THE TAXATION OF LIMITED LIABILITY COMPANIES IN NIGERIA.

BY

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1.1 INTRODUCTION

This paper discusses the law as it relates to the taxation of the profits or income of companies which started in Nigeria in 1912 followed by series of amending Acts[1] leading to the introduction of a comprehensive company taxation in 1961 and the witnessing in 1990 of the birth or consolidation of the existing companies income tax legislation codified as the Companies Income Tax Act (CITA). [2]

1.2 SCOPE AND DEFINITION

The word "Tax" is not defined in the Nigerian Tax Laws. C.S. Ola[3] has however defined it as:

"The demand made by government of a country for a compulsory payment of money by the citizens of the country".

The preferred definition in the case of Mathews V. Chicory Marketing Board[4] is to the effect that:

"A Tax is a compulsory exaction of money by an authority for public purpose, or taxation is raising money for the purpose of government by means of contributions from individual person:

In summary, sources such as dictionaries, authors and case laws agree to the fact that the essential characteristic of a tax is that: it is not a voluntary payment but an enforced contribution, exacted pursuant to legislative authority to be used for the need of the public.

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[1] Income Tax management (Amendment) a Ordinances of 1958-1960 respectively. See also Finance Miscellaneous Taxation (amendments) Provisions of 1993-1999 respectively.

[2] Cap 60 LFN, 1990 (NOW Cap C21 LFN 2004.

[3] Ola, C.S. Income tax Law and Practice in Nigeria

[4] 1938 60 C L R 263 at p 276.

1.3 DEFINITION OF COMPANY

The term "Company" is defined in Section 84 of CITA, 1990 to mean "any company or corporation (other than corporation sole) established by or under any law in force in Nigeria or elsewhere". The same Section 84 CITA 1990 goes further to categorise companies into Nigerian and Foreign.

1.4 NIGERIAN COMPANIES

A "Nigerian Company" is defined as any company incorporated under the Companies and Allied Matters Act or any enactment replaced by the Act. Thus the old definition which premised on control and management as the basis of Nigerianization has been dispensed with.

1.5 FOREIGN COMPANIES

A foreign company on the other hand is defined to mean any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria.

2.1 SOURCE OF ACCRUAL AND BASIS OF LIABILITY TO NIGERIAN TAXATION

Sections 8 and 11 CITA 1990 appear to be the basis of liability of company profits taxation in Nigeria.

S.8 of the Act provides that:
"Subject to the provision of this Act, the tax shall, for each year of assessment, be payable at the rate specified in S. 29(1) upon the profits of any company accruing in, derived from, brought into or received in Nigeria."

S. 11 (1) of the act provides that:
"The profits of a Nigerian Company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria". S.11(2) of the Act provides on the other hand 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 operation of the company carried on outside Nigeria".

The proper logical and legal construction of S. 8 CITA_1990 is to the effect of emphasizing the principles of liability for tax on income with a Nigerian "source" and "remittance" of "deemed remittance". Thus, a Nigerian company pays tax on its profits that the activities of which are carried on in Nigeria or remitted to Nigeria wherever in the world the activities are carried out, while a foreign company's profits is assessable to tax whether the trading and investment activities are carried out nationally or internationally as contained in S. 11(1) CITA 1990 while only the profits from trading and investment activities of a foreign company and which the profits that are generated nationally are assessable to tax under S. I 1(2).CITA 1990.

It is worthy of note at this juncture that the assessment principles contained in the above S. 11 apply only to ordinary companies while the profits of foreign shipping and Air transport companies, cable or wireless companies and insurance companies are assessable and taxed in a special manner under SS. 12, 13 and 14 CITA 1990 respectively, and shall be treated later briefly in this paper.

2.2 TYPES OF INCOME ASSESSABLE TO TAX

As already noted above, the assessment of income tax of companies doing business in Nigeria is governed by CITA 1990 specifically in its S. 8 quoted above which provides the categories of taxable income of companies viz:

1. Gains or profits from a trade or business
2. Rents or premiums arising from property
3. Dividends, interest, discount, charges or annuities;
4. Any source of annual profits or gains not falling within the preceding categories (the sweep-up clause).
5. Benefits from pension or provident funds treated as income under. Income Tax Management Act (ITMA) 1961
6. Fees, dues, allowance (whether paid) for service rendered. We shall for the purpose of convenience examine these categories under two broad subheadings namely: Trading profits and Investment income

2.3 TRADE PROFITS

Trading for the purpose of this paper is assigned its ordinary meaning of buying and selling or exchange of goods for money or other goods. Thus the

Nigerian courts in the case of ARBICO LTD Vs F.B.I.R. AND[5] ADERAWO TIMBER TRADING CO. Vs F.B.I.R.[6] departed from the English case of LEEMING Vs JONES.[7] And held that an isolated transaction for purchases and resale of property was an adventure in the nature of trade and assessable to income tax.

