A CASE FOR THE REFORM AND HARMONIZATION OF COMPANIES INCOME TAX LEGISLATION IN NIGERIA*

1.1 INTRODUCTION

What the author considers the current dissatisfactory state of our tax laws in general[1] and our Company Income Tax legislation[2] in particular prompt this paper. It aims at highlighting the scattered nature and in some cases incomprehensible and complex state of our company tax law, with a view to suggesting ways of improving on them.

The perspective of this paper shall be to identify the authority in which the power to legislate on tax matters is vested, some basic rules of a good tax system and legislation, some defects in the companies income tax legislation in Nigeria, and finally make recommendations for reform.

2.2 THE LEGISLATIVE AUTHORITY ON TAX IN NIGERIA

The power to legislate on tax in Nigeria in more recent times may be traced to the 1979 constitution of the Federal Republic of Nigeria. One does not intend to concern this paper with the historical antecedents of the regulation of taxation in Nigeria prior to 1979. This is because it is not of immediate relevance to the context of this paper. The focus of this paper is, inter alia, to identify the legislative authority in tax matters with a view to addressing the shortcomings presently inherent in the law.

Section 4 of the 1979 constitution of the Federal Republic of Nigeria provides:

(1) The legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representative.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the Second Schedule to this constitution.

Section 4 of the 1999 constitution of the Federal Republic of Nigeria, which is the current binding constitution, reproduces section 4 of the 1979 constitution.

Item 58, part 1, second schedule of the exclusive legislative list provides that the National Assembly shall have the exclusive power to legislate on "taxation of income, profits and capital gains, except as otherwise prescribed by this constitution." This provision is reproduced in item 59, part 1, second schedule of the exclusive legislative list of the 1999 constitution of the Federal Republic of Nigeria.

In a similar vein item 7 part II of the concurrent legislative list of both the 1979 and 1999 constitutions provide:

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

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

(b) Documents or transactions by way of stamp duties, the National Assembly may, subject to such condition 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.

Paragraph 8 of the concurrent legislative list of both constitutions further provide that:

> 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 hereof, 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 persons by more than one state.

The combined effect of these constitutional provisions is that the National Assembly is vested with the exclusive powers to legislate on tax matters generally. One can safely contend that the "powers to impose any tax" in Nigeria is vested in the National Assembly. The powers of the states only lie in "the collection of any tax or duty or the administration of the law imposing it", subject to such conditions as the National Assembly may prescribe. So also is the State House of Assembly empowered, "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.[3]

It is therefore evident that the power to impose tax or legislate on tax matters in Nigeria is vested in the National Assembly. Let us now consider some salient rules of a good tax system and legislation. This shall enable us assess whether or not the companies income tax provisions satisfy these rules and to make recommendations for reforms where necessary.

3.3 SALIENT RULES OF A GOOD TAX SYSTEM AND LEGISLATION

3.1 BACKGROUND TO THE RULES

The constitutional provisions relating to taxation in Nigeria lend credence to the statement of Mr. Justice Roberts in the case of UNITED STATES V. BUTLER[4] that "A tax, in the general understanding of the term, and as used in the constitution signifies an exaction for the support of the government". Although tax is not imposed for the support of government alone,[5] the point sought to be stressed here is that it is a pecuniary burden imposed on individuals, persons (natural or artificial) or property to, inter alia, support the government and it is a payment exacted by legislative authority. Tax is therefore a statutory matter.

It has also been recognized that since by tax "government was to interfere with property, pry into a man's affairs and take his money,"[6] it must be on clear statutory authority. This is premised on the necessity to protect the individual from the state.[7]

Equally important is that the established rules governing the construction of taxing statutes, call for a good and coherent tax system and legislation. Some of these rules include:

(a) Tax should not be imposed on a person unless the clear words of the taxing statutes expressly do so.[8]

(b) The words of the Act must be given their ordinary or natural meaning[9]

(c) The court should not suppose any general principle underlying taxing statutes and remaining unexpressed[10]

(d) It has equally been contended that words should be given their natural meaning even if such a meaning encourages or validates tax avoidance.[11]

(e) Ambiguity in a taxing statute should be construed in favour of the tax paper.[12]

From these rules one may be able to glean the following features of a good tax system and legislation:

(i) A tax legislation must be certain. This is one of the "canons of taxation" set out by Adam Smith in his Wealth of Nations [13] It is to the effect that a tax, which every person is bound to pay ought to be certain not arbitrary. The scope of the tax should be clear. This has received judicial blessing in a plethora of cases. In the words of Lord Halsbury L. C. in TENANT V. SMITH[14] "you must see whether a tax is expressly imposed". For Lord Blackburn, in COLTNESS IRON CO. v. BLACK[15] "No tax can be imposed on the subject without words in an Act of parliament clearly showing an intention to lay a burden on him". Stressing the same point, Lord Radclife in ST. AUBYN V. A.G[16] said "the taxpayer is entitled to be told with some reasonable certainty in what circumstances and under what conditions liability to tax is incurred..."

