



ATSWA

ACCOUNTING TECHNICIANS SCHEME WEST AFRICA

STUDY TEXT

**PREPARING TAX COMPUTATIONS
AND RETURNS**

PUBLICATION OF ASSOCIATION OF ACCOUNTANCY BODIES IN WEST AFRICA (ABWA)

ASSOCIATION OF ACCOUNTANCY BODIES IN WEST AFIRCA (ABWA)

**ACCOUNTING TECHNICIANS SCHEME
WEST AFRICA (ATSWA)**

STUDY TEXT FOR

PREPARING TAX COMPUTATIONS AND RETURNS

THIRD EDITION

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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.

FORWARD

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 Processes and Systems
- 2 Economics
- 3 Business Law
- 4 Communication Skills

PART II

- 1 Principles and Practice of Financial Accounting
- 2 Public Sector Accounting
- 3 Quantitative Analysis
- 4 Information Technology

PART III

- 1 Principles of Auditing
- 2 Cost Accounting
- 3 Preparation of Tax Computation and Returns
- 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 learning objective and a summary 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), 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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- The Institute of Chartered Accountants of Nigeria (ICAN) for the use of the Institute's examination materials;
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- Owners of Trademarks and Trade names referred to or mentioned in this Study Text.

We have made every effort to obtain permission for use of intellectual materials in this Study Texts 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

Following the review of the ATSWA syllabus a review team was constituted in 2016 to undertake a comprehensive review of the study text in line with the new syllabus effective from September 2017. The reviewers and editorial board are listed below:

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SYLLABUS AND EXAMINATION QUESTIONS OUTLINE

PAPER 11:

COURSE TITLE: PREPARING TAX COMPUTATIONS AND RETURNS

AIMS:

The aims of this paper are to examine candidates' knowledge and understanding of:

- a. the meaning of taxation and various aspects of tax system (tax policy, tax laws and tax administration) of the ABWA member countries;
- b. tax computations for individuals and businesses resident in member countries for the purposes of Personal Income Tax, Companies Income Tax, Capital Gains Tax, Value Added Tax and Tertiary Education Tax as applicable to member countries; and
- c. all issues relating to filing of returns to relevant tax authorities of (ABWA) member countries.

OBJECTIVES:

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

- a. Explain the basic operation and scope of the member country's tax system;
- b. Compute Adjusted Profit or Loss computation for trade and vocations;
- c. Compute **Pay-As-You-Earn** (PAYE) as it relates to employees;
- d. Prepare direct assessment on individuals;
- e. Compute Companies Income Tax;
- f. Compute Capital Gains Tax;
- g. Compute Value Added Tax and Stamp Duties;
- h. Compute Tax on property and investment income;
- i. File the necessary returns to the relevant tax authorities;
- j. Identify and explain the taxes and levies collectible by different tiers of government or relevant tax authorities in member countries; and
- k. Attend to the queries from the State Internal Revenue Service and Federal Inland Revenue Service as applicable in Nigeria or relevant tax authorities in member countries.

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 at 12½ marks.

CONTENTS:

1. **Introduction to Taxation** **10%**
 - a. Definition and Objectives of Taxation
 - b. Principles of Taxation
 - c. Classifications of Taxes
 - d. Sources of Nigerian Tax Laws
 - e. Tax Yield, Tax Rate, Tax Incidence, Tax Impact, Tax Shift and Tax Effect
 - f. Distinguish between Taxes and Levies