In determining whether a particular activity is a trading transaction for companies income tax purpose, the following must be taken into consideration i.e. nature of assets, circumstance of purchase, vocation of the tax payer. The number of like transactions, the objective clause of the Memorandum and Articles of Association, length of time property was held by the company and the circumstances of sale.

Investment income consists of the following
(a) Interest (b) Rent and Premium (c) Discount and (d) Annuities.

Under S.(2) CITA 1990, two criteria for determining whether an interest is derived from Nigeria for the purpose of its being taxed are spelt out clearly. Firstly, an interest is deemed to be derived from Nigeria for the purpose of taxation where in the relevant agreement evidencing a transaction in which interest required to be paid, the liability to the payment of such interest is by a Nigerian Company based in Nigeria irrespective of whether the payment of such interest is outside Nigeria.

Secondly, an interest will be deemed to be derived from Nigeria for the interest accrues to a foreign company or persons from a Nigerian Company or a company in Nigeria irrespective of whichever way the interest accrued.

Thus the advent of S. 8 (2) CITA 1990 has done away with the holding in the case of ALUMINIUM INDUSTRIES AKTIEN GASELLSCHAFF Vs F.B.I.R.[8] where the Supreme Court under 5.17 CITA 1961 (same as S. 8(2)CITA 1990) held that a foreign company could not be compelled to pay tax on interest simply because the relevant contractual agreement evidencing the investment in Nigeria, the place of payment of the interest was stated to be outside Nigeria.

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[5] (1968) N. C.L.R. at Pp. 150-151 and
[6] 12(1969)
[7] 1930 L.K.B. 279,15 T.C. 333.
[8] (1971) N.M L R 339

2.4 DEDUCTION OF TAX FROM INTEREST AND RENTS

S. 60 (1) CITA 1990 permits the company paying interest, rents and royalty to another company or any person to whom personal Income Tax Decree 1993 apply to withhold tax at the rate of 15% at the date when such payment was made which said withheld tax should be paid over to the Federal Board of Inland Revenue (F.B.I.R) where the recipient is a company or body corporate or a non resident individual member of the armed forces and to the tax authority of the state where the beneficiary is an individual resident in the state and pay tax to the state.

(a) State the gross amount of the interest or royalty.

(b) The name and address of the recipient

(c) The amount of tax being accounted for

Of interest to note is that failure to withhold tax or pay-over same after deduction for 30 days attracts a fine of N5,000.00 in addition to the amount of tax deducted.[9]

2.5 ALLOWANCES, DUES AND FEES

These are other categories of company income taxed under CITA 1990. This type of income are usually paid for services in Nigeria. The scope of these forms of income are wide and affords the Revenue authorities unbounded powers to subject to income tax, profits of any company accruing or derived from Nigeria.

We should note again that the place of such interest is not important but what is rather important is that such payments are made in respect of services rendered in Nigeria.

2.6 INCOME EXEMPTED FROM TAXATION

S. 19 CITA gives a comprehensive list of income of a company exempted from tax as follows:

(a) Profits of a statutory or registered society;

(b) Profits of a co-operative society registered under any law relating there to;

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[9] S 64 CITA, 1990

(c) Profits of any company engaged in ecclesiastical, charitable or educational activities of pubic character;
(d) Profits of any company formed to promote sporting activities;
(e) Profits of a trade union registered under any law relating thereto;
(f) Interest received by any company from Federal Saving Bank;
(g) Profits of any company engaged in petroleum operations in so far as such profits are taxed under the petroleum Profits Tax Act.
(h) Profits of any company established as a purchases authority by a state to acquire commodity for export from Nigeria from the purchases and sale of that commodity.
(i) Profits of any company or corporation established by the law of a state for the purpose of fostering the economic development of that state.
(j) Profits of a company other than a Nigeria company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria.

It should be noted that all these profits exempted must not be derived from trade or business carried on by the concerned tax beneficiaries stated above.
(k) S. 9 (1) CITA 1990 also exempts from tax as from 1st January 1971 interest on foreign loan of at least N150,000.00 granted by a foreign company to any person carrying on business or trade in Nigeria provided that such loans are repayable over a period of at least 10 years.

However, the interest on the loan will be taxed at half the normal company income tax rate if the loan is repayable between 5 and 10 years.
(l) S. 9(6) CITA 1990 also exempts from tax as from 1st April 1978 interest payable on any foreign loan as prescribed in table 1 in schedule 3 CITA 1990.
(m) Interest on agricultural trade or business as prescribed in Table 11 in schedule 3 CITA 1990.

Further take note that S. 9(8) specifies agricultural trade or business to mean.
(a) Plantation cultivation such as rubber, oil palm, cocoa etc.
(b) Cereal crops, tubers, fruits of all kinds, cotton, beans etc.
(c) Animal husbandry such as poultry, piggery etc.