(ii) A tax legislation must be orderly. This rule requires that the legislation should bear such an order that will make it most readily understood; the idea should be arranged in some order. Each sentence should bear such an order that will most readily and clearly bring out the meaning of the sentence. In paragraphing the statute, it should be preferably short, concise and straight to the point. Where the statute is drafted in clauses and sub clause, it should be duly numbered Numbering may be numerical or alphabetical. A consistent pattern must be maintained. To do otherwise may engender confusion and ambiguity, which in the words of Cohen L. J. in CIR V. LORD HOWARD DE WALDEN[17] "ambiguity must tell in favour of the taxpayer".

(iii) A tax legislation must be devoid of intricate expressions, which will make the sentence unnecessarily difficult to understand. Where technical terms are used there is the need for interpretation in the definition section of the statute. This is one of the areas where this author finds fault with the Nigerian Tax Legislation that will be highlighted soon. It has in some instances occasioned difficulty of explaining or conveying the real intention of the legislature to students of tax law.

(iv) The words "and" and "or" should be properly used. For the avoidance of doubt "and" is restricted to a conjunctive use while "or" to a disjunctive use.[18]

(v) Expressions relating to time must as much as possible be clearly stated if not, this may cause problem of interpretation as to which particular period or time an event stipulated by the statute is attributable. This problem is particularly noticeable in the area of the basis of computation of trading profits when business ceases as provided by some tax legislations.[19]

It must be observed at this stage that these rules, do not constitute a comprehensive list of rules for the interpretation of taxing statute or rules for a good tax system or legislation. They are mentioned only to the extent of their relevance to the context of the central focus of this paper. To what extent does the Companies Income Tax Act, 1990 conform to them? This will enable us make the necessary recommendations for reform.

4.4 THE COMPANIES INCOME TAX ACT 1990

The principal legislation currently governing companies income tax in Nigeria is the Companies Income Tax Act, 1990.[20] The Act consolidates the provisions of the Companies Income Tax Act, 1961 and makes other provisions relating thereto. The Act has also been subject to series of amendments, during the military regimes, which inundated the Nigeria political scene in the 1990s. These amendments, which took the forms of deletion, or additions were carried out by series of Finance (Miscellaneous Taxation Provisions) Decrees. F(MTP)D) . These amendments are so numerous, that there are amendments to amendments, thereby leading to scattered legislation and engendering clumsiness and confusion in the state of Companies Income Tax law in Nigeria. The case one puts forward in this write up is for a comprehensive review of the present legislation and a production of a coherent, consistent and more comprehensive tax regime for companies, given their importance in the revenue yield to the economy.

4.4.1 GENERAL APPRAISAL

The Companies Income Tax Act. 1990 has as its commencement date, 1st April 1977.[21] In no period did the Act undergo several amendments as between 1993 and 1999. These amendments were ushered in by series of F(MTP)D They were almost carried out to give effect to government fiscal measures as pronounced in the various national budgets. They have the effect of either amending, extending or totally deleting certain provisions of the Act. At the time of this write up one could access only seven of these Decrees, which constitute the basis of the write up. These are:

(i) F(MTP)D No. 3, 1993, promulgated to give effect to fiscal measures introduced by government preceding the decree.
(ii) F(MTP)S No. 30, 1996, promulgated to give effect to fiscal measures contained in the 1994 budget.
(iii) F(MTP)D No. 31, 1996, promulgated to give effect to fiscal measures contained in the 1995 budget.
(iv) F(MTP)D No. 32, 1996, promulgated to give effect to fiscal measures contained in the 1996 budget.
(v) F(MTP)D No. 18, 1998 promulgated to give effect to fiscal measures contained in the 1997 budget.
(vi) F(MTP)D No. 19, 1998 promulgated to give effect to fiscal measures contained in the 1998 budget.
(vii) F(MTP)D No. 30, 1999 promulgated to give effect to fiscal measures contained in the 1999 budget.

