and VAT	18,600,000	
Value of exempted/zero-rated supplies included in the above	(4,800,000)	
Total supplies subject to VAT	13,800,000	
VAT received on supplies ($^{7.5}/_{107.5}$ x N13,800,000)		962,791
VAT on domestic supplies/purchases for which invoicing requirements have been met	110,300	

VAT on import	285,600	
	395,900	
VAT on purchases not wholly used in making vatable supplies	(62,000)	(333,900)
VAT remittable		628,891

Tutorial notes

(i) The Value Added Tax (VAT) Cap VI LFN 2004 (as amended), allows input tax as a deduction from output tax to be limited to the tax on goods purchased or imported directly for resale and goods which form the inventory in trade used for direct production of any product on which output tax is charged.

(ii) VAT paid on any overhead, service and general administration of a business outfit which otherwise can be expensed through the statement of profit or loss shall not be allowed as input tax.

(iii) VAT paid on any capital item and asset shall be capitalised along with the cost of acquisition and shall not be allowed as input tax.

7.14 Self-account provision – Section 14(4) of VAT Act (as amended)

A self-account provision for all supplies for which VAT was not charged was introduced by the amendment of section 14 (3) of the Value Added Tax Act.

The self-account provision imposed a duty to withhold and remit VAT on a taxable person to whom a supply is made in Nigeria where:

(a) The supplier is a person exempt from charging VAT under the Act or otherwise failed to charge VAT; or

(b) The supplier is a foreign company without a fixed base (permanent establishment) in Nigeria, whether or not VAT is included in the invoice.

The Service may appoint any person to withhold or collect the tax, and the person so appointed shall, on or before the 21st day of the following month, remit the tax so withheld or collected to the Service in the currency of the transaction.

Section 15 of VAT Act (as amended) provides that companies engaged in Upstream Petroleum operations will continue to have obligation to withhold VAT, even when they have not commenced commercial operations or have not reacted N25million turnover.

7.15 Treatment of VAT on sale and transfer of assets amongst related parties in business reorganisation and restructuring – section 42 of VAT Act (as amended)

Assets employed in trade or business sold or transferred, where a trade or business carried on by a company is sold or transferred to a Nigerian company in order to achieve a better organisation of that trade or business or to transfer its management to Nigeria, are exempted from VAT.

The conditions precedent for the entities to qualify for this concession are as follows:

(a) The companies must have been related for not less than a consecutive period of 365 days before the reorganisation; and

(b) The Service must be convinced that one company has control over the other or some other companies are members of a recognised group of companies.

The VAT exemption granted shall be withdrawn if the assets transferred in the reorganisation are further disposed within 365 days after the reorganisation.

It should be noted that the VAT not paid on assets further disposed within 365 days after the reorganisation, shall be treated as due for penalty and the interest shall be charged accordingly.

7.16 Treatment of VAT on property, plant and equipment, and operating expenses

The input tax allowed as deduction from output tax is limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product, on which the output tax is charged.

Arising from the above, any VAT paid on any:

a) Overhead, service, and general administration of any business which otherwise can be expended through the statement of profit or loss, will be expensed; and

b) Capital item and asset, is to be capitalized along with cost of the capital item and asset, and this is not allowed as a deduction from output tax.

7.17 Treatment of VAT on imported and exported goods and services

(a) **VAT on imported goods and services**

(i) On imported goods VAT will be charged on non-exempted imported goods into Nigeria and it is based on government assessment via Nigeria Custom Service.

There are basically four points of VAT payments for imported goods. They are through:

- Nigeria Customs Service (NCS)
- Nigeria Port Authority (NPA);

- Shipping companies or airlines; and
- Clearing and forwarding agents.

The VAT assessment payable through Nigeria Customs Service (NCS) is usually calculated via the summation of the following:

- Cost, insurance and freight (CIF) value of goods imported;
- Import duty value;
- Sur- charge; and
- Any other charges which are collectable by the Nigeria Customs Service. The total sum above is multiplied by VAT rate of 5% to arrive at the VAT payable on import.

(ii) On imported services: VAT is payable on services received from outside Nigeria if such services are supplied to a Nigerian customer.

(b) **VAT on export:** - All exported goods and services are exempted from VAT. This is in line with the **concept of destination principle**, which allows for value added taxes to be retained by the country where the taxed product is being sold/consumed.

7.18 Obligation for records and accounts keeping, preparation of VAT accounts, and valid VAT invoice.

7.18.1 Obligation for records and accounts keeping

A person who is registered with the FIRS for the purpose of the tax (i.e. VAT) is obligated to keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act.

A taxable person who fails or refuses to register with the FIRS within the specified timeline shall be liable to pay as penalty an amount of:

(a) N50,000 for the first month in which the failure occurs; and

(b) N25,000 for each subsequent month in which the failure continues.

A taxable person who is registered for tax is also obligated to issue valid VAT invoice as well as maintain VAT accounts at all times. Therefore, if a taxable person fails to issue tax invoice or issue an invalid tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of 50 per cent of the cost of the goods or services for which the invoice was not issued.

Also, a taxable person who fails to keep proper records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of N2,000 for every month in which the failure continues.

7.18.2 Tax invoice

A taxable person who makes a taxable supply shall, in respect of that supply, furnish the purchaser with a tax invoice containing, inter-alia, the following:

(a) Taxpayer's identification number;
(b) Name and address;
(c) VAT registration number;
(d) The date of supply;
(e) Name of the purchaser or client;
(f) Gross amount of transactions; and
(g) Tax charged and rate applied.

A tax invoice shall be issued on supply whether or not payment is made at the time of supply.

7.19 Types of VAT

The three variants of VAT are:

(a) **The gross products variant**
This allows deductions for all purchases of raw materials and components. Tax is levied on all sales with no deduction for business inputs. No deduction is made for capital goods, such as, plant and machinery and depreciation.

(b) **The income tax variant**
This allows deductions for purchases of raw materials and components plus depreciation on capital goods. The economic base of income variant is the net national product, that is, net investment (gross investment minus depreciation) is taxed.

(c) **The consumption variant**
With the consumption variant of VAT, the economic base is equivalent to total private consumption. Here, deductions are made for all business purchases and capital assets. Of all the three variants of VAT, the consumption variant is popular and widely used by many countries including Nigeria.

7.20 Merits and demerits of VAT

(a) **Merits**
These include:
(i) Reliable source of government revenue;

(ii) It eliminates the narrow scope and cascading effect of the repealed sales tax;

(iii) It is a consumption tax, hence very easy to collect;

(iv) Fairness is established because consumers pay the tax in line with their consumption of goods and services received; and

(ii) It can be used as a tool of fiscal policy. Items can be exempted; tax rate can be changed to achieve specific economic objective.

(b) **Demerits**

These include:

(i) High administrative cost on the part of the government;

(ii) High cost of keeping records by the companies/agents;

(iii) Injustice in the distribution of the VAT proceeds.;

(iv) Corruption on the part of tax officials can render VAT ineffective; and

(iii) Problem of inadequate information can make VAT administration ineffective.

7.21 VAT recovery

Any tax, penalty or interest that remains unpaid after the period specified for payment may be recovered by the FIRS through proceeding in the Value Added Tax Tribunal.

A taxable person who is aggrieved by an assessment made on the person may appeal to the Value added Tax Tribunal.

7.22 Offences and penalties associated with VAT

(a) **Furnishing of false documents, etc.**

A person who:

(i) Produces, furnishes, sends or makes use of a document, which is false in any material particular, or

(ii) In furnishing an information to the FIRS, makes a statement which is false in any material particular, is guilty of an offence and liable on conviction, to a fine of twice the amount under-declared.

(b) **Evasion of tax**

A person who:

(i) Participates in, or

(ii) Takes steps with a view to making the evasion of the tax by him or any other person possible, is guilty of an offence, and liable on conviction, to a fine of ₦30,000 or twice the amount of the tax evaded, whichever is greater, or to imprisonment for a term not exceeding three years.

(iii) **Failure to make attribution**

A person, required to make an attribution, who:

- Fails to do so, or

- Having done so, fails to notify the Revenue is liable to pay a penalty of ₦5,000.

(iv) **Failure to notify change of address or permanent cessation of trade or business (section 28 of VAT Act)**

A person, who fails to notify the FIRS of any change of address, is guilty of an offence and liable to pay a penalty of N50,000 for the first month in which the failure occurs and N25,000 for each subsequent month in which the failure continues.

(v) **Failure to issue tax invoice**

A person who fails to issue tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of 50 per cent of the cost of the goods or services for which the invoice was not issued.

(c) **Resisting an authorised officer**

A person who:

(i) Resists, hinders or obstructs or attempts to resist or hinder an authorized officer acting under the VAT Act; or

(ii) Fails to comply fully with any requirement made under the VAT Act; or

(iii) Makes any statement in response to a requirement made under the VAT Act, which is false or incomplete; and

(iv) Procures or attempts to procure by any means, any other person to act as aforesaid, is guilty of an offence and liable on conviction, to a fine of ₦10,000 or imprisonment for a term of 6 months or both such fine and imprisonment.

(d) **Issuing of tax invoice by an unauthorised person**

A person who, other than:

(i) A person registered under the VAT Act; or

(ii) A person authorised to do so under the VAT Act, issues an invoice, purporting same to be attributable to tax, is guilty of an offence and is liable on conviction to a fine of ₦10,000 or imprisonment for a term of 6 months.

(e) **Failure to register – section 8(2) of VAT Act (as amended)**

A taxable person who fails to register for VAT, is guilty of an offence and liable on conviction to a penalty of N50,000 for the first month in which the failure occurs and N25,000 for each subsequent month in which the failure continues.

(f) **Failure to keep proper records and accounts**

A taxable person who fails to keep proper records and accounts of his business transactions, to allow for the correct ascertainment of tax and filing of returns, is liable to pay penalty of ₦2,000 for every month in which the failure continues.

(g) **Failure to remit tax – section 19 of VAT Act (as amended)**
A taxable person, who fails to remit VAT within the time specified in section 15 of the Act, is liable to pay a penalty of 10% of the tax not remitted plus interest at CBN minimum re-discount rate (MRR)

(h) **Failure to submit returns – section 35 of VAT Act (as amended)**
A taxable person, who fails to submit returns to the FIRS, is liable to a penalty of N50,000 for the first month in which the failure occurs and N25,000 for every subsequent month in which the failure continues.

(i) **Aiding and abetting commission of offence, etc.**
An officer of the FIRS or any other person, who aids and abets the commission of any of the offences under the VAT Act, is guilty of an offence and is liable on conviction to a fine of N50,000 or to imprisonment for a term of five years.

(j) Where a person's conduct during any specified period has involved the commission or omission by him, of any one or more of the foregoing offences, then whether or not the particulars of the offences are known, he shall be guilty of an offence and liable to pay a fine of ₦10,000 or if greater, four times the amount of any tax that was, or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment.

(k) On cessation of business, where the taxpayer fails to notify the Service, penalties for failure to file returns will continue to apply.

(l) Offence by body corporate
Where a body corporate or firm or other association of individuals commits an offence under the VAT Act:
(i) Every director, manager, secretary or other similar officer of the body corporate; or
(ii) Every partner or officer of the firm; or

(iii) Every person concerned in the management of the affairs of the association; or

(iv) Every person who was purporting to act in any capacity as aforesaid, is severally guilty of that offence and liable to be proceeded against and punished for the offence, in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence, took place without his knowledge, consent or connivance.

(m) Where a taxable person fails to render returns or renders incomplete or inaccurate returns, the FIRS shall assess, to the best of its judgement, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person.

(n) (i) If a taxable person or his agent does not remit the tax, on / before the 30th day of the month following that, in which the purchase or supply was made, a sum equal to five per centum per annum, (plus interest at a commercial rate) of the amount of tax remittable, shall be added to the tax and the provision of the VAT

Act relating to collection and recovery of unremitted tax, penalty and interest, shall apply; and

(ii) The FIRS shall notify the taxable person of the tax due, together with the penalty and interest, and if payment is not made within 30 days from the date of such notification, the FIRS may proceed to enforce payment as provided for, in the next paragraph.

(o) (i) Any tax, penalty or interest which remains unpaid after the period specified for payment, may be recovered by the FIRS through proceedings in the Value Added Tax Tribunal;

(ii) A taxable person who is aggrieved by an assessment made on him may appeal to the Value Added Tax Tribunal; and

(iii) A further appeal, beyond the Value Added Tax Tribunal, shall be made to the Federal Court of Appeal.

7.23 VAT enforcement and practice

(a) **VAT visits**

VAT inspectors from the local VAT office, from time to time, visit the premises of every vatable person for the following purposes:

(i) To ensure compliance with the VAT law;

(ii) To ensure that amounts deducted as VAT are promptly accounted for;

(ii) To examine method of keeping transactions and offer suggestions where necessary; and

(iv) To educate VAT agents on new developments in the system.

(b) **VAT drive**

This is to take place periodically at the instance of the zonal coordinators. Such tax drives are to stimulate the collection of VAT proceeds from defaulters.

7.24 VAT Tribunal

(a) The minister shall establish, by notice in the federal gazette, zonal value added tax (VAT) tribunals, spread geographically throughout the country;

(b) Each of the zonal VAT tribunals shall, consist of not more than eight persons, none of whom shall be a serving public officer and one of whom shall be designated as Chairman by the Minister;

(c) The Chairman of each of the zonal VAT tribunals:

(i) Shall be a legal practitioner, of not more than 15 years, post call experience; and

(ii) Shall preside over the proceedings of the tribunal.

(d) Members of each of the zonal VAT tribunals:

(i) Shall be appointed by notice in the federal gazette by the minister from among persons appearing to him to have wide and adequate practical experience, professional knowledge, skills and integrity in the profession of law, accountancy or taxation in Nigeria as well as, persons that have shown capacity in the management of trade/business and retired senior public servants in tax administration;

(ii) Shall hold office for a period of three years from the date of appointment and may resign at any time, by a notice in writing, addressed to the minister; and

(iii) Shall cease to be a member, upon the minister determining that his office be vacated, upon notice of such determination.

(e) Where the minister is satisfied that a member:

(i) Has been absent for two consecutive meetings without the written permission of the Chairman of the Board; or

(ii) Is incapacitated by illness; or

(iii) Has failed to make any declaration and give notice of his direct or indirect financial interest in a case, when any appeal by such case is pending before the tribunal; or

(iv) Has been convicted of any felony, or of any offence, under any enactment imposing tax on income or profit.

The minister shall make a determination that his office as a member, is vacant.

(f) Where for some reason there is insufficient number of members to hear an appeal the minister may make an ad-hoc appointment in writing for the purpose of hearing such appeal.

(g) The minister shall designate a serving public officer to be secretary to a zonal VAT tribunal and the official address of the secretary shall be published in the federal gazette.

(h) The members of the VAT tribunal shall remain in office until new ones are sworn in.

(i) Any taxable person who, being a person aggrieved by an assessment or demand notice made upon him, may appeal against the assessment and notice to the zonal VAT tribunal, where the taxable person is resident, giving notice in writing, through the secretary to the zonal VAT tribunal, within fifteen days after the date of service upon such taxable person, of the assessment or demand notices and the appeal shall be heard by the tribunal.

(j) The Service, if aggrieved by the non-compliance of a taxable person to any provision of this Act, may appeal to the zonal tribunal where the taxable person is resident, giving notice in writing through the secretary to the zonal VAT tribunal.

(k) Where a notice of appeal is not given within the period specified, the assessment or demand notices shall become final and conclusive and the Service may recover tax, interest and penalty, which remain unpaid from any taxable person, through the proceedings at the zonal tribunal.

(l) A judgement of the zonal VAT tribunal shall be enforced as if it were a judgement of the Federal High Court.

(m) Notice of appeal against an assessment, shall contain:

(i) The name and address of the taxable person;

(ii) The total amount of goods and services chargeable to tax, in respect of each month;

(iii) An input tax;

(iv) Net amount of tax payable;

(v) The copy of assessment notice:

- The precise grounds of appeal against the assessment; and
- An address for service of any notice, process or other documents to be given to the appellant and the secretary to the zonal tribunal.

(n) The Revenue or a taxable person, may, discontinue an appeal at any time before the hearing of the appeal, by giving notice in writing, through the secretary to the zonal tribunal.

(o) The zonal tribunal shall meet, as often as may be necessary, to hear appeal in any town and place in which the office of the tribunal is situated.

(p) At least five members may hear and determine an appeal;

(q) The secretary to the zonal tribunal shall give seven days' notice to the parties to an appeal, of the date and place fixed for the hearing of the appeal.

(r) All notice and documents, other than the decisions of the tribunal may be signed under the hand of the secretary. All appeals before the tribunal shall be held in camera. Every taxable person, so appealing, shall be entitled to be represented at the hearing of the appeal, by a legal practitioner, a qualified chartered accountant, or tax consultant.

(s) The onus of proving the basis of grievance against an assessment or non-compliance with the provisions of the law shall be onthe appellant.

(t) The zonal tribunal may, upon hearing the appeal, confirm, reduce, increase or amend the assessment or make such orders thereon as it deems fit.

(u) The minister may make rules regulating the practice and procedure of the VAT tribunal and until such rules are made, the practice and procedure of the Federal

High Court, shall apply with any such modifications as circumstances may require.

(v) Any case on VAT issues which the VAT tribunal has jurisdiction and pending before the Federal High Court, before the setting up of VAT tribunal, shall be continued and completed by the Federal High Court.

(w) After the decision of the VAT tribunal, notice of tax payable or determined by the tribunal, shall be served by FIRS to the company and notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the VAT tribunal, within one month of the notification of the tax payable to the company.

(x) Any party aggrieved by the decision of the VAT tribunal, may appeal to the Court of Appeal against the decision of the tribunal on a point of law, after giving notice in writing to the Secretary to the tribunal within 30 days after the decision of the tribunal. The appellant shall set out the grounds of his appeal.

The secretary of the tribunal on receipt of the notice of appeal to the court of appeal, shall compile the record of proceedings and judgement before the VAT tribunal and forward same to the chief registrar of the Court of Appeal, together with all exhibits tendered at the hearing, before the VAT tribunal, within 30 days, after the decision to appeal was made.

(y) The president of the Court of Appeal may make rules for hearing appeals on VAT appeals. However, pending such rules, the rules of the Court of Appeal shall apply.

Note: Section 59 of the Federal Inland Revenue (Establishment) Act of 2007, provides for the establishment of Tax Appeal Tribunal, with jurisdiction covering various taxes including value added tax.

Miscellaneous

An authorised officer, may at any time without warrant, enter any premises upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether the VAT Act is being complied with (whether on the part of the occupier of the premises or any other person) and on entry, he may carry out such inspections and make such requirements as may be specified by FIRS. He may also take with him such persons as he considers necessary, for carrying out his functions under the VAT Act.

Appointment of an agent

FIRS may, by notice in writing, appoint any person to be the agent of any manufacturer or importer and the person so appointed, shall be the agent of the manufacturer or importer. Such agent may be required to pay any tax, which is or may become payable by the manufacturer or importer from any money which may be held by him for, or become due by him, to the manufacturer or importer, as the case may be, and in default of such payment, the tax shall be recoverable from him. FIRS may require a person to give information as to any money, fund or other assets, which may be held by him for, or of any money due from him to a manufacturer or an importer.

7.25 VAT audit and investigation

This is to be instituted on regular basis by the headquarters of FIRS. It involves checking both VAT officers and VAT payers' records to ensure strict compliance with the provisions of the Act and accountability of the proceeds collected.

7.26 Chapter review

This chapter introduces the nature, objectives and administration of Value Added Tax (VAT), specifying the taxable persons and taxable supplies of goods and services. A brief write-up of on the obligation for registration, records and accounts keeping, valid VAT invoice and preparation of VAT accounts, including the requirements for filing of VAT returns and remittance of VAT liability, treatment of VAT on imported and exported goods and services, types of VAT and offences and penalties associated with VAT.

The chapter also addresses issues bordering on returns, remittances, recovery and refund of tax as well as matters relating to the administration of the tax as well as VAT enforcement and practice in all its ramifications.

Details of merits and demerits of VAT are highlighted, including glossary of definitions of certain titles/terms encountered under the VAT Act.

7.27 Worked examples

7.27.1 Multiple-choice questions

1. Vatable persons may include the following EXCEPT
   A. A limited liability company
   B. A firm
   C. A sole trader
   D. An individual
   E. A school
2. Goods exempted from VAT include the following EXCEPT
   A. Medical and pharmaceutical products
   B. Basic food items
   C. Baby products
   D. Private vehicles
   E. Books and educational materials
3. A taxable person shall remit the VAT payable to the FIRS, not later than ………………… following the month of transaction.
   A 21 days
   B. 27 days
   C. 30days

D. 45 days
E. 60 days

4. Services exempted from VAT include the following EXCEPT
   A. Services by commercial banks
   B. Plays and performances conducted by educational institutions as party of learning
   C. Medical services
   D. All exported services
   E. Services rendered by micro-finance banks

5. Effective February 1, 2020, the standard VAT rate applicable on all vatable goods and services was reviewed upward to
   A. 5%
   B. 7.5%
   C. 10%
   D. 15%
   E. 20%

7.27.2 Short answer questions

1. A tax invoice shall be issued on supply whether or not payment is made at the time of …………………………
2. A taxable person who fails to register for VAT, is guilty of an offence and liable on conviction to a penalty …………………………… for the first month in which the failure occurs and …………………… for each subsequent month in which the failure continues.
3. Based on the provisions of the Finance Act 2019, only taxable persons with taxable supplies of ………… and above are required to charge, collect, remit the tax and file monthly returns to the FIRS.
4. An appeal from the Value Added Tax Tribunal shall be made to the ………………………………….
5. A taxpayer who permanently ceases business is expected to notify the FIRS of such cessation within……….. for the purposes of deregistration.

7.27.3 Examination type questions

(1) Jonathan Ekpudu Trading Company is registered for value added tax (VAT) scheme. The accounting records of the company revealed the following information for the year ended December 31,2021:

	₦
Revenue (VAT inclusive)	30,400,500
Purchase of raw materials (VAT inclusive)	20,140,650
Transport & travelling (VAT exclusive)	1,215,800
Vehicle running expenses (VAT exclusive)	850,420
Office equipment (VAT inclusive)	2,100,500
Furniture & fittings (VAT exclusive)	1,500,000
Motor vehicle (VAT inclusive)	2,000,600

Audit & accountancy fees (VAT inclusive)	150,000
Bank charges (VAT inclusive)	185,050
Miscellaneous expenses (VAT exclusive)	550,500

Required:
Compute the VAT payable by Jonathan Ekpudu Trading Company for the year ended December 31, 2021; and give reasons. Ignore penalties and interest.

(2) Olabisi Limited is a manufacturing outfit based in Mowe, Ogun State.
The company sold its vatable products to a wholesaler, Ake Enterprises, for ₦2,000,000 in 2021. The wholesaler in turn sold the products to a retailer, Mrs. Ojelade, for ₦3,500,000, who finally sold to consumers for ₦4,200,000.

Assume there was no closing inventory at each stage of the transactions.

Required:
Compute total VAT payable to Federal Inland Revenue Service.

(3) With regards to VAT, write short notes on the following:
(a) The gross product type variant

(b) The income type variant

(c) The consumption type variant

(4) Shode-Abiala Ventures Limited is a small scale producer of chemicals. The company bought materials worth ₦4,000,000 during the year 2021 from its major supplier, Seun Limited.

Additional sum of ₦1,250,000 was incurred in the process of converting the materials to finished goods. Total revenue (VAT inclusive) of ₦7,650,000 was recorded during the year.

Required:
Determine the total VAT payable for the year ended December 31, 2021.

(5) Mr. James Clark, the accountant of XYZ Limited, resigned his appointment on December 31, 2019. The company was unable to file its VAT returns as and when due. The tax inspectors visited the company on January 2, 2021, to remind the directors of the need to regularise the filing of monthly VAT returns.

The company filed monthly VAT returns relating to transactions up to December 31, 2019, but failed to file those returns on all transactions for the year ended December 31, 2020.

Required:

Compute the penalties payable by the company for failing to file returns on transactions relating to the year ended December 31, 2020.

7.27.4 Suggested solutions to multiple-choice questions

1. E
2. D
3. A
4. A
5. B

7.27.5 Suggested solutions to short answer questions

1. Supply
2. ₦50,000 and ₦25,000
3. ₦25,000
4. Federal Court of Appeal
5. 90 days

7.27.6 Suggested solutions to examination type questions

(1) Jonathan Ekpudu Trading Company
Computation of VAT payable
For the year ended December 31, 2021

	₦
Output tax (Revenue) W1	2,120,965
Less: Input tax (Purchases of raw materials) W2	1,405,162
VAT payable	715,803

Comments

(a) The VAT Act 2004 allows Input tax as a deduction from Output tax to be limited to the tax on goods purchased or imported directly for resale and goods which form the inventory in trade used for direct production of any product on which the Output tax is charged.

(b) VAT paid on any overhead, service and general administration of business outfit which otherwise can be expensed through the statement of profit or loss shall not be allowed as Input tax.

(c) VAT paid on any capital item and asset shall be capitalised along with the cost of acquisition and shall not be allowed as input tax.

Working Notes:

(W1) Output tax

= $^{7.5}/_{107.5}$ x ₦30,400,500

= ₦2,120,965

(W2) Input tax

= $^{7.5}/_{107.5}$ x ₦20,140,650

= ₦1,405,162

(2) Computation of total VAT payable to FIRS
For the ended December 31, 2021

Stages	Computations		VAT payable
		₦	₦
a	Manufacturer - Sales value	2,000,000	
	Gross VAT at 7.5%	150,000	
	Net VAT	150,000	150,000
b	Wholesaler - Sales value	3,500,000	
	Gross VAT at 7.5%	262,500	
	Net VAT (N262,500 – N150,000)		112,500
c	Retailer - Sales value	4,200,000	
	Gross VAT at 7.5%	315,000	
	Net VAT (N315,000 – 262,500)		52,500
	Total VAT payable to FIRS		315,000

(3) (a) The gross products variant

This allows deductions for all purchases of raw materials and components. Tax is levied on all sales with no deduction for business inputs. No deduction is made for capital goods, such as, plant and machinery and depreciation.

(b) The income tax variant

This allows deductions for purchases of raw materials and components plus depreciation on capital goods. The economic base of income variant, is the net national product, that is, net investment (gross investment minus depreciation), is taxed.

(c) The consumption variant

With the consumption variant of VAT, the economic base is equivalent to total private consumption. Deductions are made for all business purchases and capital assets. Of all the three variants of VAT, the consumption variant is popular and widely used by many countries including Nigeria.

(4) Shode-Abiala Ventures
Computation of VAT payable
For the year ended December 31 2021

	₦
Output VAT ($^{7.5}/_{107.5}$ x ₦ 7,650,000)	533,720.93
Less: Input VAT ($^{7.5}/_{107.5}$ x ₦ 4,000,000)	279,069,77
Total VAT payable	254,651.16

(5) XYZ Limited
Computation of monthly VAT penalties

Month	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Monthly Total
	N	N	N	N	N	N	N	N	N	N	N	N	N
Jan	-												-
Feb	50,000	-											50,000
Mar	25,000	50,000	-										75,000
Apr	25,000	25,000	50,000	-									100,000
May	25,000	25,000	25,000	50,000	-								125,000
June	25,000	25,000	25,000	25,000	50,000	-							150,000
July	25,000	25,000	25,000	25,000	25,000	50,000	-						175,000
Aug	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-					200,000
Sep	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-				225,000
Oct	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-			250,000
Nov	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,0000	-		275,000
Dec	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	25,000	50,000	-	300,000
Total	300,000	275,000	250,000	225,000	200,000	175,000	150,000	125,000	100,000	75,000	50,000	-	1,925,000

CHAPTER EIGHT
STAMP DUTIES

Chapter contents

a) Learning objectives
b) Nature, objectives and administration of stamp duties
c) Forms of stamp duties and method of computation of each
d) Instruments and receipts liable to stamp duties
e) Instruments exempted from stamp duties
f) Relevant tax authorities for collection
g) Functions of the Commissioner for Stamp Duties
h) Modes of denoting stamp duties
i) When electronic documents are regarded as received in Nigeria
j) Duties on loans, credit facilities, and other agreements
k) Electronic money transfer levy
l) Stamp duty on contracts
m) Process of adjudication, the limits, and appeal procedures
n) Time limit for stamping and implications of non-stamping
o) Recoverability of outstanding duties
p) Lost instruments
q) Instruments not properly stamped
r) Stamping of instruments after execution
s) Duty upon receipt
t) Collection of stamp duty on rent payable to a landlord
u) Consequences for non- compliance with the provisions of the Stamp Duties Act Cap. S8 LFN 2004 (as amended) based on FIRS circular issued in 2020
v) Chapter review
w) Worked examples

8.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Understand the nature of stamp duties;

(b) Appreciate the administration of Stamp Duties Act; and

(c) Gain knowledge and understanding of other issues relating to stamp duties.

8.1 Nature, objectives and administration of stamp duties

8.1.1 Nature and objectives

Stamp duties are duties basically on instruments (defined to include every written document). Stamp duties are governed by Stamp Duties Act Cap S8, LFN 2004, which provides for the levying of stamp duties on certain matters specified in the Act, effective April 1, 1993.

The primary objective of stamping of documents is specifically mentioned in Section 22(4) of the Stamp Duties Act, 2004. It states that, 'An instrument executed in Nigeria or relating where it is executed, to any property situate or to any matter or thing done or to be done in Nigeria, shall not, except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force in Nigeria at the time when it was first executed.'

8.1.2 Administration of stamp duties – section 4 of SDA Act (as amended)

Both the Federal Inland Revenue Service (FIRS) and the relevant tax authority in a State administer stamp duties. The FIRS is the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to the Act, if such Instruments relate to matters executed between a company and an individual, group or body of individuals.

The relevant tax authority in a State shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Inland Revenue Service.

Stamp duty is managed by the Commissioners of Stamp Duties. An instrument must be sent to the Commissioner of Stamp Duties for adjudication since the process for determining formally, the correct duty is by adjudication. An appeal lies from the decision of the Commissioner of Stamp Duties to the High Court, with rights of appeals as for ordinary tax cases.

8.2 Forms of stamp duties and methods of computation

There are two forms of stamp duties. These are:

(a) **Fixed duties**

These are duties that do not vary with the consideration for the document being stamped.

Examples of instruments being assessed by fixed duties are:

(i) Power of Attorney (POA);

(ii) Certificate of occupancy (C of O);

(iii) Appointment of receiver;

(iv) Memorandum of understanding (MOU);

(v) Joint venture agreements (JVA);

(vi) Ordinary agreements receipts;

(vii) Guarantor forms; and

(viii) Proxy forms.

(b) **Ad-valorem**

These are duties that vary with the amount of consideration and are in accordance with a scale prescribed by the Act. The Commissioner of Stamp Duties or adjudicator will need to know the amount involved in the transaction. This will enable him determine the appropriate duty to be paid.

Examples of instruments that are assessed based on ad-valorem basis are:

(i) Deed of assignment;

(ii) Sales agreement;

(iii) Tenancy or lease agreement;

(iv) Insurance policies;

(v) Contract agreements;

(vi) Vending agreement;

(vii) Charter – party;

(viii) Contract notes;

(ix) Legal mortgage and debenture loans;

(x) Share capital of companies; and

(x) Promissory notes.

Mode of calculating ad-valorem duty – section 10 of SDA Act (as amended)

Where an instrument is chargeable with ad-valorem duty in respect of:

(i) Any money in any foreign currency; or

(ii) Any stock or marketable security, the duty shall be calculated on the value on the date of the instrument, of the money in United States dollars according to the current rate of exchange, or of the stock or security according to the average price thereof.

Where an instrument contains a statement of current rate of exchange, or average rate of exchange, or average price, as the case may require, and is stamped in accordance with that statement, it shall, so far as regards the subject matter of the statement, be deemed duly stamped, unless it is shown that the statement is untrue, and that the instrument is in fact, insufficiently stamped.

8.3 Instruments and receipts liable to stamp duties

The instruments that are required by law to be stamped are as follows:

(a) All written or printed dutiable instruments or receipts which include:
- (i) Leases;
- (ii) Contract notes;
- (iii) Bills of lading;
- (iv) Agreements;
- (v) Duplicates and counterparts;
- (vi) Marketable securities;
- (vii) Mortgages;
- (viii) Notarial acts;
- (ix) Policies of insurances;
- (x) Receipts;
- (xi) Settlements;
- (xii) Share warrants;
- (xiii) Warrants for goods;
- (xiv) Appraisement;
- (xv) Instrument of apprenticeship;
- (xvi) Bank notes, bills of exchange and promissory notes;
- (xvii) Conveyances of sale;
- (xviii) Other conveyances;
- (xix) Exchange partition or division;
- (xx) Letters of powers of attorney and voting papers; and
- (xxi) Capital of companies.

(b) All electronic dutiable instruments or receipts (that is, in the form of electronic media content, electronic documents or files, e-mails, short message service (SMS), instant messages (IM), any internet-based messaging service, website or cloud-based platform, etc;

(c) All printed receipts (including POS receipts, fiscalised device receipts, automated teller machine (ATM) print-outs and other forms of written or printed acknowledgement; and

(d) All electronically generated receipts and any form of electronic acknowledgement of money for dutiable transactions.

The scope of instruments liable to stamp duties was expanded by amending section 2 of the Stamp Duties Act, to include "electronic documents". The amendment further accommodates "electronic stamping" and electronic denoting" of documents.

8.4 Instruments exempted

Instruments that are specifically exempted are as follows:

(a) Those relating to agreements between the Federal Government and other foreign governments;

(b) Instruments relating to reconstruction and amalgamation; subject to specified condition under section 104(1) of the Act;

(c) Transactions and sales of properties of a company under liquidation arising from a compulsory winding up by a court or creditors' voluntary winding up;

(d) Based on Central Bank circular number CBN/GEN/DMB/02/006 dated January 15, 2016, titled *"Currency and Remittance of Statutory Charges or Receipts to Nigerian Postal Service under the Stamp Duties Act",* the following transactions are exempted from stamp duties:

(i) Transactions relating to savings accounts holders, salary accounts or students savings accounts;

(ii) Payments and deposits for self to self-transactions whether inter or intra-bank; and

(iii) Payments for goods supplied or services rendered if the amount is under N1,000, payment of salaries or wages, pensions, gratuities, etc;

(e) Section 56 of the Finance Act, 2019, exempts the following "exempt receipts" and "general exemptions" from stamp duties;

(i) Exempt receipts

Receipts given by any person in a regulated securities lending transaction carried out under regulation issued by the Securities and Exchange Commission

(ii) General exemptions which include the following:

- Shares, stocks or securities transferred by a lender to its approved agent or a borrower in furtherance of a regulated securities lending transaction;
- Shares, stocks or securities returned to a lender or its approved agent by a borrower in pursuant to a regulated securities lending transaction; and
- All documents relating to a regulated securities lending transactions carried out under regulations issued by the Securities and Exchange Commission; and

(f) Share transfer based on FIRS information circular on "clarifications on the provisions of the Stamp Duties Act" No: 2020/05 dated April 29, 2020.

8.5 Relevant tax authorities for collection – section 4 of SDA Act (as amended)

The relevant tax authorities for collection of stamp duties are FIRS and the relevant state tax authority (RSTA). While FIRS collect stamp duties on instruments executed between two companies or a company and an individual, RSTA collects stamp duties on instruments executed by two or more individuals.

8.6 Functions of Commissioner of Stamp Duties

Section 6 of the Stamp Duties Act, 2004 (as amended), provides for the appointment of Commissioners of Stamp Duties by the relevant Civil Service Commission. The commissioners have the care and management of the duties to be taken under this Act.

The functions of a Commissioner of Stamp Duties are:

(a) He is the administrative head;

(b) Assessments: He has the duties of assessing documents on appropriate duties and imposing penalties where applicable;

(c) Stamping or embossments: This can be by way of embossment with dies, affixing adhesive stamps, affixing postage stamps in lieu of adhesive stamps and printing on the instrument;

(d) The custody of dies and stamps: These are security materials being kept by the commissioner to avoid misuse or loss; and

(e) Adjudication: A commissioner may be required to express opinion on the amount of duty to be paid on any executed instrument.

8.7 Modes of denoting stamp duties – section 5 of SDA Act (as amended)

The stamping of duties can be effected through the under listed methods:

(a) Affixing printed adhesive stamps issued by the Service on instruments;

(b) Electronic tagging;

(c) Employing a die impressed on an instrument as an adhesive stamp;

(d) Issuance of stamp duties certificates;

(e) Direct electronic printing or impression on the instrument; and

(f) Any other form of acknowledgement of payment for stamp duties adopted by the Service.

Illustration 8.1

In response to the amount sent by Mr. James, an employee of Circular Limited, the Chief Accountant of Apex Limited sent a message to him on his WhatsApp, which reads "this is to acknowledge the receipt of the sum of N200,000".

Required:
Is stamp duty payable based on the message?

Solution 8.1

The WhatsApp message sent by the Chief Accountant of Apex Limited to Mr. James evidencing the receipt of N200,000, constitutes a receipt, hence stamp duty is payable.

Mr. James is expected to inform the relevant Stamp Duties Commissioner or FIRS using the e-stamp duty platform. Thereafter, FIRS raises an assessment and stamp duty certificate or an acknowledgement is issued after the payment of the appropriate stamp duties.

8.8 When electronic documents are regarded as received in Nigeria

Documents, receipts or instruments executed outside Nigeria but received in Nigeria must be presented for stamping in accordance with sections 7(3)(a), 23(3) and 47 of the SDA, within:

(a) 10days in the case of charter parties;
(b) 30days in the case of instruments subject of ad valorem stamp duties; or
(c) 21days in any other instance.

For an electronic document, receipt or instrument executed outside Nigeria to be regarded as received in Nigeria, it must be:

(a) Retrieved or accessed in or from Nigeria;
(b) Stored or an electronic copy of it is also stored on a device (including a computer, magnetic storage, etc) and brought into Nigeria; or
(c) Stored or an electronic copy of it is also stored on a device or computer in Nigeria.

Illustration 8.2

XYZ Limited and ABC Limited carried out a transaction in Togo, using electronic records. These records were stored on a server in Togo or a cloud facility.

ABC Limited using an electronic device in Nigeria was able to view a copy of the electronic records stored in Togo.

Required:

Were the electronic records received in Nigeria?

Suggested solution 8.2

ABC Limited having assessed the electronic instrument which comprises the electronic records in Nigeria, same is regarded as received in Nigeria.

8.9 Stamp duties on loans and credit facilities, and other documents

Banks are expected to pay stamp duties on the following dutiable transactions in strict adherence with the relevant provisions of the Stamp Duties Act:

(a) In respect of loan application, guarantor's form at a flat rate of N500;
(b) Loan agreement, which is ad valorem at a fee of 0.125% of the value of the loan, that is N1.25 for every N1,000;
(c) Loan agreement which accompanies document to a mortgage or debenture is to be charged at a flat rate of N500;
(d) Legal mortgage, which is ad valorem at a fee of 0.375 of the mortgage value, that is N3.75 for every N1,000;
(e) Legal mortgage (up-stamping), which is ad valorem at a fee of 0.375% of the up-stamped value, that is N3.75 for every N1,000;
(f) Tenancy or lease, which is ad valorem at a fee of 6% of the tenancy or lease value, that is N6 for every N100;
(g) Bank cheque per leaflet (premium) at a flat rate of N1.00 per leaflet; and
(h) Other dutiable transactions as listed on stamp duty portal at https://www/stampduty.gov.ng/stamp_duty_charges, some of which are as follows:

S/N	Name	Type	Rate	Extra Copy	Remarks
i	Appointment of receiver	Flat rate	N500.00	N50.00	
ii	Appointment of trustee or of attorney	Flat rate	N500.00	N50.00	
iii	Appraisement or valuation of property	Ad valorem	1.5%	N50.00	
iv	Bank deposit/transfer	Flat rate	N50.00	N100.00	
v	Bill of sale	Ad valorem	1.5%	N50.00	
vi	Bonds (mortgage)	Ad valorem	0.375%	N50.00	
vii	Certificate of occupancy, partnership	Flat rate	N1,000.00	N50.00	
viii	Contract agreement	Ad valorem	1.0%	N50.00	1% of contract value excluding VAT
ix	Contract notes	Ad valorem	0.08%	N50.00	
x	Vending agreement	Ad valorem	1.0%	N50.00	
xi	Will	Flat rate	N500.00	N50.00	
xii	Sales agreement	Ad valorem	1.5%	N50.00	
xiii	Share increase	Ad valorem	0.75%	N50.00	
xiv	Share transfer	Non-	Free	N0.000	

S/N	Name	Type	Rate	Extra Copy	Remarks
		chargeable			
xv	Joint venture agreements	Flat rate	N500.00	N50.00	
xvi	Insurance policies	Ad valorem	0.075%	N50.00	
xvii	Deed of assignment	Ad valorem	1.5%	N50.00	
xviii	Power of attorney – Revocable/not land related	Flat rate	N500.00	N50.00	
xix	Power of attorney (irrevocable/land related)	Ad valorem	1.5%	N50.00	
xx	Promissory notes of ordinary documents/IOU	Flat rate	0.1%	N50.00	
xxi	Proxy form	Flat rate	N500.00	N50.00	

Note:

It is pertinent to state that FIRS clarified stamp duty on rent or lease as follows:

(i) 0.78% for a lease term less than 7 years;
(ii) 3% for a lease term between 7 to 21years; and
(iii) 6% for a lease term above 21years.

8.10 Electronic money transfer levy

Section 89A of the Stamp Duties Act (as amended) states that:

(a) "There is imposed a levy, to be referred to as the Electronic Money Transfer Levy, on electronic receipts or electronic transfer for money deposited in any deposit money bank or financial institution, on any type of account to be accounted for and expressed to be received by the person to whom the transfer or deposit is made;

(b) The levy shall be imposed as a singular and one-off charge of N50 on electronic receipts or electronic transfers of money in the sum of N10,000 or more;

(c) The Minister of Finance shall, subject to the approval of the National Assembly, make regulations for the imposition, administration, collection and remittance of the levy, including regulations relating to the auditing, accounting, allocation and distribution of arrears of the relevant stamp duties and Electronic Money Transfer Levies collected between 2015 and 2019 fiscal years within 30 days of the date when this Act becomes effective.

Provided that Electronic Money Transfer Levies subsequently collected shall be distributed within 30 days following the month of collection.

(d) Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by virtue of the operation of this section, shall, on the basis of derivation, be distributed as follows:

(i) 15% to the Federal Government and the Federal Capital Territory, Abuja; and

(ii) 85% to the State Governments.

8.11 Duty on contracts

It is the responsibility of any corporate body or Ministry, department or agency (MDA) to charge stamp duty at a rate of 1% of the contract value excluding value added tax (VAT) on all contracts issued to third party vendors. Thereafter, the stamp duties collected should be remitted to the Service.

8.12 Process of adjudication, the limits and appeals procedure

(a) **Adjudication**

This is the process of determining the correct amount of duty by the Commissioner of Stamp Duties. A document will be duly stamped and adjudicated only when the applicable duty has been paid.

Benefits of adjudication

These include:

(i) It is the first step in disputing the views of stamp duties office of the correct amount of duty;

(ii) It shows the document is genuine;

(iii) It satisfies the statutory requirement; and

(iv) It makes instrument once adjudicated, admissible for all purposes notwithstanding any objection as to the duty to be paid.

(b) **The limits**

The following are the limitations of the adjudication process:

(i) Where a court has ruled that an instrument has not been duly stamped, subsequent adjudication cannot retrospectively make it duly stamped; and

(ii) The process cannot prejudice rights that have been asserted before adjudication.

(c) **Appeals procedure**

This is a judicial review of the adjudication process.

Where any person is aggrieved by an assessment of the Commissioners of Stamp Duties, an appeal lies to the High Court by way of case stated but only after the adjudication and payment of duty.

Any aggrieved person may within twenty days after the date of the assessment and on the payment of the duty, appeal against the assessment to the High Court of the State in which the assessment was made.

He may require the commissioner to state and sign a case setting forth the question upon which his opinion was required and the assessment made by him.

The commissioner shall then state and sign a case and deliver such to the aggrieved person. Such a person then files this within seven days in the high court to enable the court to hear the case.

Upon hearing the case, the court shall determine the question submitted and if the instrument in question is in the opinion of the court chargeable with any duty, the Court shall assess such a duty.

If it is decided by the court that the assessment of the commissioner is wrong, the court shall assess the correct amount of duty, and;

(i) If the amount assessed is less than the duty already paid, the Court shall order a refund of the excess amount together with any penalty or fine which might have been paid, with or without cost; and

(ii) If the amount assessed is more than the duty already paid, the shortfall, together with any fine or penalty shall be paid with or without costs immediately or within such a time that the court may permit.

Note that the Revenue may not sue to recover the shortfall of any higher duty assessed by the court because the instrument, in such circumstance, is simply treated as not duly stamped until the shortfall is paid.

8.13 Time limit for stamping and implications of non-stamping – section 12 of SDA Act (as amended)

Every instrument first executed in Nigeria, which by law may be or is required to be stamped with an adhesive stamp, shall be stamped on or before its first execution, and such stamp shall be cancelled by the person by whom the instrument is first executed and, at the time of such execution:

Provided that where an instrument is prepared or attested by or executed before a commissioner of oaths, a justice of the peace or a notary public, such stamp shall be cancelled by such commissioner of oaths, justices of the peace or notary public at the time of its first execution

The following are the implications of non-stamping of instruments require to be stamped:

a) Such an instrument, which is not duly stamped in accordance with the law in force at the time it was first executed, shall not be given in evidence. This disadvantage cannot be remedied by an agreement between the parties in a case;

b) Such an instrument is not admissible whether directly or for collateral purpose. The secondary evidence of the instrument is not admissible either; and

c) Cross-examination upon an unstamped document is not allowed.

It is important to note, however that there are exemptions to the above rules. An unstamped or improperly stamped instrument may be admissible under the following conditions:

a) Where a criminal proceeding is being held. This is also applicable before a rent tribunal or a proceeding before the Commissioner of Stamp Duties;

b) Where it is imperative to refresh the memory of a witness;

c) Where it is necessary to prove an act of bankruptcy;

d) Where a plaintiff is trying to prevent a transaction from being implemented if it is believed that the agreement is void;

e) Where the instrument may be admitted subject to an undertaking that the instrument would be stamped later; and

f) Where it may be used to prove fraud.

8.14 Recoverability of outstanding duties

Based on the provisions of sections 110 – 117 of Stamp Duties Act, FIRS can initiate proceedings for the recovery of any duty imposed by the Act, and any fines and penalties arising from failure to pay or remit duties.

It is pertinent to state that proceedings for the recovery of the aforementioned amounts may be commenced within five years from when the liabilities arose.

8.15 Lost instruments

(a) A lost instrument is presumed to have been duly stamped but where there is a proof that it has not been stamped it remains unstamped.

(b) When a duly stamped instrument has been lost, a replica may by concession be stamped free of charge or if a replica has been stamped, it may be required that the original duty be repaid.

(c) Claims for stamping of a replica, where an original has been lost, should be sent to the stamp duties office at which the lost document was originally stamped.

(d) A lost instrument cannot be presented for stamping on payment of the necessary penalties outside the statutory time limit.

8.16 Instruments not properly stamped

An instrument is considered to be improperly stamped where it does not carry the correct duty. An instrument which is not properly stamped is still effective because the failure to stamp an instrument is not a criminal offence. However, an improperly stamped instrument is inadmissible in a court of law.

8.17 Stamping of instruments after execution – section 23 of SDA Act (as amended)

Any unstamped or insufficiently stamped Instrument, may be stamped with an impressed stamp at any time within forty days from the first execution thereof, upon payment of the duty or unpaid duty only but after that time, the said Instrument may only be stamped upon payment of the unpaid duty and a penalty of twenty naira (₦20), and also by way of further penalty, where the unpaid duty exceeds twenty naira, or interest on such duty, at the rate of ten percent per annum, from the day upon which the instrument was first executed up to the time when the amount of interest is equal to the unpaid duty.

In respect of ad-valorem duty, in addition to the unpaid duty, the person must pay a penalty of ₦20 and a sum equal to the unpaid duty unless there is a reasonable excuse for the delay.

It is however noted that instruments presented for stamping within 40 days following execution may not have a penalty imposed on it.
Section 23 of the Stamp Duties Act provides a table that shows the person that is liable to pay liability.

Title of instrument as described in the schedule	Person liable to penalty
Bond, covenant or instruments of any kind whatsoever	The oblige covenantee or other person taking the security
Conveyance on sale	The vendee or transferee
Title of instrument as described in the schedule	Person liable to penalty
Conveyance or transfers operating as voluntary disposition inter vivos	The grantor or transferor
Lease	The lessee
Mortgage bond, debenture, covenant and warrant of attorney to confess and enter up judgement	The mortgagee or oblige, in the case of a transfer or reconveyance the transferee, assignee or disponee or the person redeeming the security.
Settlement	The Settler

8.18 Duty upon receipts – section 89 of SDA (as amended)

Receipt includes any note, memorandum, writing whereby any money, or bill of exchange or promissory note for money if acknowledged or expressed to have been received or deposited, or paid, or whereby any debt or demand, or any part of a debt or demand as acknowledged to have been settled, satisfied, or discharged, or which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

The duty upon a receipt may be denoted by an adhesive stamp which is to be cancelled by the person whom the receipt is given before he delivers it out of his hands or by a digital tag with electronic stamp.

Any duty paid shall be applied as a credit against any duty applicable on the instrument denoted with an adhesive stamp.

8.19 Collection of stamp duty on rent payable to a landlord

It is the responsibility of the tenant to pay stamp duties and remit to the FIRS office nearest to the tenant or at the tenant’s bank. The tenant should fix the stamp duty imprimatur on the tenancy agreement before it is signed with the property owner.

Landlords are not collecting agents.

8.20 Consequences for non-compliance with the provisions of the Stamp Duties Act (SDA)

Based on FIRS circular number 2020/05 dated April 29, 2020, in respect of clarifications on the provisions of the Stamp Duties Act, the following consequences may result from noncompliance with the provisions of the SDA:

(a) Prosecution of offences under the Acts;
(b) Payment of penalties of various degrees;
(c) Inability to use the relevant instrument as evidence in court or other judicial or quasi-judicial proceedings; and
(d) Enforcement actions.

8.21 Chapter review

The chapter explains stamp duties and its importance to the legalisation of instruments, under the Stamp Duties Act, CAP S8 LFN 2004. Some definitions have been provided for a number of terms used in the Act. The Act also states:

(a) The powers of adjudication of the Commissioner of Stamp Duties;
(b) The territorial limits; and
(c) Stamping authority as between federal and state governments, with the understanding that duties are to be charged at the respective rates specified for the various instruments listed in the Schedule to the Act.

The mode of calculating ad-valorem duty, that is, duty rate that varies with the value of the subject matter of the Instrument, was also discussed. The chapter concludes with a comprehensive listing of transactions/instruments that would require stamping for legalisation, as well as those specifically exempted, according to the Act.

8.22 Worked examples

8.22.1 Multiple-choice questions

1. The examples of instruments assessed by fixed stamp duties include the following **EXCEPT**
   A. Proxy form
   B. Memorandum of understanding (MOU)
   C. Appointment of receiver
   D. Share capital of companies
   E. Guarantor form

2. Which one of the following is not an example of instruments assessed based on ad-valorem basis?
   A. Deed of assignment
   B. Joint venture agreements
   C. Share capital of companies
   D. Promissory notes
   E. Policy of life insurance

3. The functions of the Commissioner of Stamp Duties include the following **EXCEPT**
   A. Responsible for assessing documents on appropriate duties and imposing penalties, where applicable
   B. Responsible for stamping or embossing the instruments
   C. Responsible for keeping custody of the stamping instruments
   D. Responsible for the arrest a tax offender
   E. Responsible for adjudication

4. Documents, receipts or instruments executed outside Nigeria but received in Nigeria must be presented for stamping in accordance with sections 7(3)(a), 23(3) and 47 of the Stamp Duties Act (as amended), within ……….days in the case of charter parties.
   A. 10
   B. 14
   C. 15

D. 20
E. 30

5. The benefits of adjudication include the following **EXCEPT**
   A. It satisfies the statutory requirements
   B. The instrument is admissible for all purpose not withstanding any objection as to the duty required to be paid
   C. It is the first step in disputing the stamp duties office's opinion of the correct amount
   D. It confers tax clearance certificate to the payer
   E. It shows the genuineness of the instrument

8.22.2 Short answer questions

1. Stamp duties that are assessed at a flat rate and which do not vary with the consideration for the document being stamped is called………
2. A lost instrument is presumed to have been duly stamped but where there is a proof that it is has not been stamped, it remains ……..
3. Taxes charged on documents and not on transactions or persons are called---
4. Proceedings for the recovery of outstanding duties may be commenced within ……. from when the liability arose.
5. It is the responsibility of any corporate body or Ministry, department or agency (MDA) to charge stamp duty at a rate of …. of the contract value excluding value added tax(VAT) on all contracts issued to third party vendors.

8.22.3 Examination type questions

(1) Write short notes on the following:
   (a) Fixed duties
   (b) Ad-valorem duties
   (c) Denoting stamp
   (d) Adjudication

(2) (a) Discuss briefly the administration of stamp duties in Nigeria
   (b) List **ten** instruments that are chargeable to stamp duties
   (c) What are the functions of commissioner of stamp duties?

(3) In relation to stamp duties, what is the status of a lost instrument?

(4) In relation to stamp duties in Nigeria, write short notes on the following:
   (a) Penalties for late stamping
   (b) Form of stamp duties

8.22.4 Suggested solutions to multiple-choice questions

1. D
2. B
3. D
4. A
5. D

8.22.5 Suggested solutions to short answer questions

1. Fixed duties
2. Unstamped
3. Stamp duties
4. Five years
5. 1%

8.22.6 Suggested solutions to examination type questions

(1) (a) Fixed duties

These are duties that do not vary with the consideration for the document being stamped. The same duty is payable irrespective of the value of the instrument. Examples include payment receipts, cheque leaves and bank notes.

(b) Ad-valorem duties

These are duties that vary with the amount of consideration and in accordance with a scale stated in the relevant schedule fixed by the government. Examples include bills of exchange, share capital, life assurance policy and promissory notes.

(c) Denoting stamp

Where an instrument which is being transferred has been duly stamped, the instrument of transfer does not need to be duly stamped again. The instrument of transfer will merely carry a stamp denoting the amount of duty already paid.

(d) Adjudication

This is the process of determining the correct amount of duty, usually convincingly, by the Commissioner of Stamp Duties.

(2) (a) Administration of stamp duties in Nigeria

Stamp duty is managed by the Commissioner of Stamp Duties who may be appointed from within the Service. The duty of a commissioner may be performed by any one of the commissioners where there is more than one. An instrument must be sent to the commissioner of stamp duties for adjudication.

The Federal government is the only competent authority to impose, charge and collect duties upon Instruments specified in the Schedule to the Act, if such Instruments relate to matters executed between a company and an individual, group or body of individuals.

The relevant tax authority in a State shall collect duties in respect of instruments executed between persons or individuals, at such rates to be imposed or charged as may be agreed with the federal government.

Stamp duty is managed by the Commissioners of Stamp Duties. An instrument must be sent to the Commissioner of Stamp Duties for adjudication, since the process for determining formally, the correct duty is by adjudication.

(b) The instruments that are required by law to be stamped are as follows:

(i) All written or printed dutiable instruments or receipts which include:

- Leases;
- Contract notes;
- Bills of lading;
- Agreements;
- Duplicates and counterparts;

- Marketable securities;
- Mortgages;
- Notarial acts;
- Policies of insurances;
- Receipts;
- Settlements;
- Share warrants;
- Warrants for goods;
- Appraisement;
- Instrument of apprenticeship;
- Bank notes, bills of exchange and promissory notes;
- Conveyances of sale;
- Other conveyances;
- Exchange partition or division;
- Letters of powers of attorney and voting papers; and
- Capital of companies.

(ii) All electronic dutiable instruments or receipts (that is, in the form of electronic media content, electronic documents or files, e-mails, short message service (SMS), instant messages (IM), any internet-based messaging service, website or cloud-based platform, etc;

(iii) All printed receipts (including POS receipts, fiscalised device receipts, automated teller machine (ATM) print-outs and other forms of written or printed acknowledgement; and

(iv) All electronically generated receipts and any form of electronic acknowledgement of money for dutiable transactions.

The scope of instruments liable to stamp duties was expanded by amending section 2 of the Stamp Duties Act, to include "electronic documents". The amendment further accommodates "electronic stamping" and electronic denoting" of documents.

(c) The Commissioner of Stamp Duties is responsible for:

(i) The overall administration of the office;
(ii) Assessing the instruments and imposing penalties where applicable;
(iii) Stamping or embossing the instruments with the appropriate stamp denominations;
(iv) Keeping custody of stamping instruments such as dies, stamping/ embossing machine, etc; and
(v) Adjudication.

(3) Status of a lost instrument

(a) A lost instrument is presumed to have been duly stamped but where there is a proof that it has not been stamped it remains unstamped.

(b) When a duly stamped instrument has been lost, a replica may, by concession be stamped free of charge or if a replica has been stamped, it may be required that the original duty be repaid.

(c) Claims for stamping of a replica, where an original has been lost, should be sent to the stamp duties office at which the lost document was originally stamped.

(d) A lost instrument cannot be presented for stamping on payment of the necessary penalties outside the statutory time limit.

(4) **(a) Penalties for late stamping**

The failure to stamp an instrument is not a criminal offence. The stamp duties Act, 2004 provides a tariff of penalties for late stamping.

The general rule is that the person presenting the instrument for stamping after the date of the execution must pay the unpaid daily duty; a penalty of N20 and a further penalty, if the unpaid duty exceeds N20 of interest on such duty at 10% per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty.

(b) Forms of stamp duties

There are two forms of stamp duties. These are:

(i) **Fixed duties:** These are duties, which do not vary with the consideration for the document.

(ii) **Ad valorem duties:** These are duties, which vary with the amount of the consideration for the document, in accordance with scale of rates provided in the Schedule to the Act.

CHAPTER NINE
WITHHOLDING TAX (WHT)

Chapter contents

a) Learning objectives
b) Nature, objectives, and administration of WHT
c) Relevant tax authority for collection of WHT
d) Transactions subject to WHT, exemptions, and applicable rates
e) Exemption of "sales in the ordinary course of business from WHT", taking into consideration the judgement of Tax Appeal Tribunal, Lagos, on November 30, 2020
f) Procedure for filing, contents of WHT return, and remittance to relevant tax authorities
g) Treatment of withholding tax receipts/ credit notes
h) Procedure relating to WHT refunds
i) Merits and demerits of WHT scheme
j) Penalty for late remittance and non-deduction of withholding tax from payments to third parties
k) Chapter review
l) Worked examples

9.0 Learning objectives

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

(a) Nature of withholding tax, objectives, enabling laws, transactions/income subject to WHT and relevant tax authority for collection of WHT;
(b) Procedure for filing withholding tax, content, time frame, refund procedure and ground of objection;
(c) Administrative bottlenecks and other problems of WHT (including merits and demerits of WHT scheme); and
(d) Operation of the WHT system, currency of payment and rights and obligations of taxpayers.

9.1 Nature, objectives and administration of withholding tax (WHT)

9.1.1 Nature of WHT

Withholding tax is a tax deducted at source from payments made to a taxable person for the supply of goods and services.

It is not another form of tax, but simply an advance payment of tax, as the withholding tax deducted at source is off-settable against any subsequent tax liability that may be due in respect of other income.

In certain cases, the withholding tax deducted at source is the final tax in the hands of the recipients.

Section 81 of CITA (as amended) by Finance Act 2021, provides that:

(a) Income tax assessable on any company, whether or not an assessment has been made, shall, if the Service so directs, be receivable from any payments made by any person to such company;
(b) Any such direction may apply to any person or class of persons specified in such direction, either with respect to all companies or a company or class of companies, liable to payment of income tax:
(c) Any direction in (a) above shall be in writing addressed to the person or published in the

Federal Government Gazette and shall specify the nature of payments and the rate at which tax is to be deducted;

(d) In determining the rate of tax to be applied to any payments made to a company, the Service may take into account:

(i) Any assessable profits of that company for the year arising from any other source chargeable to income tax under this Act; and

(ii) Any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.

(e) Income tax recovered under the provisions of this section by deduction from payments made to a company shall be set off for the purpose of collection against tax charged on such company by an assessment;

(f) Every person required under any provisions of this Act to make any deduction from payments made to any company shall account to the Service in such manner as the Service may prescribe for the deduction so made;

(g) Any excess payment arising from compliance with sections 78, 79, 80 and 81 of this Act over the assessment under section 65 of this Act shall be refunded by the Service within ninety days of the assessment if duly filed with the option to set off against future taxes;

(h) The provisions of this section shall not apply to compensating payments made under a Registered Securities Lending Transaction; and

(i) The Minister of Finance on the advice of the Service may make regulations for the carrying out of the provision of this section.

Peculiarities of withholding tax

(a) A taxpayer has no option as to whether to pay it or not as the person making the payment is statutorily required to deduct. Failure to deduct attracts sanctions.

(b) It is an advance payment of income tax and can therefore be utilised as tax credit against income tax liability of the year to which the income relates and any unutilised withholding tax may be carried forward and set-off against income tax of future years; and

(c) It represents the final tax in certain cases

9.1.2 Objectives of withholding tax

The objectives of withholding tax include:

(a) To discourage, minimise or prevent incidence of tax evasion;
(b) To increase the tax net of the government;
(c) To serve as a veritable source of revenue to the government; and
(d) To serve as a collection mechanism for income tax.

a) Administration of withholding tax

The authority for the deduction of withholding tax at source is contained in Sections 69, 70, 72 and 73 of the Personal Income Tax Act in respect of individuals and Sections 78, 79, 80 and 81 of CITA Cap C21 LFN 2004, in respect of companies.

The tax provisions referred to above, deals with deductions from rent, interest, royalties, dividends, directors' fees (PITA only) and other payments. It is under these Sections that the application of the general provisions contained in Section 73 PITA and Section 81 of CITA widens the scope of withholding tax deductions to include building contracts, contracts of supply, consultancy and professional services, which are not specifically mentioned in the tax Acts.

Taxes may be collected by any of the three tiers of government in Nigeria – the federal, state or local government. Both the Companies Income Tax Act and the Personal Income Tax Act clearly specify the ultimate government beneficiary of withholding taxes. These are the state government through the agency of the State Internal Revenue Service (SIRS) and the federal government through the Federal Inland Revenue Service (FIRS).

Therefore, the administration of withholding tax is within the purview of both the FIRS and the SIRS

9.2 Relevant tax authorities for collection of WHT

The relevant tax authorities for the collection of WHT are both the State Internal Revenue Service (SIRS) and the Federal Inland Revenue Service (FIRS).

While the SIRS collects withholding taxes due from individuals and unincorporated business entities residing in the state during a year of assessment, the FIRS collects withholding tax from amount due to corporate bodies, military and police officers, external affairs offices. However, with effect from 2015, the FCT IRS is responsible for collecting withholding tax from non-residents and residents of Abuja.

In the case of savings interest, the relevant tax authority is the tax authority of the place where the branch of the bank paying the interest is located.

9.3 Transactions / incomes subject to WHT and applicable rates

As provided for in both Companies Income Tax Act and Personal Income Tax Act, withholding tax shall be deducted at source from the following transactions / income and the applicable rate highlighted below:

	Transactions / Incomes	Applicable WHT rate	
		Individual	Company
A	Royalties	5%	10%
B	Rents	10%	10%
C	Interest	10%	10%
D	Dividends	10%	10%
E	Director’s fees	10%	10%
F	Consultancy fees	5%	10%
G	Professional fees	5%	10%
H	Commissions	5%	10%
I	Technical and management fees	5%	10%
J	Construction income	2.5% or 5%	2.5% or 5%
K	Agency arrangements	5%	10%
L	Contract of supplies	5%	10%

Notes:

The term “Contract of Supplies” covers all forms of supplies, deliveries, or the like through competitive bidding tenders, LPOs or other arrangements, whether oral or written. The term does not cover the across counter cash sales or supplies in the ordinary course of sales.

The withholding tax rate of 2.5% on construction contracts, only applies to construction of roads, bridges, buildings and power plants. Subcontracts for supply of materials, equipment, labour, etc. or services such as survey, architectural design, soil test, environmental impact assessment, structural design, etc shall still attract 5% withholding tax.

Contract, which is outright sale and purchase of goods and property in the ordinary course of business are exempted from withholding tax.

Section 73 of CITA and section 81 of PITA empowered the Finance Minister to add to the above list from time to time through official gazette.

9.4 Exemption of sales in the ordinary course of business from withholding tax

On November 30, 2020, the Tax Appeal Tribunal (TAT), Lagos Zone, in the case of Tetra Pak West Africa Limited vs Federal Inland Revenue Service, ruled that sales in the ordinary course of business shall not be liable to withholding tax (WHT).

The TAT laid the following criteria in ascertaining what constitutes "sales in the ordinary course of business";

a) The inclusion of the transaction/activity in the objects of the memorandum of associations;
b) The nature and practice of the taxpayer's business and industry;
c) The history of the taxpayer in relation to the activity, and
d) The frequency of the type of transaction.

9.5 Procedure for filing, contents of WHT returns, and remittance to relevant tax authorities

9.5.1 Procedure for filling

It is expected that a schedule of withholding tax payable should be prepared by applying the correct WHT rate on each transaction/payment made during the month. Thereafter, a cheque for the amount due to the FIRS is raised and forwarded plus the WHT schedule (in both soft and hard copies) to one of the approved collecting banks for processing.

The WHT schedule is then uploaded onto the FIRS portal and once accepted, an electronic receipt (e-receipt) is generated as acknowledgement that the process is successful.

Thereafter, the bank submits copies of the WHT schedule and evidence of payment at the local FIRS office for processing of both the bulk receipt and individual receipts (WHT credit notes).

9.5.2 Contents of WHT returns / payment schedule

Each withholding tax cheque, being paid to the Revenue must be accompanied with a payment schedule, which is a list of those who suffered the deductions that make up the cheque. The payment schedule must contain the following particulars:

a) Name of the taxpayers who suffered the deductions;
b) Their addresses;
c) The nature of their activities/services and period covered;
d) Their tax file numbers [now Tax Identification Number (TIN)];
e) The total amount payable;
f) The rate of tax applied;
g) The amount of tax withheld;
h) The balance paid to the taxpayer;
i) The tax contract for which returns were being made;
j) The date of payment; and
k) The cheque number and date.

9.5.3 Remittance of WHT to relevant tax authorities

Taxes are to be withheld from payments due to corporate bodies and individuals at the specified rates and remitted to the relevant tax authorities within 21 days (in case of corporate bodies) or 30 days (in the case of individuals) from the date the amount was deducted, or from the time the duty to deduct arose, whichever is earlier.

In line with the provision of section 78(4) of CITA (as amended), the tax, when paid to the Service, shall be the final tax due from a:

(a) Non-resident recipient of the payment; and

(b) Unit trust recipient of the payment.

9.6 Treatment of withholding tax credit notes

When payment is made to the bank or the Withholding Tax Section of the Revenue in respect of withholding tax deducted at source, the Federal Inland Revenue Service will issue credit notes, in favour of the taxpayers whose names are contained in the withholding tax schedule. The credit notes are to be forwarded by the collection agents to the taxpayers who suffered the deductions, to enable them claim tax credits against their tax liabilities for the relevant assessment year(s).

(a) It is important to emphasise that the presentation of a letter from the collection agent, showing that a taxpayer has suffered deductions, is not enough for the FIRS to grant withholding tax credit.

(b) Similarly, government treasury receipts issued by other government departments, showing that they have deducted tax from a taxpayer, is not enough to grant tax credit since only the FIRS can collect tax for the federal government and will therefore issue credit notes for only the taxes that have been paid into its coffers.

(c) Each state government is expected to design forms that will enable credit to be granted to those from whose incomes, tax has been withheld.

9.7 Withholding tax refunds and grounds for objection

Where it is proved that the person who suffered a withholding tax deduction is not liable to income tax for the year or that the tax withheld is in excess of the tax assessed, the Board has obligation to grant a refund of the over-payment. However, this is currently not the case.

Section 63 (7) of CITA 2004 provides that any excess withholding tax, shall be refunded by the FIRS within 90 days of the application, if duly filed with the option to set-off against future taxes.

9.8 Merits and demerits of WHT scheme

(a) Merits

The following are some of the merits of withholding tax scheme:

(i) Source of government revenue;

(ii) It helps in expanding the tax net by bringing into the tax net persons who were previously unknown to the tax authorities;

(iii) It helps in determining a person's turnover and thus ascertaining the correct in come for tax purposes;

(iv) It makes tax payment less cumbersome to the taxpayer who may not have to bother himself going to the tax office to pay his tax;

(v) It reduces incidence of tax evasion;

(vi) It involves little or no cost of collection as it is self accounting in nature; and

(vii) It saves time for the revenue officers to attend to other duties.

(b) Demerits

The demerits of the withholding tax scheme are:

(i) A high rate of withholding tax is likely to affect the operational performance of most businesses;

(ii) The application of withholding tax affects the cash flow of most businesses as they receive amounts less than what they have estimated or budgeted for per the invoices they have issued; and

(iii) It is likely to discourage hard work by revenue officers since it is self accounting in nature.

9.9 Penalty for late remittance and non-deduction of withholding tax from payments

Section 82 of CITA 2004 (as amended) specifies that where any person who being obliged to deduct any tax under section 78 (deduction of tax from interest, etc.), 79 (deduction of tax on rent), 80 (deduction of tax from dividend) or 81 (deduction of tax at source) of this Act fails to deduct or having deducted fails to pay to the FIRS within 21 days from the date the amount was deducted or the time the duty to deduct arose, shall be guilty of an offence and shall be liable to a penalty of 10% per annum of the tax withheld or not remitted, as the case may be.