(o) Interest payable on any loan granted by a bank on or after 1st April 1980 for the purpose of manufacturing goods for export is also exempted subject to presentation of a certificate issued by the Nigeria Export Promotion Council stating that the level of export specified has been achieved by the company. See S. 9 (9) CITA 1990.

(p) The income of a pioneer company is also exempted from companies income tax. The relief was first granted under the pioneer industries ordinance of 1952 and currently under the industrial Development (Income Tax Relief) Act Cap. 179 L.F.N 1990. The pioneer companies Tax Relief Policy is to encourage people to venture into new areas for purpose of economic and industrial development with this tax incentive. A pioneer company is one engaged in manufacturing, processing, mining, servicing of agricultural activities and its products have been declared pioneer products.

3.1. CONDITIONS TO QUALIFY FOR PIONEER STATUS

(1) The pioneer company involved in any industry or productive activity must be one that is new in Nigeria.

(2) Where it is already been produced, production is not sufficient to meet current or expected requirement.

(3) The industry or product has a very favourable prospect of development.

(4) The company must one whose product is considered expedient in the interest of the public.

(5) The Company must have incurred capital investment for product purpose not below =N=50,000.00 for indigenes and =N=150,000.00 for foreigners.

(6) An application for pioneer status must be directed to the Minister of Industries accompanied by a fee of =N=100.00, stating whether the company will be indigenously controlled, the address and nationalities of the promoters (for company) the source of capital, particulars of loans, share capital and date of issue, the sources and estimated cost of asset on which qualified expenditure will be incurred before the production day i.e. day of commencement of production in marketable quantities the location of the assets that production day must be specified and finally, the application must contain a declaration duly signed to the effect that all the particulars contained therein are true.

3.2 PIONEER CERTIFICATE

This is a document that states that a company has met all the requirements to be declared a pioneer company and its products are pioneer products under the law. Having then met all the above requirements, tax relief is then given for a period of 3 years either an extension of another 2 years.

It should be clearly understood that the extension cannot be granted unless its volume of product is increasing and its "Nigerianization" of another 2 years.

3.3 OPERATIONS OF PIONEER COMPANIES

The accounts of a pioneer company is made up of the following:

(a) A period not exceeding one year commencing on its production day

(b) Successive period of one year thereafter

(c) A period not exceeding one year ending at the date when the tax relief ends.

The accounts are however, submitted to the Corporate Affairs Commission.

3.4 COMMENCEMENT OF BUSINESS OR TRADE BY PIONEER COMPANIES

A pioneer business or trade is deemed to have commenced on the day following the end of the tax relief period. During the relief period, the profits of the pioneer company is not taxed. The profits is distributed to shareholders as tax free dividends.

3.5 POWER OF F.B.I.R. IN RESPECT OF PIONEER COMPANIES

The board is responsible for issuing statements to the company in respect of the following, namely.

(a) The power to examine the accounts of a pioneer company to confirm a profit or losses and qualifying expenditure for a given period .

(b) Ensure the reasonableness of charges in respect of directors or shareholders of the company;

(c) Ensure proper treatment of the company accounts and certain other receipts and expenses.

3.6 RESTRICTIONS ON PIONEER COMPANY

(a) They are restricted prior to the expiration of the tax relief period from carrying on any other business other than its pioneer enterprises because if it does, profits from such other enterprises will be subject to tax.

(b) There is also a restriction on its powers to grant loan except with the consent of the Minister of Industries.

3.7 PURPOSES OF TAX EXEMPTION

(a) To encourage the establishment of public spirited companies like charitable organisations or mutual fund firms; and

(b) To grant tax incentives for stimulating the economic development of the country generally by attracting capital to Nigeria.

4.1 COMPUTATION OF TOTAL PROFITS OF A COMPANY GENERALLY

The basis of assessment is the income of the year preceding the year of assessment i.e. the previous year's income. Generally, income tax of companies is calculated and charged on companies income separately on each accounting year which commences from 1st January to 31st December of the same year. See S. 25(1) CITA 1990.

However, the proviso to S.25(1) state that a company changes its accounting date by making its account taxable from 1st January, 1980 i.e. it may commence its accounting period from either January or March and when this happens. The proviso to S. 25(2) mandates the F.B.I.R. may in its discretion decide. This is to avoid the unnecessary delay which may result in the collection of taxes.

4.2 EXEMPTIONS TO THE PRECEDING YEAR RULE AS BASIS OF ASSESSMENT.

6.1.1 COMMENCEMENT OF A TRADE OR BUSINESS

According to S.25 (3) CITA 1990 when a new trade or business is commenced, the assessable profits of a company is computed on the following basis.

(a) In the first year of assessment in which the trade or business (or in the case of a foreign company) the year of assessment in which it commences in Nigeria, the assessable profits is the amount of the profits of that year from the relevant sources.