While (i) was promulgated by the regime of General I. B. Babangida, (ii), (iii) and (iv) were promulgated by General Sani Abacha and (v), (vi) and (vii) were promulgated by the regime of General Abdulsalami Alhaji Abubakar. It is in the context of these legislations that one will consider how they have impacted on the principal Act.[22]

4.4.2 EXEMPT INCOME FROM COMPANY TAXATION

The main provision, which regulates exempt income from company taxation is section 19 of the Principal Act. This provision has been generally amended by deletion and substitution, and by inclusion of new categories of exempted income. The amendments introduced by section 21 F(MTP)D, No. 3, 1993 in this areas is a deletion of paragraph (f) section 19 dealing with categories of companies income exempt from taxation and substituting same with a new paragraph (f) introduced by section 15 F(MTP)D No. 32 1996. By this amendment the former paragraph (f) which, exempts "interest received by a company from the Federal Savings Bank" is deleted and substituted by the exemption of "dividend distributed by Unit trust". Section 11 F(MTP)D, No. 31, 1996 extends the categories of income exempt from tax to "O" and "P" and section 14 F(MTP)D, No. 32, 1996 extends it therefrom to "q" and "r". These are essentially geared towards encouraging export-oriented business. The provisions of section 11 F(MTP)D No. 32, 1996 are:

(o) dividend received from small companies in the manufacturing sector, in the first five years of their operation,

(p) dividend received from investment in wholly export oriented business.

The provisions of section 14 F(MTP)D No. 32, 1996 are:

(q) the profits of any Nigerian company in respect of goods exported from Nigeria provided that the proceeds from such export are repatriated to Nigeria and are used exclusive for the purchase of raw materials, plants, equipment and spare parts.

(r) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies.

This new paragraph "O" exempts dividend received from "small companies" in the manufacturing sector, in the first five years of their operation. The decree does not however define what constitutes "small companies". Is this to be determined by the extent of its nominal or paid up share capital or subscribed share capital, or is it to be judged by the extent of membership of the company, or annual turnover? This should be clearly stipulated otherwise, it may be subject to abuse and engender tax avoidance or evasion.

It is submitted that the Decree does not stipulate at whose instance it lies to state that the proceeds from goods exported are repatriated into Nigeria for the purposes indidated as required by paragraph (q). If left to be determined by the taxpaper company, these may appear as another pro tax avoidance provisions.

4.4.3 COMPANIES INCOME TAX RATE

This is regulated by the provision of section 29(1) of the principal act. It originally provided that the rate of tax on companies, profits shall be forty kobo for every naira. This provision has been amended twice.

The first is by section 27 F(MTP)D No. 3, 1993, which reduced the tax rate to thirty five kobo for every naira. The second is by section 23 F(MTP)D No. 32, 1996, which further reduced the tax rate to thirty kobo for every naira, which is the current rate of tax on companies profits.

4.4.4 DEDUCTIBLE EXPENSES

Deductible expenses is primarily provided for by section 20 of the Principal Act. The section generally provides for deduction of expenses wholly, exclusively, necessarily and reasonably incurred in the production of the company's profits. Two main amendments are effected to this section. The first is in section 20(b) (i) and (ii) dealing with the deduction of rent and premiums the liability for which was incurred during that period in respect of land and building occupied for the purposes of acquiring the profits, subject in the case of residential accommodation occupied by employees of the company, to a maximum of:

(i) N28,000 per annum for each building and N14,000 per annum for each flat in the Lagos area and
(ii) N20,000 per annum for each building and N5,000 per annum for each flat in any other part of Nigeria.

The above provision of the Principal Act was substituted twice, in 1996 in the F(MPT)D of that year. The first is section 5, F(MTP)D No. 30, 1996, which provided for new sub paragraphs, (i) and (ii) as follows:

(i) N56,000 per annum for each building and N28,000 per annum for each flat in Lagos and the Federal Capital Territory, Abuja and
(ii) N40,000 per annum for each building and N10,000 per annum for each flat in any other part of Nigeria.

The second substitution is by section 16, F(MTP)D No. 32, 1996, which deletes sub paragraphs (i) and (ii) and now have in its place "100% of the basic salary of employees". No. allusion was made to the earlier substitution by Decree No. 30 of this law. This, it is submitted, may create the impression that the appropriate tax authority or the taxpayer has two legislation on the same subject to elect from for purpose of application.