Similarly, failure to deduct or having deducted, fail to remit to the State Board within 30 days, withholding tax withheld from payments due to individuals, shall be guilty of an offence punishable on conviction and shall be liable to a fine of N5,000, in addition to the tax deductible or deducted, but not remitted, plus interest at the prevailing commercial rate.

Notes

(a) Withholding tax deductions from payments due to companies are payable to the Federal Inland Revenue Service;

(b) Withholding tax deductions from payments due to individuals are payable to the State Internal Revenue Service, where the recipient is resident;

(c) The withholding tax deductions are payable to the Federal Inland Revenue Service, where the payments are due to residents of the FCT, Abuja, members of the Nigerian Armed Forces and Police, Officers of the Nigerian Foreign Service and persons resident outside Nigeria, who derive income from Nigeria. However, with effect from 2015, the FCT IRS is responsible for collecting withholding tax from non-residents and residents of Abuja; and

(d) Withholding taxes on dividend, interest, rent and royalties when suffered by non-residents represent final tax. Also, with effect from January 1996, withholding tax on interest and dividend is final tax for individuals.

9.10 Chapter review

In this chapter, explanations have been given on the nature, and peculiarities of withholding tax, along with the enabling laws. A profile of the transactions/payments attracting withholding tax, and the rates applicable to each of them, vis-a-vis the category of taxpayers (Corporate entities or Individuals), suffering the tax was provided.

Details of the relevant tax authorities for purposes of collection, the nature of offences/ penalties with regards to the tax and the incidence of double taxation relief have been clearly addressed.

The operation of the WHT, highlighting the scenario where transactions are in foreign currency, contents of the payment schedule, issuance of withholding tax credit notes and payment certificate/treasury receipts including the need for refunds and set-offs where necessary, have been fully covered. Finally, the dual role of ministries, parastatals and other agencies of governments, as well as the rights and obligations of the taxpayers, have been fully discussed.

9.11 Worked examples

9.11.1 Multiple-choice questions

1. Benefits of withholding tax system include the following EXCEPT
   A. It helps to broaden the tax base
   B. It helps to bring obscure transactions to the notice of the tax authorities
   C. It makes tax payment less cumbersome
   D. It provides opportunity for taxpayer to make more money
   E. It reduces the incidence of tax evasion

2. The withholding tax rate for companies on all aspects of construction contract is…..
   A. 15%
   B. 5% or 2.5%
   C. 10%
   D. 20%
   E. 25%

3. The withholding tax rate for director's fees is……..
   A. 10%
   B. 20%
   C. 5%
   D. 30%
   E. 15%

4. Contents of the payment schedule for the payment of withholding tax must include the following EXCEPT
   A. Name of the taxpayer who suffered the deduction
   B. The total amount payable
   C. The rate of tax applied
   D. The tax identification number of the taxpayer
   E. The names and addresses of the directors of the two parties involved in the transaction

5. The following criteria are taking into consideration in ascertaining what constitutes "sales in the ordinary course of business" EXCEPT
   A. The inclusion of the transaction/ activity in the objects of the memorandum of association
   B. The nature and practice of the taxpayer's business and industry
   C. The history of the taxpayer in relation to the activity
   D. The frequency of the type of transaction
   E. The location of the company

9.11.2 Short answer questions

1. A contract which is an outright sale and purchase of goods and property in the ordinary course of business is exempted from ……….
2. Withholding tax rate in respect of individuals on consultancy fees is …………
3. Withholding tax enhances ……… tax compliance.
4. The common feature of investment income is that it is subject to ………….
5. Commission payable to a company is subject to withholding tax rate of ………

9.11.3 Examination type questions

(1) (a) Briefly highlight the main features of withholding tax.

(b) State the relevant tax authorities in relation to withholding tax in Nigeria

(c) Enumerate the contents of a payment schedule for the remittance of withholding tax.

(2) Aseye Insurance Plc engaged the services of Desu Consulting Limited for corporate re-structure and strategic management in line with the on-going recapitalisation exercise within the insurance industry in Nigeria. The fee forthe assignment is N65 million.

As the leading company in the new mega insurance company, Aseye Insurance paid the agreed fee on the June 30, 2013, upon which no Withholding tax was deducted.

Required:
What is the tax implication of this action?

(3) Differentiate between value added tax and withholding tax.

(4) Adebola Nigeria Limited has been trading for many years. The company make up its accounts to December 31, annually.

The extracts from its statement of profit or loss for the years ended December 31, 2012 and 2013 (as adjusted for tax purposes) are as follows:
Year ended December 31,

	2013 (₦)	2012 (₦)
Trading profit (adjusted)	14,000,000	10,000,000
Bank interest received gross	2,400,000	1,600,000
Debenture interest received (gross)	800,000	800,000
Dividend received from Adesemowo Limited. (Net)	720,000	720,000
Dividend paid to shareholders (gross)	6,000,000	4,000,000

Required:

(a) Compute the company’s tax liabilities for the relevant years of assessment. Ignore capital allowances.

(b) Determine the net withholding tax payable or receivable by Adebola Nigeria Limited, arising from dividends paid and received by it.

(5) Kuba Limited a medium scale manufacturing company made the following transactions during the year ended December 31, 2016.

February 7, 2016	₦250,000 was paid to Mr. Okon, an estate surveyor, for the services rendered to the company during the month.
April 11, 2016	₦650,000 was paid to Armani Limited as a fee for technical services rendered.
May 15, 2016	₦800,000 was paid as interim dividends to individual shareholders of the company.
July 19, 2016	₦18,000,000 was paid to Binlad Limited for purchases of goods used in the ordinary course of business.
September 23, 2016	₦360,000 was paid to a management consultant – R.O. Pedro
November 26, 2016	₦1,000,000 was paid to Kasi Limited as royalty.
December 29, 2016	₦500,000 was paid to the directors of the company as directors' fees.

Required:

Compute the withholding tax payable to:

(a) Federal Inland Revenue Service

(b) State Board of Internal Revenue Service.

9.11.4 Suggested solutions to multiple-choice questions

1. D
2. B
3. A
4. E
5. E

9.11.5 Suggested solutions to short answer questions

1. Withholding tax
2. 5%
3. Voluntary
4. Withholding tax
5. 10%

9.11.6 Suggested solutions to examination type questions

1 (a) Main features of withholding tax include:

(i) Payment of withholding tax is statutory on a person making the payment;

(ii) Withholding tax credit cannot be used to off-set tax liabilities of prior years;

(iii) It is an advance payment of income tax which is utilised as tax credit against income tax liability of the year to which the income relates;

(iv) Withholding tax represents the final tax on Franked Investment Income, in the hands of the recipients.

(b) The relevant tax authorities in relation to withholding tax in Nigeria are:

(i) Federal Inland Revenue Service for corporate bodies;

(ii) State Internal Revenue Service for individuals; and

(iii) Federal Inland Revenue Service for residents of the Federal Capital Territory, Abuja, members of the Nigerian Armed Forces and Police and officers of Nigerian Foreign Service. However, with effect from 2015, the FCT IRS is responsible for collecting withholding tax from non-residents and residents of Abuja.

(c) Contents of the payment schedule for the payment of withholding tax must include:

(i) Names of the taxpayers who suffered the deductions;

(ii) Their addresses;

(iii) The nature of their activities/services and period covered;

(iv) Their tax file numbers [now Tax Identification Number (TIN)];

(v) The total amount payable;

(vi) The rate of tax applied;

(vii) The amount of tax withheld;

(viii) The balance paid to the taxpayer;

(ix) The tax contract for which returns were being made;

(x) The date of payment; and

(xi) The cheque number and date.

2 The tax implications to Aseye Insurance Plc for failure to deduct according to Section 82 CITA 2004 (as amended) is that the company will be liable to a penalty of 10% of the tax withheld or not remitted, in addition to payment of the tax itself.

Specifically, this is equal to:

(a) Payment of the penalty = 10% of the tax (₦6.5m) = ₦650,000

(b) Payment of the tax, that is, 10% of ₦65million, which is ₦6.5 million

(3) The major differences between VAT and WHT are as shown in the table below:

	Value added tax	**Withholding tax**
a	An indirect tax	A direct tax
b	Imposed on goods and service	Imposed on incomes at source
c	Imposed at 5%	Rate applicable is dependent on type of transaction
d	Backed by VAT Act 2004	Backed by certain Sections of CITA and PITA (Amendment) Act 2011
e	Is governed only by Federal Revenue Inland Service Revenue	Is governed by State Internal Revenue Service and Federal Inland Revenue Service
f	VAT is shared by the 3 tiers of government	Withholding tax is not shared by the 3 tiers of government

(4) (a) **Adebola Nigeria Limited**

Computation of income tax liability for the relevant tax years

	2014 (N)	2013 (N)
Trading profit (adjusted)	14,000,000	10,000,000
Bank interest received (gross)	2,400,000	1,600,000
Debenture interest received (gross)	800,000	800,000
Total profit/Assessable profit	17,200,000	12,400,000
Companies income tax @ 30% of assessable profit	5,160,000	3,720,000
Tertiary education tax @ 2% of assessable profit	344,000	248,000

(b) **Computation of net amount of withholding tax for A.Y. 2013**

	₦
Gross dividend received (720,000 x $^{100}/_{90}$)	800,000
Withholding tax of 10% thereon	80,000
Withholding tax on dividend paid (10% of N4,000,000)	400,000
Net withholding tax payable by the company	320,000

Computation of net amount of withholding tax for A.Y. 2014

	₦
Gross dividend received (720,000 x $^{100}/_{90}$)	800,000
Withholding tax of 10% thereon	80,000
Withholding tax on dividend paid (10% of N6,000,000)	600,000
Net withholding tax payable by the company	520,000

5) Kuba Limited

(a) Computation of withholding tax payable to Federal Inland Revenue Service (FIRS)

Date	Transaction	Amount ₦	WHT Rate %	WHT ₦
11/04/06	Payment of technical fees to Armani Limited	650,000	10	65,000
26/11/06	Payment of royalty to Kasi Limited	1,000,000	10	100,000
Total WHT payable to FIRS				165,000

(b) **Computation of withholding tax payable to State Internal Revenue Service (SIRS)**

Date	Transaction	Amount ₦	WHT Rate %	WHT ₦
7/02/06	Payment to Mr. Okon	250,000	5	12,500

15/05/06	Payment of dividends to individuals	800,000	10	80,000
26/11/06	Payment to management consultant	360,000	5	18,000
29/12/06	Payment of director's fees	500,000	10	<u>50,000</u>
Total WHT payable to SIRS				**<u>160,500</u>**

CHAPTER TEN
Customs and excise duties

Chapter contents

a) Learning objectives

b) Nature, objectives and administration of customs and excise duties

c) Rates and basis of computation

d) Excisable items

e) Prohibitions and restrictions on imports and exports

f) Provisions relating to the furnishing of information by manufacturers and keeping of books

g) Offences and penalties

h) Chapter review

i) Worked examples

10.0 Leaning objectives

After studying this chapter, readers should be able to:

(a) Understand the objectives, nature and administration of customs and excise duties in Nigeria based on the provisions of Nigerian Customs and Excise Management (CEMA) Act Cap. C45 LFN 2004 (as amended);

(b) Know the rates and basis of computation;

(c) Identify excisable items;

(d) State the provisions relating to furnishing of information by manufacturers and keeping of books; and

(e) Know the various offences and penalties under this Act.

10.1 Nature, objectives and administration of customs and excise duties

(a) **Nature**

The Nigerian Customs Service (NCS) is one of the major revenue generating agencies for the Federal Government of Nigeria. The instrument that regulates the NCS has not undergone a major overhaul since 1958.

It should be noted that the Senate in May 2017, passed the Nigerian Customs Service Management Bill 2017 but the bill was not accented to by the President as at the end of the 8th Assembly.

(b) Establishment of Nigerian Customs Service Board

The establishment of the Nigerian Customs Service Board, which is under the control of the Federal Ministry of Finance, is contained in section 1 of the Nigerian Customs Service Board Act Cap. C45 LFN 2004 (as amended). The Board shall be responsible for the administration of the Customs and Excise Management Act.

Membership of the Board

The Board shall comprise:

(i) The Minister of Finance, who shall be the chairman;

(ii) The Comptroller-General of Customs, who shall be the deputy chairman;

(iii) All the Deputy Comptrollers-General;

(iv) One person to be appointed from the Federal Ministry of Finance;

(v) One person to be appointed from the Federal Ministry of Commerce;
(vi) One person to be appointed from the Federal Ministry of Industry;
(vii) One person to be appointed from the Federal Ministry of Transport;
(viii) The legal adviser to the Nigerian Customs Service Board, who shall also head the legal division of the service to be appointed from the Federal Ministry of Finance;
(ix) Two other persons to be appointed from any two of the following institutions, that is,
   * Commercial banks;
   * Reputable economic or trade consultancy firms;
   * The universities;
   * The Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;
   * The Manufacturers Association of Nigeria; and
(x) The Chairman of the Federal Inland Revenue Service.

Note: The Minister of Finance shall appoint the persons mentioned in (iv) to (vii) and (ix) above, after due consultation with the appropriate Ministry or institution.

(c) Functions of the Board

The Board shall be responsible for:

(i) Formulating the general policy guidelines for the Nigerian Customs Service; and
(ii) Administering the Customs and Excise Management Act and accordingly, the Board shall-
   * Subject to the general control of the Minister, control and manage the administration of the customs and excise laws; and
   * Collect the revenues of customs and excise and account for them in such manner as the Minister shall from time to time, direct.

(d) Powers of the Board

The Board shall have power-

(i) To appoint persons to hold or act in all the offices in the Service, including power to make appointments on promotion or transfer and to confirm appointments; and
(ii) To dismiss and exercise other disciplinary control over persons appointed pursuant to (i) above.

10.2 Rates and basis of computation

(a) Rates

On the recommendation of the Tariff Technical Committee of the Ministry of Finance, the President of Nigeria, by order, can impose, vary or remove any import or excise duty- Section 13(1) of Customs, Excise Tariff, etc (Consolidation) Act Cap. C49 LFN 2004 (as amended).

The customs duties are levied on goods coming into the country at varying rates from 5% to 75% of import value at each port of entry (airport, land border, sea port or inland waterway).

Section 21(3) of the Customs, Excise Tariffs, etc. (Consolidation) Act, having been amended by Finance Act, 2021, excise duty on non-alcoholic, carbonated and sweetened beverages shall be charged at a specific rate of N10 per litre.

(b) Basis of computation

The primary basis for the customs value of goods shall be the transaction value. The transaction value is the price actually paid or payable for the goods when sold for export to the Federal Republic of Nigeria adjusted, when necessary, in accordance with the provisions of this Act.

However, where the customs value of the imported goods cannot be determined under the provisions of this Act, the customs value shall be the transaction value of similar goods sold for export to Nigeria and exported at or about the same time as the goods being valued.

An alternative way of determining the customs value of goods if such goods cannot be sufficiently determined is by using reasonable means which is consistent with the principles and general provisions of the World Trade Organisation's Agreement on Implementation of Article VII of General Agreement on Trade and Tariff 1994 and on the basis of data available in Nigeria.

The rate on the specified item as may be determined by the Tariff Technical Committee and approved by the president is then applied to the quantity of import or export to derive the duty payable on such an item. In determining the rates, classification, valuation and origin standards contained in the Act to imported and exported goods are used as guide.

Over 5,924 items are recognized and applicable rates shown in the Act. Table 1 shows duties on specified items for 2017 and 2018:

Table 1: Duties on specified items

S/N	CET code	Description	Import Duty	Value added tax	Levy	Excise Duty
1	'0101210000	Live purebred breeding horses	5	5		
2	'0101290000	Live horses other than purebred	10	5		
3	'0102210000	Live purebred breeding cattle	5	5		
4	'0102290000	Live cattle other than purebred	10	5		
5	'0105120000	Live turkeys weighing not more than 185g	5			
6	'0106220000	Live reptiles (including snakes and turtles	10			
7	'0106410000	Live bees	5	5		
8	'0201200000	Meat of bovine animals - fresh or chilled	35			
9	'0206410000	Edible livers of swine, frozen	35			
10	'0207600000	Meat and edible offal of guinea fowls	35			
11	'0301110000	Live freshwater ornamental Fish	10	5		
12	'0302290000	Other flat fish meat- fresh or Chilled	10			
13	'0302710000	Tilapias meat - fresh or chilled	10			
14	'0402911000	Liquid milk/cream in packings of 25k or more	10	5		
15	'0402912000	Liquid milk/cream in packings of less than 25k	20	5		
16	'0507101000	Elephant tusks	5	5		

S/N	CET code	Description	Import Duty	Value added tax	Levy	Excise Duty
17	‘0603110000	Roses	20	5		
18	‘0701100000	Seed	5			
19	‘0709920000	Olives	20			
20	‘0710900000	Mixtures of vegetables	20			
21	‘0801310000	Cashew nuts in shell	20	5		
22	‘0905000000	Mate	20	5		
23	‘0904120000	Pepper (neither crushed nor ground)	20			
24	1006200021	Husked (brown) rice imported by pure rice traders	10		60	
25	1006400000	Broken rice	10		60	
26	1101000000	Wheat or meslin flour	20		65	
27	1106209100	Cocoyam flour	20			
28	1212930000	Sugar cane	5	5		
29	1508100000	Crude groundnut oil	10			
30	1511100000	Crude palm oil	10		25	
31	1605550000	Prepare or preserved octopus	20	5		
32	1804002000	Natural cocoa butter	10	5		
33	1901903000	Malt extract	5	5	25	
34	2204100000	Sparkling wine	20	5	50	20
35	2208201000	Brandy	20	5	50	
36	2501002000	Salt for human consumption	10		60	
37	2710193200	Brake fluid	10	5	20	
38	2711210000	Natural gas	5	5		
39	2936210000	Vitamin A and their derivatives	5	5		
40	3401111000	Medicated soaps	10	5		
41	4407280000	Iroko	10	5		
42	4421909100	Toothpicks	20	5		
43	4817100000	Envelopes	20	5	30	
44	6402992000	Beach sandals	20	5		
45	6905100000	Roofing tiles	20	5		
46	7002100000	Glass in balls	10	5		
47	7210410000	Corrugated	20	5	25	
48	7220000000	Wire of other alloy steel	10	5	35	
49	8438400000	Brewery machinery	5			

S/N	CET code	Description	Import Duty	Value added tax	Levy	Excise Duty
50	8470500000	Cash registers	20	5		

Source: Nigeria Customs Service Website (2018)

In line with the powers granted to the President by the Customs, Excise Tariff, etc (Consolidated) Act, 2004 (as amended), the President approved an increase in the excise duties on tobacco (including cigarettes) and alcoholic beverages (beers, stouts, spirits and wines), effective June 4, 2018. The increase, however, was introduced in phases over a 3-year period (2018-2020).

Also, the suspension of excise on other goods (such as soaps, detergents, recharge cards, perfumes, tissue paper and polythene bags) that the NCS was assessing in the past has been sustained.

Table 2 presents the new tariff regime on tobacco and alcoholic beverages:

Table 2: Tariff regime on tobacco and alcoholic beverages

Product	Rates (₦)			
	2017	2018	2019	2020
Tobacco	20% ad-valorem rate	20% + ₦1 per stick (₦20 per pack of 20 sticks)	20% + ₦2 per stick (₦40 per pack of 20 sticks)	20% + ₦2.90 per stick (₦58 per pack of 20 sticks)
Beer and stout	20%	30k per centilitre (cl)	35k per cl	35k per cl
Wines	20%	₦1.25 per cl	₦1.50 per cl	₦1.50 per cl
Spirit	20%	₦1.50 per cl	₦1.75 per cl	₦2 per cl

Source: PricewaterhouseCoopers Limited (2017)

The 1st Schedule to the Customs, Excise Tariff, etc (Consolidation) Act 2004 (as amended), was amended by the Finance Act 2020 by inserting and replacing as the case may be, the following duties and levies:

(a) Duty on tractors (HS Headings 8701), from 35% to 5%;

(b) Duty on motor vehicles for the transport of more than ten persons (HS Headings 8702), from 35% to 10%;

(c) Levy on motor vehicles for the transport of persons [cars] (HS Headings 8703), from 30% to 5%; and

(d) Duty for motor vehicles for the transport of goods (HS Headings8704), from 35% to 10%.

Provided that vehicles exempt from applicable duties and levies shall continue to enjoy such exemptions.

Paragraph 1 of the Second Schedule to the Act was amended by section 39 of Finance Act 2020. It states that “airlines registered in Nigeria and providing commercial air transport services are entitled to duty-free importation of their aircrafts, engines, spare parts and components whether purchased or leased”.

10.3 Excisable items

Goods liable to excise duty are specifically provided for in Part III, Section 21 of the Customs, Excise Tariff, ETC (Consolidation) Act. These are:

(a) Goods imported and those manufactured in Nigeria and specified in the Fifth schedule to this Act shall be charged with duties of excise at the rates specified under the duty column in the said schedule;

(b) Telecommunication services provided in Nigeria shall be charged with duties of excise at the rates specified under the duty column in the Schedule as the President may by Order prescribe pursuant to section 13 of this Act; and

(c) A landing charge corresponding to the excise duty imposed on any goods manufactured in Nigeria, has been included in the customs duty in the customs duty rates column of the first schedule.

The Customs Service states over 5,924 items which cover agricultural, chemicals, industrial, tobacco, alcoholic, building, electrical, antiques (of over 100 years) and other manufactured products. Some of these items are provided in Table 1

10.4 Prohibitions and restrictions on imports and exports

In Section 55 of the Nigeria Customs Service Management Act, 2017, the President may by order:

(a) Prohibit the importation or exportation of any specified good;

(b) Prohibit the importation or exportation of all goods or any specified goods except as provided in the order; and

(c) Subject to any specified exceptions, prohibit the importation or exportation of all goods except with the general or special permission in writing of a specified authority or authorities.

Imports and exports shall where applicable, be subject to prohibition and restriction relating to:

(i) Public security, public morals and public policy;

(ii) Prevention or relieve of critical shortages of foodstuffs:

(iii) The protection of the health and life of humans, animals or plants;

(iv) The protection of the environment;

(v) The protection of national treasuries possessing artistic, historic or archaeological value;

(vi) The protection of industrial or commercial property, including controls on drug precursors and goods infringing intellectual property rights;

(vii) Currency;

(viii) Fishery conservation; and

(ix) Prohibition authorised by the World Trade Organisation (WTO) agreements.

Goods prohibited under any law or regulation found within the customs territory shall prima facie be deemed to have been imported illegally and the Customs Service shall take appropriate enforcement measures in respect of such goods.

10.5 Provisions relating to the furnishing of information by manufacturers and keeping of books

For efficient service delivery, CEMA 2004 (as amended), provides that:

(a) The Customs Service has power to require from an excise trader to:

(i) Produce for inspection, as and when required by a custom notice in writing, all invoices and other books or documents, including electronic records, in the trader's possession that are or may be relevant to goods liable to excise tax purchased or sold by the trader during the 12-month period, or any part of thereof, preceding the date the notice is served;

(ii) Furnish answers to an authorised customs officer's questionnaire regarding the description, quantity, weight, volume, purchase price, selling price, consignor, consignee, destination, or other matter relating to the excisable goods; and

(iii) Produce any evidence that a customs officer may reasonably require in support of the trader's responses.

(b) Any person directly or indirectly involved in the carrying out of customs formalities or in the application of customs controls shall, at the request of the Customs Service and within any specified time limit, provide the Customs Service with the required documents and information, in the prescribed form, and provide all the assistance necessary for the completion of the customs formalities and controls;

(c) The lodging of a goods declaration, or notification or any other decision, shall render the person concerned responsible for:

(i) The accuracy and completeness of the information given in the declaration, notification or application;

(ii) The authenticity of any documents lodged or made available; and

(iii) Where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations.

(d) Where the declaration or notification is lodged, the application is submitted or information is provided by a customs representative of the person concerned, the customs representative shall also be subject to the obligations in this section.

(e) A declarant or a person who is directly or indirectly involved with the importation or exportation of goods, or acts as a customs representative, or is directly or indirectly involved with the storage or transport of imported or exported goods, free zones, or any customs control, shall keep all documents, information and data related to customs matters for seven calendar years from the date the transaction occurred or the documents, information and data were created.

(f) When an appeal from a customs determination or ruling has been lodged, all parties to the appeal shall keep all documents, information and data related to the appeal for 3 years after the appeal procedure is finally resolved.

10.6 Offences and penalties

Specific offences and their associated penalties are found in various subsidiary laws that regulate the operations of the Nigerian Customs Service such as Customs and Excise Management (Disposal of Goods) Act, Customs and Excise (Special Penal and other Provisions) Act, CEMA 2004 (as amended) and Customs, Excise Tariff ETC (Consolidation) Act, 2004 (as amended).

Table 3 presents some selected offences and their corresponding penalties.

Table 3: Offences and penalties

S/N	Offence	Penalty
1	Releasing specific confidential information regarding risk management, such as risk registers, risk profiles and other risk assessment data pertaining to traders, goods or transactions to unauthorised persons	A person who contravenes this provision commits an offence and liable on conviction to a term of imprisonment for 2 years or to a fine of ₦1,500,000, or to both
2	Failure to make report in such form and manner the Customs Service may direct of every ship, goods carried, vehicle entering Nigeria	The person that fails to make the report as required shall be liable to a fine of ₦5,000,000. Any goods not duly reported may be detained by the proper officer until so reported or the omission is explained to the satisfaction of the Customs Service
3	Failure to provide list of imported goods unloaded from ship, aircraft or vehicle within the approved time limit to the appropriate officer	If any person fails to comply with this provision, he shall be liable to a fine of ₦1,000,000
4	Where any imported goods remain unclear at the expiration of 14 days from the date of completion or discharge of the importing ship, aircraft or vehicle, the proper officer may direct the person administering the area to remove or store such goods to the Government warehouse or any other suitable place. Failure to comply with this directive within 24 hours constitute an offence	Liable to a fine of ₦500,000 and the proper officer may cause all or any such goods to be removed to a Government warehouse or such other place as he may approve
5	Goods are subject to prohibition or restriction	The Customs Service shall with the order of court, direct the disposal or destruction of such goods
6	Abandoned goods, seized or confiscated goods	The Customs Service shall with the order of court, direct the disposal or destruction of such goods
7	Where a person imports goods into the customs territory and abandon such goods	The person or the holder of the goods shall bear the cost of destruction or disposal of the goods
8	Where goods are deposited contrary to any directions of the Customs Service	The warehouse keeper shall be liable to a fine of ₦1,500,000

S/N	Offence	Penalty
9	Where a customs warehouse is closed, the person(s) concerned shall be given 30 days to remove their goods to another customs warehouse or place the goods under another customs procedure	Failure to remove goods from a closed warehouse within the time allotted by the Customs Service shall result in forfeiture of the goods
10	Any person, without the authority of the customs officer, opens any doors or locks of any warehouse or government warehouse, or to any goods in a warehouse, commits an offence	Liable on conviction to a fine of ₦1,500,000
11	Any person who fails to leave any warehouse, including a government warehouse, or any part of the warehouse when requested to do so by any customs officer commits an offence	Liable on conviction to a fine of ₦500,000
12	Any person who, except as permitted under this Act, willfully destroys or damages any goods in a warehouse, including government warehouse, commits an offence	Liable on conviction to a fine of six times the value of the goods or ₦1,500,000 whichever is greater, or to imprisonment for a term of 2 years or to both fine an imprisonment
13	A person who intentionally participates in the import, export or transit of infringing goods commits an offence	Liable on conviction to imprisonment for 2 years, or to a fine of ₦1,500,000, or both
14	Failure to comply with the regulations regarding manufacturing of spirits, whether by distillation of a fermented liquor or by any other process	A person who fails to comply with the regulations is liable on conviction to penalty of up to ₦2,000,000 or to such other amount as may be specified by regulations. In addition, the spirits, vessels, utensils, or materials used for distilling or otherwise manufacturing or preparing spirits without a licence shall be forfeited

S/N	Offence	Penalty
15	Where there is insufficient evidence to convict a person who manufactures spirit without valid licence, and it is proved that the offence was committed on a part of a premises belonging or occupied by that person in such circumstances that it could not have been committed without that person's knowledge	That person shall on conviction be liable to a fine of ₦500,000
16	Menthylate spirits without a spirit manufacturer excise licence	Pay on conviction, a penalty of ₦1,000,000
17	Brewing of beer other than under and in accordance with an excise licence commits an offence	Liable on conviction, to a fine of ₦2,000,000 and all the equipment and materials used in the production of the beer are subject to forfeiture
18	A brewer mix sugar with the worts or beer so as to increase the quantity, gravity or original gravity of the worts or beer commits an offence	Liable on conviction, to a fine of ₦2,000,000 and the affected worts or beer shall be forfeited
19	Failure to obey regulations regarding manufacture of tobacco	A person who fails to comply with any regulations is liable to pay a fine of ₦1,000,000 and the goods and materials in respect of which non-compliance was committed liable to forfeiture
20	A person who manufactures tobacco otherwise than under and in accordance with an excise licence commits an offence	Liable to a fine of ₦2,000,000
21	Unlawful manufacture of other excisable goods	A person who manufactures or possesses excisable goods without a proper licence shall be liable to a fine of ₦2,000,000
22	Failure to make required entry of any premises, plant or equipment	That person that fails to make the entry shall be liable to pay a penalty of ₦1,500,000, and the plant, equipment or excisable goods found on the premises are liable to be forfeited

S/N	Offence	Penalty
23	Inability to produce by the excise trader for inspection all the necessary documents, invoices and other books that may be relevant to goods liable to excise tax	The person that fails to comply with this requirement is liable to a fine of ₦1,500,000 for the failure to provide the required information and N50,000 for every day the default continues
24	A person who knowingly makes use of a prohibited substance in the manufacture of excisable goods commits an offence	Liable to a fine of not less than ₦20,000,000 or imprisonment for a term of 2 years or to both fine and imprisonment and the excisable goods forfeited
25	A person in whose possession any prohibited substance is found commits an offence	Liable to a fine of not less than ₦20,000,000 or imprisonment for a term of 2 years or to both fine and imprisonment and the excisable goods forfeited
26	Removal of goods without payment of excise duties	Liable to a fine of six times the value of the goods or ₦1,000,000, whichever is greater, and any goods used or dealt with will be liable to forfeiture

Source: Customs, Excise Tariff etc (Consolidation) Act

10.7 Chapter review

This chapter fully explains the objectives, nature and administration of the Nigeria Customs Service, duties and functions of the Customs Service and its Commission. Rates and basis of computation, excisable items, furnishing of information by manufacturers, and offences and penalties under the Act are well discussed.

10.8 Worked examples

10.8.1 Multiple-choice questions

1. Imports and exports shall be subject to restriction and prohibition in the following areas EXCEPT
   A. Public security, public morals and public policy
   B. Protection of the environment
   C. Establishment of non-governmental organisation
   D. Currency
   E. Fishery conservation

2. Failure to provide list of imported goods unloaded form ship, aircraft or vehicle within the approved time limit to the appropriate authority shall be liable to a fine of ....
   A. N 500,000

B. N1,000,000
C. N1,200,000
D. N1,500,000
E. N2,000,000

3. The Nigerian Customs Service Board comprises the following members EXCEPT
A. The Minister of Budget and Planning
B. Comptroller- General of Customs
C. All the Deputy Comptrollers - General
D. The Chairman of the Federal Inland Revenue Service
E. The Legal Adviser to the Nigeria Custom Service Board

4. The primary basis for the customs valuation of goods shall be
A. Cash price
B. Total cost of goods imported
C. Free on board
D. Transaction value
E. Credit value

5. Which of the following duties was amended by the Finance Act 2020?
A. Duty on tractors (HS Headings 8701) from 35% to 5%
B. Duty on motor vehicles from 35% to 15%
C. Duty on motor vehicles from 20% to 10%
D. Duty on agricultural equipment from 35% to 20%
E. Duty on pharmaceutical products from 35% to 25%

10.8.2 Short answer questions

1. Which body is responsible for formulating the general policy guidelines for the Nigerian Customs Service?
2. Where the customs value cannot be determined for an imported item ___________ value of similar goods shall be used.
3. Section 21(3) of the Customs, Excise Tariff, etc (Consolidation) Act Cap. C49 LFN 2004 (as amended), having been amended by Finance Act 2021, excise duty on non-alcoholic, carbonated and sweetened beverages shall be charged at a specific rate of……..per litre.
4. Anyone who manufactures methylated spirit without a spirit manufacturer excise licence, is liable on conviction to a fine of _____________
5. Goods liable to excise duty are specifically provided for in _______________ Act.

10.8.3 Examination type questions

1. Explain the composition of the Nigeria Customs Service Board.
2. Explain the functions of the Nigeria Customs Service Board.
3. Mr. Larry Obinna, a licenced importer and exporter of alcoholic drinks, imported the following items from the United Kingdom through one of Nigerian sea ports on October 13, 2018:

Item	Quantity (bottles)	Price (£) (per bottle)	Value (£)
ABC super wine	2,700	12.00	32,400
XYZ standard spirit	3,000	14.50	43,500
PQR action stout	6,000	5.00	30,000
			105,900

The following additional information is available:

(a) A bottle of any of the items contains 25 centilitre liquid;

(b) The exchange rate is assumed to be N490 to £1; and

(c) Duties payable per centilitre for the items are as follows:

(i) ABC super wine - N1.25

(ii) XYZ standard spirit - N1.50

(iii) PQR action stout - N0.30

Required:

Determine the import duties payable to the Nigeria Customs Service by Mr. Larry Obinna on items imported.

10.8.4 Suggested solutions to multiple-choice questions

1. C
2. B
3. A
4. D
5. A

10.8.5 Suggested solutions to short answer questions

1. Nigerian Customs Service Board
2. Transaction value
3. N10
4. N1,000,000
5., Customs, Excise Tariff, etc (Consolidation) Act Cap. C49 LFN 2004 (as amended).

10.8.6 Suggested solutions to examination type questions

(1) The Nigeria Customs Service Board shall consist of:

(i) The Minister of Finance, who shall be the Chairman;
(ii) The Comptroller-General of Customs, who shall be the Deputy Chairman;
(iii) All the Deputy Comptroller-General;
(iv) One person to be appointed from the Federal Ministry of Finance;
(v) One person to be appointed from the Federal Ministry of Commerce;
(vi) One person to be appointed from the Federal Ministry of Industry;
(vii) One person to be appointed from the Federal Ministry of Transport;

(viii) The legal adviser to the Nigerian Customs Service Board, who shall also head the legal division of the Service to be appointed from the Federal Ministry of Finance;

(ix) Two other persons to be appointed from any two of the following institutions, that is:
- Commercial banks;
- Reputable economic or trade consultancy firms;
- The universities;
- The Nigerian Association of Chambers of Commerce, Industries, Mines and Agriculture;
- The Manufacturers Association of Nigeria; and

(x) The Chairman of the Federal Inland Revenue Service.

(2) Functions of the Board

The Board shall be responsible for:

(a) Formulating the general policy guidelines for the Nigerian Customs Service; and

(b) Administering the Customs and Excise Management Act and accordingly, the Board shall-

(i) Subject to the general control of the Minister, control and manage the administration of the customs and excise laws; and

(ii) Collect the revenues of customs and excise and account for them in such manner as the Minister shall from time to time, direct.

(3) Mr. Larry Obinna Determination of import duties
For items imported on October 13, 2018

ABC super wines

Units imported = 2,700 bottles

Conversion to centilitres = 2,700 x 25 = 67,500 centilitres
Duty payable per centilitre = N1.25

Amount of import duty payable = 67,500 x N1.25 = N84,375.

XYZ standard spirit

Units imported = 3,000 bottles

Conversion to centilitres = 3,000 x 25 = 75,000 centilitres
Duty payable per centilitre = N1.50

Amount of import duty payable = 75,000 x N1.50 = N 112,500.

PQR action stout

Units imported = 6,000 bottles

Conversion to centilitre = 6,000 x 25 = 150,000 centilitres Duty payable per centilitre = N0.30

Amount of import duty payable = 150,000 x N0.30 = N45,000.

The total import duties payable by Mr. Larry Obinna = N84,375 + N112,500 + N45,000
= **N241,875**

Note

Price per bottle should be ignored in the computation as the requirement of the question does not include computation of VAT payable.

CHAPTER ELEVEN
LUXURY TAX

Chapter contents

a) Learning objectives
b) Definition of luxury tax
c) Relevant goods and services
d) Applicable rate for each of the goods and services
e) Benefits of taxation of luxury goods
f) Chapter review
g) Worked examples

11.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Define luxury tax;
(b) Identify the relevant luxury goods and services;
(c) Know the applicable rate for each of the goods and services; and
(d) State the benefits of taxation of luxury goods.

11.1 Definition of luxury tax

Luxury tax can simply be defined as tax imposed on goods and services that are considered by the government to be luxury goods and services. Luxury goods and services are those that are not considered to be essential by the government and which are consumed by the rich or wealthy class of the society.

By implication, luxury tax is targeted at the super rich people because they are the ones that are more likely to purchase more expensive items.

Goods and services that are classified as luxury are usually assessed to tax as a percentage of the sales price, but likely at a higher percentage than the regular sales tax or value added tax.

Luxury taxes are presently being levied in some countries around the world, such as Australia, India, Indonesia, Switzerland, Ireland, Chile, Hungary, Turkey, Egypt, Tunisia, Botswana, Thailand, South Korea, China (Taiwan) and Latvia. The Nigerian government is now showing keen interest in this form of tax in order to mitigate our declining revenue, especially from the oil and gas sector.

11.2 Relevant goods and services

The idea behind introduction of luxury tax in Nigeria started in August 2014, when President Goodluck Jonathan-led Federal Government announced plans to surcharge the under listed items:

(a) Private jets;
(b) Luxury yachts;
(c) Luxury cars;
(d) Business class/first class tickets on airlines;
(e) Champagnes, wines and spirits; and
(f) Residential mansion in the Federal Capital Territory (FCT), Abuja.

The implementation of this tax was suspended because of the controversy it generated.

In 2016, the idea to introduce luxury tax in Nigeria was reactivated by the Federal Government through the Minister of Finance, Mrs. Kemi Adeosun. Surprisingly, the affected goods and services and their rates were not stated. The minister did state that the proposed luxury tax will not affect basic food items.

However, in August 2017, during a facebook live video chat tagged "Tax Thursday", Mrs. Adeosun explained government's plan on luxury taxes. The proposed tax will be on the following items:

(a) First class tickets on airline travels;

(b) Luxury coaches;

(c) Luxury goods (champagne, brandy, whisky, wine);

(d) Jewelry; and

(e) High-end jewelry.

11.3 Applicable rate for each of the goods and services

In respect to the policy thrust of Goodluck Jonathan administration, the following rates were suggested on luxury items in 2014:

(a) 10% import surcharge on new private jets;

(b) 39% import surcharge on luxury yachts;

(c) 5% import surcharge on luxury cars;

(d) Undisclosed surcharge on business and first class airplane tickets;

(e) 3% luxury surcharge on champagnes, wines and spirits; and

(f) 1% FCT, Abuja mansion tax on residential properties valued at N300 million and above.

11.4 Benefits of taxation of luxury goods

These include to:

(a) **Raise government revenue:** With over 100 billionaires, more than 100,000 multi-millionaires and the highest number of world's private jet owners in the country coupled with wealthy people's penchant to purchase expensive items from other countries, the annual revenue expected to be generated from this source will be awesome;

(b) **Broaden the tax base:** The non-oil sector tax base is expected to be broadened with the introduction of the luxury tax. The revenue generated from the oil sector has continued to decline since 2013 and this makes it imperative for the government to look for other sources. The luxury tax nevertheless is one of such other non-oil sources;

(c) **Redistribute wealth from the rich to the poor:** The tax generated from this source is expected to be used to provide social amenities to the populace and will benefit the poor people the most. The social imbalance in the system is also to be dealt with; and

(d) **Mitigate the consumption of non-essential goods and services:** The full implementation of this tax may likely curb the penchant for consumption of extremely non-essential items in the long-run. The habit of the consumer of the item as well as the elasticity demand for the product may also determine the quantity to be purchased.

11.5 Chapter review

This chapter explains the definition of luxury tax, examples of luxury goods and services, their applicable rates and benefits to be derived by its introduction and implementation in Nigeria.

11.6 Worked examples

11.1.1 Multiple-choice questions

1) Which of these options best describes luxury goods and services?
   - A. Luxury goods and services are those that are not considered to be essential by the government and which are consumed by the wealthy class of the society.
   - B. Luxury goods and services are those that are considered to be essential by the government and which are consumed by the rich or wealthy class of the society.
   - C. Luxury goods and services are those that are not considered to be essential by the government and which are consumed by the vulnerable in the society.
   - D. Luxury goods and services are those that are not considered to be essential by the rich and which are consumed by the wealthy class of the society.
   - E. Luxury goods and services are those that are not considered to be essential by the rich and which are consumed by the poor in the society.

2) Which of the following best explains luxury tax?
   - A. Luxury tax is targeted at the super rich people because they are the ones that are more likely to sell more expensive items.
   - B. Luxury tax is targeted at the poor people because they are the ones that are more likely to like more expensive items.
   - C. Luxury tax is targeted at the super rich people because they are the ones that are more likely to produce more expensive items..
   - D. Luxury tax is targeted at the super rich people because they are the ones that are more likely to purchase more expensive items.
   - E. Luxury tax is targeted at the poor people because they are the ones that are more likely to purchase more expensive items.

3. Which of these options best explains the main reason for the renewed interest of government in luxury tax?
   - A. The Nigerian government is now showing keen interest in this form of tax in order to mitigate our declining revenue.
   - B. The Nigerian government is now showing keen interest in this form of tax in order to reduce revenue, especially from the oil and gas sector.
   - C. The Nigerian government is now showing keen interest in this form of tax in order to boost revenue from the oil and gas sector.
   - D. The Nigerian government is now showing keen interest in this form of tax in order to encourage consumption of local items.
   - E. The Nigerian government is now showing keen interest in this form of tax in order to discourage the consumption of foreign goods.

4. Luxury items include the following EXCEPT
   - A. First class tickets on airline travels
   - B. Luxury coaches
   - C. Champagne
   - D. Beer
   - E. High-end jewelry

5. Which of the following is NOT a benefit of taxation of luxury goods?

A. Increase in government revenue

B. Broadening of the tax base

C. Redistribution of wealth from the rich to the poor

D. Mitigating the consumption of non-essential goods and services

E. Production of more non- essential goods and services

11.1.2 Short answer questions

1. The tax imposed on non-essential items but consumed by the rich in the society is called ……………..

2. Goods and services that are classified as luxury are usually assessed to tax as a percentage of ……………

3. Luxury tax is always at a higher percentage than the regular sales tax or value added tax. True or false?
4. The proposed luxury tax rate for import surcharge on a new private jet is ……
5. The non-oil sector tax ……. is expected to be broadened with the introduction of the luxury tax.

11.1.3 Examination type questions

(1) (a) What is luxury tax?

(b) State five goods and services that are considered to be luxury items in Nigeria and other parts of the world.

(2) What are the likely benefits to be derived through the introduction of luxury tax in Nigeria?

11.1.4 Suggested solutions to multiple-choice questions

1. A
2. D
3. A
4. D
5. E

11.1.5 Suggested solutions to short answer questions

1. Luxury tax
2. Sales price
3. True
4. 10 %
5. Base

11.1.6 Suggested solutions to examination type questions

(1) (a) Luxury tax can simply be defined as tax imposed on goods and services that are considered by the government as luxury goods and services. Luxury goods and services are those that are not considered to be essential by the government and which are consumed by the rich or wealthy class of the society.

Luxury tax can also be defined as tax levied on goods or services considered to be luxuries rather than necessities.

(b) Examples of goods and services that are considered to be luxuries are:

(i) Private jets;

(ii) Luxury yachts;

(iii) Luxury cars;

(iv) Business class/first class tickets on airlines;

(v) Champagnes, wines and spirits;

(vi) Residential mansion, whose cost is beyond a specified threshold;

(vii) Jewelry; and

(viii) Perfume.

(2) Benefits of taxation of luxury goods

These include to:

(a) Raise government revenue: With over 100 billionaires, more than 100,000 multi-millionaires and the highest number of world's private jet owners in the country couple with our penchant to purchase expensive items from other countries, the annual revenue expected to be generated from this source will be awesome;

(b) Broaden the tax base: The non-oil sector tax base is expected to be broadened with the introduction of the luxury tax. The revenue generated from the oil sector has continued to decline since 2013 and this makes it imperative for the government to look for other sources. The luxury tax nonetheless is one of other non-oil sources;

(c) Redistribute wealth from the rich to the poor: The tax generated from this source is expected to be used to provide social amenities to the populace and will benefit the poor people the most. The social imbalance in the system is also to be dealt with; and

(d) Mitigate the consumption of non-essential goods and services: The full implementation of this tax may likely curb the penchant for consumption of extremely non-essential items in the long-run. The habit of the consumer of the item as well as the elasticity of the product may also determine the quantity to be purchased.

CHAPTER TWELVE
CAPITAL ALLOWANCES

Chapter contents

a) Learning objectives

b) Definition and types of capital allowances

c) Definition and types of qualifying capital expenditure

d) Conditions for granting capital allowances

e) Capital allowances rates and restrictions

f) Basis periods for capital allowances

g) Computation of capital allowances for small companies

h) Computation of balancing adjustments on disposal of qualifying capital expenditure

i) Chapter review

j) Worked examples

12.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Appreciate the meaning of capital allowances;
(b) Understand the categories of qualifying capital expenditure;
(c) Ascertain conditions for granting capital allowances;
(d) Establish basis period for capital allowances; and
(e) Understand various restrictions on capital allowances claims.

12.1 Definition and types of capital allowances

12.1.1 Definition

Capital allowances are a form of relief granted to any company which incurred qualifying capital expenditure for the purpose of a trade or business during a basis period in respect of property, plant and equipment that are in use at the end of the basis period. Capital allowances are granted in place of depreciation which is usually disallowed for income tax purposes.

Capital allowances are initial allowance, annual allowance, balancing allowance/charge and investment allowance.

12.1.2 Initial allowance (IA)

This is a relief that is granted in the year of assessment in the basis period of which a qualifying capital expenditure was incurred. In effect, it is an allowance that is granted once in the life of any asset for as long as it is beneficial, owned and used by the same owner.

12.1.3 Annual allowance (AA)

This is granted every year, on the residue of qualifying capital expenditure, incurred on non-current assets, after deducting the initial allowance. Annual allowance is computed on a straight line basis.

12.1.4 Balancing allowance/charge

This is the difference between the tax written down value and sale proceeds on the disposal of an asset. Proceeds can also be in the form of insurance claim. Where the tax written down value exceeds the sale proceeds, the difference is a balancing allowance.

Where it is the other way round, the difference is a balancing charge. The latter is a claw back of capital allowances previously enjoyed by the company and should not exceed the reliefs actually given.

12.1.5 Investment allowance

This is an incentive granted where a company has incurred expenditure on plant and equipment (Section 32 (1)) of CITA or on plant and machinery (Second Schedule (Para 18 (3)) of CITA. The investment allowance is granted at the rate of 10% of qualifying expenditure and such allowance shall not be taken into account in ascertaining the tax written down value of qualifying expenditure.

12.1.6 Rural investment allowance

This is an allowance given in addition to an initial allowance to a company which incurs capital expenditure or the provision of facilities such as electricity, water or tarred road for the purpose of a trade or business which is located at least 20 kilometres away from such facilities provided by the government.

A company cannot claim both the investment allowance and the rural investment allowance in respect of the same assets.

The rate of the rural investment allowance shall be as follows:

(a)	No facilities at all	-	100%
(b)	No electricity	-	50%
(c)	No water	-	30%
(d)	No tarred road	-	15%

The rural investment allowance shall be made against the projects of the year in which the said facility falls and the allowance or any balance shall not be available for carry forward to any subsequent year.

12.1.7 Export processing zone allowance

This allowance is granted to a company which has incurred an expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an export processing zone. The rate granted is 100 per cent capital allowance in any year of assessment. The company shall not be entitled to an investment allowance.

12.2 Definitions and types of qualifying capital expenditure

Qualified capital expenditure means expenditure incurred on assets used for a trade or business, which qualifies for capital allowances in a basis period. Categories of capital expenditure that qualify for the grant of capital allowances are as follows:

12.2.1 Qualifying building expenditure - that is, expenditure on buildings, structures or work of a permanent nature.

12.2.2 Qualifying industrial building expenditure, that is, expenditure on buildings or structure in regular use, such as a mill or a factory, mechanical workshops, dock, port and wharf.

12.1.3 **Qualifying mining expenditure -** expenditure on working a mine, oil well, etc.).

12.2.4 Qualifying plant expenditure - that is, expenditure incurred on plant, machinery and fixtures.

12.2.5 Qualifying plantation expenditure - expenditure incurred on clearing of land for planting, etc.

12.2.6 Qualifying research and development expenditure, that is, expenditure incurred on equipment, facilities, patent and licences, etc.

12.2.7 Qualifying agricultural expenditure (expenditure incurred on plant in use for agricultural trade or business).

12.2.8 Qualifying public transportation, new mass transit coach expenditure.

12.2.9 Qualifying capital expenditure incurred on the development or acquisition of software or other electronic applications.

12.3 Conditions for granting capital allowances

Capital allowances are granted if the following conditions are satisfied:

(a) The company must have incurred qualifying capital expenditure;

(b) The claimant must remain the beneficial owner of the asset at the end of the basis period of the company,

(c) The asset must be in use wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by the company at the end of its basis period.

(d) Application for Acceptance Certificate must be made with the Federal Ministry of Industry where total value of additions to property, plant and equipment exceed N500,000 in any given year.

(e) Capital allowance on qualifying capital expenditure (QCE) incurred in generating tax exempt income is not deductible from the assessable profits arising from income not exempt from tax under CITA. Capital allowances accruing in respect of QCE employed for both taxable and tax-exempt income, shall be pro-rated where the tax-exempt income constitutes more than 20% of the total income of the company – section 31(1A) – (1B) of CITA (as amended).

(f) Capital allowance on QCE incurred by small companies are deemed utilized during the periods such companies are tax-exempt – section 31(1c) of CITA (as amended).

Notes:

(a) The provisions in (e) and (f) as stated above, shall not apply to a company that enjoys pioneer status under the Industrial Development (Income Tax Relief) Act, Cap. 17 LFN 2004 (as amended).

(b) A period of temporary disuse is ignored for this purpose, provided that the asset is brought into use before disposal.

12.4 Capital allowances rates and restrictions

12.4.1 Capital allowances rates

The rates are as indicated below:

	%	**%**
Qualifying expenditure in respect of:	Initial	Annual
Building expenditure	15	10
Industrial building expenditure	15	10

Manufacturing industrial plant expenditure	50	25
Mining expenditure	95	NIL
Plant expenditure (excluding furniture &fittings)	50	25
Construction plant expenditure (excluding furniture and fittings)	50	25
Furniture and fittings expenditure	25	20
Motor vehicle expenditure	50	25
Public transportation motor vehicle	95	NIL
Plantation equipment expenditure	95	NIL
Agricultural plant expenditure	95	NIL
Housing estate expenditure	50	25
Ranching and plantation expenditure	30	50
Research and development expenditure	95	NIL

12.4.2 Restrictions of capital allowances

Capital allowances to be deducted from assessable profits of companies in any year are restricted to 662/3% 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.

12.5 Basis period for capital allowances

12.5.1 Introduction

Based on the provisions of the Finance Act, 2019, the problems of overlapping and gaps between basis periods have been addressed, hence the situations no longer exist.

15.5.2 Basic principles

The basis period for capital allowances is the same as that for the assessment of the profits of a company. This means that capital allowances are given in an assessment year in respect of assets acquired or qualifying expenditure incurred in the preceding year of assessment.

Illustration 12.1

A company commenced business on February 1, 2020 and makes up its accounts to March 31, every year. It acquired property, plant and equipment as follows:

Date	Assets purchased	Cost
1/2/2020	Building	N5 million
1/2/2020	Furniture	N1.5 million
1/4/2020	Machinery	N 2 million
3/5/2020	Jeep motor vehicle	N 3 million

The turnover for each of the relevant assessment years was over N27million.

Required:

Determine the basis period and compute the capital allowances for all the relevant assessment years, taking into consideration the relevant provisions of the Finance Act, 2019.

Suggested solution 12.1

(a) **Determination of basis period**

YOA	Basis period for assessment	Basis period for capital allowance
2021	1/2/20 – 31/3/20	1/2/20 – 31/3/20
2022	1/4/20 – 31/3/21	1/4/20 – 31/3/21

(b) **Determination of basis period**

Allowances	**Building**	**Furn.**	**Mach.**	**Motor vehicle**	**Total**
Investment allowance	0	0	10	0	
Initial allowance (%)	15	25	50	50	
Annual allowance (%)	10	20	25	25	
	(‘000)	(‘000)	(‘000)	(‘000)	(‘000)
	₦	₦	₦	₦	₦
Assessment Year – 2021					
Cost:					
1/2/20 – Building	5,000				
1/2/20 – Furniture		1,500			
Allowances:					
Initial allowance	(750)	375			1,125
Annual allowance	(71)	(38)			109
					1,288
Written Down Value – c/f	4,179	1,087			
Assessment Year – 2022					
Cost:					
1/4/20 – Machinery			2,000		
3/5/20 – Jeep	-	-	-	3,000	
Allowances:					
Investment allowance			(200)		200
Initial allowance	-	-	(1,000)	(1,500)	2,500
Annual allowance	(425)	(225)	(250)	(375)	1,275
					3,975
Written down value – c/f	3,754	862	750	1,125	

The investment allowance of N200,000 claimed in assessment year 2022 was not taken into consideration in arriving at the written down value of the machinery carry forward to assessment year 2023.

12.5.3 Carry-back of capital allowances on cessation of business

On cessation of trade or business, unabsorbed capital allowances arising in the assessment year in which trade or business permanently ceases, may be carried back for relief against, the remainder of profits of the five years of assessment preceding the final year of trading or business.

The relief should first be claimed against the remainder of profits of the penultimate year, and thereafter, the pre-penultimate year and so on.

The remainder of profits is determined, using a proforma as follows:

Proforma computation Determination of remainder of profit

	₦	₦
Assessable profit		Xxx
Deduct:		
Unrelieved loss - b/f	(xx)	
Relieved losses	xx	(xx)
		(xx)
Balancing charge		X
		Xx
Deduct:		
Capital allowances		(x)
Total profits (remainder of profit)		X

The total profits are the remainder of profits available for carry–back of capital allowances. Thus, unabsorbed capital allowances are relieved from the remainder of profits for the five years of assessment before the year of cessation. Technically, the tax implication of the carry-back of capital allowances is that, the tax previously paid is refundable to the company by the Federal Inland Revenue Service but this rarely happens in practice.

12.6 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 the capital allowances on capital expenditure when it crosses the threshold of ₦25m as it will now qualify as either a medium or large company.

12.7 Computation of balancing adjustments on disposal of qualifying capital expenditure

12.7.1 Balancing charge

Balancing charge is one of the components of balancing adjustment, which is obtained when an asset is disposed off. It occurs where the sales proceeds exceed the tax written down value at the time of disposal.

Balancing charge is regarded as an additional taxable value. However, the maximum amount payable should not exceed the total capital allowances claimable on the asset before the disposal of the capital expenditure.

12.7.2 Balancing allowance

This occurs where the sales proceeds on disposal of qualifying expenditure is less than the tax written down value of the asset. This can be regarded as an additional annual allowance as it reduces tax liability.

A balancing allowance can only be made if immediately prior to the disposal of the asset, it was in use by the owner of the trade or business for the purposes of which qualifying expenditure was incurred.

12.8 Chapter review

This chapter addresses the incidence of capital allowances - what they represent and the categories of assets that could be classified as qualifying capital expenditure. It also discusses the conditions for granting capital allowances.

12.9 Worked examples

12.9.1 Multiple-choice questions

1. Allowance usually granted in lieu of depreciation for the tax purposes is called………
   A. Personal allowance
   B. Allowance deduction
   C. Capital allowance
   D. Department allowance
   E. General allowance

2. Capital allowance is claimed only on the following conditions **EXCEPT**
   A. The qualifying capital expenditure must be owned by the taxpayer as at the end of basis period
   B. The taxpayer may not necessarily be the owner
   C. The qualifying capital expenditure must be in use as at the end of the basis period
   D. An acceptance certificate must be obtained from Federal Ministry of Industry where the value of the qualifying capital expenditure is not less than ₦500, 000
   E. Capital allowance on qualifying capital expenditure (QCE) incurred in generating tax-exempt income is not deductible from the assessable profits arising from income not exempt from tax under CITA (as amended).

3. The following are types of capital allowance **EXCEPT**
   A. Initial allowance
   B. Annual allowance
   C. Balancing allowance
   D. General allowance
   E. Investment allowance

4. Which of the following is a type of balancing adjustment?
   A. Balancing charge
   B. Investment allowance
   C. Personal allowance
   D. Departmental allowance
   E. General allowance

5. The investment allowance is granted at the rate of ……….of qualifying expenditure and such allowance shall not be taken into account in ascertaining the tax written down value of the qualifying capital expenditure.
   A. 10%
   B. 12.5%
   C. 15%
   D. 20%
   E. 25%

12.9.2 Short answer questions

1. Balancing allowance is arrived at when the sales proceeds on a qualifying capital expenditure is less than the ……………. of the asset.
2. Capital allowances computation is usually based on the ………. life of an asset.
3. On cessation of business, unabsorbed capital allowances arising in the assessment

year in which the business permanently ceases, may be carried back for relief against, the remainder of profits of the ……….preceding the final year of business.

4. 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 ………..

4. The computation of annual allowance is on …………. basis.

12.9.3 Examination type questions

(1) Ultimate Limited is a company engaged in the production and sale of new electric cookers. The company ceased business on May 31, 2020 due to stiff competition from importers of fairly used cookers.

The company achieved an annual gross turnover of over N100,000,000 in 2019 and 2020 before cessation.

The results of the company revealed the following for the year ended December 31,

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

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

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

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

Required:

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

(2) XYZ Limited commenced business on February 1, 2020, and makes up its accounts to March 31, each year. The turnover for each assessment year was over N25million.

It acquired property, plant and equipment (PPE) as follows:

Date	PPE purchased	Cost
		₦
1/2/20	Building	6,000,000
1/2/20	Furniture	1,500,000
1/4/20	Machinery	8,000,000
31/5/20	Motor vehicle	3,000,000

Required:

Determine the basis period and compute the capital allowances for all the relevant years of assessment, taking into consideration the provisions of the Finance Act, 2019.

(3) 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 the capital allowances claimable for all the relevant years of assessment.

12.9.4 Suggested solutions to multiple-choice questions

1. C
2. B
3. D
4. A
5. A

12.9.5 Suggested solutions to short answer questions

1. Tax written down value
2. Useful/unexpired life
3. 5 years of assessment
4. Small companies
5. Straight line

12.9.6 Suggested solutions to examination type questions

(1) Ultimate Limited
Computation of income tax liabilities

Assessment year 2013 (Based on 1/1/12 – 31/12/12)

	₦	₦
Assessable profit		1,800,000
Deduct:		
Capital allowances	1,950,000	
Restricted to $66^{2}/_{3}$% of ₦ 1,800,000	(1,200,000)	(1,200,000)
Unrelieved capital allowance c/f	750,000	
Total profit		600,000
Companies income tax payable (N 600,000) at 30%		₦180,000
Tertiary education tax payable (N 1,800,000) at 2%		₦36,000

Assessment year 2014 (Based on 1/1/13 – 31/12/13)

Assessable profit		2,300,000
Deduct:		
Capital allowances – For the year	920,000	
– Unrelieved b/f	750,000	
	1,670,000	
Restricted to ₦ 2,300,000 at 66 $^2/_3$%	(1,533,333)	(1,533,333)
Unrelieved capital allowances – c/f	136,667	
Total profit		766,667
Companies income tax payable (₦ 766,667) at 30%		₦230,000
Tertiary education tax payable (₦ 2,300,000 x 2%)		₦46,000

Assessment year 2015 (Based on 1/1/14 – 31/12/14)

Assessable profit		3,500,000
Deduct:		
Capital allowances – For the year	1,350,000	
– Unrelieved b/f	136,667	(1,486,667)
Total profit		2,013,333
Companies income tax payable (₦ 2,013,333) at 30%	=	₦604,000
Tertiary education tax payable (₦ 3,500,000) x 2%	=	₦70,000

Assessment Year 2016 (Based on 1/1/15 – 31/12/15)

Assessable profit		1,500,000
Deduct:		
Capital allowances		870,000
Total profit		630,000
Companies income tax payable (₦ 630,000) at 30%		₦189,000
Tertiary education tax payable (₦ 1,500,000) x 2%		₦30,000

Assessment year 2017 (Based on 1/1/16 – 31/12/16)

Assessable profit		1,700,000
Deduct:		
Capital allowances		(850,000)
Total profit		850,000
Companies income tax payable (₦ 850,000) at 30%	=	₦255,000
Tertiary Education tax payable (₦ 1,700,000 x 2%)	=	₦34,000

Assessment year 2018 (Based on 1/1/17 - 31/12/17)

Assessable profit		1,200,000
Deduct:		
Capital allowances		730,000
Total profit		470,000
Companies income tax payable (₦ 470,000) at 30%	=	N 141,000
Tertiary Education tax payable (₦ 1,200,000 x 2%)	=	N 24,000

Assessment year 2019 (based on 1/1/18 – 31/12/18)

Assessable profit:		950,000
Deduct:		

Capital allowances	950,000	
Restricted to (₦ 950,000) x 662/3%	(633,333)	(633,333)
Unutilized capital allowances c/f	316,667	
Total profit		316,667
Companies income tax payable (₦ 316,667) at 30%	=	N 95,000
Tertiary education tax (₦ 950,000) x 2%	=	N 19,000

Assessment year 2020 (Based on 1/1/19 – 31/12/19)

Assessable profits – 7/10 x 250,000		780,000
Deduct:		
Capital allowances for the year	990,000	
b/f	316,667	
	1,306,667	
Restricted to (₦ 780,000) x 662/3%	(520,000)	(520,000)
Unutilized capital allowances c/f	786,667	
Total profit		260,000
Companies income tax payable (₦260,000) at 30%	=	N 78,000
Tertiary education tax (₦ 780,000) x 2%	=	N 15,600

Assessment year 2020 (Based on 1/1/20 – 31/5/20)

Assessable profits		250,000
Deduct:		
Capital allowances for the year – balancing allow.	2,350,000	
- b/f	786,667	
	3,136,667	
Restricted to	(250,000)	(250,000)
Unutilized capital allowances c/f	2,886,667	
Total profit		0
Carried back against the remainder of profits as follows:		
2020 A/Y	(260,000)	
2019 A/Y	(316,667)	
2018 A/Y	(470,000)	
2017 A/Y	(850,000)	
2016 A/Y	(630,000)	
	2,526,667	

The refundable by FIRS based on the foregoing:

		₦
A.Y.	– 2016 – ₦ 630,000 at 30%	189,000
	– 2017 – ₦ 850,000 at 30%	255,000
	– 2018 – ₦ 470,000 at 30%	141,000
	– 2019 – ₦ 316,667 at 30%	95,000
	– 2020 – ₦ 260,000 at 30%	78,000
Total	₦ 2,526,667	758,000

Tertiary education tax (₦250,000 x 2%)	5,000

Notes:

(a) Any part of the capital allowances, that is, ₦360,000 (₦2,886,667 less ₦2,526,667), which remained unrelieved after carrying back against the remainder of profits for 2016, will be deemed lost. The period of carry back is limited to five (5) years before the year of cessation.

(b) If the company had ceased business in any month from July 2020 to December 2020, the year of cessation will be assessment year 2021.

(2) XYZ Limited
Computation of capital allowances for assessment years 2021 and 2022

(a) **Determination of basis periods**

YOA	Basis period for assessment	Basis period for capital allowances
2021	1/2/2020 – 31/3/2020	1/2/2020 – 31/3/2020
2022	1/4/2020 – 31/3/2021	1/4/2020 – 31/3/2020

(b) **Computation of capital allowances**

	Building	**Furniture**	**Machinery**	**Motor vehicle**	**Total**
Initial allowance (%)	15	25	50	50	
Annual allowance (%)	10	20	25	25	
	₦	₦	₦	₦	₦
Assessment year 2021					
Cost	6,000,000	1,500,000			
Initial allowance	(900,000)	(375,000)			1,275,000
Annual allowance	(85,000)	(12,500)			97,500
					1,372,500
WDV. c/f to A.Y. 2022	5,015,000	1,112,500			
Assessment year 2022					
Cost			8,000,000	3,000,000	
Initial allowance	0	0	(4,000,000)	(1,500,000)	5,500,000
Annual allowance	(510,000)	(75,000)	(1,000,000)	(375,000)	1,960,000
Investment allowance	0	0	(800,000)	0	800,000
					8,260,000
W.D.V. c/f to A.Y. 2023	4,505,000	1,037,500	3,000,000	1,125,000	

Note

The investment allowance of ₦800,000 claimed in assessment year 2022 was not taken into consideration in arriving at the written down value of machinery carried forward to assessment year 2023.

(3) **Apex Limited**
Computation of capital allowances for 2020 to 2024 assessment years.

Furniture and Fittings

Initial allowance - 25%
Annual allowance – 20%

	Total capital allowances	**Cost**	**Remarks**

	₦	₦	₦	
Assessment year 2020				
Cost			2,000,000	
Initial allowance	500,000			
Annual allowance	300,000	800,000		
Assessment year 2021				
Annual allowance	300,000	1,100,000		
Assessment year 2022				
Annual allowance	300,000	1,400,000	(1,400,000)	**Not utilised**
W.D.V. c/f to A.Y. 2023			600,000	
Assessment year 2023				
Annual allowance			(300,000)	
W.D.V c/f to A.Y. 2024			300,000	
Assessment year 2024				
Annual allowance			(299,990)	
Amount retained in the books			10	

Note:

Given the fact that the company did not achieve the N25,000,000 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.

CHAPTER THIRTEEN
TAXATION OF EMPLOYMENT INCOME

Chapter contents

a) Learning objectives
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h) Importance of residence of a taxpayer
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j) Registration of employees for Pay-As-You –Earn (PAYE)
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l) Filing of annual returns by employers in respect of emoluments paid to employees in the preceding year.
m) Basis of assessment of an employee
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p) General provisions relating to valuation of benefits-in kind (BIK)
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t) Rate of tax
u) Computation of chargeable income and personal income tax payable
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w) Offences and penalties
x) Chapter review
y) Worked examples

13.0 Learning objectives

After studying this chapter, readers should be able to:

i. Draw a distinction between contract of employment and contract for employment;
ii. Differentiate between the two types of employment;
iii. Distinguish among employment, vocation and profession;
iv. Understand the basis for valuing benefits-In-kind received by employees;
v. Identify when gain or profit from employment is deemed to be derived from Nigeria;
vi. Define place of residence and principal place of residence;
vii. Discuss the significance of residence for tax purposes;
viii. Explain how a dispute over the determination of an individual's territory of residence

can be resolved;

ix. Understand registration for pay-as-you-earn (PAYE);
x. Explain the operation of PAYE regulations;
xi. Explain the expenses specifically allowed and disallowed by the Act in ascertaining the tax liability of an individual;
xii. Determine basis of assessment and computation of consolidated relief allowance;
xiii. Explain tax-exempt deductions and rate of tax;
xiv. Determine personal income tax and computation of minimum tax;
xv. Explain filing of returns by employees and employers; and
xvi. Identify offences and penalties.

13.1 Employment income

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

13.1.1 Cash emoluments

Cash emoluments are the remuneration an employee receives from the employer in cash. Cash emoluments include salary, wages, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits, share of profits received by an employee.

13.1.2 Benefits-in-kind (BIK)

Benefits-in-kind are those expenses incurred by an employer in the provision of benefits to the employee. Such benefits often include: furnished living accommodation, gardener /stewards (domestic servants), use of official car for private purpose by employees, installation of air conditioners or generator in employees' residences. These benefits are regarded as part of the employee's taxable income if these relate to services rendered by the employee. Benefits-in-kind will also include such benefits which are actually provided to the spouse, family, servant, dependant or guest of the employee.

Illustration 13.1

Format for the computation of taxpayer's tax liability

	₦	₦
Total income **less** non-taxable incomes and incomes on which no further tax is payable		xxx
Less Tax exempt items:		
(a) Pension contribution	xxx	
(b) Contribution to National housing fund (NHF)	xxx	
(c) Contribution to National health insurance scheme (NHIS)	xxx	
(d) Life assurance premium	xxx	
(e) Gratuity	xxx	xxx
Gross income		xxx
Less consolidated relief allowance (N200,000 or 1% of gross income, whichever is higher plus 20% of gross income)		xxx
Chargeable income		xxx
1st ₦300,000 @ 7%		21,000
Next ₦300,000 @ 11%		33,000
Next ₦500,000 @ 15%		75,000
Next ₦500,000 @ 19%		95,000
Next ₦1,600,000 @ 21%		336,000
Balance @ 24%		xxx
Tax payable		xxx
Less: Withholding tax		xxx
Final tax liability payable		xxx

13.2 Taxable persons under the enabling Act

While Personal Income Tax (PITA) 2004 (as amended) provides for the taxation of individuals in Nigeria, it makes special provisions for the taxation of those in employment. Section 10 of PITA provides that the gain or profit from an employment shall be deemed to be derived from Nigeria if:

a) The duties of the employment are wholly or partly performed in Nigeria, unless:

   (i) The duties are performed on behalf of an employer who is in a country other than Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria;

   (ii) The employee is not in Nigeria for a period or periods amounting to an aggregate of 183 days, (inclusive annual leave or temporary period of absence) or more in any twelve months period commencing in a calendar year and ending either within that same year or the following year; and

   (iii) The remuneration of the employee is liable to tax in that other country, under the provisions of the avoidance of double taxation treaty with other country.

b) The employer is in Nigeria or has a fixed base in Nigeria;

c) The gain or profit from any employment exercised in Nigeria shall be deemed to be derived from Nigeria whether the gains or profits from the employment are received in Nigeria or not;

d) The gains or profits from any employment, the duties of which are wholly or mainly performed in Nigeria shall be deemed to be derived from Nigeria during any period of leave of the employee from the employment, and any period of his temporary absence on duty from Nigeria; and

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

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

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

(i) Of the day on which it is paid; or

(ii) If it is paid after the cessation of the employment, of the last day of the employment including any terminal leave arising therefrom.