(b) For the second year of assessment, the assessable income is the amount of the profits of the first 12 months of the trade or business.

(c) For the third and subsequent years, the assessable income of the preceding year.

Note however, that the company tax payer has the right to elect that assessments for the second and third years be adjusted to the actual profits of these years S. 25(3)(d) CITA 1990.

4.3 CESSATION/TERMINATION OF TRADE OR BUSINESS.

When a company permanently terminates its business (including a foreign company) in Nigeria, its assessable income for the year of assessment in which the cessation accrues will be the full amount of the income of that year. As for the penultimate year of assessment the assessable income will either be:

(a) the actual income of that year; or

(b) the assessable income computed under the general rules of the preceding year basis whichever is greater.

Under the proviso to S. 25(4)CITA 1990, it is stated that where the profits of such year in which the business or trade terminate is for a period of nine months commencing from I" April to 31" December 1980, the profits shall be added up as if they were profits of 12 months.

4.4 PAYMENT RECEIVED AFTER THE TERMINATION OF BUSINESS OR TRADE

S. 25(4) (c) CITA 1990 provides that a company shall not be deemed to derive assessable profits from such trade or business for the year of assessment immediately following that in which cessation accrues. Thus receipts and payment made to the company's receivers/liquidators after the date of cessation are treated as received or paid on the last day of its trade or business for the purpose of income Tax Act 11990 S25(7). (7).

4.5 TRANSFER OR SALE OF BUSINESS OR TRADE

Ordinarily, when any tax payer sells or transfers its business or trade to another person, he is deemed to have ceased carrying on the trade or business. There are exceptions to this rule as provided in S. 25(9) CITA 1990 to the effect that where the transferee is a Nigerian company for the purpose of

(a) Better organisation; and

(b) Transfer of the management to Nigeria;

Where the F.B.I.R. is satisfied that both companies are members of a recognized group of Companies, the Board may direct as follows:

(1) That the commencement and cessation provisions shall not apply to such trade or business; and

(2) That the assets of the business or trade sold shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure or shall be deemed to have been acquired at their written down value; and

(3) That the company acquiring the asset shall not be entitled to any initial allowance with respect to the asset and any allowance deemed to have been received by the vendor company.

We must note however that there is proviso to S.25(9)CITA 1990 to the effect that the F.B.I.R. may use its discretion in appropriate case to the following; that is:

(a) Require either the transfer to transferee company to guarantee or give security for payment in full or all tax due or to become due by the company selling transferring such trade or business; and

(b) Impose such conditions as it may deem fit in appropriate cases.

The underlying purposes of these provisions is to facilitate the intra-group transfer of trade and business.

4.6 TAKEOVER, MERGER, TRANSFER OR RESTRUCTURING OF BUSINESS

Under S. 25(12)CITA 1990, no merger, take over, transfer or restructuring of the trade or business shall take place without having obtained the Board's discretion under subsection(9) of this section and clearance with respect to any tax that may be due and payable under the Capital Gain Tax Act(C.G.T, A) Cap. 42 L.F.N. 1990.

5.1 THE BASIC RULES FOR CALCULATING A COMPANY'S PROFITS

Going by the principles governing the computation of taxable income, the taxable profits of a company is usually arrived at by permitting certain expenses to set-off against the receipts of the company in an accounting year. (S.20 CITA 1990). Thus the assessable profits of a company in an accounting year is all the receipts of the company from all sources less certain expenses set-off against company's receipts and less any set-off for losses. See S.27 CITA 1990.

5.2 WHERE THERE IS NO ASSESSABLE PROFITS

The F.B.I.R. has the powers to impose tax on the turnover of the trade or business of a company on a fair and reasonable percentage where the business of the company produces either no assessable income or produces assessable income which in the Board's opinion is less than might be expected to arise from the business of the company.

For a non-Nigerian company the Board also has the power to charge part of the turnover of its business or trade on a fair and reasonable percentage especially with regard to operations carried on in Nigeria. This as an anti-avoidance provision, it is designed to ensure that a corporate tax payee will not adopt artificial to claim the necessary loss relief and avoid payment of tax.

5.3 DEDUCTIONS ALLOWED IN COMPUTING PROFITS OF A COMPANY

S.20 CITA 1990 allow expenses which are wholly , exclusively necessarily and reasonably incurred in the running of the affairs of companies assessable to income tax to be deducted and or set-off while computing assessment income to tax of such companies. In the words of Professor Ayua the purpose of the phrase is to "confirm deduction to direct and avoidable outlays".[10]

S.20 CITA 1990 has tabulated a number of allowable expenses; namely:

1. Capital expended in the acquisition of land and buildings occupied for purpose of acquiring profits.
2. Rent and Premium in respect of land and buildings occupied for purpose of acquiring . For residential accommodation in Lagos for each building and flat these are pegged at =N28,000.00 and =N=14,000.00 per annum respectively while =N=20,000.00 and =N=5,000.00 are pegged per building and flat per annum respectively in any other part of Nigeria;
3. Expenditure incurred on the repair of premises, plants and machineries.
4. Bad and doubtful debts but where eventually recovered, it will be treated as income.
5. Contributions to pension, provident or other retirement benefits fund, society or scheme approved by the Board under the power

[10] The Nigerian Tax Law Spectrum Pub. Co. Ltd. Ibadan (1993) Pg. 197.

conferred on it by P.I.T. Decree 1993 as well as contribution under any act establishing the National Provident Fund or other retirement benefit scheme for employees throughout Nigeria;

6. In the case of the Nigerian Railway Corporation, such deduction are permitted under the provisions of the authorised deduction (Nigeria Railway Corporation) Rules; and

7. Any other expenses wholly, exclusively, necessarily and reasonably incurred during an earlier period but pertaining to the period in which the trade or business was carried on.

5.4 DISALLOWABLE DEDUCTION FROM PROFIT

1. Capital repaid or withdrawn;
2. Any expenditure of capital nature;
3. Any sum recoverable under an insurance or contracts of indemnity;
4. Taxes on income or profits chargeable to tax in Nigeria where these is no relief for double taxation in Nigeria.
5. Payment to a saving widows and orphans, pensions, provident or other retirement benefits, funds society or scheme except as permitted by S.20(E);
6. The depreciation of any assets;
7. Any sum reserved out of profits except as permitted under S.20 or 21 CITA of 1990.
8. Any expenses for whatever nature incurred outside Nigeria for and on behalf of any company except it is of a nature which the Board may consider allowable.

We must note however that the list of allowable and disallowable expenses are in exhaustive hence, the relevant statutory provision have employed the word "include" in enumerating the list. What may therefore be added or deducted depends on the circumstances of the given item.

5.5 OTHER CATEGORIES OF DEDUCTIONS ALLOWED FROM PROFITS

(a) *DONATIONS AS DEDUCTIBLE EXPENSES*

S. 21(1) CITA 1990 has provided that for the purpose of ascertaining the loss or profits of a company for a given accounting year, donations made to certain bodies or institutions in Nigeria are allowed. Such bodies or institutions are as listed in S. 21(4) CITA 1990

which are:
(a) The public funds(b) the statutory bodies or institution(c) the ecclesiastical charitable, benevolent, educational and scientific institutions established in Nigeria. However, S.21 (2) CITA 1990, specified that donations are only allowed out of the profits of the company are not expenditure of a capital nature. Again under S.21(3) CITA 1990, any amount so deducted must not exceed an amount which is 10 percent of the total profits of such a company in that accounting year.

(b) LOSSES DEDUCTIBLE FROM INCOME FOR TAX PURPOSES
S. 27(2) CITA 1990 provides that in an accounting period; losses incurred by a company in a trade or business during a preceding year of assessment are allowed as deductible expenses while computing the total profit of the company.

As a safeguard against possible abuses of this entitlement provision, such amount of deductible losses must not exceed the amount of such losses according to the proviso to the section.

This relief is beneficial to the company tax payer where the profits of the company are on a downward trend but where the company appears to be doing well, it may exercise the option of carrying forward the relief but not exceeding the maximum period of four years. In setting forward the losses, it is provided that is must be set off against the particular source which sustained the loss. The essence of this is to discourage the perpetuation of badly managed business concern.

S. 27(3)CITA 1990 has provided an exception to the general rule that a company cannot carry forward its losses beyond four years. Thus companies engaged in agricultural trade or business can carry forward their losses indefinitely until such losses are completely off-set. The advantages of carrying forward of loses are:
(1) It ensures that the trade or business is efficiently run or managed
(2) It ensures that the assessable income of a particular business is appreciably reduced.

(c) CAPITAL ALLOWANCES AS DEDUCTIBLE FROM INCOME FOR TAX PURPOSES.

CITA 1990 as amended provides for deduction from the companies income in the form of capital allowances in respect of capital expenditure incurred for the purpose of any company's business. Accordingly the 2nd schedule to CITA 1990 govern the capital allowances to companies. The current rate of capital allowance for companies income tax purposes are:

7.4.1 TABLE 1

INITIAL ALLOWANCES SCHEDULE 2 PARAGRAPH 6

1. Qualifying Building Expenditure 5%
2. Qualifying Industrial Building Expenditure 15%
3. Qualifying Mining Expenditure 20%
4. Qualifying Plant Expenditure
   (Excluding Furniture and Fittings).........................20%
5. Qualifying Furniture and Fittings Expenditure 15%
6. Qualifying Motor Vehicle Expenditure 25%
7. Qualifying Plantation Equipment Expenditure 20%
8. Qualifying Ranching and Plantation Expenditure 25%
9. Qualifying Research and Development Expenditure 25%
10. Qualifying Housing Estate Expenditure 20%