The second main amendment of section 20 of the Principal Act is the provision for new categories of deductible expenses. The first is amending paragraph (bb), as inserted by the Finance (Miscellaneous Taxation Provisions) Act 1979 by substituting for sub paragraph (ii) the following new sub-paragraph (ii) i.e "(ii) directors' remuneration, which shall not exceed N10,000 per annum in respect of each director, and the number of directors to be so enumerated shall in no case exceed three". This amendment was also introduced by section 5 F(MTP)D No. 30, 1996.

The second inclusion is introduced by section 22 F(MTP)D No. 3, 1993, which amends paragraph 20 (g) of the Principal Act, by providing after sub paragraphs (i) and (ii) a new sub-paragraph "(iii) the expenses proved to the satisfaction of the Board 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." This provision aims at encouraging companies to promote research, development and scientific studies in Nigeria.

4.4.5 THE TAXATION OF THE PROFITS OF A COMPANY OTHER THAN A NIGERIAN COMPANY

Section 19 F(MTP)D No. 3, 1993 amends section 11 of the Principal Act by making a new provision for the taxation of the profits of a company other than a Nigerian Company. Section 11 (2) of the Principal Act provided "that the profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria to the extent to which such profits are not attributable to any part of the operations of the company carried on outside Nigeria." This provision is simply to the effect that the profits of a non Nigerian company is deemed to be derived from Nigeria for tax purposes, only to the extent that they are attributable to sources or operation of the company within Nigeria.

This provision has now been substituted for a new subsection (2) by virtue of section 19 F(MTP)D No. 3, 1993 by providing that the profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria:

(a) If that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base.

(b) If it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorized to conclude contracts on its behalf or on behalf of some other company controlled by it or which have controlling interest in it, or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profits is attributable to the business or trade or activities carried on through that person.

(c) If that trade or business or activities involves a single contract for surveys, deliveries, installation or construction, the profit from that contract, and

(d) Where the trade or business or activities is between the company and another person controlled by it or which has controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the board is deemed to be artificial or fictitious, so much of the profits adjusted by the board to reflect arm's length transaction.

The amendment introduced a new subsection (3) to the effect that:

For the purposes of subsection 2(a), a "fixed base" shall not include

(a) facilities used solely for storage or display of goods or merchandise;

(b) facilities used solely for the collection of information.

It is submitted that in a bid to clearly express the intention of the legislature, the new section 11 (2) (a) and (3) seems to have confused the situation. The question is of what practical use is sub-section (3) (a) and (b). In other words, with regard to the provision of the subsection of what importance is any facility used solely for the storage or display of goods or merchandise? Or facility used solely for the collection of information, if these are not intended to foster the trade or business or activities carried on by the non-Nigerian company? It is submitted that so long as the goods or merchandise are displayed or information is collected and they facilitate the trade or business, these should be considered attributable to Nigeria, so that profits derived there from should be deemed to be derived in Nigeria. If this construction is accepted, then the provision of subsection 3 is uncalled for as the situation therein are covered by subsections 2 (b) and (c). It is submitted that subsection (3) will be effective only to the extent that such display or storage or collection of information with respect to goods or merchandise is intended only to bring the non-Nigerian company in contact with the Nigeria customers and that such transactions shall not be concluded in Nigeria and that payment is not made in Nigeria by a Nigerian customer.

In effect, the contention here is that the exact purport of section 11(3) is not clear and may encourage tax avoidance.

4.4.6 TAX ADMINISTRATION UNDER COMPANIES INCOME TAX ACT

The provisions regulating the administration of tax under the Principal Act have been subjected to lots of amendments by several inclusion of new provisions. The problem in this area is not in the new provision introduced, but in the ways in which they are introduced. These added provisions are in the area of submission of returns, assessments and objections.

The amendments on submission of returns are added by the provision of sections 40A, 40AA, 41B 45A, 41(4) and 43(4) introduced by section 29 F(MTP)D No. 30, 1999.

The amendments on assessment are sections 40B, and 41A introduced by section 28 F(MTP)D No. 32, 1996 and section 4 F(MTP)D No. 31, 1996 respectively.