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

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

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

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

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

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

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

13.3 Employment, contract of service and contract for service

The Personal Income Tax Act Cap. P8 LFN 2004 (as amended) defines **employment** to include any appointment or office whether public or otherwise for which remuneration is payable, and "employee" and "employer" shall be construed accordingly.

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

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

An individual under a contract of employment is commonly referred to as an employee, while an individual under a contract for employment is referred to as an independent contractor or self-employed person. The following distinctions can be drawn between a contract of employment and a contract for employment:

(a) An individual under a contract of employment earns remuneration (that is, salary), while an individual under a contract for employment earns profit;

(b) An individual under a contract of employment is assessed to tax on actual year basis, while an individual under a contract for employment is assessed to tax on preceding year basis;

(c) A self-employed person is required to register for value added tax, while an employee is not required to do so; and

(d) An employee has the right not to be unlawfully dismissed and to receive redundancy payment and other employment rights, while a self-employed person does not have such rights.

13.4 Types of employment

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

(a) **Nigerian employment** means any employment, not being a foreign employment, the duties of which are wholly or partly performed in Nigeria.

An individual who holds a Nigerian employment on the first day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which he has a place or principal place of residence on that day or, as the case may be, on the day on which he enters upon the full duties of that employment in Nigeria:

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

(b) **Foreign employment** means an employment the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria.

An individual who holds a foreign employment on the first day of January in a year of assessment, or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences, as the case may be.

13.5 Meaning of income

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

Gain or profit from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised; and

Any salary, wage, fee, allowance or gain or profit from employment including compensation, bonuses, premiums, benefits or other perquisites allowed, given or granted by any entity to an employee, other than those specifically stated as non- taxable.

For the purposes of personal income tax and place of residence, income is classified into earned and unearned.

a) Earned income

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

Place of residence

(i) An individual who has a source of earned income in Nigeria, for a year of assessment, other than from employment or a pension, shall be deemed to be resident for that year in the territory in which he had a place or principal place of residence on the 1st day of January in that year.

(ii) If the source of the income is first acquired by the individual during the year of assessment, and he had no place of residence on the first day of that year, he shall be deemed to be resident for that year, in the territory where he first establishes a place of residence during that year.

(iii) In any other case, the individual shall be deemed to be resident for that year, in any territory from which any part or the whole of his earned income, arising in Nigeria is derived, if the income is derived from more than one territory, in the Federal Capital Territory.

b) Unearned income

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

Place of residence

(i) An individual who has no source of earned income in Nigeria for a year of assessment, but has one or more sources of unearned income in Nigeria for that year, shall be deemed to be resident for that year, in the territory in which he has a place or principal place of residence, on the 1st day of January of that year.

(ii) If all the unearned income of the individual for that year, arises in one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year in that where the income arises.

(iii) If the unearned income of the individual arises for that year, in more than one territory, and he has no place of residence on that day, he shall be deemed to be resident for that year, in the territory from which any part of the unearned income arises.

c) Corporation sole

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

13.6 Relevant tax authorities

Personal income tax covers the following:

(a) Individuals, body of individuals, communities and families; and
(b) Estates, trusts and settlements.

As provided for in section 2 of PITA 2004 (as amended) the relevant tax authority may vary from person to person. These are discussed in turn:

(i) Individuals, corporate sole or body of individuals: The relevant authority is the State where the individual is deemed to be resident for that assessment year. Thus, taxes are expected to be paid to the relevant State Internal Revenue;

(ii) The relevant tax authority of the following other persons, is Federal Inland Revenue Service:

- Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Airforce, the Nigeria Police Force, other than in a civilian capacity;
- Officers of the Nigerian Foreign Service; and
- A person resident outside Nigeria who derives income or profit from Nigeria.

(iii) For every resident of the Federal Capital Territory, Abuja, the relevant tax authority is the FCT Internal Revenue Service;

(iv) Trustees of any settlement or trusts or estates or to an executor of any estate of a deceased person: The relevant tax authority is the State in relation to such settlement, trust or estate is first administered or in which the deceased was last deemed to be resident;

(v) Communities: Tax may be collected by the law of the territory (State) in which that community is to be found;

(vi) Families: Income of a family recognised under any law or custom in Nigeria as families income, in which the several interests of individual members of the family are indeterminate or uncertain, the relevant tax authority is the State in which the member of that family who customarily receives that income in the first instance in Nigeria usually resides; and

(viii) Itinerant workers: The relevant tax authority is the State in which the itinerant worker is found (place of work) during the year.

13.7 Determination and importance of residence

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

a) Resident individual

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

(i) Is domiciled in Nigeria;

(ii) Sojourns in Nigeria for a period or periods in all amounting to 183 days or more in a 12-month period; and

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

b) Non-resident individual

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

c) Residence and nationality

Residence should not be confused with nationality. The Nigerian tax laws attach importance to residence and not nationality. Therefore, whether you are a citizen of Nigeria or a citizen of another country, the same standards apply to you as far as you are resident in Nigeria. The same condition will also apply to an individual who is not resident in Nigeria whether he is a Nigerian or a foreign national.

d) Place of residence

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

e) Principal place of residence

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

(i) In the case of an individual with no source of income other than a pension in Nigeria, that place or those places in which he usually resides;

(ii) In the case of an individual who has a source of earned income other than a pension in Nigeria, that place or those places which on a relevant day is nearest to his usual place of work;

(iii) In the case of an individual who has a source or sources of unearned income in Nigeria, that place or those places in he usually resides; and

(iv) In the case of an individual who works in an office or operational site of a company or other body corporate, the place of which the branch office or operational site is situate; provided the operational site shall include oil terminals, oil platforms, flow stations, factories, quarries, construction sites with a minimum of 50 workers etc.

f) Residence of different categories of individuals

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

A taxpayer is therefore liable to the tax authority of the territory in which he is deemed to be resident for a year of assessment. The following rules guide the determination of residence:

(i) An individual whether in employment or whose only sources of income are unearned income is deemed to be resident for a year of assessment in the territory in which he has a place available for his domestic use in Nigeria on the first day of January of the assessment year, and does not include any hotel, rest house or other place at which he is temporarily lodging;

(ii) An executor is deemed to be resident in the territory in which the deceased individual was last deemed to be resident or would have been deemed to be resident if the law had been in force prior to the date of his death;

(iii) A trustee of any trust or settlement is deemed to be resident where all the income of the settlement or trust for a year of assessment arises. Where the income arises in more than one territory or where the tax authority cannot be determined, the Federal Inland Revenue Service is the tax authority;

(iv) Partners in partnership are deemed to be resident where the principal office or the place of the partnership is situated on the first day of that year or is first established during the year;

(v) A village or an indigenous community is deemed to be resident in the territory in which the community is found;

(vi) An itinerant worker is deemed to be resident where he is found in a year of assessment;

(vii) An individual not being a person assessable by FIRS (S. 2, 1 (b)) who holds a foreign employment on the 1st day of January in a year of assessment or who first becomes liable to income tax in Nigeria for that year by reason of his entering that employment during that year, shall be deemed to be resident for that year in the territory in which the principal office of his employer is situated on that day or on the day his foreign employment commences as the case may be; and

(i) An individual whose only source of earned income arising in Nigeria on the 1st day of January in a year of assessment was a pension, or who had a place or principal place on that day shall be deemed to be resident for that year in the territory in which that place or principal place or residence was situated on that day.

13.8 Itinerant worker

(a) **Definition**

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

(b) **Imposition of tax**

In the case of an itinerant worker, tax may be imposed for any year by any state in which the itinerant worker works for a minimum of twenty (20) days in at least three (3) months of every assessment year.

13.9 Registration of employees for Pay-As-You-Earn (PAYE)

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

13.10 Operation of PAYE regulations

(a) Deduction of tax, etc

(i) The employer shall within six months of the commencement of these regulations, or within six months of commencing a business, deduct tax from emoluments of his employees and remit to the relevant tax authority;

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

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

(b) Records of deductions

An employer shall record, either on the tax deduction card or in such other form as may be authorised by the relevant tax authority, the following particulars regarding emoluments of his employees, that is:

(i) The month of payment;

(ii) The amount of emolument;

(iii) The contribution by the employee to an approved pension fund;

(iv) The cumulative net emoluments in relation to the said date;

(v) The cumulative free emoluments in relation to that date;

(vi) The cumulative taxable emoluments in relation to that date;

(vii) The corresponding cumulative tax; and

(viii) The tax, if any, deducted or repaid on making the payment.

(c) Cumulative net emoluments, etc

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

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

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

- The name of the employee;
- Any number used to identify the employer;
- The address of the employee;
- The date on which the employment commenced;
- The date on which the employment ceased;

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

(d) Certificate of deduction of tax

(i) The employer shall make on the prescribed form two copies of the said certificate and deliver them to the employee on the date on which the employment ceases.

(ii) On the commencement of another employment, the employee shall deliver the two copies of the certificate to the new employer who shall:

- Insert on one copy of the certificate the address of the employee (if different from the existing entry made by the former employer), any number used to identify the employee, and the date on which the employment commences, and shall send that copy to the collector of taxes for the tax deductions while the employer retains a copy; and

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

(e) Death of employee

(i) On the death of an employee in respect of whom a tax deduction card has been issued, the employer shall send to the collector of taxes the certificate (relating to cessation of employment) and shall insert thereon the name and address of the personal representative of the deceased employee.

(ii) If any emoluments are paid by the employer to the deceased employee’s next of kin, the employer shall, in making such payment, deduct tax.

(f) Remittance of tax deducted

(i) Within ten days of the end of every month, an employer shall pay to the nearest tax office or to any bank (as may be prescribed or designated by the relevant tax authority) all taxes deducted under these regulations.

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

(g) Demand for remittance of taxes

If after ten days of the end of any month an employer fails to remit tax to the tax officer or to any bank designated for such payments, the collector of taxes shall demand for the immediate remittance of the tax due.

(h) Application of the Act

If the relevant tax authority discovers or is of the opinion at any time that an employer has not been remitting taxes, the tax authority may within the year of assessment or within six years after the expiration thereof, assess the employer and the provisions of the Act as to notice of assessment, appeal and other proceedings shall apply to that assessment or additional assessment and to the tax there under.

(i) Inspection of records

Every employer shall produce for inspection, at the employer's premises, all wages records, tax deductions cards, vouchers and other documents and records relating to payment of emolument to his employees and deduction of tax thereof.

(j) Duty of successor in title

If any employer is unable to perform the duties under this regulation by reason of death, incapacitation, liquidation or for any other reason, his personal representative or successor shall perform such duties.

(k) Notice to render returns

The relevant tax authority may give notice to an employer requiring him to render returns of any emolument paid to the employees before the end of that year, and any such returns shall be rendered to the relevant tax authority within the time specified in the notice.

(l) Notice of assessment

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

13.11 Filing of returns by employers and employees

13.11.1 Employers

Not later than thirty first day of January of each year, an employer is required to file a return with the relevant tax authority of all emoluments paid to employees in its employment in the preceding year. The return in respect of the employees shall show the total emoluments of each employee during the year, the tax relief, if any, and the total tax deducted from the employee.

The return specified above shall be accompanied by a statement and a declaration on Form H1 or any other form approved or prescribed by the relevant tax authority.

Any employer who contravenes the above provisions shall be liable on conviction to a penalty of ₦ 500,000 in case of a body corporate and ₦ 50,000 in case of an individual.

13.11.2 Employees (Section 41 of Personal Income Tax Act 2004)

For each year of assessment, a taxable person (employee inclusive), shall without notice or demand, file a return of income in the prescribed form and containing the prescribed information with the tax authority of the State in which the taxable person is deemed to be resident together with a true and correct statement in writing containing:

a) The amount of income from every source;

b) Such particulars as by the return may be required for the purpose of this Act and rules or regulations made with respect to any such income, allowance, relief, deduction or otherwise as may be material for that purpose.

The form of return shall contain a declaration which shall be by or on behalf of the taxable person that the return contains a true and correct statement of the income computed in accordance with the provisions of this Act and rules or regulations.

A written return, statement or an information affecting the liability to tax of an individual for a year of assessment made or given by a person to a tax authority may be treated as having been given to another tax authority in the territory of which that individual is deemed to be resident for that year and if an error or omission in the return, statement or an information constitutes an offence under the income tax law of that other tax authority, proceedings may be taken by that authority in respect of that offence as though the return, statement or information had been made or given to that other tax authority in the first instance.

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

13.12 Basis of assessment

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

13.13 Exemption of minimum wage earners from the payment of personal income tax

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

13.14 Income chargeable, allowable and non-allowable expenses

13.14.1 Income chargeable

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

13.14.2 Allowable and non- allowable deductions

It is pertinent to state that employees who are involved in other businesses, the following allowable and non-allowable deductions apply:

(a) Allowable deductions - section 20 of PITA 2004 (as amended)

These include:

(i) A sum payable by way of interest on money borrowed and employed as capital in acquiring the income;

(ii) Interest on loans for developing an owner-occupied residential house;

(iii) Rent for that period, and premiums the liability for which was incurred during that period, payable in respect of land or buildings occupied for the purpose of acquiring the income; and

(iv) Any expense incurred for repair of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed:

Provided that if the premises, plant, machinery, fixtures, implement, utensil or article are used in part for domestic or private purposes, so much of the expense as relates to such use shall be deducted;

(v) Any provision for bad and doubtful debt of a specific nature;

(vi) Any bad debt written off;

(vii) Contribution to a pension, provident or other retirement benefit funds, society or scheme, recognised under the Pension Reform Act – section 20(1)(g) of PITA 2004 (as amended)

(viii) Legal expenses that are limited to:
- General legal advisory services;
- Retainership fees;
- Renewal of a short lease (tenure of less than 50 years); and
- Any cost of protecting and defending the properties of the business; and

(ix) Any other expense proved to the Revenue to have been incurred wholly, reasonably, exclusively and necessarily incurred for the purpose of the business.

(b) Non-allowable deductions - section 21 of PITA 2004 (as amended)

These include:

(i) Domestic or private expense;

(ii) Capital withdrawn from trade, business, profession or vocation and any expenditure of a capital nature;

(iii) Any loss or expense recoverable under an insurance or contract of indemnity;

(iv) Rent of or cost of repairs to any premises or part of premises not incurred for the purpose of producing the income;

(v) Taxes on income or profits levied in Nigeria or elsewhere except as provided in Section 13 of this Act (the income from a dividend paid by a company other than Nigerian company);

(vi) Any payment to a pension, provident, savings or widows' and orphans' society, fund or scheme, except as recognised under the Pension Reform Act, 2014.

(vii) The depreciation of any asset;

(viii) Any sum reserved out of profits, except as permitted by the Revenue based on Section 20 (1e).

(ix) Any expenses of any description incurred within or outside Nigeria for the purpose of earning management fees unless prior approval of an agreement giving rise to such management fees has been obtained from the Minister; and

(x) Any expense whatsoever incurred within or outside Nigeria as management fees under any agreement entered into except to the extent as the minister may allow.

13.15 General provisions relating to evaluation of benefits-in kind (BIK)

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

a) The use of assets

i. Owned or acquired by the employer:

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

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

ii. Rented or hired by the employer

If an employee is provided with asset for which the employer pays a hire or rental charges, the employee is deemed to have derived an income equal to the annual amount of the rent or hire expended by the employer on the asset.

Note

Where an employee has made any refund in respect of the asset rented or hired by the employer for the employee's benefit, the employee shall be deemed to have derived income equal to the difference between the amount incurred by the employer and any amount refunded by the employee.

b) Provision of residential accommodation

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

c) Domestic staff paid by the employer

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

Note:

The income of a domestic staff shall only be deemed as income in the hand of the employee only where the domestic staff is not a permanent employee of the employer, that is, a contract staff.

d) Benefits to employees exempted from tax

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

i. Expenses in connection with the provision of meal in any canteen for all staff or provision of non-assignable luncheon voucher;

ii. Expenses connected with the provision of uniforms, overalls and other protective clothing; and

iii. Expenses connected with employee's change of residence as a result of change in his employment (e.g. transfer).

13.16 Gross emoluments/gross income

"**Gross emolument**" means wages, salaries, allowances (including benefits-in-kind), gratuities, superannuation and any other income derived solely by reason of employment.

"Gross income" means income from all sources less non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the sixth schedule, all allowable business expenses and capital allowance – section 33 (2) and (3) of PITA 2004 (as amended).

13.17 Tax-exempt deductions

The following deductions are tax exempt:

(a) National housing fund contribution

The National Housing Fund Act Cap LFN 2004, provides that a Nigerian earning an income of ₦3,000 and above per month in either the public or private sector of the economy shall contribute 2.5 per cent of his basic monthly salary to the Fund. Employers who fails to deduct or remit are liable to pay a penalty of ₦50,000 whilst self-employed persons are to pay ₦5,000 or one year imprisonment on conviction or both. The employer is to deduct the contribution from the employee's monthly salary and remit to the Federal Mortgage Bank of Nigeria within one month of making the deduction. The Act mandates the Federal Mortgage Bank of Nigeria to collect, manage and administer the fund. Contributions made to the fund are tax deductible.

(b) National health insurance scheme

The National Health Insurance Scheme (NHIS) was set up by The National Health Insurance Act, Cap N42 LFN 2004, for the purpose of providing health insurance which shall entitle persons insured under the scheme and their dependants the benefits of prescribed good quality and cost effective health services as set out in the Act.

The Act provides that an employer who has a minimum of ten employees may, together with every person in his employment, pay contribution under the scheme, at such rate and in such manner as may be determined, from time to time, by the Governing Council for the Scheme.

In the public sector (Federal), the employer is expected to pay 3.25%, while the employee pays 1.75% which translate to 5% of the employee's consolidated salary. In the case of the private sector and other tiers of government, the employer is expected to pay 10% while the employee pays 5% representing 15% of the employee's basic salary. The employer may decide to pay the entire contribution. Sometimes, the employer may also undertake extra contributions for additional cover to the benefit package.

An employer under the scheme shall cause to be deducted from an employee's wages the negotiated amount of any contributions payable by the employee.

The employer's contributions and the contributions in respect of its employees are to be paid into the account of a designated health maintenance organisation. Contributions to the scheme are tax deductible.

(c) Life assurance premium

A deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse.

(d) National pension scheme

The Pension Reform Act 2014 (PRA), established a uniform contributory pension scheme for payment of retirement benefits of employees. The scheme applies to all employees in both the public and private sectors who are in employment in an organisation in which there are 15 or more employees.

The rate of contribution to the scheme shall be a minimum of 8% of employee's monthly emolument (i.e. basic salary, housing allowance and transport allowance) as contribution for employees in the public and private sectors and 10% of the monthly emoluments as employer's contribution.

However, contributions made by an employee to the scheme shall be tax deductible.

Notwithstanding the foregoing mode of contribution to the scheme, an employer may agree or elect to bear the full burden of the scheme, provided that in such a case, the employer's contribution shall not be less than 20% of the monthly emoluments of the employee.

It is pertinent to state that the tax relief is only limited to pension contributions to schemes, provident or retirement benefits fund that are recognised under the Pension Reform Act, 2014.

(e) Gratuities

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

13.18 Computation of consolidated relief allowance

"Gross income" means income from all sources less non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the sixth schedule, all allowable business expenses and capital allowance – section 33 (2) and (3) of PITA 2004 (as amended).

Consolidated relief allowance (CRA) is granted at the higher of ₦200,000 or 1% of gross income plus 20% of gross income.

13.19 Rate of tax

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

Income to be taxed	Rate of tax		Per centum (%)
For every naira of the First 300,000	7k per ₦1	or	7
For every naira of the next 300,000	11k per ₦1	or	11
For every naira of the next 500,000	15k per ₦1	or	15
For every naira of the next 500,000	19k per ₦1	or	19
For every naira of the next 1,600,000	21k per ₦1	or	21
For every income above 3,200,000	24k per ₦1	or	24

13.20 Determination of chargeable income and personal income tax

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

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

Thereafter, apply the tax rates to determine the gross tax liability payable. The final tax is derived by subtracting the withholding taxes earlier paid on the unearned income items, except dividend, from the gross tax liability payable.

(b) Computation of income of an employee relating to trade and other sources of income (FORMAT)

	N		**N**
Net profit			xx
Add back: Disallowable expenses	x		
Taxable income not reported	x		xx
Deduct: Non-taxable income	x		
Allowable expenses not reported	x		xx
Adjusted or assessable profit			xx
Losses b/f	x		
Relieved	x		(x)
Losses c/f	x		
			xx
Balancing charge			x
			xx
Capital allowance b/f	x		
Capital allowance for the year	x		
Balancing allowance	x		
	xx		
Relieved	x		(x)
Unrelieved capital allowance c/f	x		
Income from trade and other sources		xx	

Illustration 13.1

Mr. Yaya Ogunsowo, an employee of Cool Beauty Products Limited, has the following salary package for the year ended December 31, 2020:

a) Salary ₦6,500,000 per annum;

b) Enjoyed the service of two domestic servants and a night guard fully paid for by the company as follows:

2 Domestic servants – ₦200,000 each

Night guard – ₦150,000

c) Collected a sum of ₦88,250 during the year as reimbursement of travelling expenses for official assignments;

d) Lived in a company house rented for ₦450,000 per annum;
Used an official car purchased at a cost of ₦3,400,000 by the company.
Further information about him:
(i) Married with two children of school age
(ii) Has an aged mother whom he maintained with ₦30,800 per annum

(iii) Paid the sum of ₦48,000 as life assurance premium

(i) The rateable value of his residence is ₦250,000.

(ii) Dividends received (net of withholding tax) from shares in a blue-chip company:

	₦
Paid 5/7/2019	99,000
Paid 31/12/2019	63,000
Paid 30/6/2020	90,000
Paid 31/12/2020	95,000

Required:
Compute his tax payable for the relevant tax year.

Solution to Illustration 13.1

Mr. Yaya Ogunsowo
Computation of personal income tax liability
For 2020 assessment year

	₦	₦
Earned income:		
Salary		6,500,000
Benefits-in-kind - Domestic servants (₦ 200,000 x 2)	400,000	
Night guard	150,000	
Accommodation	250,000	
Company's car (₦ 3,400,000 x 5%)	170,000	970,000
		7,470,000
Unearned income		
Dividend (gross) (₦ 99,000/0.9 + ₦63,000/0.9)		180,000
Total income		7,650,000
Dividend (gross)		(180,000)
		7,470,000
Less: Tax exempt item:		
Life assurance relief		48,000
Gross income		7,422,000
Less: Consolidated relief allowance		
(₦ 200,000 + 20% of ₦7,422,000)		(1,684,400)
Chargeable income		5,737,600

Computation of personal income tax payable	₦
First ₦ N300,000 at 7% =	21,000
Next ₦ 300,000 at 11% =	33,000
Next ₦ 500,000 at 15% =	75,000
Next ₦ 500,000 at 19% =	95,000

Next ₦ 1,600,000 at 21% =	336,000
Next ₦ 2,537,600 at 24% =	609,024
₦ 5,737,600	
Personal income tax payable	1,169,024

13.21 Computation of minimum tax

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

e) The taxpayer has no taxable income because of large personal reliefs; or

f) Taxable income produces tax payable lower than minimum tax.

Section 37 of PITA 2004, as amended by the Finance Act, 2020, states that "minimum tax" under this section or as provided under the sixth schedule to this Act, shall not apply to a person in any year of assessment where such person earns the National Minimum Wage or less from an employment.

Illustration 13-2

The details of the employment contract of Mrs. Bukky Yussuf, a clerical officer in a public institution for 2021 assessment year are as follows:

Consolidated salary (per annum)	₦ 360,000
Contribution to pension scheme	8%
Contribution to National Housing Fund	2½%

Mrs. Yussuf, a divorcee, lives with three children. She also has an aged uncle on whom she spends ₦ 1,500 per month for his upkeep.

Required:

Compute the personal income tax liability of Mrs. Bukky Yussuf for 2021 assessment year.

Solution to illustration 13-2
Mrs. Bukky Yussuf
Computation of personal income tax liability
For 2021 assessment year

	₦	₦
Earned income:		
Salary		360,000
Unearned income		Nil
		360,000
Less: Tax exempt items:		
Pension scheme contribution (8% of ₦ 360,000)	28,800	
National housing fund contribution (2½% of ₦ 360,000)	9,000	37,800
		322,200
Less:		

Consolidated relief allowance	
(₦ 200,000 + 20% of ₦ 322,200)	264,440
	57,760
Tax liability	₦ NIL

Considering the fact that Mrs. Bukky Yusuff earned less than the National minimum wage, she is not expected to pay personal income tax in line with section 37 of PITA 2004 (as amended).

13.22 Offences and penalties

The relevant sections of the Act are captured below:

S/N	Offence	Penalty
01	**Section 74** – Failure to deduct tax on rent, interest, dividend and director's fees or any other deduction of tax at source or having deducted, fails to remit such deductions to the relevant tax authority within 30 days from the date the amount was deducted or the time the duty to deduct arose.	Liable to a penalty of an amount of 10 percent fine of N5,000 or 10 percent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible or deducted plus interest at the prevailing commercial rate.
02	**Section 82** – Failure of an employer to make deductions from emoluments, or amounts on account of emoluments paid by him to an employee or properly account to the relevant tax authority.	The amount thereof together with a penalty of 10 percent per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority.
3	**Section 94** - Failure to comply with any of the provisions of the Act or any rule or regulation made there under or which no other penalty is specifically provided.	Liable on condition to a fine of ₦ 20,000 and where the offence is failure to furnish a return, statement or information or to keep records required, a further sum of ₦ 2,000 for every day the failure continues.
4	**Section 94** - Failure to comply with the requirements of a notice served on him or without sufficient cause, fails to attend in answer to a notice or summons served on him or having attended fails to answer any question lawfully put to him	Is guilty of an offence against this Act and in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may order. The relevant tax authority will impose a penalty on the offender of an amount equal to the income tax chargeable on him for the preceding year of assessment.
5	**Section 94** - Making incorrect returns by omitting or understating any income liable to tax or gives incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person	Liable on conviction to a fine of ₦20,000 and double the amount of tax which has been undercharged. Note that no person shall be liable under this section unless the complaint concerning the offence was

		made in the year of assessment in respect of or during which the offence was committed or within 6 years after the expiration thereof.
6	**Section 94** - Making false statements and returns and whoever aids, abets, assists, counsels, incites or induces any other person to deliver or keep false return or statement	Liable on conviction to a fine of ₦ 50,000 for individuals and ₦ 500,000 for corporate bodies or to imprisonment for not more than 6 months. Provided that where an offence under this section is committed by a person in relation to tax payable by, or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as stated above, the amount of ₦10,000 or treble the tax chargeable on the person for that year, whichever is greater

13.23 Chapter review

This chapter fully addresses taxation of income from employment under Pay As You Earn (PAYE) scheme as well as issues relating to an itinerant worker.

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

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

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

13.24 Worked examples

13.24.1 Multiple-choice questions

1. Which of the following is a benefit-in-kind?
   A. Official remuneration of management staff
   B. Official non-monetary remuneration of an employee
   C. Tax paid by an employee
   D. Official remuneration of an employee
   E. A year-end bonus

2. For the purpose of the determination of benefits- in-kind for an employee living in official quarters, such employee will be liable to ………. of the rateable value of such quarters.
   A. 5%
   B. 10%
   C. 1%
   D. 2%
   E. 3%

3. The annual employers returns and tax declaration are required by the Personal Income Tax Act CAP P8 LFN 2004 (as amended) to be filed with the relevant tax authority not later than ………..
   A. March 31, after the end of the year
   B. April 30, after the end of the year
   C. January 31, after the end of the year
   D. February 28, after the end of the year
   E. May 31, after the end of the year

4. The Personal Income Tax (Amendment) Act, 2011, states that consolidated relief allowance shall be
   A. ₦200,000 or 1% of the gross income, whichever is higher
   B. ₦200,000 or 1% of the gross income, whichever is lower
   C. ₦200,000 or 1% of the gross income, whichever is higher plus 20% of the gross income
   D. ₦200,000 or 1% of the gross income, whichever is higher plus 30% of the gross income
   E. ₦200,000 or 1% of the gross income, whichever is higher plus 10% of the gross income

5. The following are tax exempt items under the Personal Income Tax (Amendment) Act 2011, EXCEPT
   A. Consolidated relief allowance
   B. National housing fund contribution
   C. National health insurance scheme contribution
   D. Life assurance premium
   E. Gratuity

13.24.2 Short answer questions

1. An employment, the duties of which are wholly performed outside Nigeria save during any temporary visit of the employee to Nigeria is……….

2. Under the Pay As You Earn (PAYE) scheme, an employer shall within............. of commencement of business deduct tax from emoluments of his employees and remit same to the relevant tax authority.
3. An employer shall pay all taxes deducted from employees to the nearest tax office or to any designated bank within …….days of the end of every month.

4. Money paid to an employee who is retiring or leaving his employer after several years of service is called……..
5. Benefits enjoyed from employment but not in monetary terms are

   called………….

13.24.3 Examination type questions

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

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

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

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

(2) Mallam Sule Yusuf is an employee of Temidire Limited. His salary is ₦5,000,000 per annum.

He is married with five children. The first two are from his first wife and the remaining from the second wife. The two wives live with him. The eldest child is now a university graduate and teaches in a secondary school in Kaduna while the remaining children are university students.

Malam Sule Yusuf has a life assurance policy with Jabu Insurance Limited. The sum assured is ₦ 250,000 and he pays a premium of ₦ 2,500 per month.

He also contributes ₦1,000 monthly to a pension scheme approved by the Joint Tax Board. The following information is made available:

(a) The company pays ₦ 180,000 per annum on his accommodation and provides him with an official car which has a market value of ₦ 2,000,000;

(b) He spent N 6,000 on his aged father and ₦ 7,000 on his aged mother. Both have no sources of income due to old age;

(c) He will be retiring on December 31, 2021 and will be paid a gratuity of ₦300,000; and

(d) He will also paid a lump sum of ₦ 100,000 for loss of office.

Required:
Compute his tax liability for the relevant year of assessment.

(3) Mr. Willi Willi was employed by Zenon Bank Limited as Head of banking operations, effective June 1, 2021

The details of his salary are as follows:

	₦
Basic salary per annum (p.a.)	48,000,000
Housing allowance	12,000,000
Transport allowance	2,000,000
Utility allowance	800,000
Meal allowance	500,000
Leave allowance	4,800,000
Clothing allowance	2,000,000

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

Prior to joining Zenon Bank Limited, Mr. Willi Willi was on annual salary of ₦32,000,000 while working with Caban Bank Plc. He resigned from the bank, effective May 31, 2021.

Additional information:

(a) Mr. Willi Willi is married with 6 children, all are of school age. He maintains his aged parent who lives with him in Lagos.

(b) He paid an annual life assurance premium of ₦3,000,000.

(c) His employers deducted and remitted on his behalf the following mandatory deduction of ₦4,900,000 and ₦1,166,667 for NHF and pension respectively for 2021.

(d) He paid NHIS premium of ₦350,000 in 2021 to a health service provider to provide medical cover for himself and his family.

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

(4) Alhaji Oriowo Olanihun is married with seven children. Details about his children are as follows:

(a) Olumide Deji is 23 years and a lecturer in one of the private tertiary institutions.

(b) His daughter, Mrs. Anike Ibe, is a housewife and married to Mr. Cornelius Ibe, a protocol officer, in the Ministry of Youths and Sports.

(c) Zeb Ireakari is an undergraduate in Ladoke Akintola University of Technology and is aged 18 years.

(d) Dupe Oyare is a student in Nick secondary school and her age last birthday was 13 years.

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

(f) Kemi is in Command secondary school and is 16 years old.

(g) Kikelomo is three years old.

You are provided with the following information:

i. He took out a life insurance policy for which he pays annual premium of ₦400,000;

ii. His employer deducted ₦2,137,500 and ₦712,500 for pension and NHF respectively from his salary and remited same on his behalf in compliance with the Pension Reforms Act and NHF Act.;

iii. His aged parents live with him. They have no income of their own;

iv. In 2021, he was on a salary of ₦28,500,000 per annum. In addition, his employer provided him with an official car and accommodation at the company's guest house; and

v. The cost of his official car is ₦5,000,000 and the construction cost of the guest house is ₦38,000,000. However, the relevant tax authority determined the local rate on the property to be ₦320,000.

Required:

Compute Alhaji Oriowo Olanihun's personal income tax payable for 2021 year of assessment.

13.24.4 Suggested solutions to multiple-choice questions

1. B
2. A
3. C
4. C
5. A

13.24.5 Suggested solutions to short answer questions

1. Foreign employment
2. Six months
3. Ten
4. Gratuity
5. Benefits- in-kind

13.24.6 Suggested solutions to examination type questions

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

(a) Is domiciled in Nigeria;

(b) Sojourns in Nigeria for a period or periods in all amounting to 183 days or more in a 12 month period;

(c) Serves as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria.

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

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

(2) Based on the above question, it is obvious that Mr. Abass has three places of residence that are not within the same state, therefore, there would be the need to establish his principal place of residence for tax. Mr. Abass principal place of residence would be the place nearest to his place of employment which in the case is Gwagwalada, FCT, Abuja.

(3) (a) **Mallam Sule Yusuf**
Computation of tax liability
For 2021 assessment year

	₦	₦
Salary		5,000,000
Benefits-in-kind:		
Company accommodation	180,000	
Official Car	100,000	280,000
Gratuity		300,000
Gross emoluments		5,580,000
Less tax-exempt items:		
(i) Gratuity	300,000	
(ii) Life assurance relief	30,000	
(iii) Contribution to pension scheme	12,000	342,000
		5,238,000
Less consolidated relief allowance		
(N200,000 or 1% of N5,238,000, whichever is higher		
+ 20% of ₦ 5,238,000)		1,247,600
Chargeable Income		3990,400

Tax payable ₦

First ₦300,000 @ 7%	21,000
Next ₦300,000 @ 11%	33,000
Next ₦500,000 @ 15%	75,000
Next ₦ ₦500,000 @ 19%	95,000
Next ₦1,600,000@ 21%	336,000
Next ₦ 790,400 @ 24%	189,696
₦ 3,990,400	
Tax payable	749,696

(4) **Mr. Willi Willi**

Computation of tax liability for 2021 assessment year

	₦	₦
Income – Zenon Bank Limited 1/6/21 – 31/12/21:		
Basic salary – 7/12 x ₦ 48,000,000		28,000,000
Housing allowance – 7/12 x ₦ N12,000,000		7,000,000
Transport allowance – 7/12 x ₦ ₦ 2,000,000		1,166,667
Utility allowance – 7/12 x ₦ 800,000		466,667
Meal allowance – 7/12 x ₦ 500,000		291,667
Leave allowance – 7/12 x ₦ N4,800,000		2,800,000
Clothing allowance – 7/12 x ₦ 2,000,000		1,166,667
BIK:		
Car – 7/12 x (5% of ₦ 7,500,000)	328,125	
Domestic servant:		
Driver – 7/12 x ₦ 300,000	175,000	
Personal assistant – 7/12 x ₦ 500,000	291,667	794,792
		41,686,460
Add: Income – Caban Bank Plc – 1/1/21-30/5/21:		
5/12 x ₦ 32,000,000		13,333,333
Gross emoluments		55,019,793
Less: tax-exempt items:		
Pension	4,900,000	
Life assurance premium	3,000,000	
NHF	1,166,667	
NHIS	350,000	9,416,667
Gross income		45,603,126
Less: consolidated relief allowance:		
1% of ₦ 45,603,126 or ₦ 200,000, whichever is higher, plus 20% of ₦ 45,603,126		(9,576,656)
Chargeable income		36,026,470

Apply tax table	₦
First ₦ 300,000 @ 7%	21,000
Next ₦ 300,000 @ 11%	33,000
Next ₦ 500,000 @ 15%	75,000
Next ₦ 500,000 @ 19%	95,000
Next ₦ 1,600,000 @ 21%	336,000
Next ₦32,826,470 @ 24%	7,878,353
₦ 36,026,470	
Tax liability	8,438,353

(5) **Alhaji Oriowo Olanihun**
Computation of tax liability For 2021 assessment year

	₦	₦
Salary		28,500,000
Add: B.I.K:		
Accommodation – Local rate	320,000	
Car – 5% x ₦ 5,000,000	250,000	570,000
		29,070,000
Less: tax –exempt items:		
Life assurance premium	400,000	
Pension	2,137,500	
NHF	712,500	(3,250,000)
Gross income		25,820,000
Less: consolidated relief allowance:		
1% of ₦ 25,820,000 or ₦ 200,000, whichever is higher, plus 20% of ₦ 25,820,000		5,422,200
Chargeable income		20,397,800

Apply tax table	₦
First ₦ 300,000 @ 7%	21,000
Next ₦ 300,000 @ 11%	33,000
Next ₦ 500,000 @ 15%	75,000
Next ₦ 500,000 @ 19%	95,000

Next ₦ 1,600,000 @ 21%	336,000
Next ₦17,197,800 @ 24%	4,127,472
₦20,397,800	
Tax liability	4,687,472

CHAPTER FOURTEEN
INVESTMENT INCOME

Chapter contents

a) Learning objectives

b) Definition of investment income

c) Computation of rental income chargeable to tax on property, including contractor-financed projects

d) Tax implications of dividends and interests

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g) Bases of assessments and payment of taxes on investment incomes

h) Franked investment income

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14.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Discuss the basis of assessment of investment income; and

(b) Compute the tax liability of an individual earning investment income.

14.1 Definition 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, rent, royalty, etc.

14.2 Computation of rental income chargeable to tax on property, including contractor-financed projects

14.2.1 Rental income

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

14.2.2 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.

14.2.3 Allowable rental expenses

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

(a) Tenement rates or land use charge;

(b) Cost of collecting rent e.g. fees paid to a caretaker, estate agent, legal representative, etc.;

(c) Cost of advertising for tenants;

(d) Any expenses incurred for repairs and maintenance of the building;

(e) Bad debt incurred;

(f) Interest on money borrowed and employed in acquiring or renovating the property;

(g) Commission paid to agent or caretaker;

(h) Insurance premium paid on the property; and

(i) Water rate.

14.2.4 Disallowable expenses

The expenses are as follows:

(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.

14.2.5 Tax implications of dividends and interests

14.3.1 Dividend income

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

(a) In relation to company not being in the process of being wound up or liquidated, any profits distributed whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus share, debentures or securities awarded to the shareholders; and

(b) In relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

14.3.2 Nigerian dividend

The income from a dividend distributed by a Nigerian company, shall be deemed to be derived from Nigeria, and shall be the gross amount of that dividend before the deduction of any tax which the company is required to deduct on payment thereof under the provisions of any law in force in Nigeria at the relevant time imposing taxation on the profits of companies.

14.3.3 Undistributed profit of a Nigerian company deemed to be dividend

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

The income from a dividend distributed by a Nigerian company shall be deemed to arise on the day on which payment of that dividend becomes due.

14.3 Dividend exempted from tax

The following dividend incomes are exempted from tax:

a) Dividend earned from abroad and brought into Nigeria by a Nigerian resident in convertible currency and paid into a domiciliary account in a bank approved by the government;

b) Dividend paid to a person by a company incorporated in Nigeria if the equity participation of the person in the company paying the dividend is either wholly paid for in foreign currency or by assets brought into Nigeria between 1 January 1987 and 31 December 1992 and the person to whom the dividends are paid own not less than 10 per cent of the equity shares of the company. The dividend tax free period is 5 years if the company paying the dividend is engaged in agricultural production within Nigeria or processing of agricultural products produced within Nigeria or production of petrochemicals or liquefied natural gas, and in any other case, the tax free period is 3 years. The tax free period commences from the year of assessment following the year in which the new capital is brought into Nigeria for the real purpose of the trade or business in Nigeria of the company paying the dividend.

14.3.4 Relevant territory in which dividend paid by a Nigerian company arises

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

14.4 Interest income

The income from any interest on money lent by an individual, or executor, or a trustee, outside Nigeria to a person in Nigeria (including a person who is resident or present in Nigeria at the time of the loan) shall be deemed to be derived from Nigeria if:

(a) There is a liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made;

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

14.3.5 Interest from a source outside Nigeria

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

14.3.6 Relevant territory in which interest paid by a Nigerian company arises

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

14.3.7 Interest exempted from tax

The following interest incomes are exempted from tax:

(a) Interest accruing to a person on foreign currency domiciliary account;

(b) With effect from 1 January 1996, 100% of certain foreign incomes are exempted from tax provided that such incomes are repatriated into Nigeria in convertible currency and paid into a domiciliary account in a bank approved by government. Income falling into this category includes interest earned from abroad and brought into Nigeria by a Nigeria resident;

(c) Interest accruing to a person who is not resident in Nigeria as specified below:

- (i) The interest on a loan charged on the public revenue of the Federation and raised in the United Kingdom;
- (ii) The interest on a bond issued by the Government of the Federation to secure repayment of loan raised from the International Bank for Reconstruction and Development under the authority of the Railway Loan (International Bank) Act;
- (iii) The interest on any money borrowed by the Government of the Federation or of a State on terms which include the exemption of interest from tax in the hands of a non- resident person;
- (iv) Where the Minister of Finance so consents, the interest on any moneys borrowed outside Nigeria by a corporation established by a law in Nigeria upon terms which include the exemption of such interest from tax in the hands of any non-resident person; and
- (v) The interest on deposit accounts, provided the deposit into the account are transfers wholly made up of foreign currencies (funds) to Nigeria on or after 1st January 1990 through Government approved channels and the depositor does not become non-resident after making the transfer while in Nigeria.

(d) Interest on any loan granted by a bank on or after 1 January 1997 to a person engaged in:

- (i) Agricultural trade or business;
- (ii) The fabrication of any local plant and machinery; and
- (iii) Any cottage industry established by the person under the Family Economic Advancement Programme as working capital, if the moratorium is not less than 12 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted, refinanced or otherwise restructured.

14.4 Royalty income

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

14.3.8 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 his/her product to a third party in exchange for royalties from the future revenues it may generate.

14.3.9 Income exempted from tax

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

14.5 Basis of assessment and payment of taxes on investment incomes

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.

14.6 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.

14.8 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.

14.9 Worked examples

14.9.1 Multiple-choice questions

1. Which of the following is not an investment income on which withholding tax is deductible?
   A. Consultancy and professional services
   B. Dividend

C. Interest
D. Royalty
E. Rent

2. In computing the gain or profit from rental income for tax purposes, all the following are disallowable EXCEPT
A. Any expense not incurred for the purpose of earning rental income
B. Any expense of a capital nature
C. Water rate
D. Depreciation of the building
E. Appropriation of profit

3. The rental income is generally deemed to accrue to the recipient over those periods covered by the payment on a
A. Daily basis
B. Yearly basis
C. Weekly basis
D. Monthly basis
E. Hourly basis

4. If rent is received in advance covering a period that is more than 5 years, it will be spread for ………..
A. I year
B. 2 years
C. 3 years
D. 4 years
E. 5 years

5. Interest on loan granted by a bank on or after January 1, 1997, to a person engaged in agricultural trade or business is exempted from tax, if the moratorium is not less than ……….. 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 restructured.
A. 3 months
B. 6 months
C. 9 months
D. 12 months
E. 18 months

14.9.2 Short answer questions

1. The income that accrues as a result of investment decisions is called………..
2. Royalty earned from abroad and brought into Nigeria shall be …………., provided that such income is brought in convertible currency and paid into domiciliary account in a bank approved by the Federal Government.
3. The basis of assessment of dividend, interest, rent and royalty is _____ basis.
4. Where an individual is resident in Nigeria, the interest occurring to him from a source outside Nigeria is liable to tax in Nigeria if such amount is brought into or __________ in Nigeria subject to double taxation provisions, if applicable.
5. Dividend received by a company after the deduction of withholding tax at source by a paying company is regarded as ……………of the company receiving the dividend.

14.9.3 Examination type questions

(1) Mr. Chukwuemeka Okoye completed the construction of his building, a two wing duplex located in Gwagwalada, Abuja, on December 31, 2011. He rented out both flats with effect from January 1, 2012, 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:

	2012	**2013**
	₦	₦
Rent received (Gross)	3,500,000	3,500,000
Expenses		
Repairs and maintenance	220,000	450,000
Water rate	82,000	105,000
Agent's commission	350,000	350,000
Professional charges	100,000	150,000
Insurance	52,000	52,000
Caretaker's wages	18,000	22,000
Tenement rate	25,000	32,000

Additional information:

(i) Capital allowances agreed with the relevant tax authority for 2013 and 2014 were ₦ 480,000 and ₦ 120,000, respectively.

(ii) Repairs and maintenance comprised:

Depreciation	₦ 100,000	₦ 85,000
Repairs of tenant's bathroom	0	₦ 180,000
Repairs of Mr. Chukwuemeka's residence	₦ 120,000	₦ 185,000

(iii) Tenement rate includes tenement rate of ₦ 5,000 and ₦ 20,000 paid on the private residence of Mr. Chukwuemeka for 2012 and 2013, respectively.

Required:

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

(2) Nelson & Sons Limited is a company owned by the members of Nelson family. Its issued share capital of 20,000,000 ordinary shares of ₦ 1 each are held by:

Williams Nelson	8,000,000 shares
Samuel Nelson	4,000,000 shares
Tamara Nelson	2,000,000 shares
Malia Nelson	6,000,000 shares

For the year ended December 31, 2012, the company made a net profit before tax of

₦ 53,000,000. The company has not paid dividend since it was established 8 years ago.

The Federal Inland Revenue Service is of the opinion that the non-payment of dividend by the company was with a view to reducing the tax payable by its shareholders. In exercise of the powers conferred on it by the Companies Income Tax Act, the FIRS has directed that ₦ 15,900,000 of the profit be treated as having been distributed as dividend.

Required:

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

(3) Explain briefly the following:

(a) Dividend income

(b) Interest income

(c) Rental income

(d) Royalty income

(e) Nigerian Dividend

(4) (a) Explain briefly the provisions of the tax law in respect of rental income received in advance.

(b) In computing the gains or profit from rental income, certain expenses are allowed as deductible.

Required:

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

14.9.4 Suggested solutions to multiple-choice questions

1. A
2. C
3. A
4. E
5. D

14.9.5 Suggested solutions to short answer questions

1. Investment income
2. Exempt from tax
3. Preceding year basis
4. Received
5. Franked investment income

14.9.6 Suggested solutions to examination type questions

(1) Mr. Chukwuemeka

Computation of rental income

For the relevant assessable years

	2013		2014	
	₦	₦	₦	₦
Rent received		3,500,000		3,500,000
Allowable expenses				
Water rate	82,000		105,000	
Agent's commission	350,000		350,000	
Professional charges	100,000		150,000	
Insurance	52,000		52,000	
Caretaker's wages	18,000		22,000	
Tenement rate	20,000	(622,000)	12,000	(871,000)
Assessable rent		2,878,000		2,629,000
Less: Capital allowances		(480,000)		(120,000)
Chargeable rent		2,398,000		2,509,000

(2) Nelson & Sons Limited Computation of amount deemed as income in the hand of shareholders

	Deemed		Dividend
			₦
Williams Nelson	$\frac{8,000,000}{20,000,000}$	X ₦ 15,900,000	6,360,000
Samuel Nelson	$\frac{4,000,000}{20,000,000}$	X ₦ ₦15,900,000	3,180,000
Tamara Nelson	$\frac{2,000,000}{20,000,000}$	X ₦15,900,000	1,590,000
Malia Nelson	$\frac{6,000,000}{20,000,000}$	X ₦15,900,000	4,770,000

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

(i) In relation to a company not being in the process of being wound up or liquidated, any profits distributed whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus share, debentures or securities awarded to the shareholders; and

(ii) In relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

(b) **Interest income:** The income from any interest on money lent by an individual, or executor, or a trustee, outside Nigeria to a person in Nigeria (including a person who is resident or present in Nigeria at the time of the loan) shall be deemed to be derived from Nigeria if:

(i) There is a liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made;

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

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

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

(e) **Nigerian dividend:** The income from a dividend distributed by a Nigeria company, shall be deemed to be derived from Nigeria and shall be the gross amount of that dividend before the deduction of any tax which the company is required to deduct on payment thereof under the provisions of any law in force in Nigerian at the relevant time imposing taxation on the profits of companies.

(4) (a) **Rent received in advance:** If rent is received in advance, it will be spread over the period of the rent (provided the period is not more than 5 years). However, if rent received in advance, covering a period that is more than 5 years, it will be spread for 5 years. Thus for tax purposes the gains or profit arising from rent of a property is ascertained by deducting only those expenses that were directly incurred for the purpose of earning the income.

(b) **Allowable rental expenses**

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

(i) Tenement rates or land use charge;

(ii) Cost of collecting rent e.g. fees paid to a caretaker, estate agent, legal representative, etc.;

(iii) Cost of advertising for tenants;

(iv) Any expenses incurred for repairs and maintenance of the building;

(v) Bad debt incurred;

(vi) Interest on money borrowed and employed in acquiring or renovating the property;

(vii) Commission paid to agent or caretaker;

(viii) Insurance premium paid on the property; and

(ix) Water rate.

CHAPTER FIFTEEN
TAXATION OF SOLE TRADERS / SELF-EMPLOYED INDIVIDUALS

Chapter contents

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b) Badges of trade, trade and profession
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e) Taxable and non- taxable income
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h) Rules for commencement, change of accounting date and cessation of business
i) Treatment of losses
j) Qualifying capital expenditure and computation of capital allowances
k) Tax exempt deductions
l) Consolidated relief allowance (CRA)
m) Computation of gross income, chargeable income, and tax liabilities
n) Minimum tax payable
o) Offences and penalties
p) Chapter review
q) Worked examples

15.0 Learning objectives

After studying this chapter, readers should be able to:

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

15.1 Meaning of a trade or profession and explanation of badges of trade

This chapter covers unincorporated entities, that is, sole proprietorship. In this section, what constitutes a business, a trade and badges of trade are discussed.

15.1.1 What constitutes a business

The term “business” as defined by the Act, includes a trade, profession or vocation. It follows, therefore, that every trade, profession or vocation is a business and this makes the concept of business very wide.

15.1.2 What constitutes a trade

The difficulty in determining what constitutes a trade has led to many litigations and the huge number of tax cases that exist on the issue. The problem from the decided cases is that of finding an absolute test for identifying a trade. The conclusion has always been that there are no fixed rules but that each case must be examined on its own facts. However, three decided cases are presented as a guide.

Case 1: Fry v Burma Corporation Limited – Lord Atkins interpreted the word ‘trade’ to mean the various activities of commerce, these include, the winning and using the product of the earth, or multiplying the product of the earth and selling them; the purchase and sale of commodity or the offering of services for reward.
From the judicial decision, it is obvious that there could be no infallible test to determine what constitutes a trade.

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

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

15.1.3 Badges of trade

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

(a) The subject- matter of the realisation;

(b) The length of period of ownership;

(c) The frequency or number of similar transactions;

(d) Supplementary work on or in connection with the property realised;

(e) The circumstances that were responsible for the realisation; and

(f) The motive.

The following case is used to provide justification for the definition of badges trade.

Case 1: Trustees of Methodist Church Mission v FBIR – An assessment was raised on the income from Wesley House, a property developed by the trustees and leased out to tenants. Objection to the assessment was based on the status of the owners (Methodist Church) which enjoys exemption under the Act as being engaged in ecclesiastical activities.

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

15.2 Definition of gross income

Section 33 (2) and (3) of PITA (as amended) defines "gross income" as "income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the sixth schedule, and all allowable business expenses and capital allowance".

15.3 Basis of assessment

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

15.4 Taxable and non-taxable income

15.4.1 Taxable income

Section 3 of Personal Income Tax Act, 2004 specifically states the following as taxable incomes:

(a) Gain or profit from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

(b) Any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed;

(c) Gain or profit including any premiums arising from a right granted to any other person for use or occupation of any property;

(d) Dividend, interest or discount;

(e) Any charge or annuity; and

(f) Any profit, gain or other payment not falling within (a) and (f).

15.4.2 Non-taxable income

The under listed incomes are treated as non-taxable by the tax authorities:

(a) Profits on disposal of non-current assets. In the like manner, losses made on disposal of non-current assets are also not recognised by the tax authorities.

(b) Profits on disposal of investments. Losses are also inadmissible by the tax authorities.

15.5 Allowable and non-allowable expenses

15.5.1 Allowable expenses

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

Wholly - The entire amount in question must be borne for the purpose of earning the income;

Exclusively - The expenses incurred must be exclusive for the generation of the income;

Necessarily - The income cannot be derived without incurring that expenses; and

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

15.5.2 Allowable expenses will include:

(a) A sum payable by way of interest on money borrowed and employed as capital in acquiring the income;

(b) Interest on loan for developing an owner occupier residential house;

(c) Rents payable in respect of land and buildings occupied for the purpose of acquiring the income;

(d) Expenses for repairs of premises, plant, machinery or fixtures employed in acquiring the income, or for the renewal, repair, or alteration of any implement, utensil or article so employed:
Provided that, if the premises, plant, machinery, fixtures, implement, utensils or articles are used in part for domestic or private purposes, so much of the expenses as relates to such use shall not be so deducted;

(e) Bad debts incurred in any trade, business, profession or vocation, proved to have become bad during the period for which the income is being ascertained, and doubtful debts to the extent that they have become bad during the said period and notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of such period:
Provided that:
All sums recovered during the said period on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purpose of this Act be deemed to be income of the trade, business, profession or vocation of that period;

(f) A contributory pension or an abatement deducted from the salary or pension of a public officer under the Pension Act or any approved scheme within the meaning of the Act, and any contribution, other than penalty, made under the provisions of any Act establishing a National Provident Fund or other retirement benefit schemes for employees throughout Nigeria;

(g) Contributions to approved pension, provident or other retirement benefits, funds under the Pension Reform Act 2004. (now Pension Reform Act 2014);

(h) In the case of income from trade, business, profession or vocation, any expenses or part thereon, incurred for that period wholly and exclusively for the purpose of trade, business, profession or vocation.

(i) Any expense which is proved to the satisfaction of the relevant tax authority, to have been incurred by the individual on research, for the period, including the amount of levy paid by him to the National Science and Technology Fund; and

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

15.5.3 Non-allowable expenses

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

(a) Domestic or private expenses;

(b) Capital withdrawn from a trade, business, profession or vocation and any expenditure of a capital nature;

(c) Any loss or expenses recoverable under an insurance or contract of indemnity;

(d) Rent or cost of repairs to any premises or part of premises, not incurred for the purpose of producing the income;

(e) Taxes on income or profits levied in Nigeria or elsewhere, except as provided in the Act;

(f) Pension contribution not approved under the Pension Reform Act;

(g) Depreciation of non-current assets;

(h) Any sum reserved out of profits, except for provision for bad and doubtful debts incurred by the business;

(i) Any expenses of any description incurred within or outside Nigeria, for the purpose of earning management fees, unless prior approval of the arrangement has been obtained from the Minister; and

(j) Management fees on an arrangement entered into after the commencement of this paragraph, except to the extent as the Minister may allow.

15.6 Computation of assessable/adjusted profit/(loss)

The assessable profit of a sole trader is its adjusted profits or part thereof that is assessed to tax in an assessment year.

While adjusted profit is computed based on the accounts of a sole trader for whatever period covered by such accounts (normally twelve months), assessable profit is determined and assessed to tax for an assessment year.

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

15.7 Rules for commencement, change of accounting date and cessation

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

15.7.1 Commencement of a new trade – section 24 of PITA 2004 (as amended)

With the promulgation of the Finance Act, 2020, the occurrence of overlapping basis periods upon commencement of business is now eliminated.

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

a) For the first year, the assessable income shall be the income from the date on which the individual commenced such trade, business, profession or vocation in Nigeria to the end of its first accounting period;
b) For the second year, the assessable income shall, be the income from the first day after the trade of business’ first accounting period to the end of its second accounting period;

c) For the third year, and each subsequent year thereafter, the assessable income shall be the profits from the day after accounting period just ended.

It is pertinent to note that the Finance Act, 2019 and Finance Act, 2020, are silent on the issue of right of election. However, with the Finance Act recognising only preceding year basis in the determination of assessable income, therefore, the practice of seeking for right of election will no longer be necessary.

15.7.2 Change of accounting date

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

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

15.7.3 Cessation of trade – section 25 of PITA 2004 (as amended)

Where an individual permanently ceases to carry on a trade, business, profession or vocation, in Nigeria, such individual's assessable income therefrom shall be the amount of income beginning from the accounting period to date of cessation and the tax thereof shall be payable within three months from the date of cessation.

Receipts and payments after cessation of business or trade

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

15.8 Treatment of losses

Loss relief procedure, for an individual, is similar to that under the incorporated companies except for current year loss. It is apposite to state that losses can be carried forward indefinitely.

15.8.1 Current year loss relief (Section 36 (2) (a)

(a) The trade loss can be set off from the current year's gains or profits from other sources of income.

(b) Such losses can also be set-off from the preceding year's gains or profits, provided that it is claimed in writing within twelve months after the end of the year of assessment as illustrated below.

(c) Such relief covers only trade losses and does not cover those incurred in connection with any other sources of income.

15.8.2 Carry forward loss relief (Section 36 (2) (b)

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

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

(b) This relief is automatically granted hence, no need for claiming it in writing as is the case under current year's loss relief;

(c) The relief is available only against the gains or profit of the same trade as the source, from where the loss was.

(d) The aggregate deduction from assessable income in respect of any loss must not exceed the amount of such loss;

(e) The amount to be relieved must not have been relieved under the current year's relief provision;

(f) Losses incurred in property letting can be relieved under the carry forward loss relief provision (and not under the current year's loss relief); and

(g) Losses can be carried forward indefinitely but losses cannot be carried back.
In the long run, it does make a significant difference whether or not the current year loss relief is claimed. However, the following factors may influence the taxpayer's decision:

(i) Possible change in tax rate: Where there is possible increase in future tax rate, the taxpayer may choose not to claim the current year's loss relief and vice versa;

(ii) Cash flow: When there is liquidity problem, it is advisable to claim the current year's loss relief; or simply to enjoy cash flow benefit (time value of money); and

(iii) Inflation rate: Where there is continuous increase in inflation rate, it may be wise to claim the current year's relief.

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

15.8.3 Treatment of losses under commencement and cessation of business

On commencement of business, loss incurred can be carried forward indefinitely. When a trade ceases, any terminal loss resulting there from which could not be relieved in the year of cessation due to insufficiency or non-availability of profit, is deemed lost.

15.9 Qualifying capital expenditure and computation of capital allowances (CA)

15.9.1 Definition of capital allowance

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

15.9.2 Qualifying capital expenditure

Subject to Fifth Schedule to the Personal Income Tax Act, 2004 (as amended), qualifying capital expenditure means expenditure in a basis period which is-

(a) Capital expenditure incurred on plant, machinery or fixtures;

(b) Capital expenditure incurred on the construction of buildings, structures or work of a permanent nature, other than expenditure which is included in (a) or (c);

(c) Capital expenditure incurred in connection with, or in preparation for, the working of a mine, oil well or other sources of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) above:

(i) 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 deposit;

(ii) On searching for or on discovering and testing deposits, or winning access thereto; or

(iii) On the 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 individual working the source immediately before the concession comes to an end; or

(d) Capital expenditure incurred in connection with a plantation on the clearing of land and on planting (other than replanting), and for the purposes of this definition where-
   (i) Expenditure is incurred for the purpose of a trade or business by an individual about to carry on that trade or business; and
   (ii) That expenditure is incurred in respect of an asset owned by that individual, then, if that expenditure would have fallen to be treated as qualifying expenditure had it been incurred by that individual on the first day on which he carries on that trade or business, that expenditure shall be deemed to be qualifying expenditure incurred by him on that day.

15.9.3 Types of capital allowances

These are initial allowance, annual allowance, investment allowance and balancing adjustment.

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

Initial allowance has the following attributes:

(i) It is claimable only once throughout the useful life of the asset;

(ii) It is determined by applying initial allowance rate on asset's cost; and

(iii) Initial allowance is never prorated on account of the basis period being less than twelve months. However, if the relevant tax authority establishes that the asset has been put to private use, the amount of initial allowance that will be allowed as a deduction from profit shall be restricted to the proportion attributable to the business use of the assets.

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

(i) It is granted annually over the useful life of the asset.

(ii) It is determined by dividing the cost of the assets less initial allowance and applying the specified rates in the Act.

(iii) Annual allowance shall be prorated where the basis period of a year of assessment is less than twelve months.

(iii) Annual allowance is calculated on straight line basis.

(v) A book value of N10 shall be deducted from annual allowance claimable in the last year of the assets life and retained until the asset is disposed off.

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

(i) It is granted only once in the life of the asset;

(ii) It is granted only on plant and machinery;

(iii) It is granted at the rate of 10%;

(iv) Investment allowance is never prorated on account of the basis period being less than twelve months. However, if the relevant tax authority establishes that the asset has been put to private use, the amount of investment allowance that will be allowed as a deduction from profit shall be restricted to the proportion attributable to the business use of the assets.

(v) It is never used in determining the tax written down value of the asset. In other words, investment allowance does not impact the tax written down value of the asset. However, it should be added to other capital allowances, that is IA and AA, and deducted from assessable profit.

(d) Balancing adjustment on disposal of qualifying capital expenditure

Balancing adjustment: This shall arise upon the disposal of a qualifying capital expenditure in a year of assessment. The disposal may result in either:

(i) **Balancing allowance:** This is arrived at when the tax written down value of the qualifying capital expenditure is greater than the sales proceed at the time of disposal. Balancing allowance shall be added to other capital allowances i.e. IA and AA, and deducted from assessable profit.

(ii) **Balancing charge:** This is arrived at when the tax written down value of a qualifying capital expenditure is less than the sales proceed at the time of disposal. Balancing charge being a gain shall be added to assessable profit. However, since balancing charge is a claw back of capital allowances previously enjoyed on the disposed asset, the amount to be added back to profit shall not exceed the relief previously enjoyed. Consequently, the excess of balancing charge being capital gains shall be assessed under the Capital Gains Tax Act.

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

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

Note: Prior to 2011, capital expenditure in respect of telephone was captured in the computation of rural investment allowance.

(f) Export processing zone allowance

All new industrial undertakings including foreign and individuals operating in any export processing zone in Nigeria shall be allowed a full tax holiday for 3 consecutive years of assessment. Manufacturing companies can include the assembly and processing of goods for export provided the value of exported goods is not less than 75% of the total turnover during the assessment year.

15.9.4 Conditions for granting capital allowance

Capital allowance is claimable only on the following conditions:

(a) Capital expenditure must have been incurred in the basis period;

(b) The qualifying capital expenditure must have been put into use for the purpose of trade or business by the taxpayer;

(c) Ownership over the assets must not be in dispute;

(d) Assets must be in use as at the end of the basis period;

(e) Application for Acceptance Certificate must be made with the Federal Ministry of Industry where total value of additions to property, plant and equipment exceed N500,000 in any given year;

(f) Capital allowance on qualifying capital expenditure (QCE) incurred in generating tax exempt income is not deductible from the assessable profits arising from income not exempt from tax under CITA. Capital allowances accruing in respect of QCE employed for both taxable and tax-exempt income, shall be pro-rated where the tax-exempt income constitutes more than 20% of the total income of the company – section 31(1A) – (1B) of CITA (as amended); and

(g) Capital allowance on QCE incurred by small companies are deemed utilized during the periods such companies are tax-exempt – section 31(1c) of CITA (as amended).

Note:

The provisions in (f) and (g) as stated above, shall not apply to a company that enjoys pioneer status under the Industrial Development (Income Tax Relief) Act, Cap. 17 LFN 2004 (as amended).

15.9.5 Capital allowances rates and restrictions

Capital allowance rates

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

Qualifying expenditure in respect of rate per centum	Initial	Annual
Building	15	10
Industrial building	15	10
Mining	95	Nil
Plant (excluding furniture and fittings)	50	25
Plant (manufacturing, construction and agricultural production)	95	Nil
Furniture and fittings	25	20
Motor vehicle	50	25
Motor vehicle (public transportation with at least 3 buses)	95	Nil
Plantation equipment	95	Nil
Housing estate	95	Nil
Ranching and plantation	30	50
Research and development	95	Nil

15.9.6 Capital allowances under hire purchase transactions

When assets are acquired based on hire purchase, the hirer is expected to pay initial deposit and annual instalments in accordance with the terms of the agreement between the owner and the hirer. It is also presumed that the hirer will become the owner of the asset upon the payment of the last instalment.

For tax purposes, the capital allowances on a qualified capital expenditure (asset) are claimed by the hirer. The initial allowances are claimed when instalments are paid, while annual allowances are claimed on the total instalments. However, interests (being allowable expenses) are excluded from initial and annual allowances and are deducted in determining the assessable profit.

15.10 Tax-exempt deductions

The following deductions are tax exempt:

(a) National housing fund contribution

The National Housing Fund Act Cap LFN 2004, provides that a Nigerian earning an income of ₦3,000 and above per month in either the public or private sector of the economy shall contribute 2.5 per cent of his basic monthly salary to the Fund. Employers who fails to deduct or remit are liable to pay a penalty of ₦50,000 whilst self-employed persons are to pay ₦5,000 or one year imprisonment on conviction or both. The employer is to deduct the contribution from the employee's monthly salary and remit to the Federal Mortgage Bank of Nigeria within one month of making the deduction. The Act mandates the Federal Mortgage Bank of Nigeria to collect, manage and administer the fund. Contributions made to the fund are tax deductible.

(b) National health insurance scheme

The National Health Insurance Scheme (NHIS) was set up by The National Health Insurance Act, Cap N42 LFN 2004, for the purpose of providing health insurance which shall entitle persons insured under the scheme and their dependants the benefits of prescribed good quality and cost effective health services as set out in the Act.

The Act provides that an employer who has a minimum of ten employees may, together with every person in his employment, pay contribution under the scheme, at such rate and in such manner as may be determined, from time to time, by the Governing Council for the Scheme.

In the public sector (Federal), the employer is expected to pay 3.25%, while the employee pays 1.75% which translate to 5% of the employee's consolidated salary. In the case of the private sector and other tiers of government, the employer is expected to pay 10% while the employee pays 5% representing 15% of the employee's basic salary. The employer may decide to pay the entire contribution. Sometimes, the employer may also undertake extra contributions for additional cover to the benefit package.

An employer under the scheme shall cause to be deducted from an employee's wages the negotiated amount of any contributions payable by the employee.

The employer's contributions and the contributions in respect of its employees are to be paid into the account of a designated health maintenance organisation. Contributions to the scheme are tax deductible.

(c) Life assurance premium

A deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse.

(d) National pension scheme

The Pension Reform Act 2014 (PRA), established a uniform contributory pension scheme for payment of retirement benefits of employees. The scheme applies to all employees in both the public and private sectors who are in employment in an organisation in which there are 15 or more employees.

The rate of contribution to the scheme shall be a minimum of 8% of employee's monthly emolument (i.e. basic salary, housing allowance and transport allowance) as contribution for employees in the public and private sectors and 10% of the monthly emoluments as employer's contribution.

However, contributions made by an employee to the scheme shall be tax deductible.

Notwithstanding the foregoing mode of contribution to the scheme, an employer may agree or elect to bear the full burden of the scheme, provided that in such a case, the employer's contribution shall not be less than 20% of the monthly emoluments of the employee.

It is pertinent to state that the tax relief is only limited to pension contributions to schemes, provident or retirement benefits fund that are recognised under the Pension Reform Act, 2014.

(e) Gratuities

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

15.11 Computation of consolidated relief allowance (CRA)

"Gross income" means income from all sources less non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the sixth schedule, all allowable business expenses and capital allowance – section 33 (2) and (3) of PITA 2004 (as amended).

Consolidated relief allowance (CRA) is granted at the higher of ₦200,000 or 1% of gross income plus 20% of gross income.

15.12 Computation of gross income, chargeable income, and tax liabilities

These are computed thus:

		N	N
Net profit/ (loss)			xx
Add back:	Disallowable expenses	x	
	Taxable income not reported	x	xx
Deduct:	Non-taxable income	x	
	Franked investment income	x	
	Allowable expenses not reported	x	xx
Adjusted or assessable profit			xx
Losses b/f		x	
Relieved		x	(x)
Losses c/f		x	
			xx
Balancing charge			x
			xx
Capital allowance b/f		x	
Capital allowance for the year		x	
Balancing allowance		x	
		xx	
Relieved		(x)	(x)
Unrelieved capital allowance c/f		x	
			xx

Tax exempt items:		
National housing fund contribution	x	
National pension fund contribution	x	
National health insurance scheme contribution	x	
Life assurance premium	x	
Gratuity	x	xx
Gross income		**xx**
Less consolidated relief allowance		**x**
Chargeable income		**xx**

Computation of personal income tax	**₦**
First N300,000 @ 7%	x
Next N300,000 @ 11%	x

Next N500,000 @ 15%	x
Next N500,000 @ 19%	x
Next N1,600,000 @ 21%	x
Over N3,200,000 @ 24%	x
Tax liability	x
Less: Withholding tax earlier deducted	x
Final tax payable	xx

15.13 Computation of minimum tax

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

) The taxpayer has no taxable income because of large personal reliefs; or

a) Taxable income produces tax payable lower than minimum tax.