7.4.2 TABLE 2

ANNUAL ALLOWANCES SCHEDULE 2 PARAGRAPH 7

1. Qualifying Building Expenditure 10%
2. Qualifying Industrial Building Expenditure 10%
3. Qualifying Mining Expenditure 10%
4. Qualifying Plant Expenditure
   (Excluding Furniture and Fittings). 10%
5. Qualifying Furniture and Fittings Expenditure....................10%
6. Qualifying Motor Vehicle Expenditure 10%
7. Qualifying Plantation Equipment Expenditure ....33 $^1/_2$%
8. Qualifying Ranching and Plantation Expenditure 15%
9. Qualifying Research and Development Expenditure ....22$^1/_2$%
10. Qualifying Housing Estate Expenditure 20%

The granting of capital allowances is restricted to 75% of total assessable profit in a year of assessment in respect of manufacturing companies and 66$^{2"}$% in all other cases but this does not however apply to agro-allied industries as defined in S.9(8) CITA 1990 and S. 3 6of Finance (Miscellaneous Taxation Provisions)Decree, 1985.

From the above table it will be seen that the system of capital allowances in respect of companies has been designed to:

1. Stimulate development in certain sectors of the economy such as industrial building/structures, mining, and agriculture.

2. To accelerate the process of amortization of capital expenditure incurred for the purpose of the business.

6.1 TAXATION OF DORMANT COMPANIES

Under S.29(4)CITA of 1990, a company which has not commenced business after 6 months of incorporation in any year of assessment is liable to pay a levy of =N=5,000.00 for each year of assessment or part thereof for which the company remains dormant, that is without carrying on any business.

Likeness under the 1990 Budget there was introduced a pre-operation levy payable for the purpose of obtaining tax clearance certificate in the sum of =N=5,000.00 for the first year and =N=4,000.00 for every subsequent year. The objective here is to discourage the formation of companies just for the sake of forming them without anything for them to do.

6.2 TAXATION OF DIVIDENDS

This constitutes an aspect of Nigerian Companies income Tax. Dividend means an amount received by a person on an investment made by him. The capital of a company is divided into shares acquired by shareholders by virtue of which they become owners of the company. Usually dividends are distributed to the shareholders at the end of a company's financial year if it records profits and these dividends constitute income in the hands of such shareholders.

6.3 DEFINITION OF DIVIDENDS

S.8(3)CITA 1990 defines "dividend" as meaning

(a) In relation to a company not in the process of being wind-up or liquidated, any profits distributed whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures, or securities awarded to the shareholders; and

(b) In relation to a company that is being wound up or liquidated any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

6.4 DEEMED DIVIDENDS

S. 17(1)CITA 1990 makes provision with regard to certain undistributed profits which are treated or deemed as dividends distributed. It provides as follows:

"Where it appears to the Board(F.B.I.R.) that a Nigerian company controlled by not more than five persons with a view to reducing the aggregate of the tax chargeable in Nigeria on the profits or income of the company and those persons have not distributed to its shareholder as dividends, profits made in any period for which accounts have been made up by such company, which profits could have been distributed without detriments to the company's business as it existed at the end of that period, it may direct that any such undistributed profits of such period be treated as distributed".

Under S. 17(2), any amount of profits treated as distributed by the Board (F.B.1.R.) is deemed to be profits or income from dividends accruing to shareholders of such company and shall be so assessed in the hand of such shareholders.

Thus the merit of S.17 lies in the fact of foiling any attempts by sole traders who formed private companies solely to avoid payment or Personal Income Tax on their profits. Whether this has been achieved or achievable in Nigeria is however not certain.

6.5 DIVIDENDS DISTRIBUTED BY ANY COMPANY TO NIGERIAN COMPANIES.

5.62 CITA 1990 is to the effect that where a Nigerian Company pays dividends or is treated as having distributed any amount of profits to another Nigerian Company which includes it in its assessable profits for any years of assessment, the tax initially deducted from such dividends under this section shall be set-off against the tax payable but the recipient company for that year. By S.32(2) CITA 1990 however, where the amount to be set-off exceeds the tax payable, the excess shall be repaid by the company to the Board(F.B.I.R.) . This is to prevent double taxation and undue advantage.

Again, same applies where such companies are taxed in countries in respect of such dividends. (See S.34 CITA 1990).

6.6. DIVIDENDS DISTRIBUTED TO SHAREHOLDERS.
Under S.62(2) CITA 1990, a company is required to deduct the relevant prevailing tax which is, 15% in respect of every dividend paid to another company or to any company whom the provisions of the Income Tax(Armed Forces) Special Provisions Acts apply; such dividends having been taxed shall not be subjected to further tax in the hands of the recipient companies.