The problem with these new provisions is in the style of numbering. The introduction of so many alphabets into the sections may sometimes occasion confusion when being read out, in the absence of emphasizing what character of alphabet is being referred to, whether small or capital letter. For instance, for a teacher, it may be misleading the students to cite a section as "section 40AA" while he actually intends "section 40A (a)." He must therefore expressly mention which of the characters, whether small or capital, is actually intended to be noted.

4.4.7 TAX TREATMENT OF DIVIDEND PAID BY A NIGERIAN COMPANY

The main provision in issue is section 15A CITA, introduced by the combined provisions of section 4 F(MTP)D No. 30, 1996 and section 15 F(MTP)D No. 18, 1998. For the purpose of clearly identifying the problem with the section, it is better set out in extenso. Section 15A provides:

Where a dividend is paid out of profit on which no tax is payable due to

(a) no total profits; or
(b) total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company, is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (i) of section 29 of this act as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

This provision seems to contemplate a situation whereby the total profits of a company is comprised of only dividend received by virtue of the company's investments as shareholder in another company. This provision views such dividend received as though, it is the total profits of the company for companies income tax purposes and thereby charged to companies income tax at the rate specified in section 29(1) of the Act, i.e. thirty kobo for every naira.[23]

It is submitted that this provision suffers from ambiguity and tends to subject dividend to tax twice, first to corporate tax on the first company and secondly, to tax in the hands of the shareholder company. This is because the dividend paid to the company (now considered as total profits) is already subject to a withholding tax at the rate of 10 percent.[24] Thus, it ought to be viewed in the hands of the recipient as tax-free. Subjecting it to tax again as "total profits" where it is to be paid as dividend would amount to taxing the same income twice.

The ambiguity arises in what constitutes "total profits" with respect to section 15A(b). The question is, in what circumstance is "a dividend paid out of profit on which no tax is payable due to" "total profits which are less than the amount of dividend which is paid, ..."? Put in other words, when will total profits be less than the amount of divided paid? Is the total profit to be viewed independently of the dividend of the company (deemed "total profit"), accruing by virtue of dividend realized from other investments in another company? If this is in the affirmative, two categories of income will accrue. The first being profits realized by the company, by virtue of its other operations e.g. trading or construction business and the second being by virtue of its investment in shares of other companies for which it is paid dividend. With respect to the first category of income this is profit in the strict sense and thereby appropriately subject to corporation tax at the rate of thirty kobo for every naira, while with respect to the second category of income this is investment income arising as dividend, which is deemed "total profits" in the absence of profits from other sources. The contention in essence, is that the actual purport of section 15A(b) is far from clear.

4.4.8 BASIS OF COMPUTATION OF PROFITS OF A COMPANY ON CESSATION OF TRADE OR BUSINESS

The applicable provision of the Principal Act is section 25 (4) (a), (b) and (c). Generally, the basis of computation or assessment to companies income tax is the preceding year. That is the profits of the year immediately preceding the year of assessment.[25] Where however, trade or business has ceased, the provision of section 25(4) comes to play. It reads:

> 25(4) 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) its assessable profits therefrom shall be

(a) as regard the year of assessment in which the cessation occurs, the amount of the profits of that year.

(b) as regards the year of assessment preceding that in which the cessation occurs, the amount of profits as computed in accordance with the foregoing subsections, or the amount of the profits of such year, which ever is the greater:

Provided that where the profits of such year is for a period of nine months from 1st April to 31st December, 1980, the profits shall be grossed up as if they were profits of twelve months and

(c) the company shall not be deemed to derive assessable profits from such trade or business for the year of assessment following that in which the cessation occurs.

The problem is with the provision of section 25 (4) (b), which deals with rules for assessment for the year preceding that in which the cessation occurs.

This seems to provide two options for the basis of assessment. These are:

(i) "the amount of the profits as computed in accordance with the foregoing sub-sections"

(ii) "the amount of the profits of such year" which ever is the greater."

With respect to (i) one may rightly contend that since the: "foregoing sub-sections" deal with the general rule it is the preceding year basis of assessment and the basis of assessment on commencement of business; "foregoing sub-section" cannot be construed as being more than the preceding year basis of assessment. This is because the rules for computation of profits when business commences[26] are necessarily different from when business ceases. If this construction is accepted as correct, what year can the phrase "such year" in the second alternative i.e. (ii) be said to allude to? Is it still the year immediately preceding that in which the cessation occurs or the year before the preceding year to the year in which the cessation occurs?