Section 37 of PITA 2004, as amended by the Finance Act, 2020, states that "minimum tax" under this section or as provided under the sixth schedule to this Act, shall not apply to a person in any year of assessment where such person earns the National Minimum Wage or less from an employment.

Illustration 13-1

The details of the employment contract of Mrs. Bukky Yussuf, a clerical officer in a public institution for 2021 assessment year are as follows:

Consolidated salary (per annum)	₦ 360,000
Contribution to pension scheme	8%
Contribution to National Housing Fund	2½%

Mrs. Yussuf, a divorcee, lives with three children. She also has an aged uncle on whom she spends ₦ 1,500 per month for his upkeep.

Required:

Compute the personal income tax liability of Mrs. Bukky Yussuf for 2021 assessment year.

Solution to illustration 13-1

Mrs. Bukky Yussuf
Computation of personal income tax liability
For 2021 assessment year

	₦	₦
Earned income:		
Salary		360,000
Unearned income		Nil
		360,000
Less: Tax exempt items:		

Pension scheme contribution (8% of ₦ 360,000)	28,800	
National housing fund contribution (2½% of ₦ 360,000)	9,000	37,800
		322,200
Less:		
Consolidated relief allowance		
(₦ 200,000 + 20% of ₦ 322,200)		264,440
		57,760
Tax liability		₦ NIL

Considering the fact that Mrs. Bukky Yusuff earned National minimum wage, she is not expected to pay personal income tax in line with section 37 of PITA 2004 (as amended).

15.14 Offences and penalties

Since incomes of sole traders and self-employed persons are governed by provisions of the Personal income Tax Act 2004 (as amended), offences and penalties are captured under section 94 of the Act.

Summary of offences and penalties are presented in the table below:

S/N	Offence	Penalty
1	**Section 74** – Failure to deduct tax on rent, interest, dividend and director's fees or any other deduction of tax at source or having deducted, fails to remit such deductions to the relevant tax authority within 30 days from the date the amount was deducted or the time the duty to deduct arose.	Liable to a penalty of an amount of 10 percent fine of N5,000 or 10 percent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible or deducted plus interest at the prevailing commercial rate.
2	**Section 82** – Failure of an employer to make deductions from emoluments, or amounts on account of emoluments paid by him to an employee or properly account to the relevant tax authority.	The amount thereof together with a penalty of 10 percent per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority.
3	**Section 94** - Failure to comply with any of the provisions of the Act or any rule or regulation made there under or which no other penalty is specifically provided.	Liable on condition to a fine of ₦ 20,000 and where the offence is failure to furnish a return, statement or information or to keep records required, a further sum of ₦ 2,000 for every day the failure continues.
4	**Section 94** - Failure to comply with the requirements of a notice served on him or without sufficient cause, fails to attend in answer to a notice or summons served on him or having attended fails to answer any	Is guilty of an offence against this Act and in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may

S/N	Offence	Penalty
	question lawfully put to him	order. The relevant tax authority will impose a penalty on the offender of an amount equal to the income tax chargeable on him for the preceding year of assessment.
5	**Section 94** - Making incorrect returns by omitting or understating any income liable to tax or gives incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person	Liable on conviction to a fine of ₦20,000 and double the amount of tax which has been undercharged. Note that no person shall be liable under this section unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed or within 6 years after the expiration thereof.
6	**Section 94** - Making false statements and returns and whoever aids, abets, assists, counsels, incites or induces any other person to deliver or keep false return or statement	Liable on conviction to a fine of ₦ 50,000 for individuals and ₦ 500,000 for corporate bodies or to imprisonment for not more than 6 months. Provided that where an offence under this section is committed by a person in relation to tax payable by, or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as stated above, the amount of ₦10,000 or treble the tax chargeable on the person for that year, whichever is greater

15.15 Chapter review

This chapter fully explains the constituents of a business and trade and addresses the taxation of income from business, profession and vocation.

15.16 Worked examples

15.16.1 Multiple-choice questions

1. Which of the following is allowable expense in the determination of assessable profit?

   A. Depreciation
   B. Expenditure of a capital nature
   C. Cost of defending traffic offence
   D. Income tax provision
   E. Specific allowance for doubtful debts

2. Which of the following is NOT a consideration that influences the identification of the badges of trade?

A. Location of the business
B. The subject-matter of the realisation
C. The motive
D. The frequency or number of similar transactions
E. The circumstances that were responsible for the realisation

3. Under the change of accounting date rule, ---- assessment years are considered relevant.
A. Six
B. Five
C. Four
D. Three
E. Two

4. Which is the relevant tax authority for unincorporated entities, individuals and body of individuals?

A. Local Government Joint Revenue Committee
B. State Internal Revenue Service
C. Federal Inland Revenue Service
D. Federal Ministry of Finance
E. Joint State Revenue Committee

5. The profit of an enterprise, being an unincorporated entity, is taxable in the hands of the …….
A. Owner
B. Staff
C. Consultants
D. Auditor
E. Secretary

15.16.2 Short answer questions

1. Income from all sources less non-taxable income, income on which no further tax is payable, tax exempt items, and all allowable business expenses and capital allowances is called…….

2. In the determination of assessable profit, defalcation by a junior staff is-----------------.
3. In commencement of business, the assessable income for the first assessment year shall be the income from the date on which the individual commenced such trade, business, profession or vocation in Nigeria to the end of its …………..
4. Capital allowance is defined as an allowance granted a …….. in lieu of depreciation charged which is treated as non-allowable expense for tax purposes.
5. Unrelieved loss which can no longer be carried forward upon the cessation of a business is known as ……………………………

15.16.3 Examination type questions

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

The assessable profits as provided are as follows:

	₦
January 2, 2020 to March 31, 2020	41,300,050
April 1, 2020 to March 31, 2021	52,750,000

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

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

Required:

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

(2) Capital allowances are a form of relief granted to any company which incurred capital expenditure for the purpose of a trade of business during a basis period in respect of property, plant and equipment that are in use at the end of the basis period.

Capital allowances are granted in place of depreciation which is usually disallowed for income tax purposes.

Required:

(a) (i) Define qualifying capital expenditure.

(ii) State the conditions for granting capital allowances.

(iii) Discuss the special provisions regarding assets purchased under hire purchase agreements or leases.

(b) Differentiate between balancing allowance and balancing charge.

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

	₦	₦
Gross profit		50,000,000
Profit on sale of vehicle		1,200,000
		51,200,000
Less: Expenses		

General administration	3,000,000	
Staff salaries	12,219,500	
Stationery and printing	800,000	
Postage and telephone	400,000	
Electricity	700,000	
Entertainment	250,500	
Vehicle repairs and maintenance	455,000	
Bank charges	800,000	
Donations	4,500,000	
Periodical and technical journals	80,000	
Audit and accountancy fee	2,500,000	
Defalcation and embezzlement	1,200,000	
Repairs and renewals	85,000	
Depreciation	5,010,000	
VAT paid on equipment	2,800,000	
Bad and doubtful debts–Specific	200,000	(35,000,000)
Net Profit		16,200,000

You are provided with the following additional information:

i. Legal expense of ₦360,000 formed part of staff salary instead of capital Items

ii. Donations made to The Boys Scout of Nigeria

iii. She agreed with the inspector of taxes that one third of vehicle repairs and maintenance related to private use

iv. Further examination of accounts revealed that salary of ₦ 800,000 was paid to an unknown person

v. The Chief Accountant perpetrated 75% of the defalcation

vi. Allowable expenses of ₦ ₦230,000 have been omitted from the accounts

vii. Repairs and renewals comprised of:

	₦
Partitioning of new office	30,500
Repairs to plant and machinery	25,000
Repairs of office roof	29,500
	85,000

viii. Agreed capital allowances on qualifying capital expenditure amounted to ₦7,500,000.

Required:

(a) Compute the gross income of Dr. Eniola for the relevant tax year.

(b) State three conditions that must be met before donations can be allowed as an expense.

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

Revenue	₦	₦
Gross trading profit		30,000,000
Dividend (gross)		2,500,000
Rental income (gross)		800,000
Profit on sale of non-current assets		1,200,000
		34,500,000
Less: Expenses:		
Salaries and wages	3,500,000	
General expenses	1,600,000	
Finance costs	900,000	
Rates and electricity	500,000	
Repairs and maintenance	2,500,000	
Depreciation	4,800,000	
Bad debt	2,000,000	(15,800,000)
Net profit		18,700,000

Additional information:		₦
(i)	Salaries and wages include:	
	Salary paid to Mrs Zuniga who is a full time employee of the company	350,000
	Wages to Mrs Zuniga's house maid	50,000
	Salaries of other employees	3,100,000
		3,500,000
(ii)	General expenses include:	
	Subscription of trade magazines	200,000
	Cost of company branded gifts	750,000
	Fines paid for traffic offence committed by Mrs. Zuniga	100,000
	Stationery	250,000
	Hire of generator set for Mr. Zuniga's private residence	300,000
		1,600,000

(iii) Finance cost include ₦ 200,000 in respect of Mr. Zuniga's private loan.

(iv) Mr. Zuniga has a life insurance policy on his life for which he pays an annual premium of ₦ 350,000.

(v) Mr. Zuniga made contribution of ₦ 150,000 to National Health Insurance Scheme (NHIS) during the year.

(vi) Mr. Zuniga has 3 children and also maintained his aged parent.

(vii) Capital allowance agreed with the relevant tax authority is ₦5,500,000.

Required:

(a) Compute adjusted profit for the relevant tax year

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

15.16.4 Suggested solutions to multiple-choice questions

1. E
2. A
3. D
4. B
5. A

15.16.5 Suggested solutions to short answer questions

1. Gross income
2. Allowable
3. First accounting period
4. Taxpayer
5. Terminal loss

15.16.6 Suggested solutions to examination type questions

(1) Dominion Enterprises
Computation of total income
Assessment years 2004 to 2009

Assessable income computation	**₦**	**₦**
2004 Based on 1/7/04 - 31/12/04 (Actual)		
Loss for the period		(180,000)
Less: Capital allowance – For the year		(30,000)
Unrelieved loss and capital allowance c/f		(210,000)
2005 Based on 1/7/04 – 30/6/05		
(first 12 months) Loss – 1/7/04 – 31/12/04		(180,000)
– 1/1/05–30/6/05–(6/12 x ₦ 120,000)		(60,000)
		(240,000)
Less:		
Capital allowance – For the year 6/12		
(6/12 x ₦ 44,000)	(20,000)	
– Unrelieved b/f	(30,000)	(500,000)

Unrelieved losses & capital allowances c/f	(290,000)

2006 Based on 1/1/05 – 31/12/05 (PYB)

Loss for the year	(120,000)

Dominion Enterprises
Computation of gross income
For assessment years 2021 and 2022

	N	**N**
Assessment year 2021		
Assessable profit (2/1/20 – 31/3/20)		41,300,050
Capital allowances		(1,561,000)
Gross income		39,739,050
Assessment year 2022		
Assessable profit (April 1, 2020 – March 31, 2021		52,750,000
Capital allowances		(434,000)
Gross income		52,316,000

Computation of capital allowances

	Motor vehicles	**Office equipment**	**Furniture and fittings**	**Total**
Initial allowance (%)	50	25	25	
Annual allowance (%)	25	20	20	
	N	**N**	**N**	**N**
Cost	2,500,000	420,000	390,000	3,310,000
Assessment year 2021				
Initial allowance (I.A.)	(1,250,000)	(105,000)	(97,500)	1,452,500
Annual allowance (A.A)	(78,125)	(15,750)	(14,625)	108,500
				1,561,000
W.D.V. c/f to A.Y. 2022	1,171,875	299,250	277,875	

Assessment year 2022

Annual allowance	(312,500)	(63,000)	(58,500)	434,000
W.D.V. c/f to A.Y. 2023	859,375	236,250	219,375	

(2) (a) (i) Qualifying capital expenditure means the expenditure incurred during the basis period of a company in the acquisition of a particular item of non-current assets, for example, plant and machinery, buildings, motor vehicles, furniture and fittings, and all incidental expenses incurred in bringing the asset into a usable position. Examples of such incidental expenses are legal, delivery and other professional fees.

(ii) Conditions for granting capital allowances include:

- The assets must be in use at the end of the basis period;
- The asset must have been used for the development and enhancement of the trade or business of the company; and
- The company must be the bonafide owner of the asset.

(iii) Special provisions for assets purchased under hire purchase agreements or leases:

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

* The qualifying capital expenditure shall be restricted to the total amount of instalments paid during the basis period; and

* The instalment shall exclude the hire purchase interest paid under the agreement.

Leases
Where a person owning an asset has incurred capital expenditure in respect thereof; or leases that asset to any person under an operating lease contract, for use wholly, exclusively, necessarily and reasonably for the purpose of a trade, or business carried on by the lessee, then the lessor or owner of the asset will claim capital allowance.

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

(b) Where in its basis period for a year of assessment, a company owning an asset has incurred in respect thereof qualifying expenditure, wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, disposes of that asset, a **balancing allowance** will be given to the owner of the asset, where the disposal value is less than the residue (tax written down value), of the asset at the date of disposal. The asset must be in use prior to disposal for the purpose of granting such allowance.

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

Note

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

3 (a) **Dr. Eniola Ajayi**
Computation of gross income
For 2021 assessment year

	₦	₦
Earned income:		
Income from trade (see working)		17,322,167
Consolidated relief allowance (CRA)		
Higher of 1% x ₦ 17,322,167 or ₦ 200,000		
whichever is higher, + 20% x N17,322,167		(3,664,433)
Gross income		13,657,734

Workings

Determination of adjusted profit and income from trade

	₦	₦
Net profit as per accounts		16,200,000
Add back: Disallowable expenses:		
Staff salary – capital item	360,000	
Vehicles repairs and maintenance – private		
use1/3 x ₦ 455,000	151,667	
Salary – paid to unknown person	800,000	
Defalcation – 75% x ₦ 1,200,000	900,000	
Repairs and renewal – partitioning cost	30,500	
Depreciation	5,010,000	
VAT	2,800,000	10,052,167
		26,252,167
Less: Non-taxable income		
Profit on sale of vehicle	(1,200,000)	

Less: Allowable expenses omitted	(230,000)	(1,430,000)
		24,822,167
Deduct capital allowances		7,500,000
		17,322,167

(b) The conditions for a donation to be allowed as an expense are as follows:

(i) It must be made to a body or institution approved under the fifth schedule of Companies Income Tax Act CAP C21 LFN 2004 (as amended);

(ii) It must not be of capital in nature, except when made to university and other tertiary or research institutions;

(iii) It must be made out of profit;

(iv) It must not exceed 10% of the chargeable profit before the deduction of the donation; and

(v) It must not be for a valuable consideration;

(vi) Donations made by companies in cash or kind to any fund set up by the Federal Government or any state government, or 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 subject to a limitation of 10% of assessable profits after deduction of other allowable donations made by the company.

4 (a) **Mr. Zuniga**

Computation of adjusted profit for 2021 tax year

	₦	₦
Net profit		18,700,000
Add: Disallowable expenses:		
Salaries and wages		
Wages paid to Mrs. Zuniga's maid	50,000	
General expenses:		
Fines paid for traffic offence committed by Mrs. Zuniga	100,000	
Hire of generating set for Mr. Zuniga's private residence	300,000	
Finance cost:		
Interest in respect of Mr. Zuniga's private loan	200,000	
Depreciation	4,800,000	5,450,000
Less: Non-taxable income		
Dividend (gross)	2,500,000	
Profit on sale of non-current assets	1,200,000	(3,700,000)
Adjusted profit		20,450,000

(b) **Mr. Zuniga**

Computation of tax liability and tax payable for 2021 tax year

	₦	₦
Trade income	20,450,000	
Less: Capital allowance	(5,500,000)	14,950,000
Tax exempt items:		
Life insurance premium	350,000	
NHIS contribution	150,000	(500,000)
		14,450,000
Consolidated relief allowance:		
Higher of: 1% of ₦ 14,450,000 or ₦ 200,000, which is higher, plus 20% of ₦ 14,450,000		(3,090,000)
Gross income		11,360,000

Computation of personal income tax	₦
First N 300,000 @ 7%	21,000
Next N 300,000 @ 11%	33,000
Next N 500,000 @ 15%	75,000
Next N 500,000 @ 19%	95,000
Next N 1,600,000 @ 21%	336,000
Next N 8,160,000 @ 24%	1,958,400
N 11,360,000	
Tax liability	2,518,400
Less: WHT earlier deducted from rent (10% x N 800,000)	(80,000)
Tax payable (net)	2,438,400

CHAPTER SIXTEEN
TAXATION OF PARTNERS IN PARTNERSHIPS

Chapter contents

a) Learning objectives
b) Definition of partnership
c) The relevant tax authority
d) Basis of assessment.
e) Treatments of admission and retirement of partners, and the amalgamation of partnerships
f) Tax treatment of conversion of a partnership to a limited liability company
g) Allowable and non allowable expenses
h) Income of a partnership business
i) Treatment of partnership loss
j) Treatment of capital allowances in the determination of computed income of a partnership business
k) Income of partners
l) Tax exempt deductions
m) Consolidated relief allowance (CRA)
n) Computation of gross income, chargeable income and income tax payable of a partner
o) Chapter review
p) Worked examples

16.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Understand the meaning of a partnership and the content of a partnership agreement;

(b) Determine a partnership's residence and the relevant tax authority in relation to a partnership for a year of assessment;

(c) Ascertain the income of a partnership and each partner's assessable income from partnership;

(d) Ascertain the loss relief available to a partner when a partnership incurs a loss;

(e) Understand the allowable and non-allowable expenses of a partnership business;

(f) Understand when to apply commencement and cessation provisions when computing the assessable income of a partnership; and

(g) Understand how to compute the tax liability of individual partners in the partnership.

16.1 Definition of partnership

The Partnership Act, 1890, defines a "partnership as a relationship that exists or subsists between or among persons carrying on business in common with a view of profit". Partnership is an association of two or more persons who come together with a view to making profit. A partnership has a minimum of two and a maximum of 20 members. However, Section 19 (2) (b) of the Companies and Allied Matters Act (CAMA) allows a partnership of more than twenty persons to be formed in Nigeria provided it is for the purpose of carrying on practice as legal practitioners, by persons each of whom is a legal practitioner, or as accountants by persons each of whom is entitled by legal practice as a chartered accountant.

16.2 Relevant tax authority

The relevant tax authority in relation to a partnership for a year of assessment is the tax authority of the territory in which the principal office or place of business of the partnership in Nigeria is situated on the first day of that year, or is first established during that year.

16.3 Basis of assessment

In Nigeria, a partner is assessed to tax on his share of a partnership profit based on a preceding year basis. Partners, not partnerships are taxed in Nigeria.

16.4 Tax treatments under change in partnerships

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

16.4.1 Admission of a partner

Where a new partner is admitted into a partnership, he is deemed to have commenced a new business, hence the application of the commencement rule. However, where a partner resigns from another partnership business in the same or similar trade before forming or joining a new one, he is deemed to be in continuous business, hence there will be no application of the commencement rule. In other words, he will be assessed on a preceding year basis.

16.4.2 Retirement of a partner

Where an existing partner retires, resigns or dies, he is deemed to have ceased business, hence the application of the cessation rule. Where, however, a partner retires or resigns from a partnership in the same or similar trade to join another one, the cessation rule shall not be applicable. In other words, he will be assessed on a preceding year basis.

16.4.3 Amalgamation of partnerships

In a situation of amalgamation of two or more partnerships, there would be no application of the commencement or cessation rule. The qualifying capital expenditure transferred to the new partnership is deemed to have been transferred at its tax written down value, hence there would be no computation of balancing adjustment; only annual allowance is claimable.

16.5 Conversion of a partnership to a limited liability company

Cessation rules apply in a situation in which a partnership is converted into a limited liability company as the old partnership is deemed to have ceased business. In the same vein, the commencement rules apply to the new company.

All the qualifying capital expenditure items transferred are deemed transferred at the agreed values and there would be computation of balancing adjustment. However, in computing capital allowances on the assets transferred, initial allowance is not allowed and the capital allowance claimable would take into account the duration of time the asset has been with the previous owners.

16.6 Allowable and non-allowable expenses

Allowable and non-allowable expenses to a partnership business are the same as those dealt with under chapter 15. Please refer to chapter 15 for allowable and disallowable expenses.

16.7 Computation of the income of a partnership business

The computation of the income of a partnership is similar to that of a sole trader save that salaries, interest on capital, payable to partners and cost of passages to and from Nigeria wholly or mainly undertaken or for the purpose of leave or recreation, are allowable expenses in computing a partnership income unlike the case of individuals or sole traders.

It is pertinent to add that private or domestic expenses of a partner are not allowable in computing the computed income of a partnership.

16.8 Partnership loss

Where upon the computation of the assessable gain or profit of partners from the partnership there results a loss, the loss shall be shared among the partners in accordance with the partnership agreement and thereafter set off against the other income of the partners (i.e. current year loss relief). Any unrelieved loss shall be carried forward and set off against future profit of the partners (i.e. carried forward loss relief).

16.9 Treatment of capital allowances in the determination of computed income of a partnership business

Capital allowances of a partnership are deductible from the adjusted profit of the partnership before the resultant computed income is shared amongst the partners.

16.10 Income of partners

The income of a partner from a partnership in Nigeria shall be deemed to be derived from the territory of the relevant tax authority, in relation to the partnership.

Income taxable in the hand of a partner includes:

(a) Any remuneration, interest on capital, or the cost of passages to or from Nigeria wholly or mainly undertaken or the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner; and

(b) His share in the income of the partnership, computed in accordance with the provisions of this Act after the deduction of charges to which paragraph (a) above applies in respect of all the partners but before the deduction of any other expenses of the partnership referable to a partner which would have been private or domestic expenditure disallowed by the Act if incurred directly by that partner.

16.11 Tax-exempt deductions

The following deductions are tax exempt:

(a) National housing fund contribution

The National Housing Fund Act Cap LFN 2004, provides that a Nigerian earning an income of ₦3,000 and above per month in either the public or private sector of the economy shall contribute 2.5 per cent of his basic monthly salary to the Fund. Employers who fails to deduct or remit are liable to pay a penalty of ₦50,000 whilst self-employed persons are to pay ₦5,000 or one year imprisonment on conviction or both. The employer is to deduct the contribution from the employee's monthly salary and remit to the Federal Mortgage Bank of Nigeria within one month of making the deduction. The Act mandates the Federal Mortgage Bank of Nigeria to collect, manage and administer the fund. Contributions made to the fund are tax deductible.

(b) National health insurance scheme

The National Health Insurance Scheme (NHIS) was set up by The National Health Insurance Act, Cap N42 LFN 2004, for the purpose of providing health insurance which shall entitle persons insured under the scheme and their dependants the benefits of prescribed good quality and cost effective health services as set out in the Act.

The Act provides that an employer who has a minimum of ten employees may, together with every person in his employment, pay contribution under the scheme, at such rate and in such manner as may be determined, from time to time, by the Governing Council for the Scheme.

In the public sector (Federal), the employer is expected to pay 3.25%, while the employee pays 1.75% which translate to 5% of the employee's consolidated salary. In the case of the private sector and other tiers of government, the employer is expected to pay 10% while the employee pays 5% representing 15% of the employee's basic salary. The employer may decide to pay the entire contribution. Sometimes, the employer may also undertake extra contributions for additional cover to the benefit package.

An employer under the scheme shall cause to be deducted from an employee's wages the negotiated amount of any contributions payable by the employee.

The employer's contributions and the contributions in respect of its employees are to be paid into the account of a designated health maintenance organisation. Contributions to the scheme are tax deductible.

(c) Life assurance premium

A deduction of the annual amount of any premium paid by the individual during the year preceding the year of assessment to an insurance company in respect of insurance on his life or the life of his spouse.

(d) National pension scheme

The Pension Reform Act 2014 (PRA), established a uniform contributory pension scheme for payment of retirement benefits of employees. The scheme applies to all employees in both the public and private sectors who are in employment in an organisation in which there are 15 or more employees.

The rate of contribution to the scheme shall be a minimum of 8% of employee's monthly emolument (i.e. basic salary, housing allowance and transport allowance) as contribution for employees in the public and private sectors and 10% of the monthly emoluments as employer's contribution.

However, contributions made by an employee to the scheme shall be tax deductible.

Notwithstanding the foregoing mode of contribution to the scheme, an employer may agree or elect to bear the full burden of the scheme, provided that in such a case, the employer's contribution shall not be less than 20% of the monthly emoluments of the employee.

It is pertinent to state that the tax relief is only limited to pension contributions to schemes, provident or retirement benefits fund that are recognised under the Pension Reform Act, 2014.

(e) Gratuities

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

16.12 Computation of consolidated relief allowance (CRA)

"Gross income" means income from all sources less non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the sixth schedule, all allowable business expenses and capital allowance – section 33 (2) and (3) of PITA 2004 (as amended).

Consolidated relief allowance (CRA) is granted at the higher of ₦200,000 or 1% of gross income plus 20% of gross income.

16.13 Computation of gross income, chargeable income and income tax payable of a partner

These are computed thus:

	₦	₦
Share of computed profit of the partnership		x
Add:		x
Partner's salary		x
Interest on capital		x
Interest on loans granted to the partnership		x
Cost of passages		x
Other taxable income		x
		xx
Tax except items:		
Contribution to National housing fund	x	
Contribution to National health insurance scheme	x	
Contribution to National pension scheme	x	
Life assurance premium	x	
Gratuities	x	x
Gross income		x
Consolidated relief allowance:		x
Higher of 1% of gross income or ₦ 200,000 plus		
20% of gross income		x
Chargeable income		xx
Personal income tax (PIT) payable:		
Apply tax table		

First ₦300,000 @ 7%	x
Next ₦300,000 @ 11%	x
Next ₦500,000 @ 15%	x
Next ₦500,000 @ 19%	x
Next ₦1,600,000 @ 21%	x
Above ₦3,200,000 @ 24%	x
	xx

16.14 Chapter review

This chapter addresses computation of the income of a partnership business and taxable income of partners. It also highlights the importance of a partnership agreement and the provisions requiring the registration of the agreement with the relevant tax authority.

16.15 Worked examples

16.15.1 Multiple-choice questions

1) The following are some of the matters usually dealt with in a partnership agreement for tax purposes, EXCEPT

A. Amount to be contributed by each partner as capital
B. The rate of interest payable, if any, on capital
C. Salary, if any, payable to a partner
D. Number of dependent relatives
E. Profit and loss sharing ratio

2) A partnership has a minimum of two and a maximum of …………members except in case of legal and accounting practice in Nigeria.

A. 10
B. 20
C. 30
D. 35
E. 40

3. In the absence of a partnership agreement or deed, interest on loan advanced by a partner to the firm is allowed at the rate of

A. 2%
B. 4%
C. 5%
D. 6%
E. 10%

4. Which of the following options best describes the relevant tax authority of partnership business?

A. The relevant tax authority in relation to a partnership for a year of assessment is the tax authority of the territory in which the principal office or place of business of the partnership in Nigeria is situated on the first day of that year.
B. The relevant tax authority in relation to a partnership for a year of assessment is the tax authority of the territory where the business has the greatest number of

clients.

C. The relevant tax authority in relation to a partnership for a year of assessment is the tax authority of the territory of the managing partner.

D. The relevant tax authority in relation to a partnership for a year of assessment is the tax authority of the territory of the senior partner.

E. The relevant tax authority in relation to a partnership for a year of assessment is the tax authority in the Federal Capital Authority.

5. The following are allowable expenses in computing partnership income, EXCEPT

A. Domestic expenses of a partner

B. Salaries

C. Interest on capital payable to partners

D. Cost of passages to and from Nigeria

E. Other expenses wholly or mainly undertaken for the purpose of business

16.15.2 Short answer questions

1. The conduct of a partnership business will usually be in accordance with certain terms and conditions as agreed to by all the ………..

2. The relevant tax authority in relation to a partnership for a year of assessment is the tax authority of the territory in which the principal office or place of business of the partnership in Nigeria is situated on the ……. day of that year.

3. The private or domestic expenses of a partner are not allowable in computing the computed income of a partnership. TRUE or FALSE?

4. Any unrelieved loss cannot be carried forward and set off against future profit of the partners. TRUE OR FALSE?

5. What rule applies in a situation where a partner resigns from another partnership business before forming or joining a new one in the same or similar trade?

16.15.3 Examination type questions

(1) Erewa, Sola and Wole have been in partnership as medical practitioners for about seven years. The operational result of the partnership for the year ended June 30, 2019, has revealed the following:

	₦	₦	₦
Gross profit			40,200,000
Deduct:			
Salaries and wages		13,550,000	
Transport and travelling		1,600,000	
Insurance		350,000	
Rent and rates		800,000	
Office expenses		1,400,000	
Professional fees		3,000,000	
Allowance for doubtful debts		650,000	
Staff loan written off		270,000	
Depreciation		7,800,000	
Interest on loan by Erewa		455,000	

Interest on capital accounts:			
Erewa	225,000		
Sola	315,000		
Wole	360,000	900,000	(30,775,000)
Net Profit for the year			**9,425,000**

Other relevant information is as follows:

(i) Allowance for doubtful debts was based on 20% of debts over 9 months old.

(ii) Office expenses include a donation of ₦ 800,000 to an old people's home.

(iii) Capital allowances agreed with the Revenue was ₦ ₦9,500,000.

(iv) Only Erewa is married with two children below 16 years of age.

(v) Partners' profit sharing ratio is Erewa - 5, Sola -7 and Wole - 8

You are required to compute:

(a) The adjusted income of the partnership for tax purposes

(b) The chargeable income of each partner for tax purposes

(c) The tax payable by each of the partners

(i) Dejo, Akanbi and David have been in partnership for many years, providing specialised engineering services to the oil sector. Accounts are made to December 31, each year. The following are the adjusted profits for:

	₦
Year ended 31 December 2014	1,440,000
Year ended 31 December 2015	1,650,000
Year ended 31 December 2016	2,400,000

Additional information is provided as follows:

(ii) Partners are to share profits in the ratio 1:2:1

(iii) Salaries are drawn in this order:

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

(iv) Interest on capital is 6%

(v) The capital account of each partner is:

Dejo	₦ 150,000
Akanbi	₦ 300,000
David	₦ 210,000

(vi) On May 31, 2016, Dejo retired and Dandy was admitted on June 1 of same year, on a salary of ₦ 180,000 per annum. He brought in a capital of ₦ 210,000 and was to have the sharing ratio which Dejo used to enjoy.

You are required to:

(a) Compute each partner's income from the partnership business for 2016 year of assessment.

(b) Itemise the rules of commencement in respect of partnership income.

(vii) Professor Wachukwu and Dr. Orlando are partners in a legal firm based in Calabar. The firm of Worland & Associate (Legal practitioners) renders legal and secretarial services. The statement of profit or loss of the firm for the year ended December 31, 2021, disclosed the following details:

	₦	₦
Legal fees		33,000,000
Fees for secretarial services	9,500,000	
Sundry incomes	4,500,000	
Interest on fixed deposit	2,800,000	16,800,000
		49,800,000
Expenses:		
Salaries	3,200,000	
Office rent	2,200,000	
Sundry expenses	1,200,000	
Depreciation	4,800,000	
Finance cost	900,000	
Administrative expenses	200,000	
Repairs and maintenance	700,000	(13,200,000)
Net profit		**36,600,000**

Additional information:

(i) Salary includes salaries paid to the partners:

Professor Wachukwu	₦ 550,000
Dr. Orlando	₦ 400,000

(ii) Sundry expenses include ₦ 300,000 paid to Dr. Orlando's personal driver as salary for the year.

(iii) Finance cost is made up of:

	₦
Interest on loan to the firm	300,00 0
Bank charges	150,000
Interest on partners' private loans:	150,000
Professor Wachukwu	100,000
Dr. Orlando	
Interest paid to Professor Wachukwu	200,000
on loan to the firm	900,000

(iv) Repairs and maintenance is made up of:

Maintenance of residence of each partner:

Professor Wachukwu	200,000
Dr. Orlando	200,000
Office repairs	300,000
	700,000

(v) Both partners are married with 3 children all are of school age. Professor Wachukwu maintains his aged parents and incurred ₦ 30,000 annually on them.

(vi) Dr. Orlando paid life insurance premium of ₦ ₦ 2,800,000 annually on his life and that of his spouse.

(vii) Sundry income includes profit on sale of property, plant and equipment amounting to ₦ 980,000.

(viii) Capital allowances agreed with the relevant tax authority amounted to ₦6,400,000.

(ix) Profits and losses are to be shared equally.

Required:

Compute the assessable income and tax liabilities of the partners for the relevant tax year.

16.15.4 Suggested solutions to multiple-choice questions

1. D
2. B
3. D
4. A
5. A

16.15.5 Suggested solutions to short answer questions

1. Partners
2. First
3. True
4. False
5. Assessment on preceding year basis

16.15.6 Suggested solutions to examination questions

(1) (a) **Erewa, Sola and Wole**
Computation of adjusted income of the partnership
For 2019 year of assessment

	₦	₦
Net profit for the year		9,425,000
Add disallowable expenses:		
Allowance for doubtful debts	650,000	
Office expenses (donation)	800,000	
Depreciation	7,800,000	
Staff loans written off	270,000	9,520,000
Adjusted/Assessable income		18,945,000
Capital allowances		(9.500.000)

Divisible profit/computed income	9,445,000

(b)

Computation of partners' chargeable income

	Erewa	Sola	Wole
	₦	₦	₦
Earned income			
Interest on capital	225,000	315,000	360,000
Share of profit [5:7:8]	2,361,250	3.305,750	3,778,000
	2,586,250	3,620,750	4,138,000
Unearned income			
Interest on loan	455,000	-	
Total income	3,041,250	3,620,750	4,138,000
Deduct: Reliefs			
Consolidated relief Allowance	808,250	924,150	1,027,600
Chargeable income	2,233,000	2,696,600	3,110,400

(c) **Computation of tax payable by partners**

	Erewa	Sola	Wole
	₦	₦	₦
Chargeable income	2,233,000	2,696,600	3,110,400
Tax liability			
First ₦300,000 @ 7%	21,000	21,000	21,000
Next ₦300,000 @ 11%	33,000	33,000	33,000
Next ₦500,000 @ 15%	75,000	75,000	75,000
Next ₦500,000 @ 19%	95,000	95,000	95,000
Next ₦1,600,000 @ 21%			
Erewa: (₦ 2,233,000-₦1,600,000) @21%	132,930		
Sola: (₦ 2,696,600-₦1,600,000) @21%		230,286	
Wole: (₦ 3,110,400-₦1,600,000) @21%			317,184
	356,930	**454,286**	**541,184**

Workings

Consolidated relief allowance

Erewa:	₦ 200,000 + 20% of ₦ 3,041,250	=	₦808,250
Sola:	₦ 200,000 + 20% of ₦ 3,620,750	=	₦924,150
Wole:	₦ 200,000 + 20% of ₦ 4,138,000	=	₦1,027,600

(2) (a) **Dejo, Akanbi & David in partnership Computation of each partner's income**

2016 is the year of cessation; Basis period is 1/1/16 – 31/5/16 (Income

Assessable):

	Dejo	Akanbi	David	Wole
	₦	₦	₦	₦
Salary (5 months)	150,000			
Salary (7 months)				105,000
Salary (12 months)		240,000	180,000	
Interest	3,750	18,000	12,600	7,350
Share of profit	250,000	825,000	412,500	350,000
	403,750	**1,083,000**	**605,100**	**462,350**
Basis period is	1/1/16 – 31/5/16	1/1/15- 31/12/15	1/1/15- 31/12/15	1/6/16– 31/12/16
	(Actual)	(PYB)	(PYB)	(Actual)
Notes Ref.	1	3	3	2

Notes:

(i) Dejo is deemed to have ceased business on 31/5/16, having retired on same date. Accordingly, applying the cessation provisions, he is assessed in 2016 tax year on his income from the partnership for the period 1/1/16 - 31/5/16, namely:

	₦
- Salary (5/12 x 360,000)	150,000
- Interest on capital 150,000 at 6% x 5/12	3,750
Share of profit - (Profit -Y/E 31/12/16 x 5/12 x 1/4)	2,400,000
(profit share)	250,000

(ii) Dandy will be deemed to have commenced business on June 1, 2016, being the date of his admission into partnership. Consequently, the commencement provisions will apply to the determination of his income for 2016 assessment year, and will, therefore, be assessed on actual year basis, that is, actual income of the period 1/6/16 - 31/12/16, namely:

	₦
- Salary 7/12 x ₦180,000	105,000
- Interest on capital - ₦210,000 at 6% x 7/12	7,350
- Share of profit ₦2,400,000 (profit) Y/E 31/12/16 x 7/12 x 1/4 (profit share)	350,000

(iii) Both Akanni and David, the continuing partners, will continue to

be assessed on preceding year basis.
Consequently, for 2016 assessment year, their assessable income is the share of each of them from the partnership income for the year ended 31 December 2015, namely:

	₦	₦
- Adjusted profit - Y/E 31/12/15		1,650,000
shared as follows:-		
- Dejo -(1/4 x ₦1,650,000)	412,500	
- Akanni -(1/2 x ₦1,650,000)	825,000	
- David -(1/4 x ₦1,650,000)	412,500	1,650,000

(b) Commencement of a new trade – section 24 of PITA 2004 as amended

With the promulgation of the Finance Act, 2020, the occurrence of overlapping basis periods upon commencement of business is now eliminated.

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

(i) For the first year, the assessable income shall be the income from the date on which the individual commenced such trade, business, profession or vocation in Nigeria to the end of its first accounting period;

(ii) For the second year, the assessable income shall, be the income from the first day after the trade of business' first accounting period to the end of its second accounting period;

(iii) For the third year, and each subsequent year thereafter, the assessable income shall be the profits from the day after accounting period just ended.

It is pertinent to note that the Finance Act, 2019 and Finance Act, 2020, are silent on the issue of right of election. However, with the Finance Act recognising only preceding year basis in the determination of assessable income, therefore, the practice of seeking for right of election will no longer be necessary.

(3) Worland & Associate
Computation of assessable income and tax liabilities of partners
For 2022 assessment year

Computation of partners' chargeable income

	Professor Wachukwu	Dr. Orlando
	₦	₦
Share of profit	17,485,000	17,485,000
Add:		
Partners salary	550,000	400,000
Income from partnership	18,035,000	17,885,000
Add: Interest on partner's loan	200,000	0
Assessable income/gross income	18,235,000	17,885,000
Tax exempt items:		
Life insurance premium	(0)	(2,800,000)
Gross income	18,235,000	15,085,000
Consolidated relief allowance:		
Higher of 1% of gross income or ₦ 200,000 plus		
20% of gross income	(3,847,000)	(3,217,000)
Life insurance premium	0	(2,800,000)
Chargeable income	14,388,000	11, 868,000
Apply Tax Table	₦	₦
First ₦300,000 @ 7%	21,000	21,000
Next ₦300,000 @ 11%	33,000	33,000
Next ₦500,000 @ 15%	75,000	75,000
Next ₦500,000 @ 19%	95,000	95,000
Next ₦1,600,000 @ 21%	336,000	336,000
Above ₦3,200,000 @ 24%		
Professor Wachukwu		
(₦14,388,000 - ₦3,200,000) x 24%)	2,685,120	
Dr. Orlando		2,080,320
(₦11,868,000 - ₦3,200,000) x 24%)	**3,244,120**	**2,640,320**

Workings

(i) Computation of adjusted profit and partner's share of profit

	Total	Professor Wachukwu	Dr. Orlando
	₦	₦	₦
Net profit	36,600,000		

Add: Disallowed expenses:			
Sundry expenses –salary paid			
to Dr. Orlando's personal driver	300,000		
Depreciation	4,800,000		
Interest on partners' loan:			
Professor Wachukwu	150,000		
Dr. Orlando	100,000		
Repairs and maintenance:			
Professor Wachukwu	200,000		
Dr. Orlando	200,000		
	42,350,000		
Less: Non-taxable income			
Sundry income:			
Profit on sale of property, plant and equipment	(980,000)		
Adjusted profit	41,370,000		
Less: Capital Allowance	(6,400,000)		
Divisible profit	34,970,000		
Share of divisible profit:			
Professor Wachukwu			
50% x ₦34,970,000	17,485,000)	(17,485,000)	
Dr. Orlando			
50% x ₦34,970,000	(17,485,000)		(17,485,000)
	0	**17,485,000**	**17,485,000**

CHAPTER SEVENTEEN
TRUSTS, SETTLEMENTS AND ESTATES

Chapter contents

(a) Learning objectives
(b) Definition of trust, settlement and estate
(c) Persons chargeable
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(k) Computation of income liable to tax in the hands of beneficiaries and trustees
(l) Accounts of the estate
(m) Payment of tax
(n) Offences and penalties
(o) Chapter review
(p) Worked examples

17.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Understand the meaning and nature of trusts, settlements and estates;

(b) Appreciate the relevant tax laws guiding trusts, settlements, and estates; and

(c) Understand the computation of tax liabilities relating to trusts, settlements and estates.

17.1 Definitions of trusts, settlements and estates

17.1.1 Trust

The term trust relates to equitable obligation, binding a person, called the trustee, to deal with a property, over which he/she has custody (which is called the trust property), for the benefit of persons (beneficiaries) of which he/she may be one.

17.1.2 Settlement

A settlement is a means by which enjoyment of an estate, or part of it is transferred to another person, either through a disposition, trust, or covenant, agreement, arrangement or transition of assets by reference to a Trust, for the benefit of persons specified.

17.1.3 Estate

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

17.2 Explanations of other definitions

(a) "**Child**" includes a stepchild, an adopted child and an illegitimate child;

(b) "**Settlor**" in relation to a settlement, includes a person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing) includes a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(c) "**Will**" is a document made by a person as to how his assets should be distributed at his death. The person mentioned in the Will to administer the estate, that is, see to the carrying out of the will of "the deceased" is called the "executor". Where the deceased appointed no executor, the court on application will appoint an "administrator" of the estate.

(d) "**Annuitant**" is a person receiving an annuity, that is, an annual payment from an estate.

(e) "**Beneficiary**" is a person who receives income from a settlement, trust or estate.

(f) "**Legatee**" is a person who receives a gift of personal property by Will. Legatee can be either:
   (i) A specific legatee who is named in a Will to receive a particular thing (e.g. black horse); and
   (ii) A residual legatee who is a person that receives the residue (i.e. the remainder; what is left) of the personal property after specific legacies have been settled.

(g) "**Devisee**" is a person who receives real property under a Will.

(h) "**Personal representative**" is the person, whether executor or administrator, who is charged with the administration of the estate of a deceased person, and in whom the estate is vested for the purpose of distribution.

(i) "**Life tenant**" is the person(s) who has a right to the income or property held in trust for life.

(j) "**Remainder man**" is the person(s), who has the right to the capital of the settlement when the life interest terminates.

(k) "**Administration period**" is the period between the date of death and the date in which the executor is able to set up the Trust or distribute the residue of the estate.

17.3 Persons chargeable

The persons liable to pay the tax due from settlements, trusts and estate include:

(a) The beneficiary including any annuitant
Their proportion of the share of income from the settlement or estate is liable to tax.

(b) The trustee or executor
The remainder, if any, after deducting all amounts apportioned to beneficiaries is liable to tax.

(c) The settlor or the person who created the trust in circumstances where he can direct the disposition of the income or the right thereto.

17.4 The relevant tax authority

The relevant tax authority in relation to a trust or settlement shall be:

(a) Where all the income of the trust or settlement for the year of assessment arises in one territory, the tax authority of the state.

(b) Where the income of the trust or settlement arises in more than one territory, or in any other case, the Federal Inland Revenue Service.

17.5 Basis period/basis of assessment

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

Note that the commencement and cessation provisions do not apply under a settlement, trust and estate arrangement.

17.6 Significant economic presence

Section 6 (6A) of PITA as amended by Finance Act, 2020, states that the Minister by Order can determine what constitutes the significant economic presence of a non-resident individual, executor or trustee.

(a) Digital transactions

For the purpose of section 13(2)(c) of CITA, a company, other than a Nigerian company, shall have a significant economic presence in Nigeria in any accounting year, where it derives gross turnover, or income of more than N25 million or its equivalent in other currencies, in that year, from any or combination of the following:

i. 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;

ii. Transmission of data collected about Nigerian users which has been generated from such users' activities on a digital interface including website or mobile applications;

iii. Provision of intermediation services through a digital platform, website or other online applications that link suppliers and customers in Nigeria;

iv. Provision of goods or services directly or through a digital platform;

v. Uses Nigeria domain name (ng) or registers a website address in Nigeria; or

vi. 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.

The activities carried out by connected persons shall be aggregated in determining the N25 million threshold, where necessary.

Any company, other than a Nigerian company, covered under a multilateral agreement to address the tax challenges arising from the digitalisation of the economy, to which Nigeria is a party, shall be treated in accordance with that agreement or arrangement.

(b) Services

A company other than a Nigerian company (foreign entity), carrying on a trade or business comprising the furnishing of services of technical, professional, management or consultancy nature, shall have a significant economic presence in Nigeria in any accounting year, where it earns any income or receives any payment from:

(i) A person resident in Nigeria; or
(ii) A fixed based or agent of a company, other than a Nigeria company (foreign entity).

Services of a technical nature means any services of a specialised nature (including advertising services, training or the provision of personnel) that are not professional, management or consultancy services.

It should be noted, however, that a company shall not have a significant economic presence in Nigeria in relation to a payment, where the payment is made.

(i) To an employee of the person making the payment under a contract of employment.
(ii) For teaching in an educational institution or for teaching by an educational institution; or
(iii) By a foreign fixed base of a Nigerian company.

In addition to the above, where an individual, executor, or trustee outside Nigeria carries on a trade or business that includes the furnishing of technical, management, consultancy or professional services to a person resident in Nigeria, the gains or profits of the trade or business shall be deemed to be derived from and taxable in Nigeria to the extent that the individual, executor or trustee has significant economic presence in Nigeria.

17.7 Allowable and non-allowable expenses

The allowable expenses peculiar to an estate include:
(a) Expenses of the trustee or executor (or administrator) connected with the settlement, trust or estate, which are authorised by the trust deed or Will.

(b) Any fixed annuity paid out of income under the deed or Will.

17.8 Computation of income from trusts, settlements and estates

The computed income of a settlement, trust or estate is simply the difference between the total income and allowable expenses. Where the income of the trust or settlement include any gain or profit from a trade, business, profession or vocation or a rent or premium, such additions and expenses thereon shall ordinarily be taken into account in arriving at the computed income.

17.9 Computation of taxable income

17.9.1 Capital allowances

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

(a) No balancing allowance or charge shall be given or made to that individual in respect of the asset for that year;

(b) The estate shall be deemed to have incurred qualifying expenditure on the acquisition of the asset equal in amount to the residue of the expenditure on the day following the death of the individual; and

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

17.9.2 Losses

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

Note that such losses may arise when the trust, settlement, or estate engages in a trade, business or vocation.

17.9.3 Discretionary payments

These are fixed amounts payable to direct beneficiary or beneficiaries as authorised by the trust deed. A trustee or executor has no power to make discretionary payments to the beneficiaries unless authorised by the instrument appointing him.

Where the instrument authorises the making of discretionary payments, it would generally provide for the apportionment of the net income after such payments. That is, the adjusted income would be apportioned after deducting such discretionary payments. **It is important to note that discretionary payments are not expenses but appropriations of the income of the estate. They are, therefore, not to be deducted in computing the computed income.**

17.9.4 Infants' income under a settlement

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

17.9.5 Special provisions as to settlement on unmarried children

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

Income paid to or for the benefit of a child of a settlor shall not be treated as provided above for any year of assessment in which the aggregate amount of the income paid to or for the benefit of that child, which but for this provision, would be so treated by virtue of the above provision, does not exceed five hundred Naira (₦ 500).

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

For these purposes:

(a) Income which, by virtue or in consequence of a settlement may become payable or applicable to or for the benefit of a child of the settlor in the future (where on the fulfilment of a condition or on the happening of a contingency, or as a result of the exercise of power or discretion conferred on any person, or otherwise) shall be deemed to be paid to or for the benefit of that child; and

(b) An income dealt with as aforesaid which is not required by the settlement to be allocated, at the time when it is so dealt with, to any particular child or children of the settlor shall be deemed to be paid in equal shares to or for the benefit of each of the children to or for the benefit of whom or any of whom the income or assets representing the income will or may become payable or applicable.

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

(i) To recover from any trustee or other person to whom the income is payable by virtue or in consequence of the settlement the amount of the tax so paid; and

(ii) For that purpose to require the relevant tax authority to furnish to the settlor a certificate specifying the amount of income in respect of which he has so paid tax and the amount of the tax so paid, and any certificate so furnished shall be conclusive evidence of the facts appearing therein.

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

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

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

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

17.10 Computation of tax liability payable by beneficiaries and trustees

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

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

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

(a) That settlor or person retains or acquires an immediately exercisable general power of appointment over the capital assets of the settlement or trust or over the income derived therefrom; or

(b) That settlor or person makes use, directly or indirectly, by borrowing or otherwiseof any part of the income arising under the settlement or trust; or

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

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

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

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

(a) There shall be deducted:

   i. Any expenses of the trustee or executor relative to the settlement, trust or estate which is authorised by the terms of the deed of settlement or trust or of the will as the case may be;

   ii. Any annuity of fixed annual amount paid out of the income of the settlement, trust or estate in accordance with the provisions of the deed or will; and

(b) If the income includes any gain or profit from a trade, business, profession or vocation, or a rent or premium, there shall be added or deducted, as the case may require, any sum which would have been added or deducted for the next following year of assessment, if the income from those sources had been the assessable income of an individual for that year of assessment.

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

Where:

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

ii. By operation of law, on an intestacy, the income of an individual is to be divided in the manner referred to in the above paragraph, the income of each beneficiary of any year from the settlement, trust or estate shall be his similarly apportioned share of the computed income.

(c) Where a trustee or executor has discretion to make any payment (other than a payment on account) to a beneficiary out of the income of a settlement, trust or estate in such amount as he sees it, from time to time, then:

i. The amount of the payment to a beneficiary made in the cause of a year shall be treated as income of that year which is assessable to tax in the hand of that beneficiary; and

ii. Out of the remainder of the computed income after deducting the aggregate amount of all the payments during any year, there shall be apportioned to each beneficiary who has any specified proportional interest in the income of the settlement, trust or estate, so much thereof as is obtained by applying the proportion to that remainder.

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

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

17.11 Accounts of the estate

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

In accordance with section 15 of PITA 2004 (as amended), an appeal against the inclusion of an income of a settlement, trust or estate in an assessment to tax by whatever tax authority it may have been made, shall lie only in accordance with the appeal provisions of the income tax law of the territory to the authority of which the trustee or executor is answerable for the relevant year of assessment.

17.12 Payment of tax

The income arising from a settlement, trust or estate is assessable in the hands of the individual beneficiary. The relevant tax authority is the tax authority of the state where the beneficiary is resident on 1st of January of that year.

Note that where the instrument does not provide for apportionment of net income or there is a balance of adjusted income not apportioned, such income is taxable in the hands of the trustee or executor as agent of the estate. The trustee therefore pays tax out of the funds of the estate.

17.13 Offences and penalties

Since incomes of beneficiaries and trustees are governed by provisions of the Personal income Tax Act 2004 (as amended), offences and penalties are captured under section 94 of the Act. Summary of offences and penalties are presented in the table below:

S/N	Offence	Penalty
1	**Section 74** – Failure to deduct tax on rent, interest, dividend and director's fees or any other deduction of tax at source or having deducted, fails to remit such deductions to the relevant tax authority within 30 days from the date the amount was deducted or the time the duty to deduct arose.	Liable to a penalty of an amount of 10 percent fine of N5,000 or 10 percent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible or deducted plus interest at the prevailing commercial rate.
2	**Section 82** – Failure of an employer to make deductions from emoluments, or amounts on account of emoluments paid by him to an employee or properly account to the relevant tax authority.	The amount thereof together with a penalty of 10 percent per annum of the amount plus interest at the prevailing commercial rate shall be recoverable as a debt due by the employer to the relevant tax authority.
3	**Section 94 -** Failure to comply with any of the provisions of the Act or any rule or regulation made there under or which no other penalty is specifically provided.	Liable on condition to a fine of ₦ 20,000 and where the offence is failure to furnish a return, statement or information or to keep records required, a further sum of ₦ 2,000 for every day the failure continues.
4	**Section 94 -** Failure to comply with the requirements of a notice served on him or without sufficient cause, fails to attend in answer to a notice or summons served on him or having attended fails to answer any question lawfully put to him	Is guilty of an offence against this Act and in default of payment, to imprisonment for six months, and the liability to such further sum shall commence from the day following the conviction, or from such other day thereafter as the Court may order. The relevant tax authority will impose a penalty on the offender of an amount equal to the income tax chargeable on him for the preceding year of assessment.
5	**Section 94 -** Making incorrect returns by omitting or understating any income liable to tax or gives incorrect information in relation to a matter or thing affecting the liability to tax of any taxable person	Liable on conviction to a fine of ₦20,000 and double the amount of tax which has been undercharged. Note that no person shall be liable under this section unless the complaint concerning the offence was made in the year of assessment in respect of or during which the offence was committed or within 6 years after the expiration thereof.

S/N	Offence	Penalty
6	**Section 94 -** Making false statements and returns and whoever aids, abets, assists, counsels, incites or induces any other person to deliver or keep false return or statement	Liable on conviction to a fine of ₦ 50,000 for individuals and ₦ 500,000 for corporate bodies or to imprisonment for not more than 6 months. Provided that where an offence under this section is committed by a person in relation to tax payable by, or repayable to him for a year of assessment, there shall be substituted for the amount of the fine as stated above, the amount of ₦10,000 or treble the tax chargeable on the person for that year, whichever is greater.

17.14 Chapter review

This chapter defines settlement, trust, estate and related income, including annuities payable to beneficiaries. It explains the distinction between income taxable in the hands of the beneficiaries and that of the trustees.

17.15 Worked examples

17.15.1 Multiple-choice questions

1. Which one of the following best describes a Trust?
   - A. Trust relates to equitable obligation, binding the trustee, to deal with a property, over which he/she has custody, for the benefit of persons (beneficiaries) of which he/she may be one.
   - B. Trust relates to equitable obligation, binding a person, to deal with a property, over which he/she has custody (which is called the trust property), for the benefit of government.
   - C. Trust relates to equitable obligation, binding government, to deal with a property,(which is called the trust property), for the benefit of persons (beneficiaries)
   - D. Trust relates to equitable obligation, binding a person, called the trustee, to deal with a property, over which government has custody (which is called the trust property), for the benefit of persons.
   - E. Trust relates to obligation, binding the trustee and government, to deal with money for the benefit of persons (beneficiaries)

2. A settlement is a………..
   - A. Means by which liability of an estate, or part of it is transferred to another person, either through a disposition, trust, or covenant, agreement, arrangement or transition of assets by reference to a Trust, for the benefit of persons specified
   - B. Means by which enjoyment of an estate, or part of it is transferred to another person, either through a disposition, trust, or covenant, agreement, arrangement

or transition of assets by reference to a Trust, for the benefit of persons specified

C. Means by which enjoyment of an estate, or part of it is appropriated to another person, either through a disposition, trust, or covenant, agreement, arrangement or transition of liabilities by reference to a Trust, for the benefit of persons specified

D. Means by which enjoyment of an estate or part of it is transferred to government, either through a disposition, trust, or covenant, agreement, arrangement or transition of assets by reference to a Trust, for the benefit of persons specified

E. Means by which liability of an estate, or part of it is transferred to government, either through a disposition, trust, or covenant, agreement, arrangement or transition of assets by reference to a Trust, for the benefit of persons specified.

3. An estate describes…………………………….

A. Some of the properties of a person and is commonly used in sole proprietorships

B. The total of the properties of government and is commonly used in executorships

C. The total of the assets of a person and is commonly used in partnership. It also means the property of a deceased person

D**.** The total of the properties of a person and is commonly used in executorships. It also means the property of a deceased person

E. The total of the properties of a person and is commonly used in partnership. It also means the property of a deceased person

4. The following persons are liable to pay the tax due from settlements, trusts and estates EXCEPT

A. The beneficiary including any annuitant

B. The trustee

C. The executor

D. The settlor or the person who created the trust in circumstances where he can direct the disposition of the income or the right thereto

E. The employer

5. The relevant tax authority in relation to a trust or settlement is ……..:

A. The tax authority of the State, where all the income of the trust or settlement for the year of assessment arises in one territory

B. The local government tax authority, where all the income of the trust or settlement for the year of assessment arises in one territory

C. Federal government, where all the income of the trust or settlement for the year of assessment arises in one territory

D. The Joint Tax Board, where the income of the trust or settlement arises in only one territory

E. The local government area where all the income of the trust or settlement for the year of assessment arises from other country

17.15.2 Short answer questions

1. The difference between the total income and allowable expenses of a settlement, trust or estate is called………
2. A person who receives income from a settlement, trust or estate is called a …..
3. The "administration period" is the period between the date of death and the date in which the executor is able to set up the trust or distribute the residue of the …..
4. The person who receives an annuity, that is, an annual payment from an estate, is called ……….
5. The person who receives the remainder of what is left of the personal property after specific legacies have been settled is called a …………

17.15.3 Examination type questions

(1) Mr. Akwa created a trust for his four children: Ade, Baruwa, Chidi and Dafur. The records of the trustee for the year ended 31 December 2016, revealed the following information:

	₦
Profit from trading activities	980,000
Interest received on fixed deposits	270,000
Rent from property (gross)	620,000
Other income	163,000

Other relevant information include:

(i) Dafur is to get a fixed annuity of ₦ 35,000 per annum.

(ii) The remuneration of the trustee is fixed at ₦ 20,000 per annum, plus 2.5per cent of computed income.

(iii) The allowable expenses of the trustee amounted to ₦ 25,000.

(iv) The trustee made the following discretionary payments:
Ade - ₦ 40,000, Baruwa - ₦ 30,000, Chidi - ₦ 20,000 and Dafur - ₦ 15,000

(v) Capital allowance agreed for the business of the trustee was ₦ 22,000.

(vi) Half of the net distributable income of the settlement is to be shared equally among the beneficiaries.

You are required to:

(a) Explain the terms "settlement", "trust", and "estate".

(b) Calculate the income of the settlement chargeable to tax in the hands of each of the beneficiaries.

(c) Calculate the amount of undistributed income of the settlement assessable to tax in the hands of the trustee.

(2) In relation to provisions of the Second schedule to PITA 2004 (as amended), explain the following terms:

(a) Settlement
(b) Trust
(c) Estate

(d) Settlor/Settler
(e) Will

(3) Baba Ali Musa is the trustee of a settlement made by late Mallam Junaid Dikko in favour of his four children, grandchildren and others. He submitted the following information to the Zamfara State Internal Revenue Service for assessment purposes for the fiscal year December 31 2017:

	₦
Interest received	2,000,000
Dividend (gross)	8,000,000
Rental income	6,000,000
Business profit	18,000,000
Miscellaneous income	3,200,000
Trustee's remuneration:	
Fixed (2% of gross income)	450,000
Fixed annuity to grandchildren:	
Aminat	50,000
Danladi	30,000
Admin. expenses	2,600,000

Additional information:

(i) Trustee made discretionary payments in line with the trust deed to the beneficiaries as follows:

	₦
Wakilu	150,000
Aishat	200,000
Illyasu	250,000
Badamasi	180,000

(ii) Each beneficiary is entitled to 1/6th share of 2/3rd of the distributable income.

(iii) Capital allowance agreed with relevant tax authority - ₦4,200,000

Required:

(a) Compute the net income assessable in the hands of the trustee.

(b) Assessable income in the hand of the each beneficiary.

(4) Dr. Solomon Olubiyo created a trust for his children- Kemmy, Busayo and Samuel before he died in 2015. As at December 31, 2015, the following information was extracted from the records of the trustee:

	₦
Adjusted trading profit for the year ended December 31, 2015	2,400,000
Rental income (gross) 2015	1,100,000
Other miscellaneous income	1,100,000

The following information is also relevant:

(i) Fixed annuity to a beneficiary - Kemmy 120,000

(ii) Fixed remuneration for the trustee 80,000

(iii) Variable trustee remuneration - 5% of total computed income

(iv) Other expenses 400,000

(v) The trust provides discretionary payments to the children towards their maintenance and education as follows: Kemmy ₦ 240,000); Busayo (₦230,000) and Samuel (₦ 250,000).

(vi) Capital allowance was agreed at ₦ 240,000

(vii) ₦ 300,000 of other expenses are not tax deductible.

(viii) It is stipulated in the trust that the beneficiaries are to share half of the distributable income equally.

Required: Calculate

(a) The net computed income

(b) The amount each beneficiary will include in his/her income tax returns in the relevant year of assessment.

17.15.4 Suggested solutions to multiple-choice questions

1. A
2. B
3. D
4. E
5. A

17.15.5 Suggested solution to short answer questions

1. Computed income
2. Beneficiary
3. Estate
4. Annuitant
5. Residual legatee

17.15.6 Suggested solutions to questions

(1) (a) **Settlement**

This is an agreement made in writing in which money is made available to another person for his/her use without any interference whatsoever. A settlement includes any disposition, trust, covenant, agreement, arrangement or transfer of assets.

Trust

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

Estate

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

(b) **Ade, Baruwa, Chidi and Dafur Computation of income chargeable to tax in the hands of each of the beneficiaries**

	Ade ₦	Baruwa ₦	Chidi ₦	Dafur ₦	Total ₦
Share of distributable income	222,363	222,363	222,363	222,363	889,451
Add:					
Fixed annuity	-	-	-	35,000	35,000
Discretionary payments	40,000	30,000	20,000	15,000	105,000
	262,363	252,363	242,363	272,363	1,029,451

(c) **Ade, Baruwa, Chidi and Dafur**
Computation of undistributable income assessable to tax in the hands of the trustee

	₦	₦
Profit from trading activities	980,000	
Deduct: capital allowances agre	22,000	958,000
Interest received on fixed deposits		270,000
Rent from property (gross)		620,000
Other income		163,000
		2,011,000
Deduct: allowable expenses		
Dafur's fixed annuity	35,000	
Trustees' fixed remuneration	20,000	
Trustees' remuneration based on Computed income: $^{2.5}/_{102.5}$ of (₦ 2,011,000 - ₦ 35,000 - ₦ 20,000 - ₦25,000)	47,098	
Allowable expenses of the trustee	25,000	(127,098)
Computed income		1,883,902
Less: discretionary payments		105,000
Distributable income		1,778,902
Deduct: $^{1}/_{2}$ of income distributable among the beneficiaries		889,451
Net distributable income assessable to tax in the hands of the trustee		889,451

(2) (a) **Settlement:** it is a means by which enjoyment of an estate, or part of it is transferred to another person, either through a disposition, trust, or covenant, agreement, arrangement or transition of assets by reference to a trust, for the benefit of persons specified.

(b) **Trust:** it relates to equitable obligation, binding a person, called the Trustee, to deal with a property, over which he/she has custody (which is called the trust property), for the benefit of persons (beneficiaries) of which he/she may be one.

(c) **Estate:**
An estate is the total of the properties of a person and is commonly used in executorships. It also means the property of a deceased person.

(d) **Settlor:** in relation to a settlement, includes a person by whom the settlement was made or entered into directly or indirectly, and in particular (but without prejudice to the generality of the foregoing) includes a person who has provided or undertaken to provide funds directly or indirectly for the purpose of the settlement, or has made with any other person a reciprocal arrangement for that other person to make or enter into the settlement.

(e) **Will:** is a document made by a person as to how his assets should be distributed at his death. The person mentioned in the Will to administer the estate, that is, see to the carrying out of the will of "the deceased" is called the "executor". Where the deceased appointed no executor, the court on application will appoint an "administrator" of the estate.

(3) (a) **Mallam Junaid Dikko settlement**
Computation of assessable income in the hands of the trustee
For 2018 tax year

	₦	₦
Income:		
Interest received		2,000,000
Dividend (gross)		8,000,000
Rental income		6,000,000
Business profit	18,000,000	
Less: capital allowance	4,200,000	13,800,000
Miscellaneous income		3,200,000
Gross Income		33,000,000
Less: allowable expenses:		
Trustee's remuneration:		
Fixed	450,000	
Variable– 2% of gross Income		
(2% x ₦ 33,000,000)	660,000	
Fixed annuity to grandchildren:		
Aminat	50,000	
Danladi	30,000	
Admin expenses	2,600,000	3,790,000
Computed income		29,210,000
Less: discretionary payments		
Wakilu	150,000	
Aishat	200,000	
Illyasu	250,000	

Badamasi	180,000	(780,000)
		28,430,000
Less: franked investment income:		
Dividend (gross)		(8,000,000)
Amount available for distribution		20,430,000
Less: Distribution:		
Wakilu (₦ 13,620,000 x $^1/_6$)	2,270,000	
Aishat (₦13,620,000 x $^1/_6$)	2,270,000	
Illyasu (₦13,620,000 x $^1/_6$)	2,270,000	
Badamasi (₦13,620,000 x$^1/_6$)	2,270,000	
Aminat (₦13,620,000 x $^1/_6$)	2,270,000	
Danladi (₦13,620,000 x $^1/_6$)	2,270,000	(13,620,000)
Balance assessable in the hand of the trustee		6,810,000

(b) **Mallam Junaid Dikko settlement**
Computation of assessable income in the hand of each beneficiary

	Wakil ₦	**Aisha** ₦	**Illyasu** ₦	**Badamasi** ₦	**Aminat** ₦	**Danladi** ₦
Fixed annuity	0	0	0	0	50,000	30,000
Discretionary Payments	150,000	200,000	250,000	180,000	0	0
Distributed Income	2,270,000	2,270,000	2,270,000	2,270,000	2,270,000	2,270,000
Beneficiary's assessable income	2,420,000	2,470,000	2,520,000	2,450,000	2,320,000	2,300,000

Note:
In order to avoid the dividend received to be taxed twice, it will be treated as part of the income in the hands of the trustee and beneficiaries but it will not be subjected to further tax.

(4) **Dr. Solomon Olubiyo trust**
Computation of amount due to each beneficiary
For 2016 tax year

	Total ₦	**Kemmy** ₦	**Busayo** ₦	**Samuel** ₦
Income				
Adjusted trading profit	2,400,000			
Less: capital allowances	240,000			
	2,160,000			
Rental income (gross)	1,100,000			
Other income	1,000,070			
Total income	4,260,070			

Less: expenses:				
Trustee remuneration:				
-fixed	80,000			
-variable (w1)	186,670			
Other expenses (440-300)	140,000			
Fixed annuity (Kemmy)	120,000	120,000	-	-
	526,670			
Computed income	3,733,400			
Less: discretionary payments:	720,000	240,000	240,000	240,000
Remainder of computed income	3,013,400			
Share of distributable income (50%)	1,506,700	502,233.34	502,223.33	502,223.33
Trustees' income	1,506,750			
Due to beneficiaries		862,233.34	742,233.33	742,233.33

Workings
Variable trustee's remuneration

	₦	₦
Total income		4,260,070
Less:		
Other expenses	140,000	
Fixed trustee remuneration	80,000	
Fixed annuity (Kemmy)	120,000	
		340,000
		3,920,070

Variable remuneration = 5 / 105× ₦ 3,920,070 = ₦ 186,670

CHAPTER EIGHTEEN

COMPUTATION OF COMPANIES INCOME TAX (CIT)

Chapter contents

a) Learning objectives
b) Definitions of small, medium-sized and large companies
c) Persons chargeable to CIT
d) Taxable and non- taxable income
e) Allowable and non – allowable expenses
f) The treatment of expenses incurred in deriving tax exempt income
g) Definition of gross turnover
h) Computation of adjusted/ assessable profit
i) Basis of assessment, rules of commencement, change of accounting date and cessation of business
j) Computation of total profit, companies income tax by applying the applicable rates of tax to the total profit
k) Companies income tax, using other bases, such as dividend and gross turnover
l) Exemption of small companies from the payment of CIT
m) Chapter review
n) Worked examples

18.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Identify the types of companies;
(b) Identify persons liable;
(c) Identify taxable and non-taxable income;
(d) Explain allowable and non- allowable expenses;
(e) Determine basis period for determination of assessable profits;
(f) Identify the rates of tax;
(g) Understand the various bases of computing companies income tax;
(h) Compute assessable profit;
(i) Compute companies income tax;
(j) Compute minimum tax; and
(k) Explain the exemption of small companies from payment of CIT.

18.1 Classification of companies and rates of tax - section 40 (as amended)

Based on the provisions of the Finance Act, 2019, tax shall be levied and paid on total profits of every company, in respect of each assessment year, as follows;

S/N	Classification	Threshold (gross turnover)	Tax rate	Remarks

1	Small company	₦25,000,000 and below	0%	For the income to be exempted from tax, the company must have registered for tax purposes, filed its tax returns on or before the due date and complied with all other provisions and obligations stipulated under CITA, including provisions relating to penalties for breach of statutory duties.
2	Medium-sized company	Above ₦25,000,000 but less than ₦100,000,000	20%	
3	Large company	₦100,000,000 and above	30%	

18.2 Persons chargeable to companies income tax – Section 47

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

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

A company shall be chargeable to companies income tax: -

(a) In its own name; or

(b) In the name of a principal officer, attorney, factor, agent or representative in Nigeria; or

(c) In the name of a receiver or a liquidator, that is, where the company is in receivership or liquidation or its attorney, agent or representative in Nigeria.

For the purpose of companies income tax, a "company" is defined in Section 105 of CITA as:
"*Any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere*".