Where again such dividends are further redistributed by the recipient company to its shareholders, the redistributed income shall not attract tax on the such dividends received from the paying company.
Again, the recipient company enjoys a relief for the tax already w'thheld on the dividend income if the recipient company use it in paying its own dividends. S. 65(5) CITA 1990 enjoins the company paying over the withheld tax while paying it over to the Board to comply with the following within 14 days of declaring the dividends.
(1) State the gross amount of the dividends or other distribution
(2) State the name and address of the recipient
(3) State the accounting period in respect of the profits in respect of which the dividend or distribution is declared to be payable.
(4) State the date on which payment is done.
(5) State the amount of tax so deducted.

Compliance with the above will enable the Board to know whether the appropriate tax payable has been deducted from the dividends made to the shareholders.

6.7 DIVIDENDS RECEIVED BY INDIVIDUAL SHAREHOLDERS
Under S.70 PITD 1993, dividends received by individual shareholders are taxed at the rate of 5% withholding tax and deducted sum is regarded as an advanced payment of tax or a provisional tax.

Where however, the amount to be set-off far exceeds the amount of tax payable by the individual, the excess is refunded to the individual by the state where the individual resides.

Now, we shall consider the other categories of companies which are taxed in a special way referred to at page 2 and those are:

6.8 SHIPPING AND AIR TRANSPORT COMPANIES.

S.12 CITA 1990 provides for the taxation of the profits of companies other than Nigerian Company which engage in the business of transport by sea or air and whose ship or aircraft calls at any port or airport in Nigeria. According to the section, the profits or loss of such companies deemed to be derived from Nigeria shall be the full profits of loss arising from the carriage or passengers, mail, livestock or goods shipped or loaded into aircraft in Nigeria.

The reciprocal arrangement contained in S.26(9) of CITA 1961 whereby the taxation of these companies were exempted has been deleted from CITA 1990 thus the government can generate more revenue from this lucrative business in Nigeria.

6.9 OPERATION OF SHIPPING AND AIR TRANSPORT BUSINESS BY FOREIGN COMPANIES.

S. 12(2) CITA 1990 provides that a company carrying on such business is in a country where the method for determining income for income tax purpose is the same as Nigeria, the F.B.I.R. may accept the certificate of that country showing the ratio of the income of the company obtained or derived from Nigeria and accordingly assess the income of that company.

6.10 METHOD OF COMPUTING THE INCOME

S.12(2) CITA 1990 goes ahead to provide as follows:

(1) The ratio of profits or loss before any depreciation allowance of an accounting period of the total sums receivable in respect of the carriage of passengers, mail, livestock or goods; and

(2) The ratio of allowance by way of depreciation for that period to that same total.

6.11 WHERE CERTIFICATE RATIO IS NOT AVAILABLE AT ASSESSMENT.

S.12(3) CITA 1990 makes provision for fair percentage computation and assessment of the profits of the company deemed to be derived from Nigeria in respect of the carriage of passengers, mail, livestock and goods shipped or loaded in Nigeria where the required certificate ratio is not available at the time of assessing such foreign companies.

6.12 WHEN CERTIFICATE RATIO BECOMES AVAILABLE

Where this become available, such foreign company so assessed may claim in writing to be assessed on certified ratio. Such claim must be in writing within a period of six(6) years.

In addition, 5.12 CITA 1990 where is applies, the tax payable by any company for any year of assessment shall not be less than 2% of the full sum receivable in respect of passengers, mail, livestock or goods shipped or loaded into an aircraft in Nigeria.

6.13 CABLE OR WIRELESS COMPANIES

S. 13 CITA 1990 provides that foreign companies in this category of business shall be assessable to tax as though they operate ships and aircraft and the provision of S.12 CITA 1990 shall apply mutatis mutandis on the computation of their profits deeded to be derived in Nigeria.

6.14 INSURANCE COMPANIES

The CITA 1990 recognizes two types of insurance companies.

12.1 NON-LIFE INSURANCE COMPANIES

5.14(1) (a) provides for the method of determination of the taxable profits of foreign non-life insurance companies which is computed by determining the income of such companies. The income consist of revenue receipts which are as follows:

1. Premiums paid by the insured to secure capital sums on the happening of some events.
2. Interests – money received by the insurer on moneys interest
3. Other income – Revenue payments which are the deductible expenses of the insurer and it includes:

(a) Premiums returned to the insured.

(b) Premiums paid to other insurance companies for re-insurance.

6.15 DETERMINATION OF TAXABLE PROFIT OF NON LIFE INSURANCE COMPANIES

5.14(1) (a) provides that the profits of the company is computed by taking the gross premiums and interest and other income receivable in Nigeria less any premium returned to the insured and premium paid on re-insurance and deducting from the balance so arrived at a reserve for unexpired risks at the end of the company's accounting year. Actual losses in Nigeria and a fair proportion of head office expenses are also deducted. It is whatever sum outstanding that is assessable to tax.