If it is the year before the preceding year to the year in which cessation occurs, then three periods of assessment appear to be in contemplation, as for example, 1999, 2000 and 2001. Assuming that business ceases on September 30, 2001, the preceding year is the period January 1st – December 31st, 2000, 1999 being the year before the preceding year. The question or ambiguity is, which of the option is the tax law contemplating? Is it between 1999 and 2000, or between 2000 and 2001 for the purpose of assessment of tax for the year preceding that in which the cessation occurs.

It is submitted that this provision as to period of assessment is uncertain and confusing as it appears to leave one year out of the three or two years, which ever is applicable tax free, as the revenue is entitled to choose "which ever is the greater."

5.5 RECOMMENDATIONS

Having identified the legislative authority in Nigeria, with respect to companies tax matter and some of the problem provisions of the companies tax law, it is pertinent to hazard some recommendations for the consideration and implementation of the appropriate authority.

It is equally important to observe that most of the new amendments introduced are by cross-referencing. They are introduced virtually on a yearly basis. Even if the tax authorities are aware of them, the taxpayer companies may not be aware of them. They may be labouring under the impression though erroneous, that the position of the law they know have not changed. Although ignorance of the law is not an excuse, this may engender disagreement as to the actual taxable profit, allowances allowed, exempt income, capital allowances, rate of tax and even the eventual amount of tax assessed as payable. Commenting on the negative impact of legislating by cross-reference, Professor Abdulrazaq observes:

> Mere legislation by cross-reference is undesirable in its diffuse effect, while legislation by modified cross-reference is positively bad in the uncertainty which it generates as to the relationship between statutory provision and in particular the relationship between judicial decision made in the context of one set of statutory provision and the statutory provision to which the latter are cross-referenced. Modified cross-references should not be used; the intended provision should be set out in extenso. The latter is perhaps a clue to the most practical general approach; an annually revised code for each form of tax, setting out in full the text as amended, might not be particularly brief but would do much to make our taxing statutes more intelligible.[27]

From the foregoing analysis the Companies Income Tax Act, 1990 as variously amended necessarily calls for reform. It is hereby recommended on a general note that to deal with the problem of uncertainty in the tax legislation, a select committee of tax administrators and experts should be involved in reviewing drafts of tax laws to remove ambiguity in the final legislation.

Additionally, any amendment made to the existing tax law should be blended with the principal legislation rather than cross-referenced. Specifically, it is recommended that the under-mentioned provisions should be properly numbered and blended into the Principal Companies Income Tax Act, 1990. These are:

(i) the provisions introducing new categories of exempt income,[28]

(ii) the provision introducing the current rate of tax as thirty kobo for every naira[29]

(ii) the provision stipulating the current deductible expenses on rents and premiums paid for land and building occupied for the purpose of acquiring the profit at "100 percent of the basic salary of employee," and introducing new categories of deductible expenses.[30]

(iii) the provisions relating to submission of returns, assessment and objections.

The write up further reveals some provisions riddled with ambiguity, which require the intervention and resolution of the legislature. These are:

(i) the phrase "small companies" should be defined to clearly bring out the categories of such companies entitled to exemptions provided by paragraph "O."[32]

(ii) the clear purport of the provisions of section 11 (2) (b) and (c), juxtaposed with subsection (3) should be unambiguously expressed.[33]

(iii) what constitute the phrase "total profits" with respect to the tax treatment of dividend paid by a Nigeria company should be unequivocally expressed. Where this amount to double taxation of the same income, it should be reviewed.[34]

(iv) the basis of assessment of the profits of a company on cessation of trade or business is not certain and the actual year or period should be accordingly mentioned to clarify what year the phrase "such year" actually refers to.[35]

6.6 CONCLUSION

As stated earlier, tax is a matter that touches on the life of all and sundry. It impacts on the life of the payer by virtue of the monetary exaction and on the life of the authority by virtue of the revenue yield to meet the needs of the state. It is therefore imperative that being a statutory matter it should be devoid of factors capable of inhibiting the attainment of the goals of the state.

Though a complex phenomenon, taxing provisions should, nevertheless, be made as clear as possible for the appreciation of the average potential taxpayer. It is in the context of these that it is hoped that if the recommendations put forward are considered and positively implemented, they would go a long way to extenuating the problems identified with accessing, interpreting and applying some of the provisions of the Companies Income Tax Act in Nigeria.