The implication of this is that income tax is payable not only on the **worldwide income of a Nigerian company**, that is, a company incorporated in Nigeria, but also on **the profits of a foreign company**, that is, company incorporated under any law in force, in any territory or country outside Nigeria to the extent that such profit, is derived or deemed to be derived, from Nigeria (Section 13 of CITA).

Section 13(2) of CITA as amended by Finance Act, 2021, provides that "the profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from or taxable in Nigeria where:

(a) That company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base;

(b) It does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;

(c) It transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that the company has significant economic presence in Nigeria and profit can be attributable to such activity;

(d) That trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract;

(e) The trade or business comprises the furnishing of technical, management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has significant economic presence in Nigeria;

Provided that the withholding tax applicable to the income under this paragraph shall be the final tax on the income of a non-resident recipient who does not otherwise fall within the scope of subsection 2(a) to (d) above; or

(f) The trade, business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit adjusted by the Board to reflect arm's length transaction.

18.3 Taxable and non-taxable income

18.3.1 Taxable income

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

(a) Any trade or business for whatever period of time such trade or business may have been carried on ;

(b) Rent or any premium arising from a right granted to any other persons for the use or occupation of any property;

(c) Dividends, interest, discounts, royalties, charges or annuities;

(d) Any source of annual profits or gain not falling within the preceding categories. The purpose is to ensure that no taxable profits escape the tax net of the Board; and

(e) Fees, dues and allowances (wherever paid) for services.

18.3.2 Non-taxable income

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

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

Third schedule
Table of tax exemption on interest on foreign loans

	Repayment period	Grace period allowed (including moratorium)	Tax exemption %
(i)	Above 7 years	Not less than 2 years	70
(ii)	5 – 7 years	Not less than 18 months	40
(iii)	2 – 4 years	Not less than 12 months	10
(iv)	Below 2 years	Nil	Nil

NOTE:

For the purposes of this Schedule:

(i) "Repayment period" means the agreed tenor of the loan facility, provided that where the loan is repaid before expiration of this period, the tax exemptions provided under this schedule shall be adjusted by the Service in a proportionate manner; and

(ii) "Moratorium" means a period at the beginning of a loan term during which the borrower is not expected to make any principal or interest repayments, provided that where any principal or interest repayments are made during the period, the tax exemptions provided under this schedule shall be adjusted by the Service in a proportionate manner.

Illustration 18.1

Loan interest payable in respect of a foreign loan granted to a Nigerian company in 2020 amounted to ₦1,000,000.

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

Repayment period	Grace period	Loan interest ₦
6 years	2 years	600,000
3 years	18 months	400,000
		1,000,000

Required:
Compute the loan interest exempted from tax.

Suggested solution 18.1
The loan interest exempted from tax based on the application of the Third schedule to CITA is computed as follows:

Repayment period	Grace period allowed (including moratorium)	Loan interest payable ₦	Percentage interest exempted %	Exempt loan interest ₦

Above 7 years	2 years	-	70	-
5 – 7 years	18months	600,000	40	240,000
2 – 4 years	12months	400,000	10	40,000
Below	2 years	Nil	Nil	- -
		1,000,000		280,000

(b) Interest on any loan granted by a bank on or after January 1, 1997, to a company engaged in:

(i) Primary agricultural production; or

(ii) Local fabrication of any plant and machinery; or

(iii) Providing working capital for any cottage industry established by the company under the Family Economic Advancement Programme (FEAP) provided moratorium is not less than twelve (12) months and interest is not more than base lending rate at the time the loan was granted, refinanced or otherwise restructured.

(c) Interest on a loan granted by a bank on or after April 1, 1980, for the purpose of manufacturing goods for export within the limits provided for in the Third Schedule to CITA (as above), provided a certificate issued by Nigerian Export Promotion Council (NEPC), is presented stating that the level of export specified has been achieved by the company (borrower).

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

(d) Profits/income exempted from tax {section 23(1) of CITA (as amended)}
There shall be exempt from tax:

(i) The profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;

(ii) The profits of any company being a co-operative society registered under an enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co- operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;

(iii) The profits of **any company** engaged in ecclesiastical or charitable activities of a public character in so far as such profits are not derived from a trade or business carried on by such company.

Section 23 (1)(c) of Companies Income Tax Act Cap C21 LFN 2004 (as amended) states that "there shall be exempt from the tax the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company".

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

(a) That is registered in accordance with relevant laws in Nigeria; and

(b) Does not distribute or share its profit in any manner to members or promoters".

(iv) The profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Service may prescribe;

(v) The profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union;

(vi) Dividend distributed by a Unit trust;

(vii) The profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria;

(viii) The profits of anybody corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria from the purchase and sale (whether for the purposes of export or otherwise) of that commodity;

(ix) The profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State, not being profits derived from or from any share or other interest possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority;

(x) Any profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria.

(xi) Dividend, interest, rent, royalty derived by a company from a country outside Nigeria and brought into Nigeria through government approved channels; and for the purpose of this subsection, "Government approved channel" means Central Bank of Nigeria (CBN), any bank or other body corporate appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act;

(xii) The interest on deposit accounts of a foreign non-resident company:

Provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1 January 1990, through Government approved channels;

(xiii) The interest on foreign domiciliary account in Nigeria accruing on or after January 1 1990;

(xiv) Profits of a small company in a relevant assessment year provided that such company shall without prejudice to this exemption, comply with the tax registration and tax return filing stipulations of this Act and be subject to the provisions as regards time of filing, penalties for breach of statutory duties and all other provisions of this Act in all respects during the period which its profits are below the tax paying threshold;

(xv) Dividends received from small companies in the manufacturing sector in the first five years of their operations;

(xvi) Dividend received from investments in wholly export-oriented business;

(xvii) The profits of any Nigerian company (other than companies engaged in the Upstream, Midstream or Downstream Petroleum operations) in respect of goods exported from Nigeria, if the proceeds of such exports are used for the purchase of raw materials, plant, equipment and spare parts:

Provided that tax shall accrue proportionately on the portion of such proceeds which are not utilised in the manner prescribed;

(xviii) The profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplier;

(xix) The dividend and rental income received by a real estate investment company on behalf of its shareholders provided that;

- A minimum of 75% of the dividend and rental income is distributed; and
- Such distribution is made within 12 months of the end of the financial year in which the dividend or rental income was earned;

(xx) The compensating payments, which qualify as dividends under section 9 (1) (c) of this Act, received by a lender from its approved agent or a borrower in a Regulated Securities Lending Transaction, such payments are deemed to be franked investment income and shall not be subjected to further tax in the hands of the lender;

(xxi) The compensating payments which qualify as dividends or interest under section 9(1)(c) of this Act, received by an approved agent from a borrower or lender on behalf of a lender or borrower in a Regulated Securities Lending Transaction; and

(xxii) The profit of a company established within an export processing zone and free trade zone:

Provided that 100% production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.

Note {section 23(1A) of CITA (as amended)}

Nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or 80 of this Act, such that the provisions of subsections 78, 79 and 80 of this Act shall apply to a dividend, interest rent or royalty paid by a company exempted from tax under subsection 1(i) to (v), (viii) to (xii), xiv (xvi) to (xix) and xx above.

Note:

Effective January 2, 2022, bonds and short-term securities on which tax is due are:

(a) Short term Federal Government of Nigeria Securities, such as Treasury Bills and Promissory Notes;

(b) Bonds issued by State and Local Governments and their Agencies;

(c) Bonds issued by corporate bodies including supra-nationals; and

(d) Interest earned by holders of the Bond and Securities mentioned above.

18.4 Allowable and disallowable expenses

18.4.1 Allowable expenses

Unless otherwise provided, for the purposes of ascertaining the chargeable profit or loss of any company from any source, only expenses incurred **wholly, exclusively, necessarily and**

reasonably in the production of the profits shall be allowable as deductions for tax purposes. Examples of allowable expenses provided for in CITA are:

(a) Subject to the provisions of the seventh schedule to this Act, any sum payable by way of interest on debt borrowed and employed as capital in acquiring the profits of a company;

(b) Rent and premium paid by the company for the period of assessment inrespect of land or building, occupied and used for the purpose of generating the profits:

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

(c) Salaries, wages, or other remuneration as well as any benefits-in-kind or allowance granted by the company to senior staff and executives within the limits prescribed by collective agreement entered into between the company and its employees and as approved by Federal Ministry of Labour, Employment and Productivity;

(d) Repairs and renewal in respect of premises, plant, machinery or fixtures, implements, utensils or articles employed in acquiring the profit;

(e) Bad debts incurred in the course of trade or business proved to have become bad, during the period and specific provision for doubtful debts;

(f) Research and development expenses incurred by the company for the period including levy payable to National Science and Technology Fund;

(g) In the case of the Nigerian Railway Corporation such deductions as are allowed under the provisions of the Authorised Deductions (Nigerian Railway Corporation) Rules, which Rules shall continue in force for all purposes of this Act;

(h) In the case of profits from a trade or business, any expenses or part thereof:
- The liability for which was incurred during that period wholly, exclusively, necessarily and reasonably for the purposes of such trade or business and which is not specifically referable to any other period or periods; or
- The liability for which was incurred during any previous period wholly, exclusively, necessarily and reasonably for the purpose of such trade or business and which is specifically referable to the period of which the profits are being ascertained; and
- The expenses proved to the satisfaction of the 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;

(i) Such other deductions as may be prescribed by the Minister by any rule;

(j) Dividends or mandatory distributions made by a real estate investment company duly approved by the Securities and Exchange Commission, to its shareholders;

(k) Compensating payments, which qualify as interest under section 9(1)(c) of this Act, made by a lender to its approved agent or a borrower in a regulated securities lending transaction;

(l) Allowable donations **(Section 25, CITA)**
In ascertaining the profits or losses of a company chargeable to tax for any period, there shall be deducted, donations made during that period by the company.

The conditions for allowing such donations are as follows:
(i) Donations must be made to any of the funds, bodies, institutions in Nigeria contained in the Fifth schedule to CITA;

(ii) Donations must be made out of profit, that is, donations shall not be allowed in circumstances where it will increase the loss of a company or convert its profit into a loss;

(iii) Donations must not be of a capital nature except donation to a university or other tertiary or research institutions; and

(iv) Donations must not exceed 10% of the company's total profits for an assessment year before any deduction for donation. In the case of donation to tertiary or research institution, up to 15% of total profit or 25% of tax payable in the year whichever is higher.

(v) 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:

(i) The cost of in-kind donations made to the Government and any designated agency shall be allowed as deductions; or

(ii) 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.

Provided that 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.

(vi) The amounts allowable for deduction in respect of (v) above, in any year of assessment shall be limited to 10% of assessable profits after deduction of other allowable donations made by the company.

18.42 Allowable deductions - research and development expenditure

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

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

Companies and other organisations engaged in research and development activities for commercialisation shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose.

18.43 Waivers or refunds of liability or expenses

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

(a) Any income waived, released or refunded in respect of any liability or expense previously allowed in computing the chargeable profit of a company; and

(b) All sums recovered during a period in respect of bad debts previously written off, or specific provision for doubtful debts previously allowed in computing the chargeable profit of a company in a previous period.

18.44 Disallowable expenses section 27 CITA 2004 (as amended)

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

Examples of such expenses are:

(a) Capital repaid or withdrawn and any expenditure of a capital nature;

(b) Sums recoverable under an insurance or contract of indemnity;

(c) Taxes on income or profits, except tax levied outside Nigeria on profits, which are also chargeable to tax in Nigeria and in respect of which double tax relief is not available;

(d) Depreciation – In place of depreciation charged in the accounts, and disallowed, capital allowances on qualifying capital expenditure are granted;

(e) 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;

(f) Any expense incurred in deriving tax exempt income, losses of capital nature and any expense allowable as a deduction under the Capital Gains Tax Act for the purpose of determining chargeable gains;

(g) Any compensating payment made by a borrower, which qualifies as dividends under section 9 (1)(c) of this Act, to its approved agent or to a lender in a Regulated Securities Exchange Commission;

(h) Any compensating payment made by an approved agent, which qualifies as interest or dividends under section 9 (1)(c) of this Act, to a borrower or lender in a regulated securities exchange transaction;

(i) Any penalty prescribed by any Act of the National Assembly for violation of any statute; and

(j) Any tax or penalty borne by a company on behalf of another person.

18.4.5 Restriction on the deductibility of interest

Section 24 of CITA (as amended) and the seventh schedule 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 in excess of 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 in the paragraph stated above. However, it should be noted that no interest expenditure shall be carried forward for more than five assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

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

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

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

Definitions

(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".

Illustration 18.2

Jones Nigeria Limited was incorporated on November 2, 2011, and it commenced business 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, 020, revealed the following:

	₦
Assessable profit	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) State how the excess interest not deductible in the relevant assessment year will be treated.

Solution 18.2

(a) Jones Nigeria Limited
Computation of interest deductible in 2021 assessment year

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

	₦	₦
Assessable profit		1,000,000
Add:		
Interests deducted	1,250,000	
Depreciation	300,000	1,550,000
EBITDA		2,550,000

Interest deductible before restriction	
Interest paid to other creditors	500,000
Interest paid to ABC (Canada) Limited	750,000
Total interest expenses	1,250,000
Interest for tax exempt profit	(200,000)
Interest qualifying for deduction	1,050,000

Restriction:

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

Amount of interest deductible in 2021 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, 2026 assessment year, whilst applying for each of the years, the same rule based on which the excess interest expenditure was first computed.

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

Section 27(1)(1) of CITA (as amended) disallows any tax or penalty borne by a company on behalf of another person as an allowable deduction for tax.

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 FIRS. XYZ Company Limited may deduct ₦1,000,000 as rent but ₦100,000 remitted to FIRS on behalf of ABC Nigeria Limited is not deductible.

18.4.7 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.

18.5 Expenses incurred in deriving exempt income

Section 27 (1)(h) of CITA (as amended) and as stated in 18.4.4 (f) above, 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.

Illustration 18.3
Crystal Clear Limited generated a profit of N2,000,000 during the year ended December 31, 2020. It incurred deductible expenses of N250,000. Out of the business profit of N2,000,000, only N1,400,000 is assessable to tax.

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

Solution 18.3
The formula to be applied is

$$\frac{A}{A + B} \quad X \quad C$$

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:

$$\frac{₦1{,}400{,}000}{₦1{,}400{,}000 + ₦600{,}000} \quad X \quad ₦250{,}000$$

$$= \quad ₦175{,}000$$

18.6 Gross turnover basis – Section 30 of CITA

Section 105 of CITA, having been amended by Finance Act, 2020, **“gross turnover”** means the gross inflow of economic benefits during the period arising in the course of the operating activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants, including sales of goods, supply of services, receipt of interest, rents, royalties or dividends.

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

(a) No assessable profits; or

(b) Assessable profits which in the opinion of the FIRS, are less than might be expected to arise from that trade or business; or

(c) The true amount of the assessable profit cannot be readily ascertained.

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

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

18.7 Computation of assessable/adjusted profit

18.7.1 Introduction

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

XYZ Limited
Statement of profit or loss
For the year ended December 31, 2017

	’000
Revenue	xxx

Cost of sales	(xx)
Gross profit	xxx
Deduct:	
Overhead expenses	(xx)
Net profit/loss	**xx**

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

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

The accounting profit has to be converted to tax profit usually referred to as adjusted profit/loss before it is used for the determination of total profit/loss and, consequently, the computation of tax payable.

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

XYZ Limited
Computation of adjusted profit
For the year ended December 31, 2017

	'000
Net profit per accounts	xxx
Deduct:	
Non-taxable incomes	xx
	xxx
Add:	
Disallowable expenses	xx
Adjusted profit/(loss)	**xxx**

18.7.2Computation of assessable profit

The assessable profit of a company is its adjusted profits or part thereof that is assessed to companies income tax, in an assessment year.

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

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

18.8 Basis of assessment, rules of commencement, change of accounting date and cessation of business

(a) year, the assessable profits shall be the profits from the day after the accounting period just ended.

Illustration 18.4

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

Required:

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

Solution 18.4

The first assessment year is 2021 **18.8.1 Introduction**

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

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

18.8.2 Subsisting business

It should be pointed out that all financial statements up to assessment year 2020 shall be prepared and submitted to FIRS in line with extant provisions on the respective due dates, whilst all returns relating to assessment year 2021 will be based on the changes introduced by the Finance Act, 2019.

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

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

18.8.3 Basis of assessment on commencement of business - section 29 (3) of CITA (as amended)

Section 29 (3) of CITA (as amended) 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 in this subsection respectively referred to as "the first year", "the second year" and "the third year") shall be ascertained in accordance with the following:

(b) 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;

(c) 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

For the third year and for each subsequent and the profits to be assessed will relate to March 1, 2020 to October 31, 2020.

Illustration 18.5

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

Required:

Determine the basis periods for the first four years of assessment
Solution 18.5

XYZ Limited basis periods for the first four years 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

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 period 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 18.6

Orion 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 ₦3,000,000.

Required:

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

Solution 18.6

Orion 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	2,400,000
		3,000,000

Arising from the above, the company did not have any assessable profit for A.Y. 2020, 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, hence, the basis period (1/10/19 – 31/12/19) was treated in assessment year 2019.

18.8.4 Basis of assessment on a change of accounting date

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

Rules on a change of accounting date

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

The manner in which the FIRS exercises its discretion, in practice, is as follows:

(a) Determine the year of assessment in which the company failed to make up accounts to its normal year-end;

(b) Identify the two (2) years of assessment next following (a) above;

(c) Compute the assessable profits for the three (3) years of assessment in (a) and (b) above on the old basis, that is, assuming the company has not changed its accounting date;

(d) Compute the assessable profits for the three (3) years of assessment in (a) and (b) above on the new basis, that is, assuming the company has always prepared accounts to its new year-end;

(e) Obtain the sum of the assessable profits for the three (3) years for each of the computations in (c) and (d) above; and

(f) The practice of the FIRS is to choose the higher of the assessable profits for the 3 years in (e) above.

Note:

The provision in Section 29(2) CITA confers on FIRS the discretion to determine the basis of assessment on a change of accounting date. In exercising this discretion, the FIRS may assess the year of change and the two following assessment years on actual basis instead of preceding year basis. This, it will do if using the basis, produces a higher assessable profits for those three (3) years put together.

Illustration 18.7

Olowo-Lekomo Limited for many years prepared accounts to December 31, but in 2009 decided to prepare a sixteen-month accounts to April 30. The adjusted profits are as follows:

	₦
12 months to December 31, 2015	180,000
12 months to December 31, 2016	240,000
16 months to April 30, 2018	336,000
12 months to April 30, 2019	144,000

Required:

Compute the assessable profits for the relevant years of assessment.

Suggested solution 18.7

Olowo-Lekomo Limited
Computation of assessable profits

Old basis			**New basis**	
Tax Year	**Basis period**	**Assessable profit**	**Basis period**	**Assessable profit**
		₦		**₦**
2017	1/1/16 - 31/12/16	240,000	1/5/15-30/4/16(w.iii)	200,000
2018	1/1/17-31/12/17(w.i)	252,000	1/5/16-30/4/17(w.iv)	244,000
2019	1/1/18-31/12/18(w.ii)	180,000	1/5/17-30/4/18(w.v)	252,000
		672,000		672,000

Based on the foregoing, the Revenue would assess on the new basis, since this would produce higher assessable profits for 2017 – 2019 assessment years. Consequently, final assessable profits will be as follows:

Assessment year	**Assessable profits**
	₦
2017	200,000
2018	244,000
2019	252,000
	696,000

Workings:

(a) **Old basis**

	Assessable profits
(i) 2018 Assessment year	**₦**
- 1/1/17 – 31/12/17 = 12/16 x ₦336,000 =	252,000
(ii) 2019 Assessment year	
- 1/1/18 – 30/4/18 = 4/16 x ₦336,000 =	84,000
- 1/5/18 – 31/12/18 = 8/12 x ₦144,000 =	96,000

	180,000

(b) **New basis**

	Assessable profits
(i) 2017 Assessment year	₦
- 1/5/15 – 31/12/15 = (8/12 x ₦180,000) =	120,000
- 1/1/16 – 30/4/16 = (4/12 x ₦240,000)=	80,000
	200,000
(ii) 2018 Assessment year	
- 1/5/16 –31/12/16 = (8/12 x ₦240,000) =	160,000
- 1/1/17 – 30/4/17 = (4/16 x ₦336,000)‘ =	84,000
	244,000
(iii) 2019 Assessment year	
- 1/5/17 – 30 /4/18 = (12/16 x ₦336,000) =	252,000

18.8.5 Basis of assessment on cessation of business - section 29 (4) of CITA (as amended)

“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.

18.8.6 Receipts and payments after the date of cessation

Any sum received or paid by liquidators of a company that has ceased business, 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, shall be deemed to have been received or paid by the company on the last day before such cessation occurred.

Illustration 18.8
Apex Nigeria Limited that was incorporated in 1990, ceased operation on March 31, 2020, having been in business for over 25 years. The accounting year-end of the company is December 31, annually.

Required:

Determine the relevant years of assessment and the due dates of payment of tax.

Solution 18.8

YOA	Basis period	Due date of payment of tax
2020	1/1/19 – 31/12/19	June 30, 2020 (PYB)
2020	1/1/20 – 31/3/20	September 30, 2020 (Six months after the date of cessation)

Illustration 18.9

Given the same scenario stated above, assume the company ceased operation on August 31, 2020.

Solution 18.9

YOA	Basis period	Due date of payment of tax
2020	1/1/19 – 31/12/19	June 30, 2020 (PYB)
2021	1/1/20 – 31/8/20	February 28, 2021 (Six months after the date of cessation)

18.8.7 Business reorganization and restructuring (Sections 29 (9) of CITA, 32 of CGTA and 42 of VATA)

Where management of a company decides to transfer or sell a trade or business carried on by it to a Nigerian company in order to achieve a better reorganisation of the trade or business or transfer its management to Nigeria, it will be entitled to the following concessions:
The rules relating to commencement and cessation of business will not apply;

(a) Assets would be deemed transferred at written down values (TWDV);

(b) The assets transferred or sold will not attract capital gains tax (CGT); and

(c) Value added tax shall not apply in the assets transferred or sold.

The following conditions must be met before any entity is entitled to the concessions stated above:

(a) The consent of the Federal Inland Revenue Service must be obtained in writing by the parties;
(b) The Service must be satisfied that one company has control over the other or that the companies are controlled by some other person or, are members of a recognised group of companies; and
(c) It is mandatory to prove that the entities were related for not less than a consecutive period of 365 days before the reorganisation.

It is important to point out that all concessions granted shall be withdrawn, if the assets sold or transferred during the process of reorganisation or restructuring are disposed within 365 days of the exercise. All relevant taxes, penalties, and interests shall be charged and paid as if there was no concession.

18.9 Normal bases for computing total profit and companies income tax payable

To assist readers, the format of the computation of companies income tax payable is stated below:

Companies income tax
Ascertainment of total profit (Section 31)

	₦	₦
Profit as per accounts		XXX
Add back: All disallowed items, for example:		
Depreciation	XX	
Capital expenses on shares	XX	
Rent disallowed	XX	
Donations	XX	
General provision for bad debts	XX	
Diminution in value of investment	XX	XXX
		XXX
Less:		
Profit on sale of property, plant and equipment	XX	
Profit on export sales	XX	
Non-taxable incomes		
(Interest on agric or export loans)	XX	XXX
Assessable profit (AP)		XXX
Less: Loss relief		XXX
		XXX
Add: Balancing charge (Schedule 2)		XXX
Less: Investment allowance		XXX
		XXX
Less: Capital allowance (Schedule 2)		
Initial	XX	
Annual	XX	
Balancing allowance (Schedule. 2)	XX	
Restricted to 66 2/3% of Assessable profit	(XX)	(XX)
Capital allowance c/f	XX	
Total profit (TP)		**XXX**
Companies income tax payable, using applicable rates based on gross turnover		XXXX
Tertiary education tax payable (2% of AP), except small		

companies	XXXX
Total tax payable	XXXX

18.10 Other bases of computing companies income tax payable

Apart from the above, other bases of determining the income tax payable by a company are as follows:

(a)	Minimum tax basis	-	Section 33 of CITA
(b)	Turnover basis	-	Section 30 of CITA
(c)	Dividend basis	-	Section 19 of CITA

18.10.1 Minimum tax basis - Section 33 of CITA (as amended)

Section 105 of CITA, having been amended by Finance Act, 2020, **"gross turnover"** means the gross inflow of economic benefits during the period arising in the course of the operating activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants, including sales of goods, supply of services, receipt of interest, rents, royalties or dividends.

The following companies are specifically exempted by Finance Act, 2019, from the payment of minimum tax:

(a) A company that earns a gross turnover of less than ₦25,000,000 in the relevant year of assessment;
(b) A company carrying on agricultural trade or business as defined in section 11(9) of CITA (as amended); and
(c) A company that has not been in business for more than four calendar years of its commencement of business.

Section 80(3) of CITA (as amended) defines "franked investment income" as dividend received by one company from another after the deduction of withholding tax.

The following should be noted:

(a) Any dividend received without the deduction of withholding tax will not be deducted from gross turnover in the computation of the minimum tax liability;
(b) Evidence of deduction of withholding tax deducted at source is a condition precedent before treating the dividend as franked investment income; and
(c) Where the franked investment income did not form part of the gross turnover, it should not be deducted from same in computing minimum tax.

The minimum tax to be levied and paid shall be 0.5% of gross turnover of the company, less franked investment income. Based on Finance Act, 2021, minimum tax is to be computed at 0.25% of gross turnover less franked investment income, for tax returns prepared and filed for any two accounting periods between January 1, 2019 and December 31, 2021, as may be chosen by the taxpayer.

Illustration 18.10

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

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

Required:

Compute the minimum tax payable.

Suggested solution 18.10

Based on the provisions of the Finance Act, 2020, the minimum tax payable is computed thus:

	N
Revenue/turnover from main business activities	25,000,000
Revenue from suspended operations	3,500,000
Rent received (gross)	750,000
Dividend received from APD Limited (gross)	2,400,000
Revenue from other operating activities	7,500,000
Total revenue/turnover	39,150,000
Divided received from APD Limited (franked investment income	(2,400,000)
Gross turnover for the computation of minimum tax	36,750,000

The minimum tax payable is 0.25% x N36,750,000 = N91,875

18.10.2 Gross turnover basis – Section 30 of CITA

Section 105 of CITA, having been amended by Finance Act, 2020, **"gross turnover"** means the gross inflow of economic benefits during the period arising in the course of the operating activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants, including sales of goods, supply of services, receipt of interest, rents, royalties or dividends.

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

(d) No assessable profits; or

(e) Assessable profits which in the opinion of the FIRS, are less than might be expected to arise from that trade or business; or
(f) The true amount of the assessable profit cannot be readily ascertained.

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

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

Illustration 18.11

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

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

A desk examination by the Inland Revenue officials revealed the following:

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

The tax official observed that the accounts submitted by the company were not reliable and that based on industry average, the gross profit percentage of about 10% revealed by the company's accounts was not reasonable.

Accordingly, the Revenue decided to revise the companies income tax computation by applying a fair and reasonable percentage of 25% on the revenue.

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

Suggested Solution 18.11

Ojokoro (Nigeria) Limited
Computation of companies income tax liability
For assessment year 2020

	₦'000
Revised assessable profit	26,250
i.e. (105m (100m+5m) x 25%)	
Deduct:	
Unrelieved losses brought forward	1,200
	25,050
Balancing charge	500
	26,550
Capital allowances	(2,500)
Total profit	23,050

Companies income tax payable
₦23,050,000 at 30% = ₦6,915,000

18.10.3 Dividend basis – Section 19 of CITA

Where a dividend is paid out of profit on which no tax is payable due to:

a. No assessable profits; or

b. Assessable profits being less than the dividend paid or proposed, the company paying the dividend shall be charged to income tax at the appropriate tax rate on the dividend paid/proposed as if it were its total profit for the assessment year to which the accounts from which the dividend was declared relate.

The Finance Act, 2019, excludes the following classes of dividend from the same treatment as those stated above:

(a) Dividends paid out of retained earnings of a company, provided that the dividends are paid out of profits that have been subjected to tax under Companies Income Act (CITA), Petroleum Profits Tax Act (PPTA) or the Capital Gains Tax Act (CGTA);

(b) Dividends paid out of all tax-exempt incomes pursuant to the CGTA, PPTA and Industrial Development (Income Tax Relief) Act or any other legislation;

(c) All franked investment income under CITA; and

(d) Distributions made by a Real Estate Investment Company to its shareholders from rental or dividend income received on behalf of those shareholders.

It should be noted that the exemption still applies whether or not where the profits that generated such dividend accrued in a year other than the year in which the dividend was paid.

Illustration 18.12
An extract from the financial statements of ABC Limited XYZ Limited for the year ended December 31, 2020, revealed the following:

	ABC Limited	**XYZ Limited**
	N	**N**
Total profit/(loss) for the year	3,600,000	(1,200,000)
Retained earnings brought forward	4,800,000	2,000,000
Dividend declared in 2020 paid in 2021	4,200,000	750,000

Based on the financial information disclosed for the companies, the following are to be noted:

(a) Out of the dividend of N4,200,000 paid by ABC Limited, only N600,000 can be regarded as having been paid out of retained earnings, hence only N3,600,000 shall be subject to the application of section 19(1) of CITA.

(b) N750,000 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 19(1).

18.11 Tax exemption of the profits of a small company

18.11.1 Definition

Section 105(1) of CITA, as amended by the Finance Act, 2019, "small company" means "a company that earns gross turnover of ₦25,000,000 or less in the relevant assessment year".

18.11.2 Criteria that must be met by small companies in order to be granted tax

exemption

Section 23(1)(0) of CITA (as amended) states that “the profits of a small company in a relevant year of assessment are exempt from tax provided that:

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

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

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

18.11.3 Exemption from payment of tertiary education tax

Given the fact that a small company whose profit is exempt from tax under section 23(1)(0) of CITA (as amended) will not have assessable profit, hence it will not pay tertiary education tax in respect to those exempt profits.

18.11.4 Tax incentives

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

(i) Pioneer status for an initial period of 4 years and an additional period of 2 years, subject to satisfactory performance; and

(ii) A reduction in import duty on tractors from 35% to 5%. To enjoy these tax incentives, these companies are expected to apply to the President through the Minister of Trade, Industry and Investment.

18.11.5 Deduction of withholding tax

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

18.11.6 Computation of capital allowances

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 the capital allowances on capital expenditure when it crosses the threshold of ₦25 million as it will now qualify as either a medium or large company.

Illustration 18.13

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 the capital allowances claimable for all the relevant years of assessment.

Suggested solution 18.13

Apex Limited

Computation of capital allowances for 2020 to 2024 assessment years.

	← **Furniture and Fittings** →			
Initial allowance - 25%				
Annual allowance – 20%				
		Total capital allowances	**Cost**	**Remarks**
	N	**N**	**N**	
<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 utilized**
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.

18.11.7 Anti-abuse

(a) Any attempt by a company to split the transactions that were carried out prior to the commencement of the Finance Act, amongst two or more companies in order to benefit from the exemption of profits of small companies, the Service in accordance with the provisions of section 22 of CITA, shall discountenance such splitting, and aggregate all such transactions to the company originally doing the business.

(b) After the commencement of the Finance Act, 2019, any attempt by a taxable person to incorporate new companies or uses two or more companies to transact a business which in the opinion of the Service is aimed at benefitting from the tax exemption of profits of small companies, the value of such contracts shall be aggregated and taxed in the hand of one of the companies.

(c) In line with section 42 of the FIRS Act, any company that conceals its turnover with a view to obtaining tax benefit available to small companies shall be prosecuted with its directors and relevant principal officers. Any tax liabilities arising from the foregoing, shall be recovered with penalties and interest.

18.12 Chapter review

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

It also explains the concepts of bases of assessment as relate to the rights of a company on commencement of business and that of the Revenue on cessation and change of accounting date.

This chapter also addresses the issue of applicable tax rates and the bases for computing companies income tax under the Companies Income Tax Act Cap C21 LFN 2004 (as amended) and the Finance Acts, 2019, 2020 and 2021.

Worked examples

18.13.1 Multiple-choice questions

1. Which of the following best describes the companies that are specifically exempted by Finance Act, 2021, from the payment of minimum tax?

   A. Companies that earn a gross turnover of less than ₦25,000,000 in the relevant year of assessment

   B. Companies that earn a gross turnover of less than ₦20,000,000 in the relevant year of assessment

   C. Companies that earn a gross turnover of less than ₦15,000,000 in the relevant year of assessment.

D. Companies that earn a gross turnover of less than ₦10,000,000 in the relevant year of assessment.

E. Companies that earn a gross turnover of less than ₦5,000,000 in the relevant year of assessment.

2. Which is the basis period for the first year of assessment under section 29 (3) of the Companies Income Tax Act Cap C21 LFN 2004(as amended)?

A. Date of commencement of business to the end of its first accounting period

B. Date of commencement of business to December 31, of the year

C. Date of commencement of business to date of cessation

D Date of commencement of business to the penultimate year end

E. Date of commencement of business to date of change in accounting year end

3. A company which has incurred an expenditure on its qualifying plant and equipment in an approved manufacturing activity in an Export Processing Zone is entitled to ………. capital allowance in any year of assessment.

A. 75%

B. 80%

C. 85%

D. 90%

E. 100%

4. The following conditions are necessary before donations can be allowed under Companies Income Tax Act, EXCEPT

A. It must be made out of the profit

B. It must not exceed 10% of an assessable profit

C. It must have been made to one of the approved bodies

D. It must be made to a political party

E. It must not be capital in nature

5. The following are the bases of computing companies income tax payable, EXCEPT.

A. Total profit basis

B. Turnover basis

C. Total asset basis

D. Minimum tax basis

E. Dividend basis

18.13.2 Short answer questions

1. Based on the provisions of the Companies Income Tax Act Cap C21LFN 2004 (as amended), tax shall be levied and paid on ……….profits of every limited liability company company.
2. A company that earns a gross turnover of less than ₦25,000,000 in the relevant year of assessment is exempted from the payment of ……………..
3. A company that has not been in business for more than six calendar years of its commencement of business is exempted from paying minimum tax. True or False
4. The dividend received by one company from another after the deduction of withholding tax is called ………..
5. Despite the exemption of profits of small companies from tax, a company doing business with a small company is expected to deduct withholding tax from relevant payments due to the company and remit same to the…………..

18.13.3 Examination type questions

(1) Olori-ebi Limited is a Nigerian company engaged in the manufacture of textile materials. For the year ended December 31, 2017, the company's accounts disclosed a net profit of ₦5million after charging the following:

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

You are informed that the annual basic salary of the company's managing director is ₦750,000 while other allowances amounted to ₦2 million.

Required:
Compute the adjusted profit of the company for the year ended December 31, 2017.

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

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

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

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

Required:
Compute the loan interest exempted from tax.

(3) Pius Ojo Limited changed its accounting date from June 30, to December 31. The following information is made available.

	₦
12 months to 30/6/2012	160,000
12 months to 30/6/2013	192,000
18 months to 31/12/2014	120,000
12 months to 31/12/2015	288,000
12 months to 31/12/2016	320,000

Required:
Compute the assessable profits for the relevant assessment years.

(4) Agbatogun Nigeria Limited is owned by Nigerians and has been in business since year 2018. The results of the company as at 31 December 2020 are as follows:

	₦	₦
Assets employed		
Non-current assets		180,000,000
Current assets	550,000,000	
Less: Current liabilities	360,000,000	
Net Current assets		190,000,000
Net assets		370,000,000
Financed by:		
Share capital		140,000,000
Statutory reserves		60,000,000
General reserves		100,000,000
Long term loans		70,000,000
		370,000,000

You are provided with the following additional information:

(i) The revenue of the company during the year ended December 31, 2020 was ₦240,000,000.

(ii) Gross profit was ₦35,000,000

(iii) Assessable profit was ₦2,100,000

(iv) Unrelieved capital allowances brought forward from 2020 year of assessment was ₦300,000

(v) Capital allowances for 2021 year of assessment amounted to ₦800,000

You are required to:

(a) Compute the company's minimum tax liability for 2021 year of assessment.

(b) Compute the company's income tax liability for 2021 year of assessment.

(5) Ada, Torera and Peace based at Okokomaiko in Lagos State, have run the firm Ada, Torera , Peace and Company as builders for several years. The partnership agreement provided for the following:

(i) Salaries paid to partners:

	₦
Ada	120,000
Torera	240,000
Peace	480,000

(ii) Profit sharing ratio:

Ada	$^1/_5$
Torera	$^3/_{10}$
Peace	½

In January 2020, there was a decision to review the partnership agreement. Messrs Ada, Torera and Peace have been unable to find worthy successors to take over as partners. Rather than review the partnership agreement, they agreed to convert the partnership into a limited liability company. In view of this, a firm of chartered accountants was contacted to incorporate the name ATP Consultants Limited.

The authorised share capital of the proposed company was agreed at ₦10,000,000, made up of 10,000,000 ordinary shares of ₦1.00 each. The details of the shareholding structure were agreed as follows:

Ada	20%
Torera	30%
Peace	50%

The certificate of incorporation was approved by the Registrar-General of the Corporate Affairs Commission (CAC), Abuja on August 1, 2020. The certificate of incorporation was dated August 10, 2020. The company commenced business on October 1, 2020.

The cost of incorporation includes:

	₦
Payment for stamp duty	80,000
Professional fee for incorporation	50,000
CAC registration fees	100,000
Additional costs of incorporation	40,000
	270,000

The financial results for the year ended December 31, 2020 are as follows:

	₦	₦	₦
Income			4,000,000
Less :			
Cost of incorporation		270,000	
Transport and travelling		135,000	
Medical		120,000	
Hotel and accommodation		125,000	
Audit and accountancy		110,000	
Postages and telephone		150,000	
Salaries:			
Ada	120,000		
Torera	240,000		
Peace	480,000	840,000	1,750,000
Net profit			2,250,000

Assume: Fees and expenses were earned/incurred evenly throughout the year.

Required:

Write a report to Messrs Ada, Torera and Peace, highlighting:

(a) Tax implication of the decision to convert to a Limited liability company, limiting yourself to the facts/details provided in the case study.

(b) Your comment on the breakdown of the cost of incorporation of ₦270,000, and the tax implication of **each** item.

18.13.4 Suggested solutions to multiple-choice questions

1. A
2. A
3. E
4. D
5. C

18.13.5 Suggested solutions to short answer questions

1. Total
2. Minimum tax
3. False
4. Franked investment income
5. Federal Inland Revenue Service

18.13.6 Suggested solutions to examination type question

(1) Olori-ebi Limited
Computation of adjusted profit
For the year ended December 31, 2017 (assessment year 2018)

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

(2) ABC Bank Limited

Loan interest exempted from tax for the year ended December 31, 2020 (assessment

year 2021)

	Moratorium period	Interest rates %	Agric loan interest ₦	Exempt interest income ₦
(i)	24 months	15	2,500,000	2,500,000
(ii)	6 months	20	800,000	-
(iii)	18 months	14	700,000	700,000
(iv)	6 months	35	1,000,000	-
			5,000,000	3,200,000

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

(3) Pius Ojo Limited
Computation of assessable profits
For 2014, 2015 and 2016 assessment years

YOA	**Basis Period**	**Amount** ₦
2014	1/7/12– 30/6/13	192,000
2015	1/7/13 – 30/6/14	
	12/18 x ₦120,000	80,000
2016	1/7/14 – 30/6/15	
	($^6/_{18}$ x ₦120,000) + ($^6/_{12}$ x ₦288,000)	
	= N40,000 + N144,000	184,000

New accounting date

YOA	**Basis Period**	**Amount** ₦
2014	1/1/13 - 31/12/13	
	$^6/_{12}$ x ₦192,000 + ($^6/_{18}$ x ₦120,000)	
	(₦96,000 + ₦40,000)	136,000
2015	1/1/14 – 31/12/14	
	$^{12}/_{18}$ x ₦120,000	80,000
2016	1/1/15 – 31/12/15	288,000

Mr. Pius Ojo's business did not make its accounts to June 30, 2014, hence 2014 is the year of change and the next two assessment years are 2015 and 2016.
The tax authority would assess the taxpayer for 2014 – 2016 assessment years using the higher assessable profits obtained by comparing the old with the new bases.

YOA	**Assessable profit Old basis** ₦	**Assessable profit New basis** ₦
2014	192,000	136,000

2015	80,000	80,000
2016	184,000	288,000
	456,000	504,000

NB: The tax authority would assess the assessment years 2014-2016, using the new accounting date because it gives a higher assessable profit of ₦504,000.

(4) (a) **Agbatogun Nigeria Limited**
Computation of minimum tax liability

Given the fact that the company was not up to 48 calendar months in business at December 31, 2020, the computation of minimum tax liabilities is not applicable.

(b) **Computation of companies income tax liability**
For 2021 assessment year

	₦	₦
Assessable profit		2,100,000
Deduct		
Unrelieved capital allowances b/f	300,000	
Current year capital allowance	800,000	(1,110,000)
Total profit		990,000
Tax on ₦990,000 at 30%		297,000
Tertiary education tax (2% of ₦2,100,000)		42,000
Total tax liability		**339,000**

Note
The Finance Act, 2021, increased the tertiary education tax rate to 2½ % of assessable profit from 2% of assessable profit.

(5) The Directors,
ATP Consultants Limited

Dear Sirs,

Re: Conversion of Ada, Torera, Peace & (Partnership) to ATP Consultants Limited

We write in response to your recent decision to convert your partnership business into a limited liability company.

Please find below our submissions:-

(a) Tax implications of conversion

(i) The partnership ceased on September 30, 2020 and so all partnership income shall be based on Personal income tax.

(ii) Commencement rules will apply from October 1, 2020 when ATP

Consultants Limited commenced operation.

(iii) The incorporation expenses shall be applicable only to ATP Consultants Limited though not an allowable expense for tax purposes.

(iv) ATP Consultants Limited will be required to register with the Federal Inland Revenue Service for VAT and CIT, etc.

(v) ATP Consultants Limited in accepting the incorporation expense shall deduct and remit with-holding tax from the professional fees at the rate of 10% if the beneficiary is a company and 5% if the recipient is an individual partnership or incorporated entity.

(b) Tax implications of cost of incorporation

(i) The total cost of N270,000 ,though paid during the partnership period, shall be considered as pre-operational expenses of ATP Consultants Limited.

(ii) The pre-operational expenses when added back, will increase taxable income, thereby increasing tax payable by ATP Consulting Limited.

(iii) N270,000, charged into ATP Consultants Limited's account is not an allowable expense for tax purposes, even if spread over a number of years.

Yours faithfully,
For: ABC Consultants Limited

A. B. James
Managing Partner

CHAPTER NINETEEN
TREATMENT OF LOSSES

Chapter contents

a) Learning objectives
b) Introduction
c) Types of loss relief
d) Rules on loss relief
e) Chapter review
f) Worked examples

19.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Understand what constitutes loss relief;

(b) Identify the basis for granting loss relief; and

(c) Know the rules guiding claims for loss relief.

19.1 Introduction

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

A company that makes a loss from its trade or business is entitled to relieve such loss by carrying it forward for set-off against the assessable profits of subsequent assessment years commencing from the year following that in which the loss occurs.

19.2 Types of loss relief

19.2.1 Current year loss relief

This is one of the methods of relieving losses. It is applicable to only individuals. It is also not available to property letting business. In this case, losses incurred from a particular source of income can be relieved against other sources (including balancing charge).

In order to enjoy this relief, a written claim must be made within twelve months after the end of the year of assessment in which the loss arises.

Any unrelieved loss can only be set off against profit from the source from which the loss was incurred.

19.22 Carry forward loss relief

This relief is available only against profit from the same source of income where the loss originally occurred. It does not require approval before the relief can be granted. The relief also applies to both individuals and corporate bodies.

19.2.2 Rules on loss relief

The following points are to be noted in the application of the rules on loss relief for companies:

(a) Trading loss to be deducted from assessable profits of an assessment year, shall not exceed the actual loss incurred by the company in the previous assessment year;

(b) Losses are not aggregated with assessable profits in the computation of a company's total profits, in strict compliance with the provision of Section 31 (1) of CITA. Consequently, a trading loss from one of the company's sources of profits cannot be set-off against profits from another source; A loss incurred from a particular line of business can only be relieved in future years from assessable profits derived from the same source or line of business;

(c) When losses incurred in two different assessment years are being carried forward against future profits, the first loss incurred will be relieved in priority to the subsequent loss;

(d) When trade ceases, any terminal loss resulting there from which could not be relieved in the year of cessation due to insufficiency or non- availability of profit, is deemed lost;

(e) There is no provision under the Nigerian tax system for carry-back of terminal loss; and

(f) A claim for relief of losses takes precedence over claim for capital allowances.

Illustration 19.1

Posu Nigeria limited has been sustaining losses for many years but made a good recovery in 2017. The adjusted results of the company for the following years are as follows:

		₦
Year ended Dec 31 2012	Loss	350,000
Year ended Dec 31 2013	Loss	250,000
Year ended Dec 31 2014	Loss	457,000
Year ended Dec 31 2015	Loss	75,000
Year ended Dec 31 2016	Profit	79,000
Year ended Dec 31 2017	Profit	450,000

Capital allowances for the periods are as follows:

Assessment Year	₦
2013	25,000
2014	37,500
2015	32,000
2016	45,000

Required:

Compute the company's tax liabilities for 2013 – 2016 assessment years. Ignore minimum tax provisions.

Suggested solution to Illustration 19.1

Posu Nigeria limited
Computation of company's tax liabilities
For assessment years 2013 – 2016

	₦	₦
Assessment year 2013		
Basis period (1/1/12-31/12/12)		
Loss for the year		(350,000)
Add:		
Capital allowances for the year		(25,000)
Unrelieved loss and capital allowance c/f		**(375,000)**
Assessment year 2014		
Basis period (1/1/13 - 31/12/13)		
Loss for the year		(250,000)
Add:		
Unrelieved loss b/f		(350,000)
		(600,000)
Capital allowances - for the year	37,500	
- b/f	25,000	(62,500)
Unrelieved loss and capital allowances c/f		(662,500)
Assessment year 2015		
Basis period (1/1/14-31/12/14)		
Loss for the year		(457,000)
Add:		
Unrelieved losses b/f		(600,000)
		(1,057,000)
Capital allowances – for the year	32,000	
– b/f	62,500	(94,500)
Unrelieved loss and capital allowances c/f		(1,151,500)
Assessment year 2016		
Basis period (1/1/15-31/12/15)		
Loss for the year		(75,000)
Add:		
Unrelieved losses b/f		(1,057,000)
		(1,132,000)
Capital allowances – For the year	45,000	
– b/f	94,500	(139,500)
Unrelieved losses & capital allowances c/f		(1,271,500)

19.3 Chapter review

The chapter defines what constitutes a loss for a company in trade or business, and goes on to provide guidelines regarding loss relief rules, by clearly explaining how the loss relief rules are applied, using detailed worked examples.

19.4 Worked examples

19.4.1 Multiple-choice questions

1. The following are the features of current year loss relief, EXCEPT
   A. It is not available to property letting business
   B. It is applicable to only individuals
   C. In order to enjoy this relief, a written claim must be made within twelve months after the end of the year of assessment in which the loss arises
   D. Any unrelieved loss can only be set off against profit from the source from which the loss was incurred
   E. In order to enjoy this relief, a written claim must be made within twenty four months after the end of the year of assessment in which the loss arises

2. Which of these is NOT a feature of carry forward loss relief?
   A. The relief is available only against profit from the same source of income where the loss originally occurred.
   B. It does not require approval before the relief can be granted.
   C. The relief also applies to both individuals and corporate bodies.
   D. It is a means of reliving losses.
   E. It applies only to corporate bodies.

3. The following are the rules on loss relief, EXCEPT
   A. Trading losses to be deducted from assessable profits of an assessment year shall not exceed the actual loss incurred by the company in the previous assessment year.
   B. Losses are not aggregated with assessable profits in the computation of a company's total profits.
   C. When losses incurred in two different assessment years are being carriedforward against future profits, the first loss incurred will be relieved in priority to the subsequent loss.
   D. When trade ceases, any terminal loss resulting therefrom which could not be relieved in the year of cessation due to insufficiency or non- availability of profit, is deemed lost.
   E. There is provision under the Nigerian tax system for carry-back of terminal loss.

4. Which of these is the best way a company can relieve its loss?
   A. By carrying it forward for set-off against the assessable profits of subsequent assessment years commencing from the year following that in which the loss occurs
   B. By carrying it backward for set-off against the assessable profits
   C. By carrying it forward for set-off against the gross profits of subsequent assessment years commencing from the year following that in which the loss occurs
   D. By carrying it forward for set-off against the net profits of subsequent assessment

years commencing from the year following that in which the loss occurs

E. By carrying it forward for set-off against the capital allowances of subsequent assessment years commencing from the year following that in which the loss occurs.

5. The following are the advantages of a loss relief to a taxpayer, EXCEPT
   A. Reduction in the amount of assessable profit of a year or future years
   B. This reduces the total tax payable by taxpayer
   C. Gives opportunity for enhanced cash flow for a taxpayer
   D Encourages tax compliance
   E. Improves income of tax officials

19.4.2 Short answer questions

1. Current year loss relief applies only to individuals. TRUE or FALSE
2. Carry forward loss relief requires approval before the relief is granted. TRUE or FALSE
3. When losses incurred in two different assessment years are carried forward against future profits, the first loss incurred will be relieved in priority to the subsequent loss. TRUE or FALSE?
4. Claiming relief for losses takes precedence over claim for ………………
5. The loss relief that applies to both individuals and corporate bodies is called …………

19.4.3 Examination type questions

(1) A company makes a loss from its trade or business, when its allowable operating expenses exceed its total income or earnings.

A company that makes a loss from its trade or business is entitled to relieve such loss by carrying it forward for set-off against the assessable profits of subsequent assessment years commencing from the year following that in which the loss occurs.

Required:

Explain the following:

(a) Current year loss relief

(b) Carry forward loss relief

(2) There are specified rules to be taken into consideration in the application of loss relief

Required:

(a) What are the rules governing the claim for loss relief?

(b) What are the major advantages of loss relief to a taxpayer?

(3) Oworu Nigeria Limited, and agricultural company which was incorporated on February 1, 2012, commenced business on May1, 2012. The company makes up its accounts to December 31, each year. The following additional information is provided;

a. Adjusted profit(loss) for	₦'000
Year ended December 31, 2016	(80,000)
Year ended December 31, 2017	40,000
Year ended December 31, 2018	20,000
Year ended December 31, 2019	50,000

b. Capital allowances for each year of assessment are as given under:

	₦'000
2017	5,000
2018	3,500
2019	2,700
2020	2,500

The turnover of the company was N101,300,000.

Required:
Compute the income tax payable for the relevant years of assessment.

19.5.1 Suggested solutions to multiple-choice questions

1. E
2. E
3. E
4. A
5. E

19.5.2 Suggested solutions to short answer questions

1. True
2. False
3. True
4. Capital allowances
5. Carry forward loss relief

19.5.3 Suggested solutions to examination type questions

(1) (a) **Current year loss relief**

This method of relieving losses applies only to individuals. Any loss incurred from a particular source of income can be relieved against other sources. In other words, loss from any source of income can be relieved against income from other sources.

It is important that any claim on this must be made in writing twelve months after the end of the year assessment in which the loss arises. The current year loss relief is applicable to a loss incurred only in the first year.

(b) **Carry forward loss relief**

This relief is available only against profits from the same source of income where the loss originally occurred. Carry forward loss relief does not require approval before the relief is granted. It applies to both individuals and corporate bodies.

(2) (a) The rules governing loss relief are as follows:

(i) In no circumstance shall the amount to be relieved exceed the actual loss incurred.

(ii) Where a person has incurred more than one loss, losses shall be deducted in the order in which they were incurred.

(iii) Losses are to be deducted from the sources from which they were incurred. That is to say, a loss from one line of business, for example mining, cannot be set off against income from another line of business, say farming. Mining losses are set off against mining income only, and farming losses are set off against faming income only.

(iv) Claiming relief for losses takes precedence over claim for capital allowances.

(v) Losses can be carried forward indefinitely save losses of insurance companies.

(b) The major advantage of a loss relief to a taxpayer is the consequential reduction in the amount of assessable profit of a year or future years. This has major impact on the total tax payable with a corresponding cash flow advantage for a taxpayer.

(3) Oworu Nigeria Limited
Computation of income tax payable
For the relevant assessment years

	N'000	**N'000**
2017 Assessment year		
Adjusted loss		(80,000)
Loss relieved		Nil
Unrelieved loss c/f		(80,000)
Capital allowance for the year	5,000	
Capital allowance utilized	Nil	
Unutilized capital allowance c/f	5,000	
Total profit		Nil
Companies income tax @ 30%		Nil
Tertiary education tax		Nil
2018 Assessment year (normal)		
Adjusted profit		40,000
Loss brought forward		80,000
Loss carried forward		40,000
Capital allowance brought forward	5,000	
Capital allowance for the year	3,500	
Utilized capital allowance c/f	8,500	
Total profit		N NIL
Companies income tax at 30% of total profit		N NIL
Tertiary education tax at 2% of assessable profit		
		N 800

2019 Assessment year

Adjusted profit for the year		20,000
Unrelieved loss b/f		(40,000)
Unrelieved loss c/f		(20,000)
Capital allowance for the year	2,700	
Unutilized capital allowance b/f	8,500	
Unutilized capital allowance c/f	11,200	
Total profit		Nil
Companies income tax @30% of total profit		Nil
Tertiary education tax @2% of adjusted		400

2020 Assessment Year

Adjusted profit		50,000
Capital Allowance for the year	2,500	
Unutilized capital allowance b/f	11,200	
Unutilized capital allowance	13,700	(13,700)
Total profit		36,300
Companies income tax @30% of total profit		10,890
Tertiary education tax @2% of adjusted profit		1,000

CHAPTER TWENTY
TAXATION OF SPECIALISED BUSINESSES

Chapter contents

a. Learning objectives
b. Definitions
c. Taxation of enterprises in free trade zones
d. Tax provisions relating to agricultural business and primary agricultural production
e. Taxation of foreign air and sea transport companies
f. Taxation of foreign companies engaged in cable undertakings (telecommunications)
g. Taxation of banks
h. Taxation of insurance businesses
i. Taxation of authorised unit trust scheme
j. Tax provisions of the Nigerian Information Technology Development Act (NITDA),2007 (as amended)
k. Tax provisions relating to real estate investment companies which are approved by the Securities and Exchange Commission under the relevant provisions of real estate investment scheme (REIS)
l. Tax implications of the operation of regulated securities lending transactions in Nigeria
m. Tax provisions of the National Agency for Science and Engineering Infrastructure (NASENI) Act, 1992 (as amended)
n. Legal basis for the taxation of non-governmental organisations (NGOs) in Nigeria, other obligations and exemptions as specified under the relevant tax legislations
o. Tax provisions of the Nigerian Police Trust Fund (Establishment) Act, 2019, as they relate to 0.005% of the net profits of companies operating in Nigeria
p. Incentives that are granted to companies engaged in gas utilization (downstream operations) - section 39 of CITA (as amended)
q. E-commerce and e-business
r. Chapter summary
s. Worked examples

20.0 Learning objectives

After studying this chapter, readers should be able to:

(a) Understand the peculiar tax laws relating to specialized businesses ;and

(b) Compute the taxes payable including minimum tax.

20.1 Definitions

(a) **Agricultural trade or business:** means any trade or business connected with-

(i) The establishment or management of plantations for the production of rubber, oil palm, cocoa, coffee, tea and similar crops;

(ii) The cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, benised, vegetables, pineapples, bananas and plantains;

(iii) Animal husbandry, that is to say, poultry, piggery, cattle rearing, fish farming and deep sea fish trawling.

(b) **Primary agricultural production**

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

(i) “Primary crop production comprising the production of raw crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop product;

(ii) Primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock product;

(iii) Primary forestry production comprising the production of timbers of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product; and

(iv) Primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate of final processing of any other manufactured or derivative fish product.

(c) “**Base lending rate”** means the weighted average of the cost of fund to any bank.

(d) “**Cottage industry”** means an industry where the creation of products and services is home-based, rather than factory based.

(e) “**Foreign company”** means any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria.

(f) “**Foreign loan”** in relation to any foreign company, means any loan granted by that company with moneys brought into Nigeria from any territory or country outside Nigeria, or any loan granted by that company in any territory or country outside Nigeria, in a currency other than Nigerian currency.

(g) “**Real estate investment company (REIC)”** means a company (including a Real Estate Unit Trust) duly approved by the Securities and Exchange Commission to operate as a real estate investment scheme (REIS) in Nigeria – section 105 of CITA as amended by Finance Act 2021.

(h) **“Real estate investment schemes (REIS)”** means any company, trust or other such corporate structures approved and regulated by the Securities and Exchange Commission, which is primarily engaged in and invests in income generating real estate asset or real estate related asset and is expected to distribute not less than 75% of its income within 12 months or receipt of the income.

(i) **“Real estate”** means income generating property consisting of land or building (including special purpose vehicle (SPV) holding such income generating land and building).

(j) **“Regulated securities lending transaction”** means any securities lending transaction conducted pursuant to rules made by the Securities and Exchange Commission.

20.2 Taxation of enterprises in free trade zones

20.2.1 Introduction

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

The manufacturing companies shall include assembling or processing of goods for export provided the value of exported goods is not less than 75 per cent of the total turnover during the assessment year. This is a tax incentive to encourage the manufacturing of exporting goods so as to diversify the economy and improve the revenue base of the government. This would also provide job opportunities for unemployed people in the country.

Companies operating in free trade zones will be exempted from taxes only when they comply with tax filing and returns obligations to the FIRS under section 55(1) of CITA (as amended).

20.2.2 Export processing zone allowance – section 35 of CITA (as amended)

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

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

a. The undertaking is 100 percent export oriented;

b. The undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;

c. It manufactures, produces and exports articles during the relevant year and the export proceeds form 75 per cent of its turnover;

d. The undertaking is not formed by transfer of machinery or plants previously used for any purpose to the new undertaking or where machinery or plant previously used for any purpose is transferred does not exceed 25 per cent of the total value of the machinery of the undertaking; and

e. The undertaking repatriates at least 75 per cent of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria.

Companies registered and operating in the zone shall comply with the provisions of section 55(1) of CITA (as amended) and render returns in the manner prescribed therein, to the Federal Inland Revenue Service, in order to enjoy the exemption from taxes, levies, duties and foreign exchange regulations in accordance with section 8 of the Act and relevant provisions of BOFIA 2020.

All penalties prescribed in CITA and the Federal Inland Revenue Service (Establishment) Act, 2007, may apply to such companies in the event of non-compliance with section 55(1) of CITA.

20.2.3 Special tax incentives for enterprises in an export processing zone – section 18(1) of Nigeria Export Processing Zones Act 1992 (as amended)

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

(a) Legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within the zones;

(b) Repatriation of foreign capital investment in the Zones at any time with capital appreciation of the investment;

(c) Remittance of profits and dividends earned by foreign investors in the zones;

(d) No import or export licenses' shall be required;

(e) Up to 25% of production may be sold in the customs territory against a valid permit and on payment of appropriate duties;

(f) Rent-free land at construction stage; thereafter rent shall be as determined by the authority;

(g) Up to 100% foreign ownership of business in the zones allowable; and

(h) Foreign managers and qualified personnel may be employed by companies operating in the zones.

20.3 Tax provisions relating to agricultural business and primary agricultural production

20.3.1 Agricultural trade or business

Agricultural trade or business is defined in the Act, as any trade or business connected with; the establishment or management of plantations for the production of rubber, oil palm, coffee, tea and similar crops; the cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, benised, vegetables, pineapples, bananas and plantains, animal husbandry, that is to say, poultry, piggery, cattle rearing, fish farming, and deep sea fish trawling

The gain or profit from any land used for agricultural purposes or for livestock shall unless the relevant tax authority is satisfied to the contrary, be deemed to be gain or profit which should be realised by the tax payer, if the land were dealt with, as the case may be, in the manner and up to average standard of cultivation, use or practice, relating to the use of the land, or the dealing with livestock prevailing in the neighbourhood.

This is an area where average standard of cultivation plays an important role in case the business result is below expectation.

20.3.2 Primary agricultural production

(a) Definition

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

(i) "Primary crop production comprising the production of raw crops of all kinds, but excluding any intermediate or final processing of crops or any other associated manufactured or derivative crop product;

(ii) Primary livestock production comprising the production of live animals and their direct produce such as live or raw meat, live or raw poultry, fresh eggs and milk of all kinds, but excluding any other associated manufactured or derivative livestock product;

(iii) Primary forestry production comprising the production of timber of various kinds such as firewood, charcoal, uncultivated materials gathered and other forestry products of all kinds, including seeds and saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product; and

(v) Primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate and final processing of any other manufactured or derivative fish product.

(b) Tax incentives

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

(i) Pioneer status for an initial period of 4 years and an additional period of 2 years, subject to satisfactory performance; and

(ii) A reduction in import duty on tractors from 35% to 5%.

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

20.4 Taxation of foreign air and sea transport companies

20.4.1 Introduction

The provisions of Sections 14 – 17 of CITA, cover the taxation of the profits of specialised businesses.

The specialised businesses covered by these provisions are:

(a) Foreign companies engaged in air and sea transport business - Section 14 of CITA;

(b) Foreign companies engaged in cable undertakings – section 15 of CITA;

(c) Foreign companies engaged in insurance business (life and non-life) - Section16 of CITA;

(d) Nigerian companies engaged in insurance business (life and non-life) –Section 16 of CITA; and

(e) Companies engaged in authorised unit trust schemes - Section 17 of CITA.

Foreign companies engaged in air or sea transport businesses are assessable to tax in Nigeria, in respect of their income, derived from the loading of passengers, mails, livestock or goods into an aircraft or a ship in Nigeria. Income from leasing, containers, non-freight operations or any other incidental income liable to tax under section 9 of CITA.

Incomes exempted are those in respect of passengers, mails, livestock or goods which are:

(a) Loaded on routes outside Nigeria, but terminating in Nigeria; and

(b) In transit in Nigeria, that is, brought to Nigeria for trans- shipment or connecting flight.

20.4.2 Computation and assessment of profit liable to tax

The determination of profit or loss derived by a foreign company in respect of loading of passengers, mails, livestock or goods into an aircraft or a ship in Nigeria is based on the rules explained under paragraph 24.3.3 below otherwise, the FIRS shall compute on a fair percentage on the full sum receivable in respect of the carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria.

20.4.3 Adjusted profit/depreciation ratio basis

This basis (herewith considered as method 1) is adopted where the Federal Inland Revenue Service is satisfied that the tax authority of the foreign company's country of origin:

(a) Computes and assesses a company which operates ship or aircraft on a basis not materially different from that prescribed by CITA, and

(b) Certifies as being applicable to a company in the air or sea transport business,

(i) Adjusted profit ratio (%) =

$\frac{\text{Adjusted profit}}{\text{Worldwide income}} \times 100\%$

(ii) Depreciation ratio (%) =

$\frac{\text{Depreciation allowance}}{\text{Worldwide income}} \times 100\%$

In order to determine the assessable profit, capital allowances and consequently the total profits chargeable to tax in Nigeria, the Federal Inland Revenue Service applies the above ratios against the income derived by the foreign company from the loading of passengers, mails, livestock and goods into an aircraft or a ship in Nigeria.

The above can be explained by way of a pro-forma thus:

Assessable profit = Income receivable in Nigeria x profit ratio (%)	xxx
Less:	
Capital allowance = Income receivable in Nigeria x depreciation ratio (%)	x
Total profit	xx
Income tax payable (xx at the appropriate tax rate)	**X**

Illustration 20.1

The statement of profit or loss of a foreign Airline, Ethiopian Airways Limited, for year ended March 31, 2013, is as follows:

	₦'000	**₦'000**
Income from passengers freight into Nigeria	300,000	
Income from goods loaded into aircraft in Nigeria	220,000	
Income from passengers loaded and flown out of Nigeria	180,000	
Income from goods loaded into aircraft on other routes	500,000	1,200,000
Less: Salaries and other expenses	800,000	
Depreciation	120,000	
Other disallowable expenses	40,000	960,000
Net profit for the year		240,000

You are given the following additional information:

(i) The Federal Inland Revenue Service is satisfied that the tax authority in Ethiopia computes and assesses tax on similar basis with Nigeria and has received certification of the appropriate ratios.

(ii) The tax authority has agreed that depreciation charged in the accounts can be granted in lieu of capital allowances.

(iii) Salaries and other expenses include:

- Deposit for a new V.C 10 aircraft₦80,000;
- Payment of ₦24,000 to Nigeria Airport Authority for the use of the V.I.P.

lounge at the new Murtala Mohammed Airport by the Airline's first class passengers; and

- Payment of ₦12,000 as rent for accommodation used as transit flat by the airline's crew.

Required: Compute the:

(a) Total profit for Nigerian tax purposes, and

(b) Income tax payable by the airline for assessment year2014.

Suggested solution 20.1

Ethiopian Airways Limited

(a) Computation of total profit for Nigerian tax purposes Assessment year2014

	₦'000
Assessable profit – ₦400,000 x 40% (w2)	160,000
Capital allowances	(120,000)
Total profit liable to tax in Nigeria	**40,000**

(b) Computation of income tax payable for 2014 assessment year

Total profit (₦40,000,000 at 30%) = ₦12,000,000

Workings:

(i) Computation of adjusted profit Year ended March 31, 2013

	₦'000
Net profit per accounts	240,000
Add:	
Depreciation	120,000
Other disallowable expenses	40,000
Deposit for V.C. 10 aircraft – capital	80,000
Adjusted Profit	**480,000**

(ii) **Computation of adjusted profit ratio**

$$\frac{\text{Adjusted profit}}{\text{Worldwide ,income}} \times 100\% = \frac{₦480,000,000}{₦1,200,000,000} \times 100 = 40\%$$

(iii) **Computation of depreciation allowance ratio**

Since FIRS agreed with the company that the depreciation charged should be adopted as capital allowance, there will be no need to compute depreciation ratio, rather, capital allowance shall be the amount of depreciation in the question, that is, N120,000.

Method 2

This method is only used where the Federal Inland Revenue Service is not satisfied as to the conditions listed under Method 1.

Under this method, the FIRS is given the discretionary power, to determine the profits derived from Nigeria, by applying a fair percentage on the full sum receivable in respect of carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria.

Put in a proforma, the assessable profits of a foreign company in respect of income derived from Nigeria is as shown below:

	₦
Income receivable in Nigeria	xxx
Assessable profits:	
Income receivable in Nigeria x fair %	
(as determined by FIRS)	xx

Other points to note

(a) Where method 2 above is used, the foreign company shall be entitled to require that its assessment revised and re-computed on the basis of method1.

(b) The request in (a) above will be valid only if made by the company within six (6) years after the end of the relevant assessment year to which it relates and on production from its home country's tax authority, of appropriate certificate to the satisfaction of the revenue.

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

20.4.4 Minimum tax

As stated above, minimum tax should not be less than 2% of the full sums receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in Nigeria.

20.5 Taxation of foreign company engaged in cable undertakings (telecommunication)

Where a foreign company is engaged in the business of transmission of messages by cable or any other form of wireless apparatus, it is assessable to tax in the same way as a foreign company engaged in air or sea transport business.

Its profits, which are deemed to be derived from Nigeria, are from the transmission of messages through its network in Nigeria to places outside the country (Nigeria). Such cable messages originating from Nigeria are deemed equivalent to the shipping or loading of passengers, mails, livestock or goods in Nigeria.

Apart from the above, all the other provisions relating to the taxation of companies engaged in air or sea transport companies apply exactly in the same way as to companies engaged in cable undertakings.

Illustration 20.2
Ultimate Limited is a Canadian foreign company engaged in cable undertakings in Nigeria.

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

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

Notes:

(i) Federal Inland Revenue Service is satisfied that tax is computed and assessed in Canada, the country of the foreign company, on the same basis as Nigeria;

(ii) Canadian tax authority has certified the adjusted profit and Depreciation allowance ratios.

(iii) Included in overhead expenses are disallowable items totalingN23million.

Required:

(a) Compute the company's adjusted profit

(b) Determine the adjusted profit ratio and depreciation ratio

(c) Compute the total profits and Income tax payable in Nigeria

Suggested solution 20.2

(a) **Ultimate Limited**
Computation of adjusted profit

	₦'000	**₦'000**
Net profit per accounts		56,000
Add:		
Depreciation	90,000	
Purchase of capital equipment	39,000	

Other disallowable expenses	23,000	152,000
Adjusted profit		**208,000**

(b) **Computation of adjusted profit and depreciation ratios**

(i) Computation of adjusted profit ratio:

$$\frac{₦208,000,000}{₦450,000,000} \times 100\% = 46.22\%$$

(ii) Computation of depreciation ratio:

$$\frac{₦90,000,000}{₦450,000,000} \times 100\% = 20\%$$

(c) **Computation of income tax payable in Nigeria**

Assessable profit (₦100m x 46.22%)	46,220
Deduct:	
Capital allowances (₦100m x 20%)	20,000
Total profit	26,220
Income tax payable ₦26,220,000 at 30%	**7,886**

20.6 Taxation of banks

20.6.1 Introduction

Banks like other financial institutions are not exempted from the payment of tax under the Companies Income Tax Act Cap C21 LFN 2004 (as amended). Based on the foregoing, banks are subject to tax in the same way and manner with which other incorporated companies are subject to tax. It is pertinent to state that banks are liable to both companies income tax and value added tax, including other applicable taxes.

Additionally, banks are required to file both monthly and annual tax returns, failing which, such returns will constitute a violation of the applicable law and would attract the prescribed penalties / sanctions.