6.16 LIFE INSURANCE COMPANIES.

S.14 (1) (b) CITA 1990 regulates the taxation of Non-Nigeria. Life insurance Companies.

The income of such companies assessable to tax in Nigeria is the amount of investment income of the company less management expenses including commission.

6.17 WHERE PROFITS ACCRUES PARTLY IN NIGERIA AND PARTLY OUTSIDE NIGERIA

Where this happens, the profits shall be the proportion of the total investment income of the company as the premiums receivable, less the agency expenses in Nigeria and a fair proportion of the head office expenses of the company. S. 14(l) (b) CITA 1990.

Note however, that the F.B.I.R. may substitute a different basis for ascertaining the requirement proportion of the total investment income. This happens where it is difficult to assess the liability of the total global investment income of the foreign company.

6.18 NIGERIAN INSURANCE COMPANIES

S. 14(1)(c) CITA 1990 governs the taxation of Nigerian Insurance Company carrying on both life and non-life insurance business in Nigeria.

The purpose of the section appears to be that the profits of a Nigerian Insurance Company respectively and the whole investment income and premiums of such company were received in Nigeria and all the expenses and other outgoings of the company were incurred in Nigeria.

7.1 CONCLUSION AND RECOMMENDATIONS

The paper elucidates the administration of tax on limited liability companies in Nigeria by first of all giving a brief historical background on taxation of companies as well as giving the meaning of companies, both Nigerian and Foreign Companies for tax purpose. The paper further throws light on the mode of assessment of companies doing business in

Nigeria with respect to income tax. The categories of income assessable have also been enumerated.

Furthermore, certain income exempted from tax have also been listed as provided in the law (CITA 1990). One of such is income from foreign loans. Also, the relief to which pioneer companies are entitled to has been explained. Such relief or tax holiday (Tax free period for newly floated companies) go a long way in boosting the growth of business activities of the company.

We have also considered deductions allowed in computing profits of a company as well as deductions not allowed as provided by CITA 1990. We also noted situations where there is no assessable profits, the approach to be taken in taxing the turn-over of the business of a company. Cognizance has also been taken on taxation of dormant companies after incorporation which are to pay a levy of =N=500 for each year of assessment. Note has also been taken on other types of companies taxed in a special way such as shipping and air transport companies and insurance companies.

Finally, the paper made observation with respect to common sharp practices engaged in by some companies with the bid to avoid and/or evade tax payment, hence few recommendations are made to curb such practices in order to call for more revenue generation from taxation of companies for economic and national development at large. Considering the main objectives of taxation generally, that is, to raise revenue for financing government expenditure as well as influencing economic activities in the country as a whole and the fact that companies taxation forms a substantial part of source of revenue generated by the government, there is the need for the improvement in the administration of tax of limited liabilities companies in Nigeria. This will achieve the main goal for imposing tax on companies, that is to maximize revenue for development. The Federal Board of Inland Revenue established by section I CITA 1990, should ensure diligent administration of tax on Limited Liability Companies. One of such diligent measures is to ensure that each company prepares and delivers to the Board, a return of profits computed in accordance with the CITA 1990 within the period limited. Such returns must include a signed declaration that the returns contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with the CITA and that the particulars given in the return are true and correct statement of the amount of its profits computed in respect of all sources in accordance with the CITA and that the particulars given in the return are true and complete.[11] Such treatment should be aimed at fighting against tax avoidance – a situation where by tax payer's advantage – though not a crime.

In a bid to avoid tax, companies shift profits from one company to another, thereby distorting the tax liability of the relevant company. This is very common with companies incorporated in Nigeria by expatriate companies which are not Nigerian companies under the definition of Nigeria companies in S.2 CITA. Such so-called Nigerian Companies are not more than branch offices of their expatriate parent companies in so far as control and management of such companies are concerned.

As a matter of fact and for the purposes of revenue generation, the tax statutes for companies should be amended in order to consider such companies as independent legal entities from their parent companies. This will have the effect of making their income derived from Nigeria liable to Company Income Tax.

Another important issue that needs to be addressed is tax evasion. Tax evasion denotes activities which are responsible for a taxable person not paying the tax that he is under a legal obligation to pay[9]. Quite a large number of companies declare losses year in year out, yet such companies continue in business unabated with directors remuneration increasing. This is a clear evidence of tax evasion, hence criminal sanctions against companies found in such practices be imposed strictly so as to make it unworthy for companies to attempt evading tax from their parent companies. This will have the effect of making their income derived from Nigeria liable to Company Income Tax.

There should be strict penalty for making incorrect returns as provided under S72 CITA, 1990.

[11] CITA s. 41(2)

However, it should also be noted that there is need to reduce tax liability of our companies. This will encourage business activities as well as foreign investment in Nigeria thereby bringing about greater economic development. It could also ameliorate unwanted practices such as tax avoidance and tax evasion by tax-payers since they will have less to pay.

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