2. **Administration of Taxes** **20%**
 - a. Composition, Powers and Duties of Organs of Tax Administration:
 - i. Joint Tax Board
 - ii. Federal Inland Revenue Service Board
 - iii. State Board of Internal Revenue
 - iv. Technical Committees of the Boards
 - v. Tax Appeal Tribunal
 - b. Practical Procedures for Registration of Taxpayers
 - c. Knowledge of Documents Necessary for Filing Returns for Taxes and Dealing with the Relevant Tax Authorities
 - d. Returns
 - i) Individual Taxpayer's Returns
 - ii) Corporate Taxpayers' Returns
 - iii) Timing of Filing of Returns
 - e. Types of Assessment
 - i) Self Assessment Scheme – Nature and Benefits
 - ii) Provisional Assessment
 - iii) Best of Judgment Assessment (BOJ)
 - iv) Turnover Assessment
 - f. Terms of Payment
 - g. Failure and Penalties for Late Payment
 - h. Pre-operation Levy
 - i. Introduction to Ethical Issues- Confidentiality and Conflict of Interest
 - j. Distinction between Tax Avoidance and Tax Evasion
 - k. Tax Clearance Certificate-Nature, Relevance and Problems
 - l. Taxes and Levies (approved list for collection) in Member Countries

3. **Personal Income Tax** **20%**
 - a. Imposition of Tax
 - b. Taxable Persons
 - c. Define Contract of Employment and Contract for Employment
 - d. Distinguish between Types of Employment:
 - i) Nigerian Employment; and
 - ii) Foreign Employment.

- e. Incomes Chargeable
- f. General Provisions as to Valuation of Benefits-in-Kind
- g. Valuation as to Living Accommodation
- h. Allowable and Non-Allowable Deductions
- i. Relevant Tax Authority
- j. Reliefs and Allowances, and Tax Exempt Deductions
- k. Taxable Income of Partners of Partnerships
- l. Basis for Computing Assessable Income
- m. Commencement of Business
- n. Change of Accounting Dates
- o. Cessation of Business
- p. Ascertainment of Gross Emoluments and Assessable Income from Employment
- q. Collection and Recoveries
- r. Objections and Appeals
- s. Offences and Penalties
- t. Taxation of Trusts, Settlements and Estates
 - i) Define Trust, Settlement and Estate
 - ii) Identify Relevant Tax Authority
 - iii) Determine Taxable Income
 - iv) Determine Income from Trust, Settlement and Estate
 - v) Identify and Explain Allowable and Non-allowable Expenses
 - vi) Compute Tax Liability in the Hands of Beneficiaries and Trustees
 - vii) State and Explain Offences and Penalties
- u. Taxation of Investment Income
 - i) Compute Rent on Property, including Contractor- financed Projects
 - ii) State and Explain the Tax Implications on Dividends and Interests
 - iii) Explain the Bases of Assessments and Payment of Taxes on Investment Incomes

4. **Companies Income Tax**

20%

- a. Basis for Computing Assessable Profits
- b. Commencement of Business
- c. Change of Accounting Dates
- d. Cessation of Business
- e. Reconstruction and Investment Allowance
- f. Computation of Minimum Tax
- g. Rural Investment Allowance
- h. Export Processing Zone Allowance
- i. Local Plants and Fabrication of Spare Parts
- j. Capital Allowances – Types of Allowances and Conditions for Granting Allowances
- k. Total Profits and Tax Liabilities
- l. Exempted Incomes
- m. Allowable and Non- Allowable Deductions
- n. Treatment of Losses
- o. Reliefs and Allowances

- p. Filing of Tax Returns
 - q. Outline and Apply the Tax Provisions for Real Estate and Agriculture
 - r. Taxation of Foreign Air and Sea Transport Companies
 - s. Taxation of Foreign Companies Engaged in Cable Undertakings (telecommunications)
5. **Withholding Tax** **5%**
- a. Relevant Tax Authority
 - b. Deduction of Tax at Source
 - c. Withholding Tax on Rent, Interest, Royalty, Dividends, Directors Fee, Professional Fees, Technical and Management fee and Contract of supplies
 - d. Withholding Tax Rates
 - e. Exemptions from Withholding Tax
 - f. Remittance to Relevant Tax Authorities
 - g. Treatment of Withholding Tax Receipts
6. **Capital Gains Tax** **10%**
- a. Relevant Tax Authority
 - b. Administration
 