20.6.2 Determination of assessable profit and tax liability

As explained above, banks are liable to tax under the provisions of the Companies Income Tax Act Cap C21 LFN 2004 (as amended). Therefore, banks are subject to tax like any other company on their total profit. However, there are some specific provisions that are somewhat peculiar to banks that are important to be discussed. These provisions include:

(a) Interest on loan granted by banks to a company for manufacturing goods for export shall be exempted from tax as provided under Table 2 Schedule 3 of CITA 2004 (as amended) and subject to the following conditions:

(i) The beneficiary company must export not less than 50% of its manufactured goods sold and such goods must not be re-exported back to Nigeria; and

(ii) The beneficiary company must obtain a certificate of export issued by the Nigeria Export Promotion Council certifying the export of the company.

Table 2 schedule 3 of CITA 2004

Repayment period	Grace period (including moratorium not less than)	Tax exemption allowed
Above 7 years	2 years	70%
5 – 7 years	18 months	40%
2 – 4 years	12 months	10%
Below 2 years	Nil	Nil

(b) 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. 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.

(c) Interest on loan granted by bank to a company engaged in the fabrication of local plant, machinery and tools shall be exempted from tax if at least twelve-month moratorium is allowed and the rate of interest is not more than the based lending rate of the bank at the time the loan was granted, refinanced or otherwise restructured.

(d) Interest on loan granted by bank to companies in the cottage industry under the family economic advancement program (FEAP) 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 at the time the loan was granted, refinanced or restructured.

(e) Interest received by banks on Federal and State Government Development loan stocks or bonds are exempted from tax.

(f) Interest earned on foreign placement or dividend, rent and royalty derived by any company from outside Nigeria and brought into Nigeria in convertible currency through a domiciliary account in a bank approved by the government.

(g) Dividend treated as franked investment income

Also, in taxation of banks, the following expenses / provisions are not allowed:

(a) Increase in provisions on performing loans account;

(b) Increase in provisions on other assets or account receivable;

(c) Increase in provisions on advances under finance lease;

(d) Increase in provision for diminution in the value of investment;

(e) Increase in provision for off balance sheet engagement;

(f) Increase in provision for gratuity; and

(g) Unrealised exchange loss.

20.7 Taxation of insurance companies

20.7.1 Introduction

The taxation of insurance business is covered by section 16 of CITA 2004. The section deals with both Nigerian and Non-Nigerian insurance businesses. It further distinguishes between Life assurance business and Non-life insurance business.

For tax purposes, the main difference between the taxation of life assurance business and Non-life business is that for life assurance business, the premium received from the assured does not from part of income for tax purposes since the assured will definitely be paid or indemnified either at his death or the attainment of a specified age under endowment policy. Since the premium is not taken as income, claims paid is also not allowable as a deduction for life assurance business, the reverse is applicable for non-life insurance business.

With effect from 1995, where a company engages in composite insurance business, that is, a company carrying on life and non-life insurance business, the income from each source would be taxed separately. This means that where a loss is incurred from life business, it cannot be relieved against income from non-life.

Like any other company, dividend received by insurance companies is treated as franked investment income and they are exempted from tax.

20.7.2 Recent changes introduced by Finance Acts 2019, 2020 and 2021

(a) Preamble

(i) Section 16 (1) of CITA (as amended)

"An insurance business shall be taxed as:

- A general insurance company, whether proprietary or mutual other than a life insurance company, or

- A life insurance company:

Provided that the profits on which tax may be imposed for an insurance business shall be in accordance with section 13 of this Act".

(ii) General insurance business (section 16 (2) of CITA (as amended)

This section states that "the profit on which tax may be imposed, shall be ascertained by taking the gross premium and other income receivable, less reinsurance, and deducting from the balance arrived at, a reserve for unexpired risks, determined in accordance with subsection (10)(a) of this section. Please see "others" (e(i) and (ii).

(iii) Life insurance company

- Section 16 (3) of CITA (as amended) states that "the profits on which tax may be imposed shall be the investment income less the management expenses, including commission".

- Section 16(4) of CITA (as amended)
  Any amount distributed in any form as divided from an actuarial revaluation of unexpired risks or from any other revaluation shall be deemed to be part of the total profits of the company for tax purposes.

- Section 16(5) of CITA (as amended)
  Not more than three months after an actuarial revaluation of unexpired risks or any other revaluation has taken place, the company shall provide the Service with full particulars of the revaluation carried out, including a copy of the actuary's revaluation certificate.

(iv) The profits on which tax may be imposed (section 16(6) of CITA (as

amended)

- General Nigerian insurance company
  The profits shall be ascertained in accordance with the provisions of subsection (2) as though the whole premium and investment incomes of the company were derived in Nigeria.

- Nigerian life insurance company
  The profits shall be ascertained in accordance with the provisions of subsections (3), (4) and (5) as though the whole investment and other incomes were received in Nigeria and all the expenses and other outgoings of the company were incurred in Nigeria.

(v) Keeping of books of accounts and filing of annual tax returns
Based on section 16(8) as amended, "where an insurance company carries on a life class and a general or non-life class insurance business, the funds and books of accounts of one class shall be kept separate from the other as though one class does not relate to the other class, and the annual tax returns of the two classes of insurance businesses shall be made separately.

(vi) Assessments – (section 16(9) of CITA (as amended)
Each class of insurance shall be assessed separately as "life insurance assessment" and "non-life (other) insurance assessment" and in respect of each class of insurance business where there are more than one type of insurance and in the same class, they form one type of business and shall not be allowed against the income from another type of insurance business but the loss shall be available to be carried forward against profits from the same class of insurance business.

(vii) Capital requirement – sections 9 and 10 of the Insurance Act (as amended)
Finance Act 2021 amended these sections of the Insurance Act by replacing the words "paid-up share capital" with the words "capital requirement".
For the definitions of capital requirement, please see 23.6.2(b).

(b) Definitions

(i) Investment income - section 16(7) of CITA (as amended)
"Investment income" for the purpose of taxation of a life insurance company means "income derived from investment of shareholders' funds".

(ii) Gross premium and gross income – section 16(15) of CITA (as amended)
For the purpose of subsection 14 – minimum tax computation:

- "Gross premium" means "the total premiums written, received and receivable excluding unearned premium and premiums returned to the insured"; and

- "Gross income " means "total income earned by a life insurance business including all investment income (excluding franked investment income), fees, commission and income from other assets but excluding premium received and claims paid by reinsurers".

Gross income may also include other incomes, such as annuities, commission received, rent, as well as surplus arising from actuarial revaluation of the reserve for the unexpired risk account or life fund account transferred to profit or loss account for distribution.

(iii) "Other income", for the purposes of non-life insurance businesses means all the income of the non-life insurance business other than gross premium (excluding franked investment income).

(iv) Capital requirement (sections 9 and 10 of Insurance Act (as amended)
- n the case of an existing company, capital requirement means:
- The excess of admissible assets over liabilities, less the amount of own shares held by the company;
- Subordinated liabilities subject to approval by the Commission; and
- Any other financial instrument as prescribed.

The admissible assets over liabilities have been amended to include share capital, share premium, retained earnings, contingency reserves, and any other admissible assets subject to the approval of the Commission.
- In the case of a new company, capital requirement includes government bonds and treasury bills, cash and bank balances, and cash and cash equivalents.

(c) Minimum tax payable

Section 16(14) of CITA (as amended), provides that the tax payable by any insurance company for any year of assessment shall not be less than:
(i) 0.5% of the gross turnover which means gross income and other income for non-life insurance business and
(ii) 0.5% of gross income for life insurance businesses.

Provided, that all applicable minimum tax under this section shall be reduced to 0.25% for tax returns prepared and filed for any two accounting periods between January 1, 2019 and December 31, 2021, as may be chosen by the taxpayer.

(d) Losses can be carried forward indefinitely
Insurance companies to carry forward losses indefinitely.

(e) Others

(i) Based on section 16(10) of CITA (as amended), any insurance company other than a life insurance company shall be allowed for deductions from its premium, the following reserves for tax purposes:

- Reserve for unexpired risks calculated on a time apportionment basis of the risks accepted in the year instead of the old basis determined on a percentage consistently adopted by the company; and

- Outstanding claims and outgoings, an amount equal to the total estimated amount of all outstanding claims and outgoings, provided that any amount not utilised towards settlement of claims and outgoings shall be added to the total profits of the following year instead of the old provision which was based on a percentage (25%) of total premium.

(ii) Based on section 16(11)(c) of CITA (as amended), a life insurance business shall be allowed the following deductions from its investment income and other incomes:

- An amount which makes a general reserve and fund equal to the net liabilities on policies in force at the time of actuarial revaluation;
- An amount which is equal to 1% of gross premium earned or 10% of profits, whichever is greater, to a special reserve fund and accommodation until it becomes the amount of the statutory minimum paid-up capital; and
- All normal allowable business outgoings
  No restriction on a certain percentage (20%) of gross income shall be available at total profit of the company for tax purposes.

(iii) Section 16(12) of CITA (as amended),
A reinsurance company shall be allowed the following deductions from its gross profit to be credited to a general reserve fund:

- An amount not more than 50% of the gross profits of the reinsurer for the year where the general reserve fund is less than the initial statutory minimum authorised share capital; or
- An amount not more than 25% of the gross profits of the reinsurer for that year, where the fund is equal to or exceeds the initial statutory minimum authorised share capital.

20.7.3 Additional information to be filed by insurance business

Based on section 16(13) of CITA (as amended), an insurance company that engages the services of an insurance agent, a loss adjuster and an insurance broker shall include in its annual tax returns, a schedule showing the names and addresses of insurance agent, a loss adjuster and an insurance broker, the date their services were employed and terminated (as applicable) and payments made to each such agent, loss adjuster and insurance broker for the period covered by the tax returns.

An insurance company is expected to maintain the details and schedule of policies and risks accepted in a given year, and the computation of unexpired risks associated with them. The schedule should comprise the name of the policy holder, type of policy, period of the policy, amount of the premium and expired risk computed therefrom.

A schedule detailing the specific items making up the estimated amount of outstanding claims and outgoings shall be prepared, by insurance companies.

Insurance companies shall maintain a schedule of estimated claims and outgoings that constitute the amount deducted every year.

Section 16(5) of CITA (as amended)
Not more than three months after an actuarial revaluation of unexpired risks or any other revaluation has taken place, the company shall provide the Service with full particulars of the revaluation carried out, including a copy of the actuary's revaluation certificate.

20.8 Taxation of authorised unit trust schemes

20.8.1 Introduction

A unit trust scheme is an arrangement whereby facilities are provided for the participation of the public as beneficiaries, under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever.

A trustee is defined as a person or firm that usually holds and administers assets or property for the benefit of a third party. Trustees are expected to make reasonable judgements in the management of assets held on behalf of the trust beneficiaries with a view to protecting their interests.

A unit holder is any investor, beneficiary or person holding units in a unit trust. Unit holders have specific rights that are indicated in the trust declaration, which controls the trust's actions.

20.8.2 Taxation of unit trust income

Ordinarily, trust income is assessable on the beneficiaries of a trust after deducting trust expenses and any fixed annuities as may be provided for by the trust deed or on the trustee(s) in his/their names as trustee(s) where there is any part of the trust income not apportioned to the beneficiaries (PITA Second Schedule).

However, Section 17 of CITA makes special provisions for the taxation of the profit of an "authorised unit trust scheme".

The assessable profit of the scheme is determined in accordance with the provision of section 17 (2) of CITA as follows:

	₦
Investment Income, that is, from unit trust	
Investments	x
Less:	
Management expenses (inclusive of manager's remuneration)	(x)
Assessable profit	**xx**

Notes:

(i) Where the trustees of a unit trust receive a payment on which the unit trust suffers tax by deduction (not being franked investment income), the tax thereon shall be set off against any income on the trustees by an assessment made for the year of assessment in which the receipt, on which the tax deduction was made, falls to be taken into account in ascertaining the tax payable by the unit trust for the year of assessment.

(ii) In respect of dividend accruing to the trustees of a unit trust, the provisions of section 53 of CITA shall apply, that is, file a self-assessment return.

(iii) sed on section 23(f) of CITA (as amended), dividends received and redistributed by unit trusts are exempt from any tax at redistribution.

(iv) Section 9 of the Finance Act, 2019, having deleted Section 23(n) of CITA (as amended), a unit trust is not expected to deduct withholding tax upon distribution of such dividend to its beneficiaries.

(v) Withholding tax deducted from payments to a Unit Trust shall be the final tax on such income provided that the said deduction is fully remitted to FIRS – section 78(4) of CITA (as amended).

Illustration 20.3

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

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

Required:

Compute the following for 2021 and 2022 assessment years:

(a) The un-expired risk that is attributable to the risk accepted in each year

(b) Assessable profits

(c) The gross premium liable to minimum tax.

Suggested solution 20.4

Apple Insurance Plc

(a) Computation of un-expired risk that is attributable to the risk accepted in the year

	2022	**2021**
	N'000	**N'000**
Reserve for un-expired risk c/f	65,000	50,000
Reserve for un-expired risk b/f	50,000	43,000
Un-expired risk that is attributable to the risk accepted in the year	15,000	7,000

(b) Computation of assessable profit

	N'000	**N'000**
2021 assessment year		
Net profit before claims		11,000
Less:		
Actual claims and outgoings	2,800	
Estimated claims and outgoings	3,000	5,800
Assessable profit		5,200
2022 assessment year		
Net profit before claims		12,000
Add estimated claims and outgoings (2021)		3,000
		15,000
Deduct actual claims and outgoings	2,500	
Estimated claims and outgoings (2022)	4,200	6,700
Assessable profit		8,300

(c) Computation of the gross premium (GP) liable to minimum tax

	2022 N'000	2021 N'000
Total premium written	125,150	122,000
Less premium returned to insured	8,200	7,100
Gross premium liable to minimum tax	116,950	114,900
Minimum tax based on gross premium @ 0.25% of GP	**N2,923,750**	**N2,872,500**

20.7.4 Determination of assessable profit and tax liability

(a) Life insurance business

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

	₦	₦	
Investment income		x	
Add:			
Other income, that is, fees and commission income		x	
Dividend from actuarial revaluation of unexpired risk or other distributions			
Gross income		x	
		x	
		x	
Deduct:			
i. General reserves	x		
Add life fund a/c	x		
	xx		
Restricted to amount equal to net liabilities on policies in force at time of actuarial valuation	x	x	
ii. Special reserves			
The higher of:			
1% of gross premium; or		x	
10% of net profit	x	x	
iii. All allowable business expenses		x	(x)
Assessable profit			xx
Capital allowance			(x)
Total profit			X

Tax payable shall be the higher of:

Tax @ specified rate of total profit computed, taking into consideration the gross income; or

Tax @ 0.5% of gross income

Notes:

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

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

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

	₦	₦
Investment Income (see working1)		x
Less: Agency commission in Nigeria	x	
Allowable expenses in Nigeria	x	
Fair proportion of head office expenses	x	(x)
Assessable profit		**x**

Working

Investment Income:

$$\frac{\text{Premium receivable in Nigeria}}{\text{Global premium of the company}} \times \frac{\text{Global investment income}}{1}$$

(b) Non-life insurance business

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

	₦	₦	₦
Gross premium			x
Less premium returned on cancelled policies			(x)
Net premium			xx
Add:			
Investment income		x	
Fees and commission income		x	
Rent received		x	
Estimated insurance claims for previous year, for example, re-insurance claims		x	x
Gross income			xx
Less non-taxable income (if any)			(x)
Net income			xx

Less:			
Reserve for unexpired risk calculated on time apportionment basis		x	
Re-insurance premium paid		x	
Commission		x	
Other allowable management expenses		x	
Insurance claims and outgoings:			
Actual total claims expenses (a)	x		
Add estimated total claims expenses (b)	x		
Total claims and outgoings claimable (a + b)	x	x	(x)
Assessable profit			**xx**
Less loss b/f (if any)			x
			xx
Add balancing charge (if any)			x
			xx
Less capital allowance			(x)
Total profit			**xx**

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

Notes:

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

(ii) Non-Nigerian company

Where a non-Nigerian company is engaged in non-life insurance business in Nigeria, the assessable profit would be determined just like that of the Nigerian company. However, only premium received in Nigeria will be taken into consideration and only expenses incurred in Nigeria will be allowed as deduction including a fair proportion of head office expenses.

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

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

For each class of insurance business, where there are more than one type of insurance (products) in the same class, they form one type of business and the loss of one shall be allowed against the income from another type of insurance business but the loss shall be available to be carried forward against profit from the same class of insurance business, and such loss can be carried forward indefinitely, effective February 1, 2020.

(c) Reinsurance business

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

	₦	₦	₦
Gross premium			x
Less premium returned on cancelled policies			(x)
Net premium			xx
Add:			
Investment income		x	
Fees and commission income		x	
Rent received		x	
Estimated insurance claims for previous year, for example, re-insurance claims		x	xx
Gross income			xx
Less non-taxable income (if any)			(x)
Net income			xx
Less:			
Reserve for unexpired risk calculated on time apportionment basis		x	
Re-insurance premium paid		x	
Commission		x	
Other allowable management expenses		x	
Insurance claims and outgoings:			
Actual total claims expenses (a)	x		
Add estimated total claims expenses (b)	x		
Total claims and outgoings claimable (a + b)	x	x	(x)
			xx
Add: Transfer to general reserve			
(i) General reserve < minimum authorised Capital			
50% of gross profit	X		

Or

(ii) General reserve ≥ minimum authorised capital

Restricted to 25% of gross profit	X	(xx)
Assessable profit		xx
Less loss b/f (if any)	x	
Relief	x	x
	x	xx
Add balancing charge (if any)		x
		xx
Less capital allowance	(x)	x
Total profit		**xx**

Tax payable shall be the higher of:
Tax @ specified rate of total profit computed, taking into consideration the gross income; or
Tax paid on 0.5% of gross premium

Notes:

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

20.9 Tax provisions of the National Information Technology Development Agency Act (NITDA) 2007

20.9.1 Introduction

Section 1 (1) of the National Information Technology Development Agency Act2007 (as amended) provides for the establishment of a body to be known as the National Information Technology Establishment of Development Agency.

Section 1 (2) provides that the agency shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

Establishment of the NITDA governing board

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

Composition of the NITDA governing board

The NITDA governing board shall consist of the following members:

(a) A chairman;

(b) A representative each of;

(i) The Federal Ministry of Science &Technology;
(ii) The Ministry of Communication;
(iii) The Federal Ministry of Education;

(iv) The Standards Organisation of Nigeria; and
(v) The Nigerian Society of Engineers;

(c) Four persons to represent the affiliate professionals' bodies of the computer registration of Nigeria;

(d) Two persons with cognate experience in information technology to represent the academic staff union of universities, and the academic staff union of polytechnics;

(e) Six persons who are experts in the area of information technology appointed by the President from each of the six geo-political zones of Nigeria; and

(f) The Director-General of the agency who shall be the secretary of the Board.

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

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

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

(b) On such terms and conditions as may be specified in his letter of appointment.

A member of the board shall cease to hold office if:

(a) He resigns his appointment as a member of the board by notice, under his hand, addressed to the President;

(b) He becomes of unsound mind;

(c) Becomes bankrupt or makes a compromise with his creditors;

(d) He is convicted of a felony or of any offence involving dishonesty or corruption;

(e) He becomes incapable of carrying out the functions of his office either arising from an infirmity of the mind or of the body; or

(f) The President is satisfied that it is not in the interest of the agency or of the public for the person to continue in office and notifies the member in writing to that effect.

When a vacancy occurs in the membership of the board, it shall be filled by the appointment of a successor to hold office for the remainder of the term of office of his predecessor provided that the successor shall represent the same interest as his predecessor.

The chairman and members of the board shall be paid such emoluments, allowances and benefits the federal government may, from time to time, direct.

Functions and powers of the Board

The Board shall have power to:

(a) Formulate overall policy for the management of the affairs of the agency;

(b) Manage the National Information Technology Development Fund established under Section 12 of the Act; and

(c) Appoint, promote, terminate, dismiss and exercise disciplinary control over the principal officers and senior staff of the agency;

(d) Structure the agency into such number of departments as it deems fit for the effective discharge of the functions of the agency; and

(e) Exercise such powers as are necessary or expedient for giving effect to the provisions of the

Act.

20.9.2 National information technology development Levy (NITDL)

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

20.9.3 Specified companies liable to pay NITDL

The specified companies liable to pay include:

(a) Cyber companies and internet providers;

(b) GSM service providers and all telecommunication companies;

(c) Pension managers and pension related companies;

(d) Banks and other financial institutions; and

(e) Insurance companies.

20.10 Tax provision for real estate companies, and real estate investment companies that are approved by the Security Exchange Commission (SEC) under the relevant provisions of real estate investment schemes (REIS).

20.10.1 Real estate companies

The taxes that relate to real property transactions in Nigeria are as follows:

(a) Companies income tax and personal income tax

Tax is imposed on the profits of a taxable person. Rent or any premium arising from a right granted to any other persons for the use or occupation of any property is subject to tax.

Individuals pay based on graduated tax rate which varies from 7% to 24% of the chargeable income whilst corporate bodies pay companies income tax at 20% or 30% of total profit, where the gross turnover is between ₦25 million and less than ₦100 million, and ₦100 million and above, respectively.

(b) Withholding tax

Where the recipients of incomes are companies and individuals, the payer of any income is expected to withhold 10% and 5% respectively.

The amount deducted by the payer should be remitted to the relevant tax authority within the period specified by law.

Withholding tax deducted on a dividend is regarded as final tax in the hand of the recipient.

(c) Tertiary education tax

Like other taxpayers, companies which are into real estate business are expected to pay tertiary education tax in addition to companies income tax.

The tertiary education tax is 2% of the assessable profit of a company, a small company with a gross turnover of ₦25 million and below is exempted from paying this tax.

(d) Value added tax

Real estate companies are required to register for VAT on commencement of business with the relevant tax authority.

Like companies in other sectors, all goods and services utilised in the real estate industry are to be invoiced and 7.5% of the value of the goods and services representing the value added tax should be remitted to the relevant tax authority.

(e) Land use charge

Property owners in Lagos State pay this charge annually. Some other charges that are similar to land use charge are tenement rate and ground rent. See chapter 12 for more details.

(f) Stamp duties

It is expected that all written documents relating to any property or interest in property, which are transferred or leased to any person, must be stamped. The rate of stamp duties is 75 kobo for every ₦200 of the consideration of certain real estate transactions like mortgages while for conveyances or the transfer or sale of real property is 75k for every ₦50.

20.10.2 Real estate investment companies that are approved by SEC under REIS

(a) Definition – section 105 of CITA (as amended)

"**Real estate investment company (REIC)"** as defined by Finance Act 2021, means a company (including a Real Estate Unit Trust) duly approved by the Securities and Exchange Commission to operate as a Real Estate Investment Scheme (REIS) in Nigeria.

(b) Statutory provisions

The regulations of real estate investment companies (REIS) in the Nigeria capital market include the provisions of the Investment and Securities Act 2007, the Securities and Exchange Commission Rules 2017, and other extant laws and regulations.

(c) Nature of business

REIS are investment vehicles which pool funds from investors comprising individuals, companies, pension funds, associations, etc. for investments in real estate as an asset class.

REIS are usually established to acquire, develop and hold portfolios of real estate assets, and do not generally hold single assets. They primarily engage in and invest in income generating real estate asset or real estate related asset.

Some REIS are structured to invest in specific property types whilst others focus their investments based on geographic location.

(d) Income of REIC

There are four broad classifications for the income of REIC, namely:

(i) Rental income;
(ii) Dividend from another REIC;
(iii) Gains from disposal of assets; and
(iv) Others, for example, fees and other income not related to REIS.

(e) Taxation of the income of REIC

(i) Dividend and rental income of REIC earned under a REIS

- **Section 19 of CITA (as amended)**
  This section relates to dividend as a basis for computing companies income tax due to no total profits or total profits are less than the amount of dividend paid. Rental and dividend income made by a REIC distributed to its shareholders under a REIS are exempt from section 19 of CITA. Put differently, the rental and dividend income redistributed to its shareholders shall be deducted from the total dividend paid in order to

arrive at the net amount of dividend to be considered for the purposes of section 19 of this Act.

It is apposite to state that for a dividend paid out by a REIC to be considered a redistribution under a REIS, the redistribution to shareholders must not be less than 75% of the rental or dividend income, and such redistribution must be done not later than 12 months after the end of the financial year in which the rental or dividend income was received by the REIC.

- **Section 23 (1) (s) of CITA (as amended)**
  Dividend and rental income received by a REIC under REIS are exempted from further tax in the hand of the company. Simply put, the gross amount of each of these incomes is treated as non-taxable income because the income is regarded as received on behalf of its shareholders.

  In computing the assessable profits of a company, rental and dividend income will be deducted from the profits, if already included in same.

  To qualify for this exemption, the REIC must ensure that:
  - A minimum of 75% of dividend and rental income received is redistributed as dividend to the shareholders; and
  - Such distribution is made not later than 12 months after the end of the financial year in which the dividend or rental income was earned.

Any rental or dividend income not distributed is chargeable to tax.

- **Section 24(1)(k) of CITA (as amended)**
  Dividends or mandatory distributions made by a REIC to its shareholders under REIS are allowable deduction for tax purposes.

  Given the fact that dividend or mandatory distribution made by a REIC to its shareholders is an expense relating to an exempt income, it shall not be allowed as a deduction in computing the company's assessable profits.

  It is pertinent to state that rental or dividend income received by a REIC will be treated as a taxable income, if the conditions stated in section 23(1)(s) of the Act is not met.

- **Section 80 of CITA (as amended)**
  Under section 80 of CITA, any distribution or dividend paid to a REIC pursuant to REIS shall not be subject to deduction of withholding tax. Based on the foregoing, such payment shall not be regarded as franked investment income unless when such payment is made to a REIC is not under a REIS.

- **Section 80(5)(6) of CITA (as amended)**
  A REIC is expected to withhold tax at the rate of 10% and remit same to the relevant tax authorities when a distribution or dividend is paid except such shareholder is a REIC under a REIS.

(ii) Gains from disposal of assets, fees, and other income not related to REIS

These incomes are not tax exempt as they are taxable in accordance with the provisions of the relevant tax laws.

20.11 Tax implications of the operation of the regulated securities lending transactions ('SEC Lending') in Nigeria

(a) Definitions and nature of transaction

(i) Definition of regulated security lending transaction

Section 105 of CITA, having been amended by the Finance Act, 2019, "regulated securities lending transaction" means any securities lending transaction conducted in accordance with rules made by Securities and Exchange Commission.

(ii) Other definitions

- "Lender" means an authorised lender in a regulated securities lending transaction.
- "Borrower" means an authorised borrower in a regulated securities lending transaction.
- "Lending agent" means any person authorised by the Securities and Exchange Commission to function as a go-between for the performance of a regulated securities lending transaction.
- "Compensating payments" means any payments made in lieu of interest or dividend in accordance with a regulated securities lending transaction.
- "Dividend" means compensating payments received by a lender from its authorised agent or borrower in a regulated securities lending transaction if the fundamental transaction giving rise to the compensating payment is a receipt of dividends by a borrower or any shares or securities received from its approved agent or a lender in a regulated securities lending transaction.

(b) Relevant regulatory provisions

The provisions of the Investment and Securities Act, Securities and Exchange Commission Rules 2013 (as amended) and other extant laws and regulations control the operation of SEC lending in the Nigerian capital market.

The taxation of SEC lending transactions is influenced by CITA and other relevant tax laws.

(c) Income

Income under a SEC lending covers the following:

(i) Dividends;
(ii) Interests;
(iii) Securities lending fees or any other right or reward arising from the securities loaned;
(iv) Rights;
(v) Bonus; and
(vi) Redemption benefits.

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

(i) Dividend and interest received

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

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

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

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

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

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

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

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

  Where the agent remits interest to the borrower, the agent is to deduct withholding tax.

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

(ii) Fees, rights, bonuses and other benefits

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

(e) Income received by an individual under a SEC Lending

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

(f) Relevance of Stamp Duties Act to SEC Lending

The following documents and transactions are exempt from stamp duties:

(i) All documents issued by the SEC in relation to a SEC Lending;

(ii) Shares, stocks or securities returned to a lender or its recognised agent by a borrower in accordance with the rules of SEC Lending;

(iii) Receipts given by any person under a SEC Lending; and

(iv) Shares, stocks or securities transferred by a lender to its agent or borrower in furtherance of a SEC Lending.

20.12 Tax provisions of the National Agency for Science and Engineering Infrastructure (NASENI) Act, 1992 (as amended)

20.12.1 Introduction

In1992, National Agency for Science and Engineering Infrastructure was established.

The agency shall be a body corporate with perpetual succession and a common seal, and may sue or be sued in its corporate name.

20.12.2 Establishment of the Board of the Agency

The Board shall consist of:

(a) The President as chairman;

(b) A full-time executive vice-chairman, who shall be a person with good knowledge of science and technology, to be appointed by the President;

(c) The Minister of the National Planning Commission or his representative;

(d) The Governor of the Central Bank of Nigeria or his representative;

(e) The Minister of Science and Technology or his representative;

(f) The Minister of Works and Housing or his representative;

(g) The Minister of Agriculture and Rural Development or his representative;

(h) The Minister of Health or his representative;

(i) The President or Chairman, as the case may be, or a representative of:

- (i) The Nigerian Academy of Science;
- (ii) The Nigerian Society of Engineers;
- (iii) The Council of Registered Engineers of Nigeria;
- (iv) The Manufacturers Association of Nigeria;
- (v) The National Association of Small Scale Industrialists;
- (vi) The Nigerian Association of Chambers of Commerce;
- (vii) Industry, Mines and Agriculture; and

(j) Two other persons to be appointed on personal merit by the President.

The Vice-chairman shall be the chief executive and accounting officer of the Agency.

20.12.3 Functions and Powers of the Board

(a) The functions of the Board shall be to:

(g) Formulate policies and advise the Federal Government on:

- The establishment by the public and private sectors, of a national science and engineering infrastructure; and
- The exploitation, acquisition, conservation and stockpiling strategic materials;

(ii) Receive and consider proposals, recommendations and suggestions by the Technical Advisory Committee and by other bodies and persons or subjects relating to the functions of the Agency;

(iii) Consider and approve the capital development plans of the Agency, and consider and award contracts which lie within its competence;

(iv) Appoint:
- Employees necessary for the proper discharge of the functions of the Agency; and
- Committees as may be expedient which shall be charged with specific functions delegated by the Board;

(v) Devise strategies for attracting funds and contributions and implement mechanisms for collecting such funds and contributions and paying them into the account of the Agency:

(vi) Submit to the President the annual report and audited accounts of the Agency; and

(vii) Carryout any other duties as the President may, from time to time, direct.

(b) Powers of the Board

The Board shall have power to:

(i) Open and operate ordinary and domiciliary accounts for the Agency in recognised banking institutions in Nigeria;

(ii) Enter into research and production partnerships with any company, firm or individuals, as may be necessary, for the performance of the functions of the Agency, provided that a partnership which is of the value of N50million or above shall require the prior approval of the President;

(iii) Specify the management system, including financial approval ceilings, for the officers of the Agency;

(iv) Devise and operate a programme of "Volunteers for National Science and Engineering Infrastructure for securing the contributions of Nigerian experts who are resident abroad; and

(v) Do such other things as are necessary for the successful performance of the functions of the Agency.

20.12.4 Establishment of technical advisory committees

The agency may establish technical advisory committees in areas of science and engineering, to assist the Agency in various aspects of its responsibilities.

The members of a technical advisory committee shall be appointed by the Agency and be persons who possess the expertise and the experience in the relevant areas of science and engineering.

20.12.5 Fund of the Agency

(a) The Agency shall establish a fund from which shall be defrayed all expenditure incurred by the Agency for the purposes of this Act.

(b) There shall be paid and credited to the fund, as amended by section 37 of the Finance Act 2021, the following

(i) "1% of the Federation Account;

(ii) Levy or profit before tax of commercial companies and firms with turnover of N100,000,000 and above covering the banking, mobile telecommunications, ICT, aviation, maritime, oil and gas sectors which shall be:
- At the rate of 0.25%;
- Collected by the Federal Inland Revenue Service (FIRS); and
- Credited to the account of the Agency;

(iii) Contributions from the organised private sector;
(iv) Foreign aid and assistance from bilateral and multilateral agencies;
(v) Fees charged for services rendered by the Agency; and
(vi) All sums accruing to the Agency by way of gifts, endowments, bequests or other voluntary contributions by persons and organisations".

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

20.13.1 Introduction

In 2021, the FIRS issued an information circular on "guidelines on the tax treatment of non-governmental organisations (NGOs), to provide clarifications on the application of the provisions of CITA, PITA, CGT and VAT Acts on the income, operations and activities of NGOs.

20.13.2 Definition of an NGO

An NGO as defined by FIRS "is a not-for-profit association of persons incorporated as a company limited by guarantee under PART A of the Companies and Allied Matters Act (CAMA) 2020 or registered under PART C of the Act, or under any other law in force in Nigeria, or registered under the laws of a foreign jurisdiction and approved as such in Nigeria".

The object of such entities is to provide a given public good, not to carry on business for the purpose of making profits for the distribution to their members.

For the avoidance of doubt, NGOs include organisations, institutions and companies engaged in ecclesiastical, charitable, benevolent, literary, scientific, social, cultural and sporting activities of a public character. Additionally, any co-operative society registered under any law within the federation is expected to receive similar treatment as on NGO.

20.13.3 Definition of public character

Based on the provisions of section 105 of CITA (as amended), "public character" means an organisation or institution that:

a) Is registered in accordance with the relevant law in Nigeria; and
b) Does not distribute or share its profit in any manner to its members or promoters.

It is pertinent to state that the income of the organisation should be wholly utilised for the objects of same in the interest of the public.

Where an organisation distributes its assets whether in cash or in kind, such as the gift of any asset to a promoter or members, such a transaction is regarded as distribution of profit.

20.13.4 Registration with FIRS for tax purposes

NGOs are expected to register for tax purposes, obtain tax identification number (TIN) and file the following documents with the FIRS:

(a) A copy of registration certificate issued by Corporate Affairs Commission (CAC) in Nigeria or other instruments of incorporation issued to the foreign NGO or any other document evidencing exemption from incorporation in Nigeria;

(b) Certified true copy (CTC) of memorandum and articles of association, constitution or rules and regulations governing the NGO;

(c) List and profiles of the trustees/board members nominated; and

(d) Other relevant documents that may be required at the time of registration.

20.13.5 Designated medium tax offices (MTOs) of FIRS

The FIRS has designated the following medium tax offices in geo-political regions for the registration of NGOs for tax purposes:

(a) MTO Lagos island, in Lagos state;
(b) MTO Abuja for North-Central geopolitical region and FCT;
(c) MTO Kano for North-East and North-West geo-political regions;
(d) MTO Enugu for South-East geo-political region;
(e) MTO Port Harcourt for South-South geo-political region; and
(f) MTO Ibadan for South-West geo-political region

20.13.6 Filing of tax returns

Section 55(1) of CITA (as amended) provides that every NGO shall file tax returns annually and such a return shall contain.

(a) The audited accounts, together with the tax computations and a written true and correct statement specifying the amounts of its computed surplus from each and every source in accordance with the relevant provisions of CITA;

(b) Such particulars in the required form for the purpose of the Act relating to such profits, allowances, reliefs and deductions;

(c) A signed declaration by a trustee, director, secretary or any authorised person of the organisation stating that the information as contained in the return is true and correct; and

(d) The period for filing returns shall be as stipulated in the relevant tax laws.

20.13.7 Obligation to pay companies income tax (CIT)

Based on the provision of section 23(1)(C) of CITA (as amended), the profits of any company engaged in ecclesiastical or charitable activities of a public character shall be tax-exempt provided that such profits are not derived from any trade or business carried on by such organisation or association.

For the avoidance of doubt, the income exempted from tax include subscription fees by members, donations, grants, zakat, offerings, tithes, funds realised from launchings, etc. However, it should be noted that income or profits of such organisations liable to tax include:

(a) Profits arising from trade or business carried on, such as proceeds from sale of goods or merchandise , provision of consultancy, professional or other services for a fee; and
(b) Investment income, such as interest, rent, royalty, dividend or similar income.

The above notwithstanding, an NGO has the responsibility to deduct WHT on contracts awarded to suppliers and contractors, including other qualifying payments and remit amounts deducted to the relevant tax authorities in the currency of transaction.

20.13.8 Tax relief to any company making donations to an organisation listed under the fifth schedule to CITA (as amended)

Section 25 of CITA (as amended), provides that such a company will be given a tax relief provided that:

(a) The donation is made out of its profits for that year of assessment;
(b) The total donation shall not exceed 10% of the total profits of that assessment year before the deduction for donation; and
(c) Such donation is not of capital nature, except where the donations are made to universities or other tertiary or research institutions or any developmental purpose and this should not exceed 15% of total profits or 25% of tax payable in the year, whichever is higher.

Any NGO that is interested to be listed under the fifth schedule to CITA (as amended) is at liberty to supply to the Minister of Finance for enlistment through the FIRS.

20.13.9 Liability to personal income tax (PIT)

Despite the tax exemption of profits of NGOs not arising from trade or business carried on by the organisation, the following income of individual promoters and employees of NGOs are not tax exempt:

(a) Emoluments of promoters;
(b) Fees, other remuneration or benefits-in-kind paid to trustees and guarantors; and
(c) Salaries or other remuneration of employees.

It is the responsibility of an NGO under the PAYE obligation to deduct tax at source from salaries and other emoluments of employees, directors, officers, etc. and remit same to the relevant tax authorities in the currency of payment of the emoluments.

20.13.10 Liability for capital gain tax (CGT)

Based on the provision of section 26 of the Capital Gains Tax Act (CGTA) Cap CI LFN 2004 (as amended), where the following two conditions are jointly fulfilled, the gains from the disposal of chargeable assets of NGOs are exempted from tax.

(a) The gains are not derived from the disposal of asset acquired in relation to any trade or business carried on by the organisation; and
(b) The gains are used purely for the purpose of the activities of the organisation.

20.13.11 Liability to value added tax (VAT)

The VAT Act (as amended) provides that VAT on goods purchased by NGOs for use in humanitarian donor-funded projects is at zero rate. Similarly, any service procured or consumed by NGO is liable to VAT at the prevailing rate, save where such service is exempt under the VAT Act.

The above notwithstanding, VAT shall be applied at the prevailing rate where an NGO procures contracts or purchases goods not directly used in humanitarian donor-funded projects.

NGOs shall self-account for VAT and remit same to the FIRS where goods or services are procured from persons not liable to VAT or from non-resident suppliers.

NGOs shall charge VAT on all taxable goods and services supplied and remit same to the FIRS as and when due. The returns shall be filed with FIRS on or before the 21st day of the month following that in which the purchase or supply was made.

20.13.12 Other statutory responsibilities of NGOs

NGOs are required to:

(a) Maintain accurate record of employees; and

(b) Maintain proper books of accounts.

Non-compliance with the requirements stated above, attracts penalties under the extant tax laws.

20.14 Provision of the Nigeria Police Trust Fund (Establishment) Act, 2019, as it relates to the levy of 0.005% of the net profit of companies operating in Nigeria

20.14.1 Introduction

In 2019, the Nigeria Police Trust Fund (Establishment) Act was enacted by the National Assembly and signed into law by the President.

The objective of the Act is "to provide a legal framework for management and control of the special intervention fund established under section 3 of the Act for the training and retraining of personnel of the Nigeria Police Force and for the provision of state of the art security equipment and other related facilities for the enhancement of the skills of the personnel of the Nigeria Police in the handling of operational equipment and machineries".

The Trust Fund is to operate for six years from the commencement of the Act and is expected to cease at the expiration the period unless it is extended by an Act of the National Assembly for any further period.

The Act established a fund known as the Nigeria Police Trust Fund which is a body corporate with perpetual succession and a common seal, and may sue and be sued in its corporate name.

20.14.2 Sources of the Trust Fund

The Trust Fund shall consist of:

(a) An amount consisting of 0.5% of the total revenue accruing to the Federation Account;

(b) A levy of 0.005% of the net profit of companies operating in Nigeria;

(c) Any take-off grant and special intervention fund as may be provided by the Federal, State and Local Government of the Federation;

(d) Such money as may be appropriated to meet the objective of the Act by the National Assembly in the budget;

(e) Aids, grants and assistance from international, bilateral and multilateral agencies, non-governmental organisations and the private sector;

(f) Grants, donations, endowments, bequests and gifts, whether of money, land or any other property from any source; and

(g) Money derived from investment made by the Trust Fund.

The Trust Fund shall be utilised as follows:

(a) For meeting the training and re-training needs of the personnel of the Nigeria Police Force and its auxiliary staff within and outside Nigeria;

(b) For the enhancement of the skills of the personnel of the Nigeria Police Force and its auxiliary staff for improved proficiency in the use of operational equipment and machineries;

(c) For the overall improvement, performance and efficiency in the discharge of the duties and responsibilities of the Nigeria Police Force;

(d) For the purchase of equipment, machineries, including operational vehicles for the Nigeria Police Force;

(e) For the construction of police stations, provision of living facilities, such as quarters or barracks for the Nigeria Police Force;

(f) To finance the procurement of books, instructional materials, training equipment for use at Police Colleges and such other similar training institutions;

(g) To meet the cost of participation by the personnel of the Nigeria Police Force at seminars and conferences relevant to, or connected with, policing or intelligence gathering; and

(f) For such other purposes incidental to, or connected with, the attainment of objective of the Act.

20.14.3 Assessment, collection and enforcement of the payment of the levy

Section 4(3) of the Nigeria Police Trust Fund (Establishment) Act as amended by the Finance Act 2021, states that "the Federal Inland Revenue Service shall assess, collect, account and enforce the payment of the levy imposed by subsection (1)(b) and the provisions of the Companies Income Tax Act Cap. C21 LFN 2004 (as amended) and the Federal Inland Revenue Service (Establishment) Act No 13, 2007 (as amended) shall apply to the administration, assessment, collection, accounting, returns and enforcement of the levy.

The levy is 0.005% of the net profit of companies operating business in Nigeria.

20.15 Incentives that are granted to companies engaged in gas utilization (downstream operations) - section 39 of CITA (as amended)

(1) **"**Where a company is engaged in a trade or business of gas utilisation is downstream operations, the company shall, in respect of that trade or business, be granted the following incentives:

(a) An initial tax-free period of three years which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years; provided that:

(i) This incentive is claimable not more once by the same company;

(ii) Any company formed from reorganisation, restructuring, buy-back or other similar schemes out of a company which has already enjoyed this incentive shall not be entitled to it; and

(iii) Thus incentive shall not apply to any company that has claimed an incentive for trade or business of gas utilisation under any law in Nigeria, including the Petroleum Profits Tax Act or the incentives under the Industrial Development (Income Tax Relief) Act.

(b) As an alternative to the initial tax-free period granted under paragraph (ii) of this subsection, an additional investment allowance of 35% which shall not reduce the value of the asset, and a company shall not further claim the additional investment allowance of 15% in section 39(1)(c)(ii) – see below.

(c) Accelerated capital allowance after tax-free period, that is:

(i) An annual allowance of 90 percent with 10 percent retention, for investment in plant and machinery; and

(ii) An additional investment allowance of 15 percent which shall not reduce the value of the asset

(d) Tax free dividends during the tax free period, where

(i) The dividend for the business was in foreign currency; as

(ii) The introduction of imported plant and machinery during the period was not less that 30 percent of the equity share capital of the company.

(2) The tax-free period of a trade or business shall start on the day the trade or business commences production as certified by the Ministry of Petroleum Resources.

(3) Definitions

"Gas utilisation" means the marketing and distribution of natural gas for commercial purposes and includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines.

"Tax-free period" means the tax-free period referred to in subsection (1)(a) of this section".

20.16 Digital economy (including taxation of income from e-commerce and e-business)

20.16.1 Introduction

Generally, business transactions are undertaken with the traditional view of a market in mind and taxation of these market activities has been a source of government revenue.

Global industrialisation and efficiency in the dynamics of production and distribution of goods and service has significantly changed the pre-historic perception of a market from being a designated location for exchange of goods and services to boundless geography bolstered by daily human interactions in search for ways to meet their basic needs. This trend is the same with both developed and developing economies like Nigeria.

Obviously,technologyhasledthewayinprovidingaplatformforthesevoluminousand boundless transactions to happen leading to the creation of a system of trade known as e-commerce which has made international trade easier, faster and less burdensome while at the same time advancing the per capita income of participants therein.

Essentially, e-commerce presents a major challenge for tax administrations, given the often multi-jurisdictional nature of the transactions and the potential anonymity of the parties.

It is, therefore, crucial to give the subject a critical examination through the lenses of relevant statutes.

20.16.2 Definition of e-commerce

The term "Electronic Commerce" sounds so familiar. Everybody seems to have an understanding of what it means. The term is used on a daily basis in newspapers or on television. However, looking at the term "Electronic Commerce" from a more academic point of view, one realises that there is no standard definition of "Electronic Commerce".

The definitions differ significantly depending on the various authors and sources. Some definitions include all financial and commercial transactions that take place electronically, including electronic data interchange, electronic funds transfers, and all credit/debit card activity. Others limit electronic commerce to retail sales to consumers, definitions include all financial and commercial transactions that take place electronically, including electronic data interchange, electronic funds transfers, and all credit/debit card activity. Others limit electronic commerce to retail sales to consumers

The following are some of the definitions offered on e-commerce:

"The use of electronic networks to exchange information, products, services and payments for commercial and communication purposes between individuals (consumers) and businesses, between businesses themselves, between individuals themselves, within government or between the public and government and between business and government." (Source - "Green Paper on Electronic Commerce for South Africa.")

"Electronic commerce refers generally to all forms of transactions relating to commercial activities, including both organisations and individuals that are based upon the processing and transmission of digitised data, including text, sound and visual images." (Source – OECD)

"Electronic Commerce is about doing business electronically. It is based on the electronic processing and transmission of data, including text, sound and video. It encompasses many diverse activities including electronic fund transfer, electronic share trading ... direct consumer marketing, and after-sales service. It involves both products and services." (Source - European Commission)

Judging by the various definitions offered on e-commerce, one thing is common and that is the use of electronics in the conduct of business transactions. Therefore, e-commerce can be defined literally to mean all transactions whether visible or invisible which are conducted electronically.

20.16.3 Difference between e-commerce and e-business

Most often, the terms "e-business" and "e-commerce" are used interchangeably; however, they are not synonymous. E-commerce refers to buying and selling online, while e-business encompasses all business conducted online. Therefore, e-commerce can be viewed as a subset of e-business.

Below are the differences between e-commerce and e-business.

	E-commerce	**E-business**
1	E-commerce involves commercial transactions done over the internet.	E-business is conduct of business process on the internet.
2	E-commerce is use of electronic transmission medium that caters for buying and selling of products and services	In addition, e-business also includes the exchange of information directly related to buying and selling of products.
3	Thus, those activities when essentially involve monetary transactions are termed "e-commerce"	In addition, it includes activities like procurement of raw materials or goods, customer education, looking for suppliers etc.
4	E-commerce usually requires the use of just a Website.	E-business involves the use of CRM's, ERP's that connect different business processes.
5	E-commerce involves the mandatory use of internet	E-business can involve the use of internet, intranet or extranet.

	E-commerce	E-business
6	E-commerce is narrower concept and restricted to buying and selling.	E-business is a broader concept that involves market surveying, supply chain and logistics management and using data mining.

20.16.4 Current treaty rules for taxing business profit: implications for e-commerce

Whilst there are significant differences between bilateral tax treaties, the principles underlying the treaty provisions governing the taxation of business profits are relatively uniform and may be summarised as follows:

(a) Liability to a country's tax: residents and non-residents

Under the rules of tax treaties, liability to a country's tax first depends on whether or not the taxpayer that derives the relevant income is a resident of that country. Any resident taxpayer may be taxed on its business profits wherever arising (subject to the requirement that the residence country eliminate residence-source double taxation) whilst, as a general rule, non-resident taxpayers may only be taxed on their business profits to the extent that these are attributable to a permanent establishment situated in the country (see below for the exceptions to that general rule).

Residence, for treaty purposes, depends on liability to tax under the domestic law of the taxpayer. A company is considered to be a resident of a State if it is liable to tax, in that State, by reason of factors (e.g. domicile, residence, incorporation or place of management) that trigger the widest domestic tax liability. Since the reference to domestic factors could result in the same company being a resident of the two countries that have entered into a treaty, treaties also include so- called "tie-breaker" rules that ensure that a taxpayer will have a single country's residence for purposes of applying the treaty. The tie-breaker rule of the OECD Model Tax Convention provides that a company that is considered to be a resident of two countries is a resident only of the country in which its place of effective management is situated.

(b) Permanent establishment (PE): the treaty nexus/threshold for taxing business profits of non-residents

Treaty rules for taxing business profits use the concept of permanent establishment as a basic nexus/threshold rule for determining whether or not a country has taxing rights with respect to the business profits of a non-resident taxpayer. That threshold rule, however, is subject to a few exceptions for certain categories of business profits. The permanent establishment concept also acts as a source rule to the extent that, as a general rule, the only business profits of a non-resident that may be taxed by a country are those that are attributable to a permanent establishment.

The basic treaty definition of "permanent establishment" is "a fixed place of business through which the business of an enterprise is wholly or partly carried on". That definition incorporates both a geographical requirement (i.e. that a fixed physical location be identified as a permanent establishment) as well as a time requirement (i.e. the presence of the enterprise at that location must be more than merely temporary having regard to the type of business carried on).

In order to be able to conclude that part or the whole of the business of an enterprise is carried on through a particular place, that place must be at the disposal of that enterprise for purposes of these business activities. The treaty definition of permanent establishment provides, however, that if the place is only used to carry on certain activities of a preparatory or auxiliary character, that place will be deemed not to constitute a permanent establishment notwithstanding the basic definition.

The basic definition of permanent establishment is supplemented by a rule that deems a non-resident to have a permanent establishment in a country if another person acts in that country as an agent of the non–resident and habitually exercises an authority to conclude contracts in the name of the non- resident.

That rule, however, does not apply to independent agents acting in the ordinary course of their business.

The interpretation of the current treaty definition of permanent establishment in the context of e- commerce has raised some questions. The OECD has now clarified how it considers that the definition should be applied with respect to
e-commerce operations. The main conclusions that it has reached in that respect are as follows:

(i) A web site cannot, in itself, constitute a PE;

(ii) Web site hosting arrangements typically do not result in a PE for the enterprise that carries on business through the hosted web site;

(iii) Except in very unusual circumstances, an Internet service provider will not be deemed (under the agent/permanent establishment rule described above) to constitute a permanent establishment for the enterprises to which it provides services; and

(iv) Whilst a place where computer equipment, such as a server, is located may in certain circumstances constitute a permanent establishment, this requires that the functions performed at that place be such as to go beyond what is preparatory or auxiliary.

As already mentioned, there are a number of exceptions to the permanent establishment nexus/threshold general rule as regards some categories of business profits.

On the one hand, some categories of profits may be taxed in a country even though there is no permanent establishment therein. This is the case of:

(i) Profits derived from immovable property (e.g. hotels, mines etc.),which, in all or almost all treaties, may be taxed by the country of source where the immovable property is located;

(ii) Profits relating to the performance of entertainers and athletes, which, in all or almost all treaties, may be taxed by the country of source where the performance takes place;

(iii) Profits that include certain types of payments which, depending on the treaty, may include dividends, interest, royalties or technical fees, on which the treaty allows the country of source to levy a limited tax based on the gross amount of the payment (as opposed to the profit element related to the payment);

(iv) Under some treaties, profits derived from collecting insurance premiums or insuring risks in the source country; and

(v) Under some treaties, profits derived from the provision of services if the presence of the provider in the country of source exceeds 183 days in a 12-month period.

An aircraft in international traffic may not be taxed by the source country even though there is a permanent establishment situated in that country. Most treaties also provide that capital gains (except on immovable property and business property of a permanent establishment) may not be taxed by the country of source.

(c) Computation of profits: the separate entity accounting and arm's length principles

The treaty principles for computing the business profits that may be taxed by a country are similar whether a country has taxing rights over business profits because these profits are those of a resident taxpayer or because these business profits are attributable to the permanent establishment of a non- resident taxpayer.

In both cases, the rules for computing the business profits that may be taxed by the source country are based on the separate entity accounting and arm's length principles. Thus, each legal person or permanent establishment is generally treated as a separate taxpayer regardless of its relationship with other entities or parts of an entity. Each branch or subsidiary that is part of a multinational enterprise is therefore treated separately for purposes of the computation of profits under tax treaties, with the important proviso that, for purposes of determining the profits of each such branch or subsidiary, the conditions (i.e. primarily the price) of intra-group transactions may be readjusted to reflect those that would prevail between independent enterprises (the arm's length principle).

The OECD, in its Transfer Pricing Guidelines (1995, in paragraphs 5 and 6of the preface), identifies the "separate entity approach as the most reasonable s means for achieving equitable results and minimising the risk of unrelieved double taxation," notes that, "to apply the separate entity approach to intra-group transactions, individual group members must be taxed on the basis that they act at arm's length in dealing with each other," and concludes, "To ensure the correct application of the separate entity approach, OECD Member Countries have adopted the arm's-length principle.

The "traditional" methods of determining arm's length prices (contained in Chapter II of the OECD Transfer Pricing Guidelines) are a) comparable uncontrolled prices (CUP), b) resale price (minus a margin), c) cost plus (a mark- up). In recent years, reflecting problems in applying the traditional methods, two additional "transactional profits methods" have been added to the OECD Transfer Pricing Guidelines: the "profit split method" and the "transactional net margin method."

Profit split method. The profit split methodology first identifies the combined profit to be split between the affiliated enterprises from controlled transactions and then seeks to divide that profit based on the functions performed, assets used and the risks assumed by each. The profits to be split may be either the total combined profits from the controlled transactions or the residual profits that cannot be easily assigned to any of the enterprises on some appropriate basis, after providing a basic return to each entity for the activities performed.

Transactional net margin method - The transactional net margin method examines profit margins, relative to an appropriate base such as costs, sales, or assets. Thus it operates in a manner similar to the cost plus and resale price methods.

The OECD notes at paragraph 3.49 of the transfer pricing guidelines that traditional transaction methods are to be preferred over transactional profit methods. It is however recognised at paragraph 3.50 that there are cases of last resort where traditional transaction methods cannot be applied reliably or exceptionally at all and so where transactional profit methods have to be applied. The paragraph concludes that as a general matter the use of transactional profit methods is discouraged. Since 1995, however, there has been a much wider use of profit methods by both taxpayers and tax administrations, especially to deal with the integration of functions within a multinational group (see the 1998 OECD Global Trading Report) and with unique and highly valuable intangibles. Further, the OECD is currently reviewing the treatment of profit methods as part of the process of monitoring the transfer pricing guidelines.

(d) The treaty rules for sharing the tax base between States where there is nexus Since tax treaty rules allow for business profits to be taxed by both the source and residence countries in some cases, the same business profits may be subject to competing claims by these countries. Such competing claims are addressed by giving priority to source taxation.

This priority is ensured by rules that either provide for the exemption from residence taxation of items of income with respect to which a tax treaty grants source taxation rights to the other State or that allow the source country's tax to be credited against the residence tax on such items.

As treaty rules also allow certain categories of profits to be taxed by a source country where there is no permanent establishment (see above), there can be, in certain cases, taxation in the State of source, in the State where the permanent establishment to which such profits are attributable is located and in the State of residence of the taxpayer to which that permanent establishment belongs.

Tax treaties provide for the elimination of such triple taxation by giving priority (through the exemption/credit rules described above) to source taxation, then to taxation in the State where the permanent establishment is located, with residual taxation rights being given to the State of residence.

(**Source**: OECD Centre for Tax Policy and Administration (2004)

20.16.5 Complexities of e-commerce taxation

E-commerce has become an integral part of everyday life and accessibility to e-commerce platforms is not a privilege but rather a necessity for most people in the urban areas.

As of December 2017, 4.1 billion of the world's population has internet access out of which Nigeria has a total of 98.3 million internet and broadband subscribers. This penetration of internet coupled with the increasing confidence of the internet users to purchase online, has led to an increasing confidence of the internet users to purchase online, and has led to an enormous growth in the e-commerce space.

Taxation of e-commerce

Many companies today run profitable enterprises outside their home countries through websites hosted on servers they neither own nor operate. Physical presence to perform the traditional commercial activities is no longer required; technology invention has replaced the physical transactions with bytes and data.

The internet has made international borders inconsequential for e-commerce and business transactions, leaving countries with the challenge of developing a workable tax policy for those online dealings. Due to non-existence of geographical boundaries in the e-commerce world, the question, where profits should be taxed becomes crucial. This also challenges the fundamental principal and assumptions of international taxation such as physical presence, place of residence of a person etc. that are the very basis of ascertaining tax liability.

Tax rules in Nigeria

The provisions of the Companies Income Tax Act 2004 (as amended), govern the taxation of income in Nigeria. As per the provision of the act, international taxation in Nigeria is as per the following principles:

(a) Jurisdictional nexus

The prime principal that determines whether tax can be levied on commerce or not within territorial jurisdiction of Nigeria is defined.

(b) Source of income

The source based taxation rule provides authority to tax the income in the source country, i.e. the profit from e-commerce transactions shall be taxed in the country of its origin.

(c) Status principle

Resident and non-resident principle determines whether the person is eligible for taxation in Nigeria on its global income or Nigerian income only.

Please note that the above principles are governed by the provisions of section 13 (2) of CIT Act, 2004 as amended.

Tax complexities in e-commerce

With the accessibility to internet across borders, e-commerce transactions can involve people who are resident of more than one country. Therefore, income arising out of such transactions may be taxed in more than one country. E-commerce raises twin problems:

(a) The determination of the **character of income that is generated** by the e-commerce transaction: is it royalty, business profit, or fees for technical service?

(b) The determination of income liable for tax, which necessitates the establishment of **the existence of a permanent establishment (PE)** and determination of attributes of income, if any, to the PE.

Income characterization

The act as well as the tax treaties imposes different tax treatment on different types of cross-border income. For example, business profits are generally sourced to the country where the income- producing business is based and taxed on a net basis. Royalty income, on the other hand, is generally sourced to the country where intellectual property was used (e.g. the country where the consumer of the intellectual property is resident) and may be subject to gross withholding taxes.

The digital world raises a number of problems with respect to income characterization issues. Cross-border transaction involving the transmission of digital goods and services often makes it difficult to determine whether a transfer of product has occurred, whether services have been performed, or whether an intangible product has been licensed. The problem is that transactions involving e-commerce are very difficult to track thereby making it difficult for the tax authority to impose tax.

The existence of permanent establishment

Under the Nigerian tax system, companies resident in Nigeria are liable to pay tax on their global income whilst non-resident companies are subject to tax in Nigeria only on the activities carried out within Nigeria through a permanent establishment.

For a non-resident company therefore, where a tax liability arises in more than one jurisdiction, the company can seek relief from double taxation under existing double taxation treaties, which are by and large adaptations of the OECD model tax convention.

The main challenge posed by e-commerce to the Nigerian tax system is that the law that governs direct taxes i.e. income taxes, are presently premised on the concept of permanent establishment (PE) as presently defined in the double taxation treaties. With the advent of e-commerce, the need for physical presence in the country receiving the goods or services is removed or at best diminished. This creates the problem of how to determine the right to tax profits that are derived from e-transactions.

On indirect taxes (VAT), the major challenge is how to track e-commerce transactions for purpose of VAT collection.

Source: Rakesh Nangia & Neha Malhotra (2015)

20.16.6 CIT, VAT and WHT implications one-commerce

As earlier explained, the taxation of profits derived from e-commerce activities would be almost impossible due to the problems posed by the nature of the transactions such as the difficulty in tracking the transactions, the ability to determine physical presence, etc.

However, in order to counter most of the problems posed by the emergence of e-commerce activities so as to enable tax authorities (particularly in developing countries) to be able to properly track and levy tax on e-commerce activities, there is the need to institute a legal framework for the taxation of electronic transactions.

Essentially, the legal framework for the taxation of e-transactions must adopt the OECD model for the taxation of e-commerce.

Challenges of taxation of e-commerce transactions in Nigeria CIT implication on e-commerce

Income taxes are premised on structure, as imposition of income tax is limited to a particular geographical location of a taxable entity i.e. company, with the basic consideration of source of income and fixed base. Section 9 of the Companies Income Tax Act Cap LFN 2004 (as amended), expounds on this by subjecting to income tax all profits of any company from any trade accruing in, derived from, brought into or received in Nigeria.

Also, section 13 of CITA 2004, further provides for the tax assessment of a non- Nigerian company where the taxable entity has a fixed base for business purposes, does business through an authorised agent and operates a business (contract for surveys, deliveries, installation or construction) in Nigeria.

The above is a clear limitation on the assessment and imposition of tax on a non- resident company in Nigeria. The express restriction imposed by "fixed base in Nigeria" has strong tax implications on e-commerce. How then does the Nigerian government impose income tax on a foreign business transacting business via the internet with a Nigerian wherein:

(a) The non-resident has no fixed place of business;

(b) Has no agency relationship with any person; and

(c) The objects of the business do not conform to the relevant income tax legislations.

These queries posit obvious answers that where the above conditions do not exist; the only logical conclusion is that gains/profits from such transaction are a loss to the government tax-wise.
While local transactions are wholly chargeable to tax except where allowances and pioneer status apply, the ability of the relevant tax authority to access and assess chargeable income is put to test. This is the stiffest of all tests as the relevant tax authority is saddled with the responsibility of tracking e-transactions, which is a herculean task.

The principles of source and residence have formed the basis for taxation internationally.

The nature of e-trade, whether it is for tangible or intangible goods and services is a key consideration in administering tax on e-commerce related transactions. Therefore, it is important to institute policies that encourage and monitor e-payments as well as ensure a liaison between the e-payment systems, banks, the authority themselves and the annual returns filed by companies.

The implication of the above is that it will aid the tax authority in tracking and identifying profits attributable to e-transactions that are liable to Nigerian tax. This would reduce or eliminate the current tax revenue leakages that exist in e-commerce activities.

VAT implication of e-commerce

The general principle for imposing VAT is the destination principle. Under this principle, VAT is imposed at the point of consumption/rendition of goods and services. The Nigerian Value Added Tax Act Cap V1 LFN 2004 (as amended) is also premised on this principle.

Section 2 of the VAT Act 2004 provides that tax shall be charged and payable on the supply of all goods and services save goods and services specifically exempted. Therefore, in interpreting the above section, the Act defines supply of goods to mean "any transaction where the whole property in the goods is transferred or where the agreement expressly contemplates that this will happen and in particular includes the sale and delivery of taxable goods or services used outside the business, the letting out of taxable goods on hire or leasing, and any disposal of taxable goods". It is therefore evident that the supplies of goods relate to physical goods. Also, the Act also interprets the supply of services to include any service provided for a consideration.

The implication of the above interpretation is that for VAT to apply, it must have been included in the prices of goods and services. Also, where the transaction is for the supply of taxable goods for consideration other than cash, the value shall be deemed to be its market value.

In the above instance and bearing in mind the fundamentals of VAT, it can be safely assumed that VAT is payable at the location of supply. It is also logical to conclude that the fact that an order is made via the internet does not obliterate the incidence of VAT where there is a delivery of the goods.

Furthermore, the VAT Act also provides that the value of imported taxable goods shall be equal to its price that is inclusive of all taxes as well as other charges levied outside Nigeria apart from the VAT and all costs by way of commission and other related costs up to the place of importation are equal to the price.

The VAT Act also provides for the registration of a taxable person within six months of the commencement of business. A non-resident company is expected to register for tax using the address of the person with whom it has a subsisting contract.

From the foregoing, it is evident that where there is a supply of goods, irrespective of whether the order was made via the internet or through physical contact that the transaction should be liable to VAT.

WHT implication one-commerce

As earlier explained, once the principle of source and destination is clearly defined and policies that encourage/monitor e-payments as well as ensure liaison between the e-payment systems, banks and the authorities themselves (including the annual returns filed by companies) are put in place, then the tracking and identification of incomes from e-transactions by the relevant tax authorities will be possible. Therefore, the imposition of WHT on e-commerce will be very evident i.e. WHT will be applicable on the supply of goods and services consumed in Nigeria, thereby increasing the revenue generation by the tax authority.

In spite of the above, it is important that the current income tax law is amended to properly cater for the taxation of e-commerce transactions. Also, there is the need for the tax authority to come up with a clarification note i.e. official circular, on tax implication of e-commerce transactions and or e-business generally.

20.16.7 Taxation issues in e-commerce

The rise of Internet commerce will present a range of challenges for the FIRS & states IRS, as it will transcend state and national borders and commerce will become truly global in every sense.

Small and medium enterprises (SMEs), and more consumers than ever before, will have the opportunity from the comfort of their personal computers or Web TVs, to buy and sell goods internationally.

Already in Australia, large telecommunications companies such as Telstra are running advertisements encouraging people to conduct their businesses through their "Big Pond" Internet service, touting as one of its advantages that consumers can be multinationals too and have access to an international market.

Next, ponder the prospect of these goods and services being downloaded electronically and the entire transaction being protected by sophisticated encryption technologies.
In this environment, the challenge will be for tax administrators to determine which government is entitled to tax?

A simple example will serve to illustrate the nature of the challenge involved here: A consumer in Australia could download software made in England, marketed via a web site in Los Angeles and delivered by a server located in the Cayman Islands. In this scenario, two issues that immediately arise are:

(a) To identify whether a transaction has occurred and, if so, in what jurisdiction.

(b) To assess whether tax should be applied and how it should be paid.

It is quite evident that electronic commerce will have a considerable impact on the way in which transactions are conducted and considered for taxation by the Area Tax Offices (ATO). Once the full impact of electronic commerce is experienced, the present tax system that was designed for an industrial world will face many challenges. As noted above, the process of industrialisation shifted the tax base from land to capital and labour. The new economy, facilitated by the growth of electronic commerce, will require an equally fundamental change to cope with the issues that will arise.

The issues of taxation that arise in Cyberspace include challenges to tax administration, consumption tax and finally, questions will need to be raised in relation to concepts that have become entrenched in our income tax law, such as the concept of what constitutes a "permanent establishment".

Some of the major challenges are summarised below.

(a) Establishing identity

In order to properly carry out taxation laws, the FIRS needs not only to identify whether a transaction has occurred, but also needs to ascertain where it has taken place and by whom. Verifying the identities of parties to a business transaction may be difficult in the world of "e-commerce". For example, it may be impossible to identify the true owner of a web site conducting Internet business. The problem here is that the mechanisms for tracing the identity are weak, in that it is a relatively simple matter to arrange for the untraceable use of an Internet web site. The correspondence, furthermore, between the Internet address (the computer "domain name") and the location where the activity is supplied, carried out or consumed is tenuous: although the address will tell you who is responsible for maintaining that site, it may not tell you anything about the computer that corresponds to the actual Internet address, or even where that machine is located.

Revenue authorities will need to think carefully before responding to this problem by instituting identification and registration requirements as it is likely such requirements will have limited success due to the growing ease with which web sites can be located offshore.

The Committee for Fiscal Affairs of the OECD has responded to this issue by recommending that:

Revenue authorities may consider requiring that business engaged in electronic commerce identify themselves to Revenue authorities in a manner that is comparable to the prevailing requirements for businesses engaged in conventional commerce in a country.

This recommendation, while adhering to the desirable quality of trying to achieve neutrality between physical business enterprises and virtual business enterprises operating via the Internet, is essentially advocating voluntary compliance. Indeed, the OECD believes that many businesses will provide information on their web sites that can be used to accurately identify the business and its physical location, but also believes that it would be helpful if the information is provided as a matter of "common business practice." Nonetheless, as is the case in the physical world, any voluntary compliance regime that may be contemplated for the electronic world, will need to be reinforced with other methods to enable the FIRS to trace businesses that do not provide this information as a "matter of course." An example of a supplementary measure could be the authorising of access for the FIRS to Internet Protocol number allocation records to validate identity.

(b) Establishing location

Assuming a transaction can be identified and the identity of the parties ascertained, the next problem is to determine whether a taxable transaction arises, and if so, in which jurisdiction that transaction should be taxed. Individuals and entities engaging in electronic commerce will be able to easily create an Internet address in almost any taxing jurisdiction irrespective of the location of their residence or the source of their activities.

An example of where this could be exploited is the manipulation of location to obtain a reduced or zero rate of withholding tax on royalties. While the problem of establishing physical presence and withholding tax entitlements is not necessarily a new one, it does take on a different dimension in an electronic commerce world. At present, a payer might be able to rely on the postal address of the payee to verify the right to any treaty benefit. However, in a world of electronic commerce, there is no necessary relationship between an internet address and a physical location.

As an example, a taxpayer may download a digitised photograph from an electronic stock agency and obtain the right to reproduce that image in a magazine or book. The payment for this right would presumably be characterised as a royalty. The seller of this electronic information may claim to be a resident of a treaty country by establishing an internet address in that jurisdiction without any other connection to that jurisdiction in order to claim an entitlement to a reduced or zero rate of withholding tax on royalties.

Therefore, if withholding taxes are to be imposed on electronic commerce, it will be necessary to establish procedures and standards for verifying the identity of electronic counter parties to confirm claimed entitlements to a zero or reduced rate of withholding tax on royalties. Consideration would also need to be given to determining that if withholding taxes were necessary, how would it be administered?

The challenge presented here is that traditional taxation concepts rely on physical presence or economic connection to a physical location; e- commerce, however, has little dependence on physical location. Thus, as physical location becomes less important in an electronic commerce world, it will become more difficult to determine where an activity has been carried out.

Also, it will become easier to exploit rules based on location by establishing an internet presence in jurisdictions to claim treaty or other benefits. Conversely, as an internet presence can easily be relocated, one can expect that manipulation could occur to avoid undesirable tax consequences that may result from having an internet presence in a particular jurisdiction.