ENDNOTES AND REFERENCES

H.L. Ali. Lecturer, Dept. of Commercial Law, A.B.U, Zaria.

These include, the Personal Income Tax Decree No. 104, 1993; the Petroleum Profits Tax Act, Cap 354 Laws of the Federation of Nigeria, 1990, the Capital Gains Tax acts Cap, 42 laws of the federation of Nigeria, 1990; the Value Added Tax Decree No. 102, 1993. All Decrees prior to 1999 are now deemed to be Acts of the National Assembly, by virtue of section 315 of the 1999 Constitution of the Federal Republic of Nigeria.

Companies Income Tax Act, cap 60 laws of the Federation of Nigeria, 1990 as amended by a series of the Finance (Miscellaneous Taxation Provision) Decree, from 1993 to 1999.

Paragraph 9, concurrent legislative list, 1979 and 1999 Constitutions of the Federal Republic of Nigeria.

22 79 U.S. 1 (1936), 61

Other objectives of taxation have been identified to include redistribution of income and wealth and the management of the economy. See Ayua I. A: The Nigerian Tax Law, (Ibadan Nigeria: Spectrum law publishing, 1996, pp. 4-6).

The Hamlyn lectures, 3rd series, "Intolerable inquisition? Reflection on the law of tax by Hubert Monroe (London: Stevens and Sons, 1981) at P.49, referred to in AYUA I.A. Ibid, p.46.

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Tenant V. Smith (1892) 3 T.C. 158, per Lord Halsbury L. C. Coltness Iron Co. V. Black (1881) I. T. C. 311, per Lord Blackburn; Ayrshire Employers Mutual Insurances Association Ltd. V. IRC (1944) 27 T.C. 344 per Lord President Normand. IRC V. Hinchy (1983) 30 T.C. 345 per Lord Reid; CIR V. Lord Howard De Walden (1948) 30 T.C. 345; Shell Vs. FBIR Nigerian Tax Notes Vol. 2. No. 2 1996.

Cape Brandy Syndicate v. IRC (1921) I. K.B. 64 at p.71, per Rowlatt J; Canadian Eagle Oil Co.Ltd V. The King (1964) A. C. 119 at P. 140, per Viscount Simmons L. C. Commissioner of Customs V. Topten Promotion (1969) 3 All E. R. 39 per Lord Up John.

IRC V. Wolfson (1949) I All E. R. 865 at 868 per Lord Simmonsl Margin V. IRC (1971) AC, 739 AT 746, per Lord Donovan.

Levene V. IRC (1928) ac 217 at 227, PER Viscount Summer, Commissioner of Customs V. Topten Promotions (1969) 3 All E.R. 39 at 93 and 95 for an erudite discussion of these rules see Ayua I. A. op.cit n. 6 pp 46-60.

Referred to in Ayua I. A. Ibid p.7

3. T.C 158

I.T.C. 311

(1952) A.C. 15 at p. 44

(1948) 30 T.C. 345 at p.359

Although there are judicial decision that have construed "or" to mean "and" and "and" to mean "or". See R. V. Eze 19 NLR 100, J.S. Tarka and ORS V DPP (1961). All NLR 376 where "or" was construed to mean "and". Associated Artist Ltd V.IRC (1936) 1 WLR 752 where "and" was construed to mean "or".

See section 25 Personal Income Tax Decree No. 104, 1993 and section 25 (4) Companies Income Tax Act Cap 60, Laws of the Federation of Nigeria, 1990.

Op.cit n. 2

Section 85, Ibid

So shall the Companies Income Tax Act, 1990 be called for the following sections of this paper.

See Section 23 F(MTP)D, No. 32 1996

Section 62 (2) op.cit no.23

Section 25 (1), Ibid

Section 25 (3), Ibid

Abdurazaq M. T., Registrar, Chartered Institute of Taxation of Nigeria, in a paper titled "Nigeria Tax Laws – is there a need for re-examination"? presented at a National seminar on critical issues in Tax and Tax Management in Nigeria organized by University of Lagos Consultancy services at Gateway Hotel Ota, Ogun State, on May 14, 1997. He was ostensibly quoting John Clark, "statutory drafting" British Tax Review, pp. 339 – 340.

Cf. para 4.2

Cf. para 4.3

Cf. para 4.4

Cf. para 4.6

Op. cit n. 28

Cf. para 4.5

Cf. para 34.7

Cf. para 4.8