(c) Obtaining acceptable documentation of proof will become more difficult
It is generally accepted that the FIRS has extensive powers to obtain information from taxpayers and these powers are relatively easy to enforce within Nigeria.

Obtaining information on activities carried out in other tax jurisdictions, however, requires the use of exchange of information provisions found in tax treaties.

Moreover, where books and records are maintained in a tax haven, the FIRS will encounter particular difficulties in trying to obtain access to them. Thus, domestic disclosure requirements become difficult to enforce. In any event, it is also questionable whether the evidence that tax administrators would be able to produce on transactions that take place in Cyberspace would satisfy the documentation and evidence standards set by tax laws. These "problems" should in theory be easily overcome by appropriate amendments to existing laws governing record-keeping requirements under the Companies Income Tax Act 2004 (as amended).

However, corresponding legislative changes will need to be considered to cover encrypted data to ensure that it will be no excuse for businesses to claim that they have lost encryption keys and accordingly cannot produce requested information - that is, the onus of production of information must remain with taxpayers.

(d) Impact on value added tax
Nigeria currently operates the value added tax system, which essentially applies to the supply of goods and services save for those listed under the first schedule to the Act. Goods are currently defined as being tangible items. As already observed, electronic commerce makes it possible for goods that were previously only available in a tangible form, and therefore subject to the VAT regime, to be delivered in an intangible form which will not be subject to VAT. Returning to the example of music that can now be downloaded directly from the internet, practically, this will have the same function as music sold as a CD in a shop but it will not be subject to VAT as no "good" arises on which VAT could be levied.

As more goods and services become capable of being converted into electronic form, the application of value added tax becomes more complicated and the potential for revenue leakage increases considerably. Already intangibles such as travel and ticketing services, software, entertainment (on-line gambling, games, and music), insurance and brokerage services, real estate services, banking, information services, legal services, and increasingly health-care, education and government services are appearing on the internet. This trend will no doubt continue to increase, both in number and diversity, of services that become available.

However, there are two points worth mentioning in relation to the application of a VAT in an electronic commerce world:

(i) Tax administrators will experience three main problems in relation to the application of VAT rules, particularly as they may apply to international services:
   - Ascertaining when a transaction occurs;
   - Determining where the place of supply is; and
   - Attaching a value to the transaction: that is, what would be the consideration applicable to the transaction.

(ii) For most businesses, VAT is not a real cost but normally flows through to the final customer who ultimately bears the economic burden of VAT. However, for some businesses that are exempt from VAT, consumption taxes can be a real cost as they may not be able to claim a credit for VAT charged on their business inputs. A good example of this is businesses that operate in the pharmaceutical sector, such as drug manufacturers. As drug manufacturers cannot recover fully the VAT normally charged on their business expenditure e.g. raw materials, they may look to the internet to try to achieve real cost savings. As an example, drug manufacturers may try to avoid VAT by seeking out non-resident suppliers that have no business or other fixed establishment within Nigeria. Such businesses could then establish by contractual arrangements an "artificial" source of supply outside Nigeria, thereby avoiding VAT. This type of arrangement would undermine the "place of supply" rules that are a feature of traditional VAT systems.

Hence, the advent of electronic commerce would not only have implications for the VAT system but would also have implications for the WHT system.

(e) Impact of electronic commerce on customs procedures

To assess the impact of electronic commerce on customs procedures, it is necessary to distinguish between "on-line" supplies and "off-line" supplies of goods and services.

Goods or services ordered via the internet and physically delivered may be described as "off-line" supplies. Activities involving international mail-order transactions of goods will, in principle, continue to be dealt with by the customs authorities at the point of importation with regard to the collection of both customs duties and VAT as appropriate.

In other words, for the off-line supply of goods and services via the internet, no new problems are presented to tax authorities, other than the significant increase in the number of transactions that can be expected. This in turn raises a question mark over the ability of customs authorities to be able to cope with the resulting demand.

In this regard, the following issues need to be considered:

- More resources will need to be directed to customs authorities to ensure they can cope with the expected increase in the volume of transactions consequent upon electronic commerce; and

- At the June 1999 Kyoto convention organised by the World Customs Organisation ("WCO"), some options to deal with the streamlining and simplifying of Customs clearance procedures were suggested in a common effort toward achieving the full potential of a global market place for consumers.

  A review of the customs duty and sales tax-free limit (currently $50) needs serious consideration. Certainly, the OECD has indicated that such a review is appropriate in the context of the global marketplace. The joint committee of public accounts and audit has recommended that the current $50 limit should remain, pending a survey being conducted by the government, which may validate a change of this value to$150.

  By contrast, the supply of "on-line" activities in the form of digitised information poses a serious challenge to the current "place of supply" rules contained in most VAT systems. This in turn creates a real possibility of either no taxation or double taxation being levied in an environment where supplies can be made without the supplier having any form of physical presence.

  Source: Dale Pinto (1999). Journal of Australian Taxation 227

20.16.8 Issues, approaches and solutions in taxation of e-commerce

Introduction

The nations of the world are entering a promising yet volatile e-commerce realm. Traditional concepts and principles of taxation are proving to be inadequate. Principles of residence and source for taxation cannot be applied with certainty in the seamless, borderless and timeless market place of e-commerce.

For taxation purposes, the character of income is also important, but e-commerce has the potential of blurring the character of income. Whether the income in these cases, be characterized as business income or royalty or service income is not very clear. In the absence of geographical nexus of a transaction, determination of a tax jurisdiction becomes difficult. Then there are enforcement-related problems revolving around identity and location of taxpayers, exchange of record -related information, recovery of tax, transfer-pricing issues etc.

Working of e-commerce through internet

Electronic commerce is conducted mainly through global computer networks. Generally, electronic commerce conducted through the Internet consists of three parties, namely the ISP, the trader and the customer. e-commerce activities are classified in various categories, which become major sources of online revenues.

However the issue still remains whether such revenue generated through e- commerce be taxed.

Should e-commerce be taxed?

The information technology (IT) sector has the distinctive characteristics of growth without state support. So, there is often a view that e-commerce should in some sense be allowed to take place in a tax-free environment either by specific legislation or by continued government inaction. However in view of the author, profit arising out of e-commerce should be taxed. The arguments as advanced below, would attempt to build a case for taxation of this new and potential area of revenue generation.

(a) Benefit theory justification for taxation of e-commerce: An important theory regarding a country's right of taxation is the benefit theory. According to it, a state's right to tax rests on the totality of benefits and state services provided to taxpayers that interact with a country. While in traditional commerce, services provided by the state like infrastructure, police and defense protection etc. are more visible, but benefits arising from conducive legal infrastructure, consumer base, stable exchange rates and economic stability are equally applicable to e-commerce. So, the state needs to be compensated for the cost of providing public services, by income generating e-commerce activities, too.

(b) Principle of neutrality is a fundamental tax policy principle: Essentially, it requires that economic processes should not be affected by external influences such as taxation. In fact, whether a business is carried out through electronic medium or otherwise should not affect the tax liability. It cannot be a case that traditional bookshop owner pays taxes on his profits while the retailer of books is exempted from paying tax on its profits.

(c) Vertical inequity in exempting e-commerce from tax: There is also vertical inequity in exempting e-commerce from tax. It cuts cost of procurement, cost of processing transactions as also delivery costs for products and services delivered electronically, e.g., software financial services and music. Tax exemption for e-commerce would, therefore, result in those conducting business in traditional manner and earning less profit being taxed whereas those switching over to e-commerce and earning higher profit being exempt from tax.

(d) Taxation of e-commerce not a constraint Tax exemption could perhaps have been justified if taxation of e-commerce would have proved a constraint in its healthy growth. But e-commerce has achieved un-paralleled growth not only in the developed countries but also in a large number of developing countries including India. Taxation of e- commerce transactions by no means act as a hurdle to its development and growth.

(e) Tax exemption for e-commerce: Against the spirit of current reform process Also 'infant industries' granted preferential tax treatment typically never grows up. Besides, tax exemption for e-commerce would be totally against the spirit of current reform process. Business will modify themselves on the patterns of e-commerce and thus will avoid tax, which will ultimately erode the revenue base.

On the basis of above discussion, it can be concluded that there is no case for exempting e-commerce from direct taxation. Once it is established that transactions on the electronic medium are as much taxable as those in the physical medium, the focus should thus be to analyze the methods of taxation of Income arising from e-commerce and the problems arising with the application of traditional principles of taxation in this regard.

Taxation problems posed by electronic transactions

Taxation of income is the conclusive part of the tax-procedure. Initial steps include identification of taxpayer to whom the income belong, determination of tax-jurisdiction (residence vs. source), characterisation of income, etc. After all these requirements are fulfilled comes the question of assessment of income and collection of tax.

(a) Identification of taxpayer Income tax, to put it simply, is a tax on income. However, for income to be taxed it should belong to an identifiable person. Its 'domain name' generally identifies a business engaged in e-commerce on the internet. After identification of the taxpayer, we proceed to determination of jurisdiction of taxation, which is based on source or residence.

(b) Determination of jurisdiction: A country may tax an income on the ground that the person has been given protection of life and liberty and also that he is intimately connected to its social and economic life, that is, residence basis of taxation. It may also tax an income on the ground that the economic activity giving rise to the income was performed therein – the source basis of taxation. Thus, taxation depends upon the determination with some certainty, of the residence of a person or the place of a source of income.

Most countries tax income on both of the bases. Broadly, a resident is taxed on his global income with credit for taxes paid in source countries and the non- resident is taxed on the income arising in the country. Double taxation of same
income may arise due to residence and source conflict and sometimes even due to conflict about the country of residence. Double Tax Avoidance Agreements between countries are aimed at avoiding such double taxation. OECD Model Tax Convention (Model Convention) lays down the principles involved in taxation of cross-border commerce. Most of the countries follow this model convention.

(c) Determination of residence in the context of the internet Most of the countries including Nigeria determine residence of individuals on the basis of period of stay in the country. First schedule of the Nigerian Personal Income Tax Act 2004 as amended (PITA) provides 183-day test for determination of residence for individuals.

(d) Determination of the place of effective management: The problem gets all the more complicated in case of non-individual assessees. The Nigerian Company Income Tax Act 2004 (as amended), rely on place of control and management to determine the residence of such asessee.

However, in case of electronic space, it is almost impossible to determine the exact geographical location where the decision was taken. This makes the determination of the 'place of effective management' extremely complicated.

Digitisation and problem of characterisation of income

Digitisation is significant in terms of the way in which source is defined because the intangible nature of goods and services that may be bought and sold in electronic commerce will arguably exacerbate existing difficulties in characterising income. As electronic commerce allows for an increasing number of goods and services to be delivered in an intangible way due to digitisation it is likely to make it more difficult to determine, whether income represents sales income, or services income, or whether an intangible product has been licensed, thereby giving rise to royalty income. Apart from taxing rights, it is also important to note that double taxation (or unintentional non-taxation) could result if classifications are not consistent between countries. Given that tax laws of different countries have developed different rules for the determination of both the character and source of income, there are numerous mismatches in the laws, which can result in either avoidance of tax in any country on a particular item of income or multiple taxation of the same income. Indeed there may be inherent conflicts between source and residence countries where, for example, source countries may want to widen their domestic withholding tax regimes to preserve their tax base, while residence countries may wish to adopt a different classification of an item of income to preserve their taxing rights.

To resolve the above-discussed issues the Model Convention has suggested some relevant principles and classifications of income in e-commerce environment. Also based on relevant considerations, the Model Convention has classified passive e-commerce income in 28 categories.

The principles and classification articulated in the OECD commentary are however, not universally accepted. Some countries articulate a broad standard of what constitutes a royalty so that negotiated withholding taxes may be applied to payments received by a non-resident that would not otherwise be taxable in the source country under Article 7 or Article 14.

Thus, with the above detailed discussion, it is clear that e-commerce environment, though it is still in its embryonic stage, has posed significant challenges to the traditional bases of taxation. So, the next part of our report analyses some of the policy approaches, which will help us in meeting the needs of e-commerce taxation.

Alternative approaches for taxation of e-commerce

(a) Base–erosion approach: This approach advocated by Professor Richard Durenberger seeks to redress some concerns created by e-commerce. It seeks to maintain the PE principle, which modifying its application to allow for a sharing of the tax base generated by electronic commerce transactions between source and residence countries.

It suggests that withholding at a single rate would be permitted in a source country on any payment that has the effect of "eroding" the tax base of that country. A payment would be considered as eroding the tax base of a source country if it was either deductible by a source country purchaser, or alternatively, if it formed part of its cost of goods sold (as this would decrease the gain on the sale of goods). If either of these conditions applies, then withholding would occur under the base erosion approach irrespective of the category of income.

It represents a compromise approach and there are corresponding advantages for source and residence countries. For residence countries, full tax will be collected on dividends, as these are not subject to withholding tax due to their non-deductibility. Also, residence countries will be able to tax income arising from transactions with consumers in source countries, if no PE is maintained in those countries. Source countries also benefit as they can withhold tax on any base- eroding payment made by businesses to residence countries. Allowing a credit could accommodate relief from double taxation, and distortions and excessive tax burdens maybe accommodated through allowing for net basis return filing choice in source countries. Also, the system is administratively simple, as it operates within the existing international tax regime. It is based on an objective standard to determine the right to withhold tax.

The main difficulty is that it does not redefine the concepts of PE, and with existing principles of PE, allocation of profits to PE in active business income cases will be negligible. Also, the simultaneous existence of PE concept implies that the traditional commerce will get taxed differently as compared to e-commerce.

(b) VirtualpermanentestablishmentapproachTheapproachadvocatedbyProfessor Luc Heinekens has two main elements of this approach which are: A lower withhold for a PE is intended to apply in the case of e-commerce transaction and this will be achieved by deleting the requirement for a “fixed place of business’ to exist in the country of source from the existing principles for defining PE.

Core or mainstream business activities will be subject to source country taxation under the approach, while ancillary activities will not be subject to source country taxation.

This approach helps in achieving a neutral international tax system, whereby the competitors within the same market face the same tax burden and thus derive the same relative net advantage from the infrastructure of the country. This approach helps in preservation of fiscal sovereignty and sharing of the tax-base in the source country. Also, this basis of tax- nexus provides a more reliable jurisdictional criterion than the place of incorporation or establishment of an e-commerce business as it seeks to apply taxing nexus based on economic activity. Thus, it provides a more stable and less manipulability basis for establishing taxing authority in source countries.

However, the biggest disadvantage of this approach is the problems associated with establishing an internationally acceptable standard for determining nexus under this approach, which detracts it from successful implementation. Also, there are difficulties in attributing profits to a virtual PE.

(c) Refundable withholding approach: It is a hybrid approach, which draws upon elements of other two approaches, to re-conceptualise the way source are currently defined for both active and passive income.

Under this approach all income from international transactions involving goods or services that are either provided electronically (e.g. computer software) or purchased via electronic means (e.g. flowers purchased over the Internet) would be treated as “withholding income”, which would then be subject to a uniform rate of withholding by source countries irrespective of the category of income involved. In most of the cases, they are taxed in residence countries, though consistent with current practices, they may continue to be taxed on a withholding basis by source countries that withhold tax on such income.

Conversely, if a seller’s total gross sales into a jurisdiction for the period exceeded the threshold, then the vendor would be subject to source country taxation and amounts withheld would not be refunded. At the same time, the later ones will have a choice to file a return in the source country and be taxed on net basis.

This approach redefines the source for active business income by putting forward an alternative to the PE threshold for determining source country tax nexus. Also, it simplifies the way source is defined for passive income by seeking to apply withholding tax at a standard rate to all income covered by the proposal irrespective of the character of income.

In summary, it is submitted that the proposed refundable withholding approach could provide a more stable and appropriate basis for source-based taxation of international e-commerce transaction than the current international tax system. Indian e-commerce committee report also, favours the adoption of this approach.

Now after defining the jurisdiction and characterising the income, the next step in tax procedure is 'enforcement' i.e. fixing tax-liability and its collection and recovery.

Enforcement issues

The effect of internet on enforcement of tax laws has raised fears of governments being unable to meet legitimate demands of their citizens for public service. Some of those challenges along with possible solutions have been discussed below:

(a) Identity and location of parties: One of the significant perceived threats associated with the advent of internet are anonymity offered by it to the customer; he does not know where the server is located and the server cannot identify where the customer is stationed. In fact, with e-commerce and use of private intranets, it may be difficult to know who is doing what. However, the experience in Australia, as presented in IFA Asia Regional Conference on e-commerce and International Taxation, reflected the possibility of tracing the correct identity and location.

(b) Anonymity of transactions and accounts: In the conventional commercial environment, the tax authorities were able to collect information by means of books and records in order to support the assessment of tax. However, in the electronic environment, electronic books and records could easily be concealed, or stored in foreign jurisdiction, thus denying the tax authorities access to records. Even the traditional third party information may be curtailed as the internet encourages the process of dis-intermediation.

(c) Transfer pricing Transfer pricing issues though not created by e-commerce will become more complex with the internet. The use of the new information and communication technologies in business increases the speed and borderless mobility of the transactions, making it difficult for tax administrators to identify and measure contributions and functions of the single participating undertaking to the unitary business or contract performance. In such situations how one state would determine the arm's length price is not very clear. In this regard, discussions need to be initiated at international for a, such as OECD, etc. to formulate specific guidelines in this direction.

(d) On-linedeliveryande-cashTherealproblemforenforcementinane-commerce situation arises in transactions involving online delivery and payment, which is growing at a fast pace. In these transactions where the supplier is from a foreign tax jurisdiction it becomes difficult to charge or collect direct as well as indirect taxes. Withholding of tax through a large number of small consumers for direct tax purposes or realising indirect taxes from them is administratively impossible. The development of e-cash is an even more serious challenge for tax administrators.

(e) Identification of taxing jurisdiction : The place of execution of contract and the place where title to the goods or services pass are important in determining where the income accrues or can be deemed to accrue and therefore taxed. In e-commerce, with offer and acceptance on the networks, the place where the contract is executed will not be known under laws and rules applicable to traditional commerce.

Source: Namita Chandra (2005).

20.17 Chapter review

This chapter deals comprehensively with the computation of tax for a selected number of specialised companies - such as those engaged in air and sea transport, cable (communications) undertakings, life and non-life insurance companies, property companies and authorised unit trust outfits. It also discusses issues and challenges with taxation of e-business and e-commerce.

In order to assist readers, worked examples are provided to clearly illustrate the differences inherent in the computation of tax liability for each of the specialised businesses.

20. 18 Worked examples

20.18.1 Multiple-choice questions

1. Which one is not a description of primary agricultural production according to the Companies Income Tax Act (as amended).
   - 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 product.
   - 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 product.
   - 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 saplings, but excluding the intermediate and final processing of timber and any other manufactured or derivative timber product.
   - D. Primary fishing production comprising the production of fish of all kinds, including ornamental fish, but excluding any intermediate of final processing of any other manufactured or derivative fish product.
   - E. Primary crop production comprising the production of raw crops of all kinds, including any intermediate or final processing of crops or any other associated manufactured or derivative crop product.

2. The following taxes relate to transactions of real estate companies in Nigeria, EXCEPT
   - A. Companies income tax
   - B. Luxury tax
   - C. Withholding tax
   - D. Tertiary education tax
   - E. Value added tax

3. Which of the following options best describes tax incentive granted to small and medium-sized companies engaged in primary agricultural production?

A. Pioneer status for an initial period of 4 years and an additional period of 2 years, subject to satisfactory performance
B. Pioneer status for an initial period of 6 years and an additional period of 2 years, subject to satisfactory performance
C. Pioneer status for an initial period of 4 years and an additional period of 4 years, subject to satisfactory performance
D. Pioneer status for an initial period of 4 years and an additional period of 6 years, subject to satisfactory performance
E. A reduction in import duty on tractors from 35% to 15%

4. In the taxation of banks, the following expenses are not allowed, EXCEPT
A. Increase in staff salaries
B. Increase in provisions on performing loans account
C. Increase in provisions on advances under finance lease
D. Increase in provision on other assets or accounts receivable
E. Unrealised exchange loss

5. Section 14(4) and 81 of CITA (as amended) stipulates that foreign companies that carry on the business of shipping or air transportion in Nigeria are required to remit on a monthly basis an advance payment computed as …….. of the monthly revenue derived from Nigeria.
A. 1%
B. 2%
C. 3%
D. 4%
E. 5%

20.18.2 Short answer questions

1. An industry where the creation of products and services is home-based, rather than factory based is called ……………

2. A company (including a Real Estate Unit Trust) duly approved by the Securities and Exchange Commission to operate as a Real Estate Investment Scheme (REIS) in Nigeria as stated by section 105 of CITA as amended by Finance Act 2021.is called………………

3. Any securities lending transaction conducted pursuant to rules made by the Securities and Exchange Commission is called…………………

4. Withholding tax deducted on a ………..is regarded as final tax in the hand of the recipient.

5. Interest on loan granted by a bank for primary agricultural production shall be exempted from tax, if at least ………… 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.

20.18.3 Examination type questions

1. Zen Insurance Co. Plc is a company engaged in both life and other insurance businesses. The IFRS account of the company for the year ended December 31, 2021, disclosed the following information:

(a) Statement of profit or loss
For year ended December 31, 2021

	Life business	Non-life Business	Reinsurance business	Total
	₦'000	₦'000	₦'000	₦'000
Gross premium written	22,000	150,000	78,000	250,000
Gross premium income	22,000	150,000	78,000	250,000
Re-insurance premium	0	(58,000)	0	(58,000)
Net premium income	22,000	92,000	78,000	172,000
Fees and commission income	2,500	6,300	4,200	13,000
Net underwriting income	24,500	98,300	82,200	135,000
Claims expenses	(12,500)	(24,000)	(21,000)	(57,500)
Re-insurance claims	6,000	15,000	0	21,000
Change in contract liabilities	700	(2,300)	0	(1,600)
Net claims expenses	(5,800)	(11,300)	(21,000)	(38,100)
Underwriting expenses:				
Acquisition expenses	(300)	(1,400)	(990)	(2,690)
Maintenance expenses	(1,550)	(4,330)	(1,800)	(7,680)
Total underwriting expenses	(1,850)	(5,730)	(2,790)	(10,370)
Underwriting profit/(loss)	16,850	81,270	58,410	156,530
Investment income	5,800	12,600	13,700	32,100
Other operating income	1,800	3,800	2,400	8,000
Total investment income	7,600	16,400	16,100	40,100
Impairment charges	(450)	(1,330)	(1,080)	(2,860)
Net fair value gain / loss on investment properties	220	680	340	1,240
Net operating income	7,370	15,750	15,360	38,480
Expenses:				
Administrative expenses	(3,900)	(18,000)	(9,500)	(31,400)
Other operating expenses	(880)	(1,100)	(1,420)	(3,400)
Total expenses	(4,780)	(19,100)	(10,920)	(35,800)
Result of operating activities	19,440	77,920	62,850	160,210
Interest expenses	(3,600)	(7,500)	(4,800)	(15,900)
Profit or (loss) before taxation	15,840	70,420	58,050	73,310

(b) Statement of financial position

For the year ended December 31, 2021

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

Additional information:

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

(ii) Administrative expenses include depreciation:

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

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

(iv) Net liability on life policies as at December 31, 2021, was ₦1,298,000.

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

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

(vi) Investment income includes:

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

(vii) The provision for unexpired risk includes:

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

(viii) The balance of the life fund account as at December 31, 2021, was ₦1,100,000.

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

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

	Life business	Non-life business	Reinsurance business
	₦'000	**₦'000**	**₦'000**
Estimated claims	14,500	35,000	30,500
	14,500	35,000	30,500

Required:
Compute the company's tax liability for the relevant tax year.

2. Habib Limited is a foreign company involved in air transport business. Its aircrafts are used for cargo and passenger flights between Nigeria and Spain.

The audited financial statements for year ended December 31, 2020, revealed the following:

	₦	₦
Income for passengers flown from Madrid to Nigeria		104,425,600
Income for passengers flown from Nigeria to Madrid		113,397,250
Income from cargo loaded into aircraft other routes		122,260,000
Income from cargo freight from Nigeria to Madrid		103,375,000
		443,457,850
Deduct: Operating expenses:		
Depreciation	5,460,000	
Staff salaries	40,725,000	
Use of airport facilities	2,987,000	
Accommodation for airtime crew	5,228,500	
Hotel bills for passengers	3,120,000	
General provisions	735,000	(58,255,500)
Operating profits		385,202,350

In addition to the above, capital allowances were agreed with the relevant tax authority as 175% of depreciation.

Required:
Compute the income tax liability for assessment year 2021. (Ignore minimum tax computation)

3. **DANDAUDU LIMITED** is an agricultural company which commenced business on July 1, 2016. It is engaged in plantations, cattle ranching and poultry business and prepares its financial statements to June 30, of every year. Its recent financial statements showed the following results:

	Year ended June 30		
	2017	**2018**	**2019**
	₦	₦	₦
Revenue:			
Plantation crops	-	-	1,012,000
Cattle ranching proceeds	2,475,000	5,329,000	15,868,000
Poultry sales proceeds	1,120,000	2,590,000	7,500,000
Total revenue	3,595,000	7,919,000	24,380,000
Expenses:			
Preliminary expenses	125,000	125,000	125,000
Purchase: Cockerels	764,000	1,708,005	6,000,000
Cattles purchase	1,000,000	1,600,000	4,050,000
Poultry feeds	739,065	1,764,920	6,574,550
Wages and salaries	1,050,000	2,565,500	6,067,500

Drugs and medicines for animals	109,685	110,625	111,025
Interest on bank loan	-	17,100	18,000
General expenses	41,500	41,720	51,500
Depreciation	450,600	733,420	733,420
Increase in closing inventory:	-	(4,200)	(5,100)
Net (loss)/profit	(684,850)	(743,090)	654,105
	3,595,000	7,919,000	24,380,000

Other additional information
Preliminary expenses amounted to ₦ 1,000,000, and it is to be written off in equal annual amounts over a period of eight (8) years, commencing from the year ended June 30, 2017.

Break down of the preliminary expenses is as follows:

		₦
(i)	Stamp duties and registration expenses	115,000
(ii)	Cost of initial clearing and cultivation of land for plantation	35,000
(ii)	Cost of nursery plants purchased from Ministry of Agriculture	65,000
(iv)	Another nursery plants purchased from an Institute of Agriculture	45,720
(v)	Cost of labour and technical expertise on the first planting operation on plantations	28,030
(vi)	Gratifications to local chiefs and heads of families, so as to attract labourers to the farm	711,250
		1,000,000

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

	Cost ₦	**Date of purchase**
Assets:		
Motor vehicles	2,030,500	July 2016
Office furniture	445,000	August 2016
Agric tractor	1,127,000	June 2018
Equipment used in spraying plantations	60,000	January 2018
Building (Administrative block)	2,571,000	December 2018

There was no disposal of any asset within the period.

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

4. Abiola Bashir ACA Unit Trust Scheme is authorized by the Investment and Securities Commission to deal in the business of a Unit trust scheme.

Its financial statements for the year ended September 30, 2020, revealed the following:

	₦'000	**₦'000**

Investment income:		120,000
Dividends (Gross)		115,000
Bank deposit interest (Gross)		225,000
Rental income (Gross)		490,000
Deduct:		
Staff salaries and wages	5,000	
Managers' remuneration (20% of gross income)	98,000	
Other expenses	33,000	
Depreciation	18,000	(154,000)
Net profit		336,000

Notes:

(i) Both dividend and rental income have been subjected to deduction of withholding tax at10%.

(ii) Other expenses include an amount of N 550,000, being loss on disposal of property, plant and equipment.

Required:
Compute the assessable profit for the relevant year of assessment.

5 The effect of internet on enforcement of tax laws has raised fears of governments being unable to meet legitimate demands of their citizens for public service.

Required:
Identify and discuss those challenges along with possible solutions on the effect of the internet on the enforcement of tax laws by the government to meet the legitimate demand of her citizens for public service.

20.18.4 Suggested solutions to multiple-choice questions

1. E
2. B
3. A
4. A
5. B

20.18.5 Suggested solutions to short answer questions

1. Cottage industry
2. Real Estate Investment Company
3. Regulated Securities Lending Transaction
4. Dividend
5. 12 months

20.18.4 Suggested solutions to examination type questions

(1) **Zen Insurance Co. Plc**
Computation of tax liability
For 2022 assessment year

(a) Life business

	₦'000	₦'000	₦'000
Investment income:			
Interest on fixed deposit		3,300	
Debenture interest		1,300	4,600
Other income:			
Fees and commission income			2,500
Other operating income			1,800
Actuarial revaluation surplus distributed			3,500
Gross income			12,400
Deduct:			
(i) General reserves	2,600		
Add life fund a/c	1,100		
Total of general reserve and life fund.	3,700		
Net liability on policies	1,298		
:. Amount claimable restricted to maximum of net liabilities on policies.	1,298	1,298	
(ii) Special reserve			
The higher of:			
1% of gross premium – ₦ 22,000 x 1% or	220		
10% of net profit – ₦ 15,840 x 10%	1,584	1,584	
(iii) Other allowable management expenses:			
Administrative expenses- (N3,900 – N960)	2,940		
Interest expense	3,600		
Other operating expenses	880	7,420	(10,302)
Assessable profit			2,098
Less: Capital allowance			250
Total profit			1,848
Tax payable shall be the higher of:			
(a) Tax @ 0% on total profit or			N0.00
(b) Tax paid on 0.25% of gross income - Not applicable			N0.00
:. Tax payable is (a)			N0.00

Education tax @ 2½% of assessable profit - Not applicable N0.00

Non-life business

	₦'000	₦'000	₦'000
Premium written		150,000	
Less:			
Premium returned on cancelled policies		(0)	
Re-insurance premium		(58,000)	

Gross premium			92,000
Add:			
Interest income:		7,600	
Fees and commission income		6,300	
Other investment income – Debenture interest		2,000	
Other income		3,800	
Re-insurance claim		15,000	34,700
Gross income			126,700
Less: Reserve for unexpired risk calculated on time apportionment basis (N5,280-N3,000)			(2,280)
			124,420
Less Allowable expenses:			
Administrative expenses - (₦ 18,000 – ₦ 1,200)	16,800		
Other operating expenses	1,100		
Actual total claims expenses 24,000			
Add: Estimated total claims 35,000			
Total claims and outgoings claimable 59,000.	59,000		
Interest expense	7,500		(84,400)
Assessable profit			40,020
Less :Capital allowance			800
Total profit			39,220

Tax payable shall be the higher of:

Tax paid as per total profit computed

₦ 39,220,000 x 30% or	11,766,000
Tax paid on 0.25% of gross premium	
₦ 92,000,000 x 0.25%	230,000
Therefore, tax payable is	**N11,766,000**
Education tax @ 2½% of AP (N40,020,000 x 2½%)	**N 1,000,500**

(b) Reinsurance business:

	₦'000	**₦'000**	**₦'000**
Gross premium		78,000	
Less : Premium returned on cancelled policies		(0)	
Net premium			78,000
Add:			
Interest income:		6,900	
Fees and commission income		4,200	
Debenture interest		1,300	
Other operating income		2,400	14,800
Gross income			92,800
Less: reserve for unexpired risk calculated on time apportionment basis (N1,520-N1,220)			(300)

			92,500
Less: Allowable expenses:			
Administrative expenses			
– (₦ 9,500 – ₦ 1,050)		8,450	
Other operating expenses		1,420	
Actual total claims expenses	21,000		
Add: Estimated total claims	30,500		
Total claims and outgoing claimable.	51,500	51,500	
Interest expense		4,800	
			(66,170)
Less: Transfer to general reserve			
(i) General reserve < minimum authorised capital (50% of gross profit)			
Or			
(ii) General reserve ≥ minimum authorised capital (25% of gross profit) ₦ 58,410 x 25%			(14,602.5)
Assessable profit			11,727.5
Capital allowance			(650)
Total profit			11,077.5

Tax payable shall be the higher of:

Tax payable at 20% of total profit (N11,077,500 x 20%)	N2,215,500
Tax paid on 0.25% of gross premium (₦ 78,000,000 x 0.25%)	N195,000
Therefore, tax payable is	**N 2,215,500**
Education tax @ 2½% of assessable profit (N11,727,500 x 2½%)	**N293,187.50**

(c) Zen Insurance Co. Plc
Summary of tax liabilities
For 2022 assessment year

	Life business ₦'000	**Non-life business ₦'000**	**Reinsurance business ₦'000**	**Total ₦'000**
CIT payable	0.00	11,766	2,215.5	13,981.50
Education tax	0.00	1,000.50	293.19	1,293.69
Total tax payable	**0.00**	**12,766.50**	**2,508.69**	**15,275.19**

Notes:

(i) Under life insurance, section 16 (9) (a) provides for the deduction from the investment income of a life insurance company, an amount which makes a general reserve and fund equal to the net liabilities on policies in force at the time of an actuarial valuation. The implication of this is that the amount deductible as general reserve and fund shall for no reason be more than the amount of net liabilities on policies, that is, restricted to the maximum of net liabilities in force yearly.

In the light of the above, ₦1,298,000 was deducted from the investment income of the life business of Zen Insurance Co. Plc, being the net liabilities on policies as at December 31, 2022.

(ii) Under non-life insurance business and re-insurance business (being a non-life business), section 16 (8) (a) provides for the deduction of a reserve for unexpired risks, calculated on a time apportionment basis of the risks accepted in the year. The implication of this provision is that a reserve for unexpired risk can only be claimed on actual risks accepted in a year, that is, on actual year basis.

In the light of the above, the reserve for unexpired risk deducted from the gross income of Zen Insurance was ₦2,280,000 that is, (₦5,280,000 less ₦3,000,000) for non-life business and ₦300,000 that is, (₦1,520,000 less ₦1,220,000) for reinsurance business, each amount being the actual reserve for unexpired risk for the year.

(iii) Also, under non-life insurance business and re-insurance business, section 16 (8) (b) provides for the deduction of outstanding claims and outgoings. Essentially, the Act provides that an amount equal to the total estimated amount of all outstanding claims and outgoing shall be deducted but provided that any amount not utilized towards settlement of claims and outgoings shall be added to the total profits of the following year.

The implication of this is that what is allowed as deductible for outstanding claims and outgoings in any year shall be the total of both the actual and estimated claims and outgoings and that any amount unutilised (being either the total or a part of the estimated claims and outgoings) should be added back to the profits of the following year. This trend is expected to continue on a yearly basis.

Therefore, based on the above provision, the total amount of claims and outgoings applied under non-life insurance was ₦59,000,000, that is, ₦24,000,000 + ₦35,000,000; while the amount unutilised that will be added back to the profit of 2023 YOA is ₦35,000,000 (being the total unutilised estimated claims and outgoings in 2022).

Also, the total amount of claims and outgoings applied under re-insurance business was ₦51,500,000, that is, ₦21,000,000 + ₦30,500,000; therefore, the amount unutilised that will be added back to the profit of 2023 YOA is ₦30,500,000 (being the unutilised total estimated claims and outgoings under re-insurance business in 2022).

(iv) The applicable companies income tax rates used are in line with the provision of section 40 of CIT Act 2004 (as amended).

Essentially, 0% was the companies income tax rate applied on the total profit of life business, whilst 30% and 20% rates of tax were applied to the total profits of non-life business and reinsurance business, respectively, taking into consideration their gross incomes.

(vi) It should be noted that the provisions of Finance Act 2021, became effective January 1, 2022, but based on FIRS circular, all accounts which ended between July and December 2021 must reflect the provisions of the aforementioned Act.

(2) Habib Limited
Income tax computation
For 2021 assessment year

	₦	₦	₦
Income from passengers' freight from Nigeria to Madrid			113,397,250
Income from cargo freight from Nigeria to Madrid			103,375,000
			216,772,250
Allowable deductions:			
Staff salaries	40,725,000		
Use of airport facilities	2,987,000		
Accommodation for airline crew	5,228,500		
Hotel bills for passengers	3,120,000		
	52,060,500		
Proportion applicable to operations in Nigeria			
= N216,772,250 x N52,060,500 = N443,457,850		25,448,353	
Depreciation allowance as agreed		9,555,000	(35,003,353)
Total profit			181,768,897
Companies income tax payable at (30% of ₦181,768,897)			N54,530,669.10

(3) Dandaudu Limited
Computation of tax liabilities
For assessment years 2016, 2017, 2018, 2019 and 2020

	₦	₦
Assessment year 2016		
(Based on 1/7/16 – 31/12/16)		
Loss for the period (w iii)		(54,625)
Add:		
Capital allowances (w iv)		(1,369,312)
Unrelieved loss and capital allowances c/f		(1,423,937)
Companies income tax		**N NIL**
Tertiary education tax		**N NIL**
Assessment year 2017		
(Based on 1/7/16 – 30/6/17)		
Loss for the period (w iii)	(109,250)	
Add:		
Unrelieved loss b/f	(54,625)	

	(163,875)	
Loss limited to		(109,250)
Add:		
Capital allow. - For the year (w iv)	381,375	
- B/f	1,369,312	(1,750,687)
Unrelieved losses and C.As c/f		(1,859,937)
Companies income tax		**N NIL**
Tertiary education tax		**N NIL**

Assessment year 2018
(Based on 1/7/16 – 30/6/17)

Loss for the period		(109,250)
Add:		
Unrelieved loss b/f		(109,250)
		(218,500)
However, unrelieved losses carried forward are restricted to:		
Actual loss incurred		(109,250)
Add:		
Capital allow. - For the year (w. iv)	350,960	
- Brought forward	1,750,687	(2,101,647)
Unrelieved loss and C.As c/f		(2,210,897)
Companies income tax		**N NIL**
Tertiary education tax		**N NIL**

Assessment year 2019
(Based on 1/7/17 – 30/6/18)

Assessable profit (w. iii)		115,330
Unrelieved loss b/f	(109,250)	
Relieved in the year	109,250	(109,250)
		6,080
Deduct:		
Capital allow. - For the year (w. iv)	1,566,913	
- Brought forward	2,101,647	(3,668,560)
Unrelieved capital allowances c/f		(3,662,480)
Companies income tax		**N NIL**
Tertiary education tax (2% of assessable profit)		**N 2,306.60**

Assessment year 2020
(Based on 1/7/18 – 30/6/19)

Assessable profit (w. iii)		1,512,525
Deduct:		
Capital allow. - For the year (w. iv)	797,830	
- Brought forward	3,662,480	(4,460,310)
Unrelieved capital allowances c/f		(2,947,785)
Companies income tax		**N NIL**
Tertiary education tax (2% of assessable profit)		**N 30,250.50**

Workings:

(i) Computation of adjusted profits/(loss)
Year ended June 30,

	2017	2018	2019
	₦	₦	₦
Net (loss)/profit per accounts	(684,850)	(743,090)	654,105
Add:			
Disallowable expenses			
- Preliminary expenses	125,000	125,000	125,000
- Depreciation	450,600	733,420	733,420
Adjusted (loss)/profit	**(109,250)**	**115,330**	**1,512,525**

(ii) Determination of basis period

YOA	Basis period for assessment	Basis period for Capital allowances
2016	1/7/16 – 31/12/16	1/7/16 – 31/12/16
2017	1/7/16 – 30/6/17	1/1/17 – 30/6/17
2018	1/7/16 – 30/6/17	-
2019	1/7/17 – 30/6/18	1/7/17 – 30/6/18
2020	1/7/18 – 30/6/19	1/7/18 – 30/6/19

(iii) Computation of assessable profit/(loss)

YOA	Basis period for assessment	Working	Assessable profit/(loss)
2016	1/7/16 – 31/12/16	N 109,250 x $^{6}/_{12}$	(54,625)
2017	1/7/16 – 30/6/17		(109,250)
2018	1/7/16 – 30/6/17		(109,250)
2019	1/7/17 – 30/6/18		115,330
2020	1/7/18 – 30/6/19		1,512,525

(iv) Computation of capital allowances

	Building expenditure	Motor vehicle	Plantation	Plantation equipment	Office furniture	Total allowance
Rate – Initial (%)	15	50	30	95	25	
– Annual (%)	10	25	50	-	20	
	₦	₦	₦	₦	₦	₦
Assessment Year 2016						
Acquisitions						
- July 2016						
- Motor vehicles		2,030,500				
- July 2016						
- Plantation			173,750			
- August 2016						
- Office furniture	0			0	445,000	
	0	2,030,500	173,750	0	445,000	
Allowances						
Initial allowance	0	(1,015,250)	(52,125)		(111,250)	1,178,625
Annual allowance (6 months)	0	(126,906)	(30,406)	0	(33,375)	190,687
						1,369,312
W.D.V c/f	0	888,344	91,219	0	300,375	
Assessment Year 2017						
Annual Allowance	0	(253,813)	(60,812)	0	(66,750)	381,375
W.D.V. c/f	0	634,531	30,407	0	233,625	
Assessment Year 2018						
Annual Allowance	0	(253,813)	(30,397)	0	(66,750)	350,960
W.D.V. c/f	0	380,718	10	0	166,875	
Assessment Year 2019						
Additions						
- Jan. 2018 - Spraying equip.	0	0	0	60,000	0	0
- June 2018 - Agric tractor	0	0	0	1,127,000	0	0
	0	380,718	10	1,187,000	0	0
Allowances						
Investment						

allow.	0	0	0	0	0	118,700
Initial allowance	0	0	0	(1,127,650)	0	1,127,650
Annual allowance	0	(253,813)	0	0	(66,750)	320,563
						1,566,913
W.D.V c/f	0	126,905	10	59,350	100,125	
Assessment Year 2020						
Addition - Dec. 2018 - Building	2,571,000	0	0	0	0	0
	2,571,000	126,905	10	59,350	100,125	0
Allowances						
Initial allowance	(385,650)	0	0	0	0	385,650
Annual allowance	(218,535)	(126,895)	0	0	(66,750)	412,180
						797,830
W.D.V. c/f	1,966,815	10	10	59,350	33,375	

(v) **Computation of annual allowance**

	Building expenditure	**Motor vehicle**	**Plantation**	**Plantation equipment**	**Office furniture**	**Total allowance**
Rate – Initial (%)	15	50	30	95	25	
– Annual (%)	10	25	50	-	20	
	₦	**₦**	**₦**	**₦**	**₦**	**₦**
Cost of Acquisition	2,571,000	2,030,500	173,750	1,187,000	445,000	0
Deduct: initial allow.	(385,650)	(1,015,250)	(52,125)	(1,127,650)	(111,250)	0
	2,185,350	1,015,250	121,625	59,350	333,750	0
Asset life	10 years	4 years	2 years	1 year	5 years	
Annual Allowance	2,185,350 / 10 years	1,015,250 / 4 years	121,625 / 2 years		333,750 / 5 years	
	218,535	**253,813**	**60,812**		**66,750**	

Annual allowance – 2016			
Pro-rated for	253,813 x $^{6}/_{12}$	60,812 x $^{6}/_{12}$	66,750 x $^{6}/_{12}$
6 months basis	126,906	30,406	33,375

Notes:

(a) Certain expenses included in preliminary expenses have been capitalised as qualifying plantation expenditure in accordance with the provision of Para 1 (1) of schedule 2 to CITA.

The capitalized costs consist of:		₦
(i)	Cost of initial clearing and cultivation	35,000
(ii)	Cost of nursery plants (₦ 65,000+ ₦45,720) for first planting	110,720
(iii)	Cost of labour and technical expertise on first planting	28,030
		173,750

(b) Stamp duties and registration expenses have been disallowed, as they are incurred in bringing the company into existence and not for the purpose of producing the profits assessable to tax.

(c) Gratifications to local chiefs and heads of families, have been disallowed because the expenditure was not incurred wholly and exclusively, for the purpose of producing the company's profit or loss.

(4) Abiola Bashir Aca Unit Trust Scheme

Computation of assessable profits
Assessment year 2020

	₦ '000
Net profit per accounts	336,000
Add:	
Depreciation	18,000
Loss on disposal of property, plant and equipment	550
	354,550
Deduct:	
Franked investment income	120,000
Assessable profit	234,550

Other points to note

(a) Withholding tax deducted from any income (other than franked investment income) is set-off against any tax assessable on the Unit Trust Scheme for any year of assessment.

(b) Dividend received after deduction of tax is regarded as franked investment income and not subject to any further tax in the hand of the recipient.

(5) The following are some of the challenges and the possible solutions on the effect of the internet on the enforcement of tax laws by the government to meet the legitimate demand of her citizens for public service:

(i) Identity and location of parties: One of the significant perceived threats associated with the advent of internet are anonymity offered by it to the customer; he does not know where the server is located and the server cannot identify where the customer is stationed. In fact, with e-commerce and use of private intranets, it may be difficult to know who is doing what. However, the experience in Australia, as presented in IFA Asia Regional Conference on e-commerce and International Taxation, reflected the possibility of tracing the correct identity and location.

(ii) Anonymity of transactions and accounts: In the conventional commercial environment, the tax authorities were able to collect information by means of books and records in order to support the assessment of tax. However, in the electronic environment, electronic books and records could easily be concealed, or stored in foreign jurisdiction, thus denying the tax authorities access to records. Even the traditional third party information may be curtailed as the internet encourages the process of dis-intermediation.

(iii) Transfer pricing Transfer pricing issues though not created by e-commerce will become more complex with the internet. The use of the new information and communication technologies in business increases the speed and borderless mobility of the transactions, making it difficult for tax administrators to identify and measure contributions and functions of the single participating undertaking to the unitary business or contract performance. In such situations how one state would determine the arm's length price is not very clear. In this regard, discussions need to be initiated at international for a, such as OECD, etc. to formulate specific guidelines in this direction.

(iv) On-line delivery and e-cash: The real problem for enforcement in an e-commerce situation arises in transactions involving online delivery and payments, which is growing at a fast pace. In these transactions where the supplier is from a foreign tax jurisdiction it becomes difficult to charge or collect direct as well as indirect taxes. Withholding of tax through a large number of small consumers for direct tax purposes or realising indirect taxes from them is administratively impossible. The development of e-cash is an even more serious challenge for tax administrators.

(v) Identification of taxing jurisdiction: The place of execution of contract and the place where title to the goods or services pass are important in determining where the income accrues or can be deemed to accrue and therefore taxed. In e-commerce, with offer and acceptance on the networks, the place where the contract is executed will not be known under laws and rules applicable to traditional commerce.

CHAPTER TWENTY ONE
TERTIARY EDUCATION TAX (TET)

Chapter contents

a. Learning objectives

b. Definition of tertiary education tax

c. Management and administration of the Tertiary Education Tax Fund (TETfund)

d. Composition and functions of the board of trustees

e. Exemption of small companies from paying tertiary education tax

f. Imposition, assessment and collection of tax

g. Allocation and distribution of tax

h. Computation of tertiary education tax

i. Offences and penalties

j. Chapter review

k. Worked examples

21.0 Learning objectives

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

(a) Identify the objectives of Tertiary Education Trust Fund (Establishment, etc.) Act 2011;

(b) Understand the procedures for assessment and collection of tertiary education tax;

(c) Calculate offences and penalties in respect of tertiary education tax; and

(d) Understand how tertiary education trust fund is being managed.

21.1 Definition of tertiary education tax

Tertiary education tax is tax imposed by the Tertiary Education Trust Fund (Establishment, etc.) Act, 2011 on the assessable profit of all companies registered in Nigeria.

The tax is applicable at the rate of 2½% on the assessable profits of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act, and it is payable annually.

21.2 Management and administration of the Tertiary Education Tax Fund (TETfund)

21.2.1 Objectives

Education tax was introduced into the Nigerian tax system through the Education Tax Act, 1993 (ETA 1993) which metamorphosed into Education Tax Act CAP E4 LFN 2004 but is now repealed by the Tertiary Education Trust Fund (Establishment etc.) Act, 2011, to address the funding crisis in the education sector. The Act aims at involving the private sector, being a beneficiary of the products of education to partake in its funding through contribution to the Tertiary Education Trust Fund (TETFund). This has, however, generated a lot of criticism in view of the presence of many taxes in the country which cumulatively erode the profits of companies, hence the general perception of education tax as a disincentive to foreign investment.

The Fund will be specifically used for the provision or maintenance of the following:

(a) Essential physical infrastructure for teaching and learning;

(b) Instructional material and equipment;

(c) Research and publication;

(d) Academic staff training and development; and

(e) Any other need which, in the opinion of the Board of Trustees, is critical and essential for the improvement of quality and maintenance of standards in higher educational institutions.

21.2.2 Management and administration

The Board of Trustees is vested with the management and administration of the fund. The Board of Trustees shall administer the tax imposed by the Act and disburse the amount in the fund to federal and state tertiary educational institutions specifically for the provision or maintenance of –

(a) Essential physical infrastructure for teaching and learning;

(b) Instructional material and equipment;

(c) Research and publication;

(d) Academic staff training and development; and

(e) Any other need which, in the opinion of the board of trustees, is critical and essential for the improvement of quality and maintenance of standard in the higher educational institutions.

21.2.3 Basis of computation

The rate of tertiary education tax is 2½% percent of the assessable profit of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act.

The tertiary education tax imposed is due and payable within 60 days after the FIRS has served notice of the assessment on a company.

21.3 Composition and functions of the board of trustees

21.3.1 Composition

The Board of Trustees shall consist of:

(a) A chairman who shall –

  (i) Be a person with good knowledge in finance and administrative matters; and

  (ii) Have qualifications and experiences as are required to perform the functions of that office under the Act.

(b) Six persons, each representing a geo-political zone in the country;

(c) A representative each of the following Federal Ministries, who shall not be below the rank of a Director

    (i) Education; and

    (ii) Finance.

(d) A representative from the Universities;

(e) A representative from the Polytechnics;

(f) A representative from the Colleges of Education; and

(g) The executive secretary of TETfund who shall be the Secretary to the Board of Trustees.

This brings the total number of members of Board of the Trustees to thirteen persons.

The membership of the Board of Trustees shall reflect the six-geopolitical zones of the Federation and members shall be persons of considerable experience from both the public and private sectors and appointed by the President on the recommendation of the Education Minister to represent the business, financial and education sectors.

Each member other than the ex-officio members, shall hold office for a term of four years in the first instance and may be eligible for re-appointment for a further term of four years and no more.

The Board shall meet for the conduct of its ordinary meetings four times in a calendar year. Notwithstanding the foregoing, the Board may meet to conduct such other business as exigency demands.

21.3.2 Functions

The following are the functions of the Board of Trustees:

(a) Monitor and ensure collection of tertiary education tax by the FIRS and ensure transfer to the fund;

(b) Manage and disburse the tax imposed by the Act;

(c) Liaise with the appropriate ministries or bodies responsible for collection or safekeeping of the tax;

(d) Receive requests and approve admittable projects after due consideration;

(e) Ensure disbursement of funds to various public tertiary educational institutions in Nigeria;

(f) Monitor and evaluate execution of the projects;

(g) Invest funds in appropriate and safe securities;

(h) Update the Federal Government on its activities and progress through annual and audited reports;

(i) Review progress and suggest improvements within the provisions of the Act;

(j) Do such other things as are necessary or incidental to the objects of the fund under the Act or as may be assigned by the Federal Government;

(k) Make and issue guidelines from time to time to all beneficiaries on disbursements from the Fund on the use of monies received from the fund; and

(l) Regulate the administration, application and disbursement of monies from the Fund under the Act.

21.4 Exemption of small companies from paying tertiary education tax

A small company means a company that earns gross turnover of ₦25,000,000 or less.

In line with the provision of section 34 of the Finance Act, 2020, small companies as defined under section 105(1) of the Companies Income Tax Act 2004 (as amended by section 22 of the Finance Act, 2019), are exempted from paying tertiary education tax.

21.5 Imposition, assessment and collection of the tax

21.5.1 Imposition

The Tertiary Education Tax Trust Fund (Establishment, etc.) Act 2011, provides for the imposition of the tax. Essentially, Section 1 of the Act provides that as from the commencement of the Act, there shall be charged and payable an annual education tax which shall be assessed, collected and administered in accordance with the provisions of the Act and shall be charged on the assessable profit of a company registered in Nigeria. The Act further provides that the assessable profit shall be ascertained in a manner specified in the Companies Income Tax Act or the Petroleum Profits Tax Act as the case may be.

21.5.2 Assessment

The Act provides that the FIRS shall assess and collect from each company, tertiary education tax imposed for companies' income tax or petroleum profits tax for an accounting period of the company.
The Act further provides that the FIRS shall also proceed to assess a company for the education tax due when assessing the company for companies income tax or petroleum profits tax for the accounting period of the company.

21.5.3 Collection

The Act mandates the FIRS to collect tertiary education tax imposed on companies.

The Act also states that the provision of the Act relating to the collection of companies income tax or petroleum profits tax shall, subject to this Act, apply to the tax due under the Act.

Section 2(2) of the Act, having been amended by the Finance Act 2020, the tax is due and payable within 30 days after the FIRS has served notice of the assessment on a company.

The Act also provides that the FIRS may, for the purpose of assessing and collecting tertiary education tax, devise such forms as it may deem necessary.

However, the FIRS is to pay tertiary education tax collected into the TETfund and shall when doing so, submit to the TETfund, in such form as the Board of Trustees of the

TETfund shall approve, a return showing:

(a) The name of the company making the payment;

(b) The amount collected;

(c) The assessable profit of the company for the accounting period; and

(d) Such other information as may be required by the TETfund for the proper administration of the tertiary education tax.

The board of trustees shall before the disbursement of the amount in the fund, set aside in each year, an amount not exceeding five percent of the total monies accruing to the Fund in the preceding year which shall be applied for:

(a) The cost of administration and management of the fund.

(b) The maintenance of any property acquired by or vested in the fund and generally to pay for services rendered to the fund;

(c) For project monitoring; and

(d) To meet all the needs of the fund necessary for the due administration and implementation of the purpose of this Act.

21.6 Allocation and distribution of the tax

The total tax collected in a year is disbursed in the ratio 2:1:1 amongst the universities, polytechnics and colleges of education, as shown below:

(a)	Universities	-	50%
(b)	Polytechnics	-	25%
(c)	Colleges of Education	-	25%

The Board of Trustees shall have power to give due consideration to the peculiarities of each geo-political zone in the disbursement and management of the tax imposed by this Act between the various levels of tertiary education.

The Minister for Education shall, on the recommendation of the Board of Trustees and subject to approval by the President, make guidelines for the disbursement of funds under the Act.

21.7 Computation of tertiary education tax

Illustration

The assessable profit of Adobe Limited based on audited accounts for the year ending December 31, 2022, is estimated to be - ₦ 65 million.

Required

Compute the estimated tertiary education tax due.

Solution

The tertiary education tax is 2½% of ₦ 65 million, that is, ₦ 1,625,000.

21.8 Offences and penalties

If tertiary education tax is not paid with 30 days, the Federal Inland Revenue Service will serve, on the company, a demand note for the unpaid tax a sum which is equal to 5 per cent of the tax. In addition to such penalty, the tax payable shall carry interest at bank lending rate from the date when the tax becomes payable until it is paid.

If the tax and penalty are not paid within a further period of two months of the demand, the company is guilty of an offence. The FIRS shall with the approval of the board of trustees of TETfund remit in whole or in part a sum added to the unpaid tax.

Notice that other officers of such company are severally guilty of that offence of default and liable to be prosecuted against and punished for the offence in like manners as if they themselves committed the offence, unless they prove that the act or omission constituting the offence took place without their knowledge, consent or connivance. The person guilty of the offence shall, on conviction, be liable:

(a) For the first offence, to a fine of up to ₦ 1,000,000 or imprisonment for a term of six months or both; and

(b) For a second and subsequent offence, to a fine of up to ₦ 2,000,000 or imprisonment for a term of twelve months, or both such fine and imprisonment.

The institution of proceedings or imposition of a liability under the Act shall not relieve a company from liability to pay to the FIRS, a tax which is or may become due under the Act.

Section 35 of the Finance Act, 2020, deleted section 10 of Tertiary Education Trust Fund (Establishment, etc) Act, 2011, which relates to offences. The implication of this is that there are no recognised offences in the administration and application of the Act.

In the same vein, section 36 of the Finance Act, 2020, deleted section 11(3) of Tertiary Education Trust Fund (Establishment, etc) Act 2011, which relates to penalties for those who are found guilty of any of the offences under the Act.

It is, however, surprising that section 11(2) of Tertiary Education Trust Fund (Establishment, etc) Act, 2011, is still retained. It states "The institution of proceedings or imposition of a penalty under the Act shall not relieve a company from liability to pay to the Federal Inland Revenue Service a tax which is or may become due under this Act".

Arising from the above, it is believed that it is only when there are offences that the issue of penalties can arise. Pending further clarification(s) from the Service, the offences as stated in the first three paragraphs are retained.

21.9 Chapter review

This chapter examines the background to the introduction of tertiary education tax, its objectives and the method of computing the tax. It also confirms that a tertiary education tax fund has been put in place, into which the tax collected/due is paid.

Mention is also made of the management of the fund and the uses to which the tax so collected is put. Petroleum companies engaged in petroleum operations are also subject to tertiary education tax calculated on their assessable profits but the tax is deductible in arriving at chargeable profits.

There is no doubt that every segment of the educational institutions has benefited in one way on the other from TETfund, though some areas must have benefited more than the others. The extent to which education tax has been able to solve the problem of funding in the education sector is a matter of opinion.

21.10 Worked examples

21.10.1 Multiple-choice questions

1. Which of the following best describes Tertiary education tax?

A. Tertiary education tax is payable annually at the rate of 2% on the assessable profits of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act, and as amended by the Finance Act 2021.

B. Tertiary education tax is payable annually at the rate of 2½% on the assessable profits of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act, and as amended by the Finance Act 2021.

C. Tertiary education tax is payable annually at the rate of 3½% on the assessable profits of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act, and as amended by the Finance Act 2021.

D. Tertiary education tax is payable annually at the rate of 4½% on the assessable profits of a company registered in Nigeria, other than a small company as defined under the Companies

Income Tax Act, and as amended by the Finance Act 2021.

E. Tertiary education tax is payable annually at the rate of 5½% on the assessable profits of a company registered in Nigeria, other than a small company as defined under the Companies Income Tax Act, and as amended by the Finance Act 2021.

2. The Tertiary Education Trust Fund is specifically used for the provision or maintenance of the following, EXCEPT

A. Essential physical infrastructure for teaching and learning
B. Instructional material and equipment
C. Research and publication
D. Salaries of academic staff
E. Academic staff training and development

3. Which of the following does not feature in the return of Federal Inland Revenue Service when paying the tertiary education tax collected into TET fund?

A. The name of the company making the payment
B. The amount collected
C. The assessable profit of the company for the accounting period
D. The names of directors of the company making the payment
E. Such other information as may be required by the TET fund for the proper administration of the tertiary education tax

4. The amount set aside by the Board of Trustee of TETFUND can be applied for the following EXCEPT

A. The cost of administration and management of the fund
B. The maintenance of any property acquired by or vested in the fund and generally to pay for services rendered to the fund
C. For project monitoring
D. To meet all the needs of the fund necessary for the due administration and implementation of the purpose of this Act
E. Donation to charitable organisation

5. Which one of these options best describes a small company, which is exempted from the payment of tertiary education tax in accordance with the provisions of the Finance Act, 2020?

A. A company that earns gross turnover of ₦20,000,000 or less
B. A company that earns gross turnover of ₦25,000,000 or less
C. A company that earns gross turnover of ₦35,000,000 or less
D. A company that earns gross turnover of ₦40,000,000 or less
E. A company that earns gross turnover of ₦45,000,000 or less

21.10.2 Short answer questions

1. Tertiary education tax is the tax imposed by the Tertiary Education Trust Fund (Establishment, etc.) Act, 2011 on the total profit of all companies registered in Nigeria. TRUE or FALSE?

2. The tertiary education tax is applicable at the rate of ……………of the assessable profit of a company registered in Nigeria other than a small company.

3. Which government agency has mandate to collect tertiary education tax imposed on companies?

4. According to Finance Act 2020(as amended), the tertiary education tax is due and payable within …….. after the Federal Inland Revenue Service has served notice of the assessment on a company.

5. The Board of the Trustees of Tertiary Education Tax Fund comprises ……….. persons.

21.10.1 Examination type questions

(1) The Board of Trustees is vested in the management and administration of the Tertiary Education Tax Fund.

Required:
Explain briefly the functions of the Board of Trustees.

(2) Enumerate any **two** offences and penalties stipulated by the Tertiary Education Trust Fund (Establishment etc.) Act, 2011, fornon-compliance.

(3) XYZ Limited has been in business for 4 years.
An extract from the company's financial records for the year ending December 31, 2022, is as follows:

	₦
Capital allowances for the year	2,400,000
Total profit	800,000
Depreciation	960,000
Revenue	110,000,000

Required:
Compute the estimated tertiary education tax for the relevant assessment year

(4) James Limited commenced business in 2009. You are provided with the following information for the year ending December 31, 2022:

	₦
Net profit per accounts	1,407,600
Depreciation	100,200
Provision for bad debts	250,000
Donations to ABC political party	420,000

Required:
Compute the estimated tertiary education tax for the relevant assessment year.

21.10.4 Suggested solutions to multiple-choice questions

1. B
2. D
3. D
4. E
5. B

21.10.5 Suggested solutions to short answer questions

1. False
2. 2 ½ %
3. Federal Inland Revenue Service
4. 30 days
5. Thirteen

21.10.6 Suggested solutions to examination type questions

(1) The following are the functions of the Board of Trustees:

(a) Monitor and ensure collection of tertiary education tax by the FIRS and ensure transfer to the fund;

(b) Manage and disburse the tax imposed by the Act;

(c) Liaise with the appropriate ministries or bodies responsible for collection or safekeeping of the tax;

(d) Receive requests and approve admittable projects after due consideration;

(e) Ensure disbursement of funds to various public tertiary educational institutions in Nigeria;

(f) Monitor and evaluate execution of the projects;

(g) Invest funds in appropriate and safe securities;

(h) Update the Federal Government on its activities and progress through annual and audited reports;

(i) Review progress and suggest improvements within the provisions of the Act;

(j) Do such other things as are necessary or incidental to the objects of the fund under the Act or as may be assigned by the Federal Government;

(k) Make and issue guidelines from time to time to all beneficiaries on disbursements from the Fund on the use of monies received from the fund; and

(l) Regulate the administration, application and disbursement of monies from the Fund under the Act.

(2) Offences and penalties

(a) Failure to pay within 30 days of the service of notice attracts 5 percent of the sum assessed.

(b) Failure to pay the tax and penalty as stated in (i) above within a further period of two months from date of demand attracts ₦ 1,000,000 or imprisonment for six months for first offender and ₦ 2,000,000 or imprisonment for twelve months or to both fine and imprisonment for any director, manager or every person concerned in the management of the body corporate or firm or other association of individuals unless he proves that the act or omission for the offence took place without his knowledge, consent or connivance.

(3) XYZ Limited

Computation of tertiary education tax

For year ended December 31, 2022 (Assessment year 2023)

	₦
Total profit	800,000
Add: Capital allowances	2,400,000
Assessable profit	**3,200,000**

Tertiary education tax is 2½% of assessable profit (₦ 3,200,000) = ₦ 80,000

(4) James Limited
Computation of tertiary education tax
For the year ending December 31, 2022 Assessment year 2023)

	₦
Net profit per accounts	1,407,600
Add:	
Depreciation	100,200
Provision for bad debts	250,000
Donations to ABC political party	420,000
Assessable profit	**2,177,800**

Tertiary education tax is 2½% of assessable profit (₦ 2,177,800.00) is ₦ 54,445.

CHAPTER TWENTY TWO
CAPITAL GAINS TAX

Chapter contents

a. learning objectives
b. Introduction
c. Nature, objectives and administration of capital gains tax.
d. Recent changes made by Finance Acts 2019, 2020 and 2021
   i. Treatment of compensation for loss of office
   ii. Responsibility of a taxpayer relating to the remittance of capital gains tax in respect of compensation for loss of office
   iii. Conditions that must be met before assets transferred or sold in business reorganisation and restructuring are exempted from capital gains tax
   iv. Treatment of gains accruing to a person from disposal by it of Nigerian government securities, and shares of any Nigerian company registered under the Companies and Allied Matters Act, shall be treated for tax purposes
e. Allowable and disallowable expenses
f. Exemption from capital gains tax
g. Computation of chargeable gains
h. Disposal and acquisition of assets
i. Planning for tax savings in capital gains tax
j. Reliefs
k. Artificial and fictitious transactions, and other matters
l. Offences and penalties
m. Chapter summary
n. Worked examples

22.0 Learning objectives

At the end of this chapter, readers should become familiar with various aspects of Capital Gains Tax, specifically –

a) The administration of capital gains tax;
b) Exemptions and reliefs from capital gains tax; and
c) How chargeable gains are computed and the tax calculated.

22.1 Introduction

Subject to the provisions of Capital Gains Tax Act, there shall be charged a tax to be called Capital Gains Tax for the year of assessment 1967-1968 and for subsequent years of assessment in respect of any capital gains, that is to say, gains accruing to any person on or after 1st of April, 1967 on a disposal of asset.

Every such gain shall, except so far as otherwise expressly provided be a chargeable gain. The Principal Act together with all amendments thereto have now been enacted as Capital Gains Tax Act CAP C1 of the Laws of the Federation of Nigeria (LFN) 2004.

22.2 Nature, objectives and administration of capital gains tax

22.2.1 Nature and objectives

In the usual income tax computations, profits or losses on disposal of Non- current Assets are excluded by means of adjustments to the relevant accounting results. At the same time, balancing adjustment would be made in the income tax computation in respect of the difference between the proceeds of disposal and tax written down value of such assets. Balancing allowance will be granted if the proceeds fall short of the written down value and a balancing charge if the proceeds are higher. In the latter case, if the proceeds are greater than the cost, the amount of the balancing charge would be restricted to the amount of capital allowance previously granted.

In taxation law and practice, all transactions of capital nature are excluded from income tax. In view of the fact that the surplus referred to is a capital receipt, it cannot be included in gains or profits for income tax purposes. However, such capital gains are subject to Capital Gains Tax under the Capital Gains Tax Act Cap C1 LFN 2004.

The Capital Gains Tax Act enacted in 1967, came into effect from the 1967/68 Assessment Year. In addition to the necessity to charge capital gains to tax as illustrated above, the Act could also have been introduced to produce an additional source of revenue to Government to finance Nigeria's civil war which started then.

22.2.2 Administration of capital gains tax

The administration of the tax is under the charge and management of the Federal Inland Revenue Service Board. Certain provisions of the "Income Tax Acts" (detailed in a schedule attached to the Capital Gains Tax Act) shall apply in relation to Capital Gains Tax as they apply in relation to income tax chargeable under those Acts subject to any necessary modifications- Section 43(1) appeals against any assessment to Capital Gains Tax (CGT) shall be made in accordance with Section 54 of CITA OR Section 53 of the PITA as the case may be, Tax Appeal Tribunal established UNDER THE Companies Income Tax Act.

Anti- Avoidance Provision - Section 44(3)
Without prejudice to the provisions of the Stamp Duties Act, the Minister with responsibility for matters relating to Stamp Duties shall demand Tax Clearance Certificates when checking documents on sale of landed property and other assets by any company before accepting such documents for stamping. Another anti –avoidance provision has been introduced with effect from 1 January 1993. It makes the production of evidence of tax payment a condition for effecting change of ownership of property, including shares and stocks (Section 44A).

Year of Assessment

A year of assessment in relation to Capital Gains Tax means, a year beginning with 1 January and ending with 31 December in the same calendar year with effect from 1969.

22.3 Recent changes made by Finance Acts 2019, 2020 and 2021

22.3 .1 Treatment of compensation for loss of office

With implementation of Finance Act, 2019, compensation for loss of office below N10 million is now exempted from capital gains tax.

22.3.2 Responsibility of a taxpayer relating to the remittance of capital gains tax in respect of compensation for loss of office

Also, Finance Act, 2020 states that compensation for loss of office up to N10m should be exempted from capital gains tax and tax due on excess above N10m is to be deducted by the payer and remitted within the time specified under the Pay As You Earn (PAYE) Regulations.

22.3.3 Conditions that must be met before assets transferred or sold in business reorganization and restructuring are exempted from capital gains tax

Section 32 of Capital Gains Tax Act (CGT), states that "where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organization of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transfer, no tax shall apply under this Act to the sale or transfer of the assets to the extent that one company has control over the other or both are controlled by some other person or are members of a recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of re-organisation:

Provided that if the acquiring company were to make a subsequent disposal of the assets acquired within the succeeding 365 days after the date of transaction, any concession enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of initial re-organisation".

22.3.4 Treatment of how gains accruing to a person from disposal by it of Nigerian government securities, and shares of any Nigerian company registered under the Companies and Allied Matters Act, shall be treated for tax purposes

Finance Act, 2021, which amends section 30 of the Capital Gains Tax Act, states that:

"(a) Gains accruing to a person from disposal by it of Nigerian government securities shall not be chargeable gains under the Act;

(b) Without prejudice to any other applicable law, the gains accruing to a person on disposal on the shares in any Nigerian company registered under the Companies and Allied Matters Act shall be chargeable gains under this Act except where:

(i) The proceeds from such disposal are reinvested within the same year of assessment in the acquisition of shares in the same or other Nigerian companies;
Provided that the tax shall accrue proportionately on the portion of the proceeds which are not reinvested in the manner stipulated in the subsection.

(ii) The disposal proceeds in aggregate, is less than N100,000,000 in any 12 consecutive month provided that the person making the disposals shall render appropriate returns to the Service on an annual basis; or

(iii) The shares are transferred between the approved borrower and lender in a Regulated Securities Lending Transaction as defined in the Companies Income Tax Act;

(c) Without prejudice to the provision of section (b) above, the rate of capital gains tax on disposal of shares under the section shall be 10%;

(d) The tax due in respect of the disposal under this section shall be paid for:

(i) Individuals, to the relevant tax authority in line with the provisions of the Personal Income Tax Act; and

(ii) Companies to the Federal Inland Revenue Service;

(e) In this section:

"Nigerian government securities" include Nigerian treasury bonds, saving certificates, premium bonds issued under the Savings Bonds and Certificates Act or any other long-term security issued by the Nigerian government; and

"Regulated Securities Lending Transaction" shall have the meaning provided securities under the Companies Income Tax Act, that is, those transactions conducted in accordance with rules made by Securities and Exchange Commission".

22.4 Allowable and disallowable expenses in Nigeria

Deductions allowable (Section 14) are:

a) Cost of acquisition or purchase price, including all costs incidental to the purchase,
b) Improvement costs wholly, exclusively and necessarily incurred,
c) Cost wholly, exclusively and necessarily incurred in establishing, preserving or defending the owner's title to a right over the asset; and
d) Incidental costs of disposal. These include:
   i. Fees, commissions or remuneration paid for professional services of surveyor or valuer; auctioneer, accountant; agent and or legal adviser;
   ii. Cost of transfer or conveyance (including Stamp Duties);
   iii. Advertisement cost to find a seller/buyer; and
   iv. Cost reasonably incurred to make any valuation or apportionment required for the purpose of computing the capital gains including expenses in ascertaining market value where required.

Disallowable expenses

Sums allowable as deductions in computing the profits or gains or losses of a trade for income tax purposes are not allowable under Section 14 above (Section 15). Insurance premiums on the asset are not allowable – Section 16.

22.5 Exemptions from capital gains tax

The following are exempt chargeable gains:

a. Gains accruing to –
   i. An ecclesiastical and charitable of a public character;
   ii. Any statutory or registered friendly society;

iii. Any cooperative society registered under the cooperative societies Law of any State;

iv. Any Trade Union registered under the Trade Unions Act;

in so far the gain is not derived from any disposal of any assets acquired in connection with any trade of business carried on by the institution or society and the gain is applied purely for the purpose of the institution or society as the case may be (Section 27(1);

b. Gains accruing to any Local Government Council (Section 28(1);

c. Gains accruing to any company, being a purchasing authority established by or under any law in Nigeria ,empowered to acquire any commodity in Nigeria for export from Nigeria; or

d. Gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part Nigeria so far as the gains are not derived from the disposal of any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some person or authority (Section 28(2);

e. Gains accruing on disposal of investments held as part of any superannuation fund or other statutory retirement benefits scheme to the same extent as income derived from the assets would be exempt under Section 20 of PITA (Section 29.1).

f. Disposal of a right to, or any part of any sum payable out of any superannuation fund shall also not be chargeable (Section 29.2)

g. “Superannuation Fund” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under Section 21(1)(g) of PITA;

h. Gains accruing on disposal by any person of a decoration awarded for valour or gallant conduct which he acquires otherwise than for consideration in money’s worth(Section 30);

i. Gains accruing from a disposal of Nigeria Government Securities (Section 31) Nigeria Government Securities include Nigeria treasury bonds, saving certificates and premium bonds issued under the Savings Bonds and Certificates Act;

j. Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers (Section 9); and

k. Gains accruing in connection with the disposal of an interest in or the right under any policy of assurance of contract for a deferred annuity on the life of any person (Section 33).

Some of the other exemptions and relief provisions in the Act are as follows:

♦ Section 35 exempts sums obtained by way of compensation or damages for any wrong or injury suffered by an individual to his person or in his profession or vocation. This includes wrong or injury for libel, slander or enticement. Sums obtained by way of compensation for loss of office exceeding ₦ 10,000 in any year of assessment is however chargeable;

♦ Section 36 exempts gains accruing on disposal of a dwelling house (with a maximum land area of up to one acre or such larger area as the Board may determine) which has been the individual’s only or main residence throughout the period of ownership up to the time of disposal or up to the last twelve months before the date of disposal. So far as it is necessary for the purposes of this Section to determine which of two or more residences is an individual’s main residence for any period-

♦ The individual may conclude that question by notice in writing to the Board given within two years from the beginning of that period. This can be varied by a further notice in writing to the Board as respects any period beginning not earlier than two years before the giving of the further notice,

- The question shall be concluded by the determination of the Board. The individual may appeal to the Appeal Commissioners against that determination within thirty days of service of the notice by the Board;
- A gain accruing on disposal of tangible and movable assets shall not be chargeable gain if the total value of the consideration does not exceed ₦1,000 in a year of assessment (Section 37(7). If the proceeds of disposal exceed ₦1,000 in an assessment year, the amount of CGT chargeable on the gain shall not exceed half the difference between the amount of that proceeds and ₦1,000;
- A motor vehicle for carriage of passengers is an exempt asset for CGT purposes unless it is of a type not commonly used as private vehicle and is unsuitable to be so used (Section 38);
- Section 39 exempts assets acquired by way of gift and disposed of in a similar manner;.
- Section 40 exempts capital gains accruing to a diplomatic body;
- Double taxation relief is applicable to CGT as it is applicable to income tax under PITA and Companies Income Tax under CITA with the substitution of the words capital gains for income and profits and CGT for income tax;
  - The following exemptions have been included with effect from 1993:
  - Gains arising from takeover, absorption or merger provided that no cash payment is made in respect of the shares disposed/acquired (Section 32A).
  - Gains arising in respect of disposals of securities in a Unit Trust provided the proceeds are re-invested (Section 32B); and
  - Stocks and shares of every description are exempted with effect from 1 January,1998.

22.6 Computation of chargeable gains

Gains chargeable

Capital Gains Tax (CGT) is chargeable at 10% on capital gains arising from disposal of assets (Rate of 20% applied up to 31/12/95).

Section 3 CGT Act defined chargeable assets as meaning all forms of property, whether situated in Nigeria or not and including:

a) Options, debts and incorporeal property generally;
b) Any currency other than Nigerian currency; and
c) Any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired;
d) Stock and shares of every description(excluded from chargeable assets with effect from 1/1/98).

In respect of assets outside Nigeria and

a) Disposed by non-resident individual, or
b) Trustee of any trust or settlement, or
c) A company whose activities are managed and controlled outside Nigeria

CGT is chargeable on that part of the gains(if any) received or brought into Nigeria when they are so dealt with (Section 4). This is what is termed 'remittance basis'. The amount of the gains chargeable is dependent on the whole or part which is remitted to Nigeria. If there is no remittance to Nigeria, there is no liability to Capital Gains Tax in respect of the disposals of the non-current assets.

Capital loss on disposal of any asset is not deductible from capital gains on disposal of any other asset even if both are of the same type (Section 5).

22.7 Disposal and acquisition of assets

Meaning of 'disposal'

Except as specifically exempted by the Act, there is a disposal of assets by a person where any capital sum is derived from a sale, lease, transfer, assignment ,compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum and in particular:

a) Where any capital sum is derived by way of compensation for any loss of office or employment;
b) Where any capital sum is received under a policy of insurance and the risk of any kind of damage or inquired to, or the loss, or depreciation of assets;
c) Where any capital sum is received in return for forfeiture or surrenders of rights or from refraining from exercising rights;
d) Where any capital sum is received as consideration for use or exploitation of any asset; and
e) Without prejudice to paragraph (a) above, where any capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation (Section 6(1)

It is also stated in the Act that disposal includes reference to part disposal.

When an Acquisition/Disposal is Effective

Acquisition/disposal takes effect on the date of the contract to acquire/dispose of the asset or on a date at which there is an enforceable right to acquire or a binding duty to dispose of the asset or any right or interest therein, and in particular-

a) Where any contract is to be performed subject to any condition, the date of acquisition/disposal shall be the date when the condition is satisfied, but where a consideration of such contract does not depend solely or mainly on the value of the asset at the time the condition is satisfied, the acquisition /disposal shall be treated as if the contract had never been conditional, in which case, the effective date shall be the date of the contract.

b) Where an option is conferred by virtue of any contract, the date of the acquisition or disposal of asset shall be the date when the option is exercised (Section 11).

Hire purchase transactions

Where a non-current asset is purchased under hire-purchase, the cost for tax purposes is the cash price of the asset. The hire- purchase charges which represent the interest charges are allowable deduction under Section 20 0f CITA in arriving at the Assessable Profits.

Thus for Capital Gains Tax purposes, if all the instalments have been paid before the date of disposal, it is the full cash price that is taken as the cost for Capital Gains Tax purposes. If the instalments have not been fully paid, the cost of the asset at the time of disposal will be the cash price portion of the instalments paid to the date of disposal.

Illustration 22.1

Union Company Ltd. purchased a chargeable asset on hire-purchase. The deposit paid for the purchase was ₦250,000. The balance of the purchase price was to be paid in thirty-six monthly instalments of ₦25,000. The cash price of the asset is ₦790,000.

Calculate the Capital Gains Tax due assuming the assets were sold as follows:

a) For ₦1.25 million after payment of twenty-four instalments

b) For ₦1.3 million after full payment of all the instalments.

Suggested Solution 22.1

(a) Disposal after payment of 24 instalments	₦'000	₦'000	₦ '000
Sales price			1,250
Less cost of the asset:			
Deposit		250	
Instalments paid totalled (24 x ₦ 25,000)	600		
Less interest element (24 x ₦ 10,000)	240	360	
			610
Capital Gains			640
Capital Gains Tax at 10% thereof			64

(b) Disposal after full payment of all instalments	**₦'000**	**₦'000**	**₦ '000**
Sales price			1,300
Less cost :			
Deposit		250	
Instalments paid (36 x ₦ 25,000)	900		
Less interest element (36 x ₦ 10,000)	360	540	790
Capital Gains			510
Capital Gains Tax at 10% thereof			51

Calculation of interest element of each instalment

Deposit	250

Total payable by instalments	
(36 x ₦ 25,000)	900
Total hire-purchase price	1,150
Less the cash price	790
Total interest element	360
Total number of instalments	36
Interest element of each instalment (₦360,000 ÷ 36)	10,000

For simplicity, the interest element has been apportioned on the 'straight-line' basis.

Bargains comprising two or more transactions

Section 20 CGTA provides:
Where a single bargain comprises two or more transactions whereby assets are disposed of,
those transactions shall be treated for the purposes of computing capital gains as a single disposal. Where separate considerations are agreed or purported to be agreed for any two or more transactions comprised in one bargain (here transactions whereby assets are disposed of or not) those considerations shall be treated as altogether constituting an entire consideration for the transactions and shall be apportionable between them accordingly.

Where any apportionment under this Section shall result in lesser consideration than that agreed (or purported to be agreed) in the bargain being attributable to the disposal of the assets, the separate considerations agreed (or purported to be agreed) in respect of those assets shall be deemed to be the consideration for which those assets are disposed of .

Part disposal

Where there is a part disposal, the cost of that part of asset disposed and that of the undisposed part shall be apportioned. The cost to be apportioned to the part disposed shall be in the proportion that the consideration for the disposal bears to the total value of the whole asset on the date of disposal. The value of whole asset on that date is the consideration received in respect of the part disposed plus the market value of the part of the asset which remains undisposed (Section 17).
Thus if 'A' is the consideration received in respect of that part disposed of, and 'B' is the market value of the part which remains undisposed, then the apportionment will be based on the formula

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

Which shall be applied in computing the cost and /all other sums allowable as a deduction in computing the amount of the gain accruing on the disposal, the remainder being attributable to the property which remains undisposed of.

Connected persons

In tax practice, certain persons are treated as being so closely involved with each other that they have to be viewed as the same person or that transactions between them need to be treated differently from those ‘at arm’s length’. These persons are referred to as ‘connected persons’. Transactions between such persons may be as artificial or fictitious for the purpose of determining the tax liability arising therefrom. This implies that the revenue can make whatever adjustments as it considers necessary to counteract the reduction of liability to tax that could otherwise result from such transactions.

Transactions between connected persons

Where a person acquires an asset and the person making the disposal is connected with him, the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction made otherwise than by way of a bargain at arm’s length (Section 23 (1 &2).
The consideration shall be disregarded if less than the market value, and the consideration shall be deem to be the market value.

Connected persons (section 24)

a) An individual is connected with his/ her spouse and with his /her relatives and their spouses.

b) A trustee of a settlement is connected with the settlor of that settlement, and with any person connected with the settlor.

c) A partner is connected with the person with whom he is in partnership and with the spouse or relative of that person.

   A company is connected with another company if-

   i. The same person controls both, or

   ii. One is controlled by a person who has control of the other in conjunction with persons connected with him, or

   iii. A person controls one company and persons connected with him control the other or

   iv. The same group of persons controls both, or

   v. The companies are controlled by separate group which can be regarded as the same by interchanging connected persons.

d) A company is connected with another person who (either alone or with person connected with him) has control of a company are treated in relation to that company as connected with each other and with any other person acting on the direction of any of them to secure or exercise such control.

e) Persons acting to secure or exercise control of a company are treated in relation to that company as connected as with each other and with any other person acting on the direction of any of them to secure or exercise such control.

‘Relative’ is also defined in the Act as meaning, brother, sister, ancestral or lineal descendant.

Consideration

Consideration for asset acquired/disposed shall be deemed to be equal to the market value of the asset where any person acquires the asset:

a) Otherwise than by way of a bargain made at arm's length;

b) Wholly or partly for a consideration that cannot be valued or in connection with his own or another's loss of office or employment of diminution of emolument, or otherwise in consideration for or recognition of services or past services;

c) As trustee for creditors of the person making the disposal (Section 7(1).

Where a person donates an asset acquired by him by way of a gift (not being an acquisition on a devolution on death) or otherwise the person receiving the donation shall, for all purposes of the Act, so far as it relates to the interest taken by him, be deemed to have acquired the asset-

a) In a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, for a consideration equal to that amount; and

b) In any other case, for a consideration equal to the market value of the asset on the date of that disposal; and in this subsection "gift" does not include a donation mortis causa (Section 7(2).

The conveyance or transfer by way of security of an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of the Act as involving any acquisition or disposal of the asset (Section 7(4)).

Where a person entitled to an asset by the way of security or to the benefit of a charge or encumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or encumbrance his dealings with it shall be treated for the purposes of the Act as if they were done through him as nominee of the person entitled to it subject to the security, charge or encumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or encumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid (Section 7(5).

An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall from part of the consideration for the acquisition and disposal in addition to any other consideration(Section 7(6)).

Where an asset is acquired by a creditor in satisfaction of his debt or Part thereof, the asset shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it, and chargeable gain accrues to the creditor on a disposal by him of the asset the amount of the chargeable gain (where necessary) shall be accrued if he had acquired the property for a consideration equal to the amount of the debt or that part thereof (Section 7(7)).

Any amount that can be treated as income or profits for the purposes of the Income Taxes Acts shall be excluded from the consideration for a disposal of assets for capital gains tax computation (Section 13).

Consideration payable by instalments

When the consideration is payable by instalments over a period exceeding 18 months, the chargeable gain accruing on the disposal shall be regarded as accruing in proportionate parts in the year of assessment in which the disposal is made and in each of the subsequent years of assessment up to the assessment year in which the last instalment is paid in the proportion of the amount of the instalments payable in each of the years. Such chargeable gain shall be deemed to accrue on the last day of each of the year of assessment in which the instalments are received (Section 18).

No allowance is given for possible bad debts at the time of computing the Capital Gains Tax payable. However, if any part of the consideration already brought into the computation is subsequently shown to the satisfaction of the Board as irrecoverable, such adjustment, where by way of discharge, or repayment of tax or otherwise, shall be made is required in consequence (Section 18(5)).

Death (section 8)

On the death of an individual, any assets of which he was competent to dispose of shall for the purposes of the Act be deemed to be disposed of by him at the date of his death and acquired by the personal representatives or other person on whom the assets devolve for a consideration equal to-

a) The amount of the consideration for which the asset was last disposed of by way of a bargain made arm’s length if ascertainable, or

b) In any other case, the market value of the asset at that date;(subsection 1) the gains which accrue in consequence of subsection (1) of this Section shall not be chargeable to capital gains tax under the Act (Subsection 2) the personal representatives shall be treated as having the deceased’s residence and domicile at the date of death (Subsection 3).

On a person acquiring any asset as legatee-

a) No chargeable gain shall accrue to the personal representatives; and

b) The legatee shall be treated as if the personal representatives’ acquisition of the asset had been his acquisition of it, (subsection 4)

In this Section-

“Legatee” includes any person acquiring an asset under a testamentary disposition or on an intestacy or partial intestacy whether he takes beneficially or as trustee, and a donation mortis causa shall be treated as a testamentary disposition and not as a gift;
“Personal Representatives” means

a) The executor, original or by representation, or administration for the time being of a deceased person under any law in force in Nigeria; and

b) Persons having in relation to the deceased under the law of another country any functions corresponding to the functions for administration purposes under any law in force in Nigeria or personal representatives as defined under paragraph (a) of this subsection, and references to personal representatives in their capacity as having such functions as aforesaid, (subsection 7).

Assets lost or destroyed (section 19)

If a capital sum is received by way of compensation for the loss or destruction of an asset, whether under a policy of insurance or not, a relief is available to the owner if the amount is a applied within three years of receipt in acquiring a replacement of the asset lost or destroyed.
The owner can claim:

a) As if the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that neither a loss nor a gain accrued to him on the disposal; and

b) As if the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received together with any residual value or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) above.

If part of what would have been the chargeable gain (but for this provision) is what is reinvested, then the relief available will be proportionally reduced.

22.8 Planning for tax savings in capital gains tax

The main taxes in Nigeria can be classified into direct and indirect taxes as follows:

22.8.1 Direct taxes

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

22.8.2 Indirect taxes

Indirect taxes are taxes imposed on commodities (goods), professional services and instruments, before they reach the ultimate consumer, client or owner respectively and are paid by them, not as taxes (i.e. not to the tax authorities), but as part of the selling/legalization price/cost, of the commodity, service or instrument , as the case may be. Examples of indirect taxes include: Value Added Tax, Custom Duties, Excise Duties and Stamp Duties.

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

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

Tax planning involves anticipating a set of circumstances and the identification of opportunities to 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 on the taxable profits of the taxpayer ought to be considered in tax planning before deciding on the taxpayer's accounting date. Planning with regards to the time that the profit is earned and the timing of the payment of the applicable tax on such profit could result in significant financial advantage to a continuing business. When a business ceases to trade permanently, the date of cessation can also impact the amount of its tax liability.

On tax planning, the tax-conscious business person and the expert tax adviser, working together, can very often significantly reduce the tax liability that would be otherwise payable.
Tax planning requires detailed knowledge of tax legislation and its application to particular circumstances, identifying and taking advantage of loopholes, if any. It should also be noted that tax planning involves taking note of the applicable taxation legislation, to ensure that the tax laws are properly complied with by taxpayers, such that all taxes due are paid as at when due.

22.8.3 Tax planning checklist

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

(a) List of approved taxes and levies;

(b) Timing of fixed assets acquisition;

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

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

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

(f) Where to invest;

(g) Making specific instead of general provisions;

(h) PAYE properly deducted;

(i) Withholding tax properly deducted;

(j) Note critical dates

  (i) Filing of tax returns

  (ii) Filing of notice of objection

  (iii) PAYE monthly remittances

  (iv) PAYE year-end returns and final payment

  (v) Withholding tax remittances to revenue

(vi) VAT returns and remittances to revenue

(vii) National social insurance trust fund (NSITF)

(viii) National housing fund (NHF)

(ix) Due dates for income tax payment, to avoid penalty and interest;

(k) In capital gains tax (cgt), consider roll-over relief;

(l) CGT Rate is 10%. stocks and shares now exempted from cgt. Invest in stocks and shares rather than in buildings;

(m) Consider current tax incentives

(i) Pioneer companies

(ii) Rural investment allowance

(iii) Investment tax credit

(iv) Export processing zone allowance

(v) Export free zone exempt profit

(vi) Exempt profit of solid minerals mining

(vii) Hotel income exempt from tax

(viii) Investment tax credit- spare parts fabrication

(ix) Investment tax credit- replacement of obsolete plant

(x) Gas industry incentives

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

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

(p) Dividend distribution out of franked investment income.

22.9 Reliefs

22.9.1 Delayed remittances relief

Section 42(1) A person charged or chargeable for any year of assessment in respect of chargeable gains accruing to him from the disposal of assets situated outside Nigeria may claim that the following provisions of this Section shall apply on showing that:

a) He was unable to transfer those gains to Nigeria; and

b) That inability was due to the laws of the country where the income arose, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and

c) The inability was not due to any want of reasonable endeavours on his part.

Section 42(2) if he so claims, then for the purposes of Capital Gains Tax-

a) there shall be deducted from the amount on which he is assessed to Capital Gains Tax, for the year in which the chargeable gain accrued to the claimant, the amount in respect of which the conditions in paragraphs (a), (b) and (c) of subsection (1) of this Section are satisfied, so far as applicable, but

b) the amount so deducted shall be assessed to Capital Gains Tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the said conditions cease to be satisfied:

Section 42(3) No claim under this Section shall be made in respect of any chargeable gain more than six years after the end of the year of assessment in which that gain accrues.

Section 42(4) The personal representatives of a deceased person may make any claim which he might have made under this Section if he had not died.

22.9.2 Roll-over relief (section 32 CGT Act)

If the consideration received on disposal of an old asset used only for the purposes of a trade is applied in acquiring a new asset in replacement to be used for the purposes of the trade and the old asset and the new asset are within one, and the same one, of the classes of assets listed in the Act, the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for CGT purposes as if the:

(a) Consideration for the disposal of the old asset were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a loss nor a gain accrues to him, and

(b) Value of the consideration for the acquisition of the new asset were reduced by the excess of the value of the actual consideration for the disposal of the old asset over the amount of the consideration which he is treated as receiving under paragraph (a)above.

The foregoing will not have any effect on the parties to the transactions involving the old or new assets other than the claimant. This is to say that the purchaser of the old asset will still be treated as acquiring that asset at the price which he has paid for it while the seller of the new asset will be treated as having sold the new asset at the price he received for it.

Illustration 22.2

Mr. Niger sold his factory buildings which he acquired ten years ago for ₦500,000. The cost of acquisition at that time was ₦100,000. He acquired a new factory for ₦750,000 to enable him carry on his business.

Suggested solution to illustration 22.2

For CGT purposes, and upon Mr. Niger making a claim, he will be treated,

(a) As if neither a loss nor a gain accrues to him on the disposal, that is the proceeds of disposal will be taken to be equal to the cost which is ₦100,000 and therefore no capital gains tax is payable; and

(b) As if the cost of acquisition of the new asset (₦750,000) were reduced by the excess of the actual proceeds of disposal of the old asset (₦500,000) over the amount of the proceeds

which he is treated as receiving under paragragh
(a) (₦100,000), that is,₦400,000 which would otherwise be the capital gain on the disposal of the old asset, will be deducted from the cost of the new asset.

Thus, the cost of the new asset for capital allowances and CGT purposes will be ₦350,000 (₦750,000 –₦400,000). This is what is referred to as roll-over relief in CGT practice. The liability to CGT on gains which have been fully reinvested in the same asset used for the same trade being deferred until the replacement asset is finally disposed.

Note that where the insurance compensation money for the loss or destruction of a capital asset is applied within three years of receipt in acquiring a replacement asset, the above shall also be applicable if the owner so claims (Section 19). Continuing with the example of Mr. Niger from above, the purchaser of Mr. Niger's factory will not be affected by this arrangement neither will the seller of the new factory as they will record their transactions as having purchased and sold the factories for
₦500,000 and ₦750,000 respectively.

If only part of the proceeds of disposal is reinvested and the amount reinvested is greater than the cost of the old asset, the owner, if he so claims, shall be treated:

(a) As if the amount of the gains so accruing were reduced to the amount of the said part with a proportionate reduction in the amount of the chargeable gain, and

(b) As if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragragh (a) above.

In other words, if the proceeds are not fully reinvested, the amount of relief available will be the proportion which the gain reinvested bears to the total gain accruing on the disposal.

For the foregoing to be applicable, the acquisition of the new asset should be completed within the period of twelve months before and twelve months after the date of the disposal of the old asset or at such earlier time as the Revenue Service may by notice in writing allow.

Where an unconditional contract for the acquisition has been entered into, this Section may be applied on a provisional basis without waiting to ascertain whether the new asset is acquired in pursuance of that contract. When the fact is ascertained, all necessary adjustments shall be made by making additional assessments or by repayment or discharge of tax, and shall be made notwithstanding any limitation in the Act on the time within which assessments may be made. The assets to which this Section applies are classified as follows:

Class 1 assets

A – Land and building and any permanent or semi-permanent structure in the nature of a building, occupied (as well as used) only for the purposes of trade.

B – Fixed plant or machinery

Class 2 assets – Ships

Class 3 assets – Aircraft

Class 4 assets – Goodwill

If over the period of ownership, or any substantial part of the period of ownership, a part of a building or structure is partly used for the purposes of a trade, this Section shall apply as if the part so used is a separate asset. It will be subject to any necessary apportionment for an acquisition or disposal (Section 32.7).

This section shall apply in relation to a person who, either successively or at the same time, carries on two trades which are in different localities, but which are concerned with goods or services of the same kind, as if in relation to old asset used for the purposes of the one trade and new assets used for the purposes of the other trade, the two trades were the same (Section 32.9).

This section shall apply with the necessary modifications in relation to a business, profession, vocation or employment as it applied in relation to a trade.

The expressions "trade," "business", "profession", "vocation", and "employment" have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of those Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced (Section 32.10).

22.10 Artificial and fictitious transactions, and other matters

22.10.1 Artificial or fictitious transactions

Where the Board is of the opinion that any disposition is an artificial or fictitious transaction or where any transaction which reduces or would reduce the amount of any Capital Gains Tax is artificial or fictitious, the Board shall disregard such disposition and may direct that such adjustments shall be made with respect to the liability of any person for the payment of Capital Gains Tax as it considers appropriate so as to counteract the reduction of liability to Capital Gains Tax effected or reduction which would otherwise be effected, by the transaction and any person concerned with such transaction shall be assessable accordingly (Section 21(1)).

Any person in respect of whom any direction is made under this Section shall have a right of appeal in like manner as though for the purposes of the Act, such direction were an assessment to CGT (Section 21(2)).

"Disposition" includes any trust, grant, covenant, agreement or arrangement.

Transactions between connected persons shall be deemed to be artificial or fictitious if in the opinion of the Board those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length (Section 21(3)(b)).

22.10.2 Location of assets

For the purposes of the Act-

a) The situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property;

b) Subject to the following provisions of this subsection, the situation of rights or interests(otherwise than by way of security) in or over tangible movable property is that of the tangible movable property;

c) Subject to the following provisions of this Section, a debt, secured or unsecured, is situated in Nigeria if and only if the creditor is resident in Nigeria;

d) Shares or securities issued by any governmental, municipal, local or native authority, or by anybody created by such an authority are situated in the country of that authority or place where the authority is situated;

e) Subject to paragraph (d) of this Section, registered shares or securities are situated where they are registered and, if registered in more than one register, where they principal register is situated;

f) A ship or aircraft is situated in Nigeria if and only if the owner is then resident in Nigeria, and an interest or right in or over a ship or aircraft is situated in Nigeria if and only if the person entitled to the interest or right is resident in Nigeria;

g) The situation of goodwill of a trade, business or professional asset is at the place where the trade, business or profession is carried on;

h) Patents, trade-marks and designs are situated where they are registered, and if registered in more than one register, where each register is situated, and copyright, franchises, rights and licences to use any copyright material, patent, trade-mark or design are situated in Nigeria if they, or any right derived from them, are exercisable in Nigeria; and

i) A judgement debt is situated where the judgement is recorded (Section 25)

22.10.3 Other provisions

a. Section 22(1) – Market value in relation to any assets means the prices which those assets might reasonably be expected to fetch on a sale in the open market.

b. Section 22(2) – In estimating the market value, no reduction shall be made in the estimate on the account that the estimate is based on the assumption that the whole of the assets is to be placed on the market at one and the same time.

c. Section 22(3) – In re-estimating the market value of any assets acquired, if the market value exceeds the consideration actually paid by the acquirer the assets shall be deemed to have been acquired for the amount actually paid by the acquirer.

22.10.4 Anti-avoidance provision – section 44(3)

Without prejudice to the provisions of the Stamp Duties Act, the Minister with responsibility for matters relating to stamp duties shall demand tax clearance certificates when checking documents on sale by any company of landed property and other assets before accepting such documents for stamping.

Another anti-avoidance provision has been introduced with effect from January 1, 1993. It makes the production of evidence of tax payment a condition for effecting change of ownership of property, including shares and stocks (Section 44a).

22.11 Offences and penalties

There is no special provisions in Capital Gains Tax Act relating to offences and penalties. The CGT Act, however, provides that Part XIII of the Companies Income Tax Act (CITA) CAP C21 LFN 2004, on offences is applicable to CGT.

22.12 Chapter summary

Capital gains tax is the taxation of the increase in the capital value of an asset between the date of acquisition of the asset and the date of its disposal. Taxpayers are required to report any capital gain and pay any tax arising therefrom within thirty days of realization of an asset. Chapter II of Internal Revenue Act, 2000 (Act 592) governs capital gains tax.

Note should be taken of the exemptions and what constitutes a chargeable asset. The relief by way of the non- taxable threshold should be observed and granted before the tax of 10% is applied to the chargeable gains.

22.13 Worked examples

22.13.1 Multiple-choice questions

1. Under Capital Gains tax Act, disposal is deemed to have taken place in the underlisted circumstances, EXCEPT
   A. Any capital sum received in employment
   B. Any capital sum received in return for refraining from exercising rights
   C. Any capital sum received as consideration for use or exploitation of any asset
   D. Any capital sum received under a policy of insurance and the risk of any kind of damage or injury to or loss or depreciation of assets
   E. Any capital sum received in connection with or arising by virtue of any trade, business, profession or vocation
2. Which of the following expenses is NOT admissible under the Capital Gains Tax Act CAP C1 LFN 2004 (as amended)?
   A. Any professional cost, such as solicitor's fee
   B. Any donation to a political party
   C. Any selling expenses such as advertisement cost
   D. The cost of acquiring any disposed asset
   E. The cost of refurbishing the chargeable asset prior to disposal

3. According to the Finance Act 2021, the sums obtained by way of compensation for loss of office exceeding ………………..will be subject to capital gain tax.
   A. N100,000
   B N1,000,000
   C. N10,000,000
   D. N20,000,000
   E. N30,000,000

4. Which of the following is NOT a chargeable asset under Capital gains tax?
   A. Incorporeal properties
   B. Artworks and paintings
   C. Land
   D. Options
   E. Life insurance policy

5. Capital Gains tax on companies is payable to…..

A. Joint Tax Board
B. State Internal Revenue Service
C. Federal Inland Revenue Service
D. Committee of Ministers
E. Central Bank of Nigeria

22.13.2 Short answer questions

1. Capital gains for individuals is administered by………………………………………
2. Capital gains on the disposal of a landed property through……….. by government is exempted from capital gains tax.
3. All chargeable assets are subject to capital gains tax when…………….except those exempted by the Act.
4. Capital gains tax is the tax paid on the profits made from…………an asset
5. If a residential residence, owned for more than two years, is disposed of, the profit made on such sale is exempted from capital gains tax. TRUE or FALSE?

22.13.3 Examination type questions

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

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

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

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

Required:

Advise the management on:

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

(2) Janid Investment Limited sold its two buildings situated on Lagos- Badagry Expressway, Amuwo, Lago
another in Ibadan.

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

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

Required:

a. Compute the capital gains tax liability for the relevant year of assessment.

b. State one other alternative open to Janid Investments Limited in discharging its capital gains tax liability and the time limit for exercising the option.

(3) In April 2004, Dr. Mensah acquired a house at a cost of N60million. Other acquisition expenses incurred were ₦100,000 for legal fees and ₦200,000 valuation fee. On November 30, 2004, a duplex was constructed in the excess space at a cost of ₦12million.

On June 1 2005, the duplex was sold to Uncle Jimmy for ₦16 million. The actual market value was ₦20 million and the value of remaining property was ₦68 million. On 1 January 2006, Dr. Mensah sold the remaining property for ₦72 million after paying for the following expenses:

	₦
(a) Improvements	1,000,00
(b) Estate Agency	400,000
(c) Legal fees	120,000
(d) Advertising	240,000
	1,760,000

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

22.13.4 Suggested solutions to multiple-choice questions

1. A
2. B
3. C
4. E
5. C

22.13.5 Suggested solutions to short answer questions

1. State Board of Internal Revenue
2. Forced acquisition
3. Disposed of
4. Selling/disposing of
5. True

22.13.6 Suggested solutions to examination type questions

1. **XYZ & CO. (CHARTERED**
2, AYODEJI STREET, IKEJA – LAGOS
STATE

O/R Y/R November 15, 2009

The Managing Director
Best Manufacturing (Nig.)
Ltd. Ejigbo
Lagos State

Dear Sir,

RE: ADVICE ON TAX IMPLICATIONS OF DISPOSAL OF A PROPERTY/INSURANCE CLAIMS RECEIVED ON DESTROYED PROPERTY

We are in receipt of your letter dated November 5, 2009, appointing us as your company's tax consultants and specifically requesting for our advice on the following under-listed areas:

Capital gains (if any) arising from the transactions;

The capital gains tax payable; and

Suggestions on ways of reducing the capital gains tax.

After thorough examination of the information provided in your letter under reference, we state as follows:

a. In respect of item (a) Appendix I shows the capital gains for assessment years 2007 and 2008; and

b. For the assessment year 2007, your company is not liable to capital gains tax for the fact stated under Appendix I, while for assessment year 2008, the capital gains tax is N130,000, as shown under Appendix II.

c. In our opinion, for your company to have a reduced liability on capital gains tax, the full proceeds of N5,900,000 should be applied to Ejigbo factories, thus having a full benefit of roll over relief in 2008 assessment year.

We have based all our computations on the following provisions of the tax laws;

(i) Assets lost or destroyed and replacement of business assets;

(ii) Roll over relief on re-investment of disposal proceeds of similar assets; and

(iii) The mandatory period of 12 months of disposal of old assets within which re-investment occurred. As shown in our computations, your company was liable to capital gains tax in 2008, because the amount reinvested was less than the claim proceeds.

Should you require any further clarifications or explanation, we would be most obliged to do so.

Once again, we use this opportunity to thank you for your understanding and cooperation and for considering us for this assignment.

Yours faithfully,
For: XYZ & Co. (Chartered Accountants)

PETER JAMES
Managing Partner

(a) **APPENDIX I**
BEST MANUFACTURING NIG. LTD

Capital Gains for 2007 year of assessment		₦'000 Disposal of OTA warehouse
Sales proceeds		4,200
Less: Cost of acquisition		(1,800)
Capital gains		**2,400**
Deduct roll-over relief: The lower of:		
Amount reinvested in Ejigbo	5,600	
Actual sales proceeds	4,200	
Less: Cost of acquisition	1,800	
Capital gains rolled over		(2,400)
Net capital gains		
		N

ii.

Reason: The amount reinvested is greater than the sale proceeds; therefore, full roll-over relief will be claimed.

(b) **Capital gains for 2008 year of assessment**

Disposal of OTA factory	₦'000
Claim from MACON	5,900
Less: Cost of acquisition	(3,700)
Capital gains **2,200**	
Deduct roll-over relief:	
The lower of:	
Amount re-invested	4,600

Claim/sales proceeds	5,900
Less : Cost of acquisition	3,700
Capital gains rolled over	(900)
Net capital gains	1,300

Total capital gains made on the project	
2007 Year of assessment – Disposal of warehouse	2,400
2008 Year of assessment – Disposal of factory	2,200

APPENDIX II

Capital gains tax payable		₦'000
2007 Year of assessment		Nil
2008 Year of assessment	(N1,300,000x10%)	130

(c) **Ways to reduce the capital gains tax**

In order to reduce the capital gains tax, the full proceeds of N5,900,000 should be applied to Ejigbo factories so that the company can benefit from full roll-over relief in 2008 assessment year.

2. Janid Investments Limited

(a) Computation of capital gains tax liability

For 2008 year of assessment

	Lagos building	Ibadan building
	₦	₦
Compensation/sales proceeds	25,000,000	15,500,000
Deduct: sales expenses	-	(3,250,000)
Net compensation/sales	25,000,000	12,250,000
Deduct: acquisition costs	(2,500,000)	(850,000)
Capital gains	22,500,000	11,400,000
Capital gains tax (10%)	NIL	1,140,000

The capital gains arising on the Lagos building is exempted from capital gains tax, because it relates to a compulsory acquisition of property by an authority that has the power to do so.

(b) The company can discharge its capital gains tax liability by claiming roll-over- relief from the disposal of the Ibadan building. full roll over relief will be granted if the whole of the consideration of N15,500,000 obtained from the sale of the Ibadan building is reinvested in the construction of the Ogun building.

The time limit within which the proceeds from the sale of the old asset must be reinvested in the new asset is a period beginning twelve months before and ending twelve months after the disposal of the old asset.

Please note that the tax law did not specify the time limit for claiming roll-over relief.

3. Dr. Mensah

Computation of capital gains tax
For 2005 and 2006 tax years
2005 – 01/01/05 to 31/12/2005

	₦	₦
Consideration received:		
(Market value of duplex)		20,000,000
Deduct: Cost of duplex		(12,000,000)
Capital gains		8,000,000
Capital gains tax @ 10%		800,000

2006 - 01/01/06 to 31/12/2006

Consideration received		72,000,000
Deduct: incidental selling expenses:		
Estate agency fees	400,000	
Legal fees	120,000	
Advertising	240,000	(760,000)
Net proceeds		71,240,000
Deduct: Cost of acquisition		
Consideration paid incidental cost of acquisition	60,000,000	
Legal fees	100,000	
Valuation fee	200,000	
Cost of improvements	1,000,000	(61,300,000)
Capital gains		9,940,000
Capital gains tax @10%		994,000

CHAPTER: TWENTY-THREE

APPLICATION OF INFORMATION TECHNOLOGY IN TAXATION

Chapter contents

a. Learning objectives
b. Introduction
c. Overview of the technological impact on tax practice and administration
d. Current roles of tax administrators
e. The effects of technology on modern tax administration in Nigeria
f. Operations of the FIRS TAXPROMAX solution relating to filing requirements and procedures
g. New technologies for tax practice and administration
h. Impact of new technologies for tax practice and administration
i. Taxes applicable to technology-based transactions
j. Technology as an effective tool for tax practitioners and administrators
k. Key reasons why tax practice and administration should leverage technology
l. Challenges of technology on tax practice and administration
m. Chapter review
n. Worked examples

23.0 Learning objectives

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

(a) Overview of computer applications amenable to tax planning and administration (e.g. excel and web portals);
(b) Navigational skills in FIRS and other tax portals;
(c) Electronic income/companies Income tax returns;
(d) Automated VAT management and returns;
(e) Excel payroll software template for computations of employees' tax; and
(f) Key features of integrated tax administration system (ITAS) of Federal Inland Revenue Service (FIRS) which include:
   i. Electronic registration of a taxpayer with the FIRS and validation of tax identification number TIN);
   ii. Online submission of tax returns;
   iii. Electronic tax payment to FIRS;
   iv. Processing of electronic tax clearance certificate (TCC); and
   v. Automated filing and collection system of value added tax (VAT) as it relates to branded shops, super shops; supermarkets and standard restaurants.

23.1 Introduction

The roles of tax practitioners and administrators are unique and essential in every society. There is hardly any business outfit that does not deal with series of tax issues yearly, arising from their transactions or locations. In most cases, entities find it challenging in handling their tax matters.

Following recent advances in technology all over the world, many organisations are moving fast to key into the opportunities therein to facilitate and resolve their regular business challenges.

This section discusses how tax practitioners and administrators can make use of available technology to enhance their work and make them more relevant in today's dynamic environment.

23.2 Overview of the technological impact on tax practice and administration

Tax practitioners are independent firms licensed to provide tax-related services to their clients, while tax administration refers to revenue agencies or authorities with the mandate to assess, collect and account for taxes on behalf of the government.

a. Current roles of tax practicing firms

Tax practitioners provide independent services to their clients which include:

i. Preparation of tax records;
ii. Computation of end of year tax liabilities;
iii. Filing of tax returns;
iv. Advisory to clients on tax matters;
v. Compliance with tax legislations;
vi. Resolution of tax disputes; and
vii. Management of tax audit and investigation.

Evidence from technological advancements reveal that most of these tasks can be made more efficient and effective through automation.

b. Elements of tax practice

There are four elements of tax practice as highlighted below. These elements could be enhanced by leveraging on new technologies described in the next section.

c. Tax Compliance: - This involves:

i) Gathering of relevant tax information;
ii) Evaluating and classifying the information;
iii) Filing of necessary tax returns; and
iv) Representing clients during tax audits, investigation, etc.

d. Tax planning and advisory: - This involves:

i) Arranging client's transactions to optimise (usually minimise) tax liability , that is, tax avoidance or evasion schemes; and
ii) Planning for:
   - Open transactions

     These involve planning the timing and amount for pending future transactions to reduce any associated tax implications; and

- Closed transactions

  These relate to how to present and classify past transactions in the accounts to reduce their tax exposure.

e. Tax litigation: - This involves:

i) Settling disputes with tax authorities in a law court or tribunal. It also involves reading, understanding and citing a lot of the provisions of extant tax laws and regulations;
ii) Appearing as an expert or technical witness in court of law on behalf of clients; and
iii) Appealing on behalf of clients when necessary.

f. Tax research and intelligence: - This involves:

i) Identifying a tax problem;
ii) Gathering the relevant evidence or information for tax purposes;
iii) Evaluating several scenarios relating to the challenge; and
iv) Determining and outlining the solutions to the problems.

23.3 Current roles of tax administrators

Tax administrators are public authorities empowered to assess, collect and account for taxes for a recognised jurisdiction. Their roles include, but not limited to:

(a) Registration and education of taxpayers;
(b) Receiving tax returns filed by taxpayers;
(c) Assessing taxpayers (individual and entities);
(d) Collecting, maintaining records and accounting for taxes paid;
(e) Managing and processing tax refunds applications;
(f) Conducting routine tax audits, investigations, etc; and
(g) Managing and enforcing tax debt recovery; and advising on the review of tax legislations and regulations.

23.4 The effects of technology on modern tax administration in Nigeria

In 2006, the Federal Inland Revenue Service (FIRS) deployed the first tax portal (Webportal) which was implemented to automate and streamline taxpayers' registration and other tax administration processes. In 2014, an Integrated Tax Administration System (ITAS) known as SIGTAS was implemented though it appears its deployment was stalled.

Recently, the FIRS announced the adoption and deployment of a locally developed tax management solution known as **TAXPRO MAX**. This system has the capacity to handle different aspects of tax administration including:

(a) E-registration: - Deployment and use of a robust and integrated tax management software makes it possible for accurate taxpayers' data to be captured by the tax authority. Each taxpayer enrolled is assigned a unique tax identification number (TIN) and it is now possible for taxpayers to do self-enrolment through a web application service.

(b) E-assessment: - When taxpayers file returns electronically, it is possible for their tax liabilities to be computed and assessment notice generated automatically and sent to their email accounts.

(c) E- payments: - Technology has made it possible for taxpayers to make payments through several electronic channels, such as point of sale (POS); internet banking; bank transfers; unstructured supplementary service date (USSD) or even using their credit/debit cards from the comfort of their homes.

(d) E- filing: - Most integrated tax management solutions come along with a module that facilitates electronic filing. This enables taxpayers to file their returns from their offices without the stress of going to the tax office which might be several kilometers away. For instance, the FIRS has been encouraging taxpayers to make use of the recently deployed TaxPro solution to file their periodic tax returns, including VAT and CIT returns.

(e) E-tax calculator: - Modern tax authorities develop and deploy this tool on their websites to enable taxpayers and their consultants to compute the accurate amount of taxes to be paid. This function has been part of the FIRS website (www.firs.gov.ng) in the last few years.

(f) E-TCC: - Many individual and corporate taxpayers require their tax authorities to issue tax clearance certificates (TCCs) to them on yearly basis. Through the use of appropriate technology, taxpayers can apply for their TCCs electronically and getthem sent to their email accounts, if the conditions are met.

(g) E-reporting: - Each tax authority requires various performance reports to be generated on a periodic basis. These reports can be generated within seconds at the click of a button.

(h) E-tax audit: - Technology has made it possible for the entire process of tax audit to be carried out without the tax auditors visiting the premises of the taxpayer and vice versa. For instance, all the pre and post –audit meetings can be held using video conferencing tools and documents exchanged electronically through emails.

23.5 Operations of the FIRS TAXPROMAX solution relating to filing requirements and procedures

a. Preamble

Following the provisions of the Finance Act 2020 empowers the Federal Inland Revenue Service (FIRS) to automate filing of tax returns and payment processes. In furtherance to the foregoing, the FIRS introduced the TaxProMax application. The application is a one-stop, online tax administration platform for the management of tax processes. Consequently, taxpayers have the opportunity to:

(i) Register, file returns, remit taxes;

(ii) Carry out assessments and keep track of tax obligations;

(iii) Manage withholding tax deductions;

(iv) Manage capital allowance and loss;

(v) Download tax clearance certificate; and

(vi) Communicate with the FIRS on tax issues, etc.

On June 7. 2021, the application portal was opened for filing of all naira denominated taxes. Based on a circular dated June 4, 2021, the Federal Inland Revenue Service called on taxpayers to fulfil their tax obligations using the portal.

Due to the hitches experienced by taxpayers in the registration and use of the portal, companies that have December 31, accounting year end whose returns fell due on June 30, 2021,. had the deadline for filing of returns extended to July 31, 2021, instead of the statutory June 30, 2021, without any obligation to pay penalty and interest for late filing.

Taxpayers are expected to register in order to access the portal, after which, they must input their log-in details in order to file returns. Upon filing the returns, a document identity number (DIN) will be generated. The DIN is mandatory in order to remit taxes via the portal. The portal can be used to file returns by taxpayers or their approved agents.

Taxpayers who are interest to file returns in hard copy may visit the local tax offices where staff of the FIRS will be on hand to upload the documents to the portal. However, this should be done at least 2 weeks before the deadline.

b. Filing Requirements for value added tax (VAT)

Taxpayers are expected to file their returns on TaxProMax, using the following procedure:

i. Fill the tax update form by visiting any local tax office of the FIRS;
ii. Access the TaxPro Max portal via https://taxpromax.firs.gov.ng and login with their user details, after which, a dashboard will be displayed;
iii. Click on “taxes due” and select the “tax type”;
iv. Click on “process” to begin;
v. Fill in the schedules as required including sales adjustment, exempt and zero-rated goods and service;
vi. Click on “add record” and “proceed”;
vii. Ensure that the VAT form is loaded after completing all schedules;
viii. Select the “currency type” under “Returning Currency”;
ix. Insert the total sales/income, exclusive of VAT;
x. Tick the box for the declaration form; and
xi. Confirm all entries before submission.

c. Filing requirements for companies income tax (CIT)

i. Log in to https://taxpromax.firs.gov.ng on your browser.
ii. Click “taxes due”.
iii. Under the action column, click on “process” and it will take you to schedules.
iv. The companies income tax (CIT) form will be generated and displayed after the completion of all the schedules.
v. Select the currency type, for example. NGN, GBP, USD, CFA, EUR, under “returning currency”.
vi. Insert the total revenue amount in the first box of the generated form. This will automatically fill the remaining pre-fill boxes.
vii. click on “declaration” beneath the generated CIT form, to declare that the information is correct and in accordance with the relevant Tax Act.
viii. Select payment options; full-payment, 2 instalments, 3 instalments, or 4 instalments, accordingly.
ix. Click on “submit”.
x. On the Companies income tax assessment page, click on “review the CIT assessment”.
xi. Click “proceed to payment”.
xii. On the CIT assessment page, upload audited accounts, tax computations, notes to accounts, memorandum and articles of association.
xiii. Click on “submit”.
xiv. All documents to be uploaded in PDF format except notes to the accounts which is in excel format. The size of the files should not be more than 200kb.
xv. Payment session: On the CIT payment page, go through the description items and their corresponding amounts for payment.
xvi. Click “process to payment”
xvii. Click on “pay now” on the payment page.
xviii. Click “pay” button.
xix. The system will automatically generate a payment reference code
xx. Two payment options will be available, that is, ‘pay online’ or ‘pay at bank’.
xxi. Pay online will automatically connect to Remita platform by generating the payer’s name, phone number, email, amount, reference code. You can pay the amount online or at any FIRS designated bank and click submit.
xxii. Confirm payment and print payment acknowledgment slip.

23.6 New technologies for tax practice and administration

Two different future trends in tax that both rest on information technology are:

a) **Increasing use of digital technology –** Tax professionals will use increasingly sophisticated technologies to enhance their traditional ways of serving clients. This is already happening today across the globe; and
b) **A radical shift (total takeover) –** Here, technology does not simply streamline and optimise that traditional approach, it actively displaces the work of traditional tax professionals.

Digital transformation inspired by unprecedented pace of technological advancement is disrupting nearly every industry, and taxation is no exception. Some of the new technologies disrupting the taxation industry include:

(a) **Cloud computing technology:** Many accounting software are hosted in the cloud. Some of them come along with modules for tax management used for:

i. Automated tax computation;
ii. Tax returns preparation and filing;
iii. Tax planning and forecasting; and
iv. Tax payment; etc.

In most advanced tax environments, there 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 afford tax practitioners the opportunity to work remotely from practically any device with internet connection and serve their clients from any location at any time. It further helps tax practitioners to facilitate collaborations among themselves and clients.

(b) **Artificial intelligence and robotics:** - Traditionally, tax practitioners put a lot of efforts in collating and analysing financial data in order to serve their clients and taxpayers. Artificial Intelligence (AI) 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 and monotonous aspects of the tax man's job.

AI is capable of making tax practitioners and administrators more productive as its algorithms allow machines to take over time-consuming, repetitive, and redundant tasks. Rather than just crunch numbers, tax professionals will be able to spend more time delivering actionable insight on tax implications of past and future transactions of the company.

Machines can help reduce costs and errors by streamlining operations. For instance, the optical character recognition (OCR) technology enables practicing firms to automate and accelerate manual entries by converting textual data to digital files using scanners and mobile device cameras.

Apart from automating the repetitive and mundane tasks of tax practitioners, AI would enable tax practitioners focus on high value functions such as tax advisory services based on deeper insights of client's data.

(c) **Blockchain technology:** Blockchain technology became popular globally through the advancements in digital currency transactions such as Bitcoin. Many businesses now leverage on the blockchain technology to record their financial and non-financial transactions in an open, secured and decentralised ledger.

Where the tax consultant or the tax authorities are made 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 blockchain can equally be used to facilitate tax payments to the government at highly reduced processing cost.

Blockchain enables smart contracts, protecting and transferring ownership of assets, verifying people's identities and credentials, etc. Once blockchain is widely adopted, and challenges around industry regulation are overcome, it will benefit businesses by reducing costs, increasing traceability and enhancing security.

(d) **Data analytics technology:** - Data has become the new cash as it is extremely crucial to make useful business financial decisions. Today, data is not just numbers and spreadsheets that accountants and tax practitioners have been familiar with for years. It also includes unstructured data that can be analysed through automated solutions.

Data analytic software can allow for real-time status monitoring of financial matters including their tax implications. Data is the fuel that powers other technology trends that are transforming finance and accounting. In the financial realm, data produces valuable insights, drives results and creates a better experience for clients. Since everything leaves a digital footprint, the unprecedented digitalisation of our world is creating opportunities to glean new insights from data that was not possible before.

These insights help tax administrators to improve internal operations and build revenue for the government. Through data analytics software, tax practicing firms could offer more valuable advisory services to their clients.

(e) **Social media technology:** - Social media platforms have been with us for a while and they have become useful tools in the hands of tax practitioners and administrators. Primarily, the social media platforms are used for dissemination of tax information due to its wide reach and appeal to the younger generation. Beside information sharing, platforms such as Facebook; Instagram; Twitter; LinkedIn; etc; are useful for collaboration among tax professionals and institutions.

A lot of tax practitioners have made themselves more visible and attractive to clients through the use of social media platforms.

(f) **Mobile app technology:** Tax practitioners can use 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 respectively could download and install for tax updates and news.

23.7 Impact of new technologies for tax practice and administration

The use of some of these technologies in tax practice and administration brings the following benefits:

(a) Customer satisfaction: There would be enhanced perception of overall tax practice and administration performance;
(b) Lower cost of compliance: Members of staff of the tax authority would be able to focus on more valuable activities;
(c) Data error is minimised: Improvement in the quality of taxpayers' information; and
(d) Improved voluntary compliance: The compliance level of most taxpayers is bound to improve which would in turn impact positively on revenue generation.

For tax practising firms, the following benefits could be derived:

(a) Time savings – speed and accuracy of data entries and processing;
(b) Cost savings in the long run;
(c) Focus on higher level jobs that machines cannot handle;
(d) Mobility of service; and
(e) Increased capacity to serve multiple clients.

23.8 Taxes applicable to technology-based transactions

E-business and e-commerce have become the order of the day across the globe as most economic transactions are today executed online real-time. Some good examples of e-commerce transaction are:

a. Online shopping;
b. Online movies;
c. Internet banking;
d. Online ticketing and reservation;
e. Auction sites;
f. Journal subscription; and
g. Online betting and gaming.

One wonders if the players in the digital space such as Google; Apple; Microsoft; Facebook; Jumia; Konga; etc pay the right amount of taxes to the various jurisdictions where their services are consumed. Do they have physical presence in all the countries where their services are taken?

Generally, income generated from technology-based transactions are not exempted from income taxes. Most of the traditional tax types such as VAT, WHT, CIT and PIT are equally applicable to technology-based transactions, such as e-commerce transactions.

Some multinational companies now prepare their financial statements that clearly show transactions from digital business as a separate line.

However, due to the problem of no physical presence of most of the digital companies, many countries appear to introduce special taxes based on the concept of significant economic presence (SEP) in line with Organization for Economic Cooperation and Development (OECD) framework. As at October 14, 2020, Austria, France, Hungary, Italy, Poland, Spain, Turkey, and the United Kingdom (UK) had implemented a digital service tax (DST). Belgium, the Czech Republic, and Slovakia have published proposals to enact a DST, and Latvia, Norway, and Slovenia have shown intentions to implement same.

The UK's DST is charged at 2% on gross UK-generated revenues of large businesses providing a social media service, search engine, or online marketplace to UK-based users. The tax was applied to revenues generated from April 1, 2020. France has since imposed its own 3% tax on digital revenue for large tech companies — in effect singling out the U.S. tech giants — but has said it would withdraw the tax in favor of an international solution being negotiated under the auspices of the OECD.

In late February 2021, the US removed the stumbling block to global deal on digital tax as the Joe Biden's administration dropped the insistence on 'safe harbour' for companies adopted during the Donald Trump's administration, opening door to agreement with other countries. The OECD has predicted that an acceptable international agreement on digital service tax is likely to be reached by mid-2021.

Based on the provisions of Finance Act, 2019, which came into force on February 3, 2020, Nigeria established a new legal framework that would allow her to levy tax on the income of non-resident technology companies (NRTC) whose business activities constitute Significant Economic Presence (SEP) in Nigeria, to the extent that these companies do not already have a separate local entity incorporated. Electronic transactions were made subject to stamp duties.

The Federal Government of Nigeria (FGN) on Friday, May 29, 2020 published the Companies Income Tax (Significant Economic Presence) Order, 2020 ("the Order") in its Official Gazette No. 21, Vol 107 of

February 10, 2020.

The Order provides that a non-resident company shall have a SEP in Nigeria in any accounting year, where it derives N25 million or more as annual gross turnover or its equivalent in other currencies from any or combination of some specific activities. The second sub-category includes DCs that:

a. Use a Nigerian domain name;

b. Register a website in Nigeria; or

c. Have a purposeful and sustained interaction with persons in Nigeria by customising their digital platforms to target persons in Nigeria (localization test).

An example of the latter is where the company reflects the prices of its products in naira or provides options for billing and payment in naira.

Some countries have equally put in place policies for the regulation of cryptocurrencies and make such transactions taxable.

The recent ban placed on Twitter in Nigeria has again raised the question on whether or not these technology giants operating in the digital space are paying any tax to Nigeria.

23.9 Technology as an effective tool for tax practitioners and administrators

According to McKinsey, by 2030, intelligent agents and robots could replace as much as 30% of the world's current human labour causing 375 million people to switch job categories.

The question therefore is -should robots be required to pay tax, considering the fact that many robots are being deployed to take over the repetitive tasks of accountants?

Technologies and their impact on tax

a) Cloud technology

Cloud technology impacts tax practice in the following ways:

i. Tax management software hosted in the cloud (check out cloud service providers);
ii. Storage and retrieval of tax transaction data in the cloud;
iii. Access and analyse tax data anytime, anywhere and on any device;
iv. Present results in robust dashboards; and
v. Collaboration and exchange of information between tax authorities and/or taxpayers.

b) Data analytics technology

Data analytics technology impacts tax in the following ways:

i. The use of statistical power of modern machines to analyse volumes of data and gain better business insight;
ii. Identify and predict tax risk factors and anomalies; and
iii. Improved business and tax advisory services due to deeper insight.

This equally offers accountants and tax auditors some advantages:

- Check transactions at source;
- Review complete set of data (100 per cent check);
- Predictive analytics (assist in risk assessment); and
- Evaluation of programmed tax controls.

c) Artificial intelligence and robotics

Artificial intelligence (AI) is already in use for optical character recognition (OCR), and voice recognition and can easily be adapted in other areas of tax compliance.

AI-enabled applications (Chatbot) can deal with more complex tasks, such as answering subtle taxation queries.

This technology offers the following, among others:

i. Zero data entry;
ii. Responding to queries;
iii. The machine can be made to learn from tax auditor's conclusion and uses it on future scenarios; and
iv. Identify patterns in both structured and unstructured transactions data – which ones are "normal and abnormal".

d) Social media technology

Social media is a medium to build relationships which can easily be used by tax practitioners to:

i. Gain visibility and exposure;
ii. Be recognised as experts;
iii. Build their online network; and
iv. Keep the clients informed and provide better and prompt customer service.

e) Mobile app technology

Mobile apps are useful to tax practitioners in the following ways:

i. Mobile accounting provides tax practitioners many benefits, such as on-demand data and information, even if they are on the go; and
ii. Starting a laptop or computer every time you want to work, and then go online is a waste of time when you can get all the information with just a single tap.

f) Blockchain technology

Distributed ledgers provided by blockchain technology, serves tax practitioners as follows:

i. Decentralisation and distribution of shared database;
ii. All parties to a business transaction are involved in recording and validation from inception. This includes involving the tax authorities;
iii. No reconciliation needed; and
iv. No tax audit required.

By storing blocks of information that are identical across its network, the blockchain:

- Cannot be controlled by any single entity – decentralised to all nodes;
- Offers no single point of failure;
- Provides enhanced security through its immutable ledger;
- Provides enhanced transparency of transactions; and
- Is faster and cost effective.

23.10 Key reasons why practice firms leverage technology

Below are some benefits derivable by practice firms leveraging technology:

(a) **Winning more clients**: It is obvious that majority of clients would prefer to hire tax practice firms that are adaptive to technology changes;

(b) **Retaining more clients**: Adoption and adaptation of modern technologies would make practising firms to render the much needed valuable and improved services which make clients retain them;

(c) **Cross-selling services**: Technology provides platforms to enable practising firms make their services more visible to many clients; and

(d) **Adding greater value**: Firms that adopt new technologies are able to automate most of the routine and labour-intensive tasks. This makes it possible for such firms to focus their attention on tasks that generate greater values for their clients.

23.11 Challenges of technology to tax practice and administration

The challenges of technology adoption in tax practice and administration include:

(a) Low computer literacy level;
(b) Poor internet facility;
(c) Possible cyber threat;
(d) High implementation cost;
(e) Lack of technical know-how; and
(f) Challenge of data validation - garbage-in; garbage-out-.

Opportunities

Opportunities for tax practitioners from technology adoption include:

(a) Allowing tax professionals to focus on higher level jobs while offering their services to more clients;
(b) Enhancing visibility to clients;
(c) Providing ability to offer personalised services to clients;
(d) Enhancing adaptability to change and offering new services;
(e) Saving time – become more efficient and focused on relevant data;
(f) Saving cost (long term);
(g) Enabling mobility of service – geography is now unimportant;
(h) Providing new skills to tax professionals;
(i) Enabling opportunity to work collaboratively with anyone from any part of the world; and
(j) Increasing tax audit quality, as it begins to allow auditors to ask a lot more questions.

23.12 Chapter review

The chapter discusses the following:

(a) Overview of computer applications amenable to tax planning and administration (e.g. excel and web portals);

(b) Navigational skills in FIRS and other tax portals;

(c) Electronic income/companies Income tax returns;

(d) Automated VAT management and returns;

(e) Excel payroll software template for computations of employees' tax; and

(f) Key features of integrated tax administration system (ITAS) of Federal Inland Revenue Service (FIRS).

23.13 Worked examples

23.13.1 Multiple-choice questions

1. Which of the flowing is NOT an element of tax compliance?

A. Preparation of payroll
B. Gathering of relevant tax information
C. Evaluating and classifying the information
D. Filing of necessary tax returns
E. Representing clients during tax audits, and investigation

2. The locally developed tax management solution known as **TAXPRO MAX** has the capacity to handle the following aspects of tax administration EXCEPT

A. E- registration
B. E counting
C. E-assessment
D. E-filing
E. E-payment

3. Many accounting software hosted in the cloud come along with modules for tax management used for the following EXCEPT

A. Automated tax computation
B. Tax returns preparation and filing
C. Tax planning and forecasting
D. Tax payment
E. Tax monitoring

4. The optical character recognition (OCR) technology enables practicing firms to automate and accelerate manual entries by

A. Converting textual data to digital files using scanners and mobile device cameras
B. Enhancing textual maps to microfilms
C. Converting data to digital files scanners and mobile device scanners
D. Converting scanner and mobile device to files
E. Enhancing textual data to digital files using scanners and mobile device cameras

5. The benefits of blockchain to businesses and tax administrators include the following, EXCEPT

A. Reducing costs
B. Increasing traceability
C. Enhancing security
D. Used to facilitate tax payments to the government at highly reduced processing cost
E. Increasing tax revenue

23.13.2 Short answer questions

1. Blockchain can equally be used to facilitate tax payments to the government at highly reduced ………. cost.
2. Which software can allow for real-time status monitoring of financial matters including their tax implications?
3. The platforms used for dissemination of tax information due to its wide reach and appeals to the younger generation are called…………..

4. Which technology can tax practitioners use to access the financial data of their clients anytime and anywhere especially where the client has adopted cloud accounting technology?
5. Which artificial intelligent application can deal with more complex tasks, such as answering subtle taxation queries?

23.13.3 Examination type questions

1) Identify the key features of integrated tax administration system (ITAS) of Federal Inland Revenue Service (FIRS).
2) Identify and explain five main reasons why a tax practitioner should leverage on new technology such as cloud computing in their firm.

23.13.4 Suggested solutions to multiple-choice questions

1. A
2. B
3. E
4. A
5. E

23.13.5 Suggested solutions to short answer questions

1. Processing
2. Data analytic software
3. Social media platforms
4. Mobile APP
5. Chatbot

23.13.4 Suggested solutions to examination type questions

1. Key features of integrated tax administration system (ITAS) of Federal Inland Revenue Service (FIRS) include:
   (a) Electronic registration of a taxpayer with the FIRS and validation of tax identification number TIN);
   (b) Online submission of tax returns;
   (c) Electronic tax payment to FIRS;
   (d) Processing of electronic tax clearance certificate (TCC); and
   (e) Automated filing and collection system of value added tax (VAT) as it relates to branded shops, super shops; supermarkets and standard restaurants.

2. Key reasons why practice firms leverage technology include:

   (a) **Winning more clients:** It is obvious that majority of clients would prefer to hire tax practice firms that are adaptive to technology changes;
   (b) **Retaining more clients:** Adoption and adaptation of modern technologies would make practising firms to render the much needed valuable and improved services which make clients retain them;
   (c) **Cross-selling services:** Technology provides platforms to enable practising firms make their services more visible to many clients; and
   (d) **Adding greater value**: Firms that adopt new technologies are able to automate most of the

routine and labour-intensive tasks. This makes it possible for such firms to focus their attention on tasks that generate greater values for their clients.

References

Books

Arogundade, J. A. (2010). Nigerian Income Tax & Its International Dimension. 2nd Edition, Ibadan: Spectrum Books Limited

ABWA (2014). Preparing Tax Computations and Returns. 3rd Edition, Lagos: ABWA Publishers

Baba, B. (2017). Luxury Tax: To be or not to be? (Accessed online via www.pwcnigeriatypepad.com on November 16, 2018)

Bassey O.U. (2013). Personal Income Tax in Nigeria. 1st Edition, Lagos: CIBN Press Limited

Soyode, L. & Kajola, S.O. (2015). Taxation Principles and Practice in Nigeria. 2nd Edition, Abeokuta: LekSilicon Publishing Company Limited

Workshop / Seminar papers/Legislations/Circulars

Obi J. I. Recent Developments in the Law of Company Taxation in Nigeria.
Report of the 19th Annual Senior Staff Technical Conference of FIRS – NIIA (1989)

Deloitte (2017). Luxury Tax – What is the end game? (Accessed online via www.deloitte.com/ng on November 16, 2018)

Federal Government of Nigeria (2017). Customs and Excise Management Act (CEMA). (Accessed online via https://www.customs.gov.ng/statutory/management - act.php on November 17, 2018)

Federal Government of Nigeria (2004). Customs and Excise (Special Penal and Other Provisions) Act. (Accessed online via www.resourcedat.com on November 17, 2018)

Federal Government of Nigeria. Luxury Tax. Federal Government Press

Federal Government of Nigeria (2017). National Tax Policy. Abuja: Federal Government Press

Federal Government of Nigeria (2020). Finance Act, 2019. Lagos: The Federal Government Printer.

Federal Government of Nigeria (2020). Companies and Allied Matters Act. Lagos: Federal Government Printer.

Federal Government of Nigeria (2021), Finance Act, 2020. Lagos: The Federal Government Printer.

Federal Government of Nigeria (2021), Finance Act, 2021. Lagos: The Federal Government Printer.

Federal Government of Nigeria (2020). Companies Income Tax (Significant Economic Presence) Order, 2020. Lagos: Federal Government Printer.

Federal Government of Nigeria (2021). Finance Act, 2020. Lagos: The Federal Government Printer.

Federal Inland Revenue Service (2020). Information circular on clarification on commencement and cessation rules, and business reorganization:- sections 29 of CITA, 32 of CGTA and 42 VATA (as amended by the Finance Act, 2019) No 2020/06 dated April 29, 2020. Abuja.

Federal Inland Revenue Service (2020). Information Circular on tax implications of operations of real estate investment companies (‘REIC’) in Nigeria, No 2020/07 dated April 29, 2020. Abuja.

Federal Inland Revenue Service (2020). Information Circular on tax implications of the operation of regulated securities lending transaction (‘SEC Lending) in Nigeria. Abuja.

Federal Inland Revenue Service (2020). Information Circular on clarification on the amendment to section 16 of Companies Income Tax Act in relation to taxation of insurance companies, No 2020/08 dated April 29, 2020. Abuja

Federal Inland Revenue Service (2020). Information Circular on clarification on sundry provisions of the Finance Act 2019 as it relates to Companies Income Tax Act, No 2020/04 dated April 19, 2020. Abuja.

Federal Inland Revenue Service (2020). Information circular on clarification on the provisions of the Stamp Duties Act, No 2020/05 dated April 29, 2020. Abuja.

Federal Inland Revenue Service (2020). Information circular on the clarification on the implementation of the Value Added Tax (VAT) provisions in the Finance Act, 2019, No 2020/02 dated April 29, 2020. Abuja.

Federal Inland Revenue Service (2021). Information Circular on the Key Changes to Tax Laws Introduced by Finance Act, 2021. Abuja.

Federal Inland Revenue Service (2021), Information Circular on Guidelines on the Tax Treatment of Non-governmental Organisations (NGOs), No. 2021/01 dated March 31, 2021. Abuja.

ICAN (2021). Taxation Study Text. Lagos: VI Publishers.

IESBA (2018). Handbook of the International Code of Ethics for Professional Accountants. 2018 Edition: IFAC

Namita Chandra, (2005). Issues, Approaches and Solutions in Taxation of Electronic Commerce. (Accessed on-line via https://www.taxationweb.co.uk/taxarticles/business-tax/issues on November 16, 2018)

OECD Centre for Tax Policy and Administration (2004). Are the Current
Treaty Rules for Taxation of Business Profit Appropriate for E-commerce? Final Report (Accessed online via www.oecd.org/tax/treaties on November 16, 2018)

Pinto, D. (1999). Taxation Issues In A World of Electronic Commerce. 2(4) Journal of Australian Taxation 227.
Pricewaterhouse Coopers Limited (2017). Federal Government Increases Excise Duties on Tobacco and Alcoholic Beverages (Accessed on-line via pwcnigeriatypepaid.com on November 16, 2018).

Rakesh Nangia & Neha Malhotra (2015). Complexity and Taxability of E-commerce Transaction (Accessed on-line via http://www.internetworldstats.com/stats.htm).

ISACA, (2019). *Transforming IT Audit*, accessed May 31, 2019. https://transformingaudit.isaca.org/

Ezeribe, C. (2018). *Audit & Assurance Essentials,* Topnotch Learning Publication, Abuja.

Alloy Silvertein Accountants and Advisors (2018).https://alloysilverstein.com/cloud-accounting-vs-desktop-accounting-comparison-infographic/

Accessible Accounting (2021). https://accessibleaccounting.co.uk/cloud-accounting-systems-are-revolutionary-part-3/

Accounting Today (2021).https://www.accountingtoday.com/tag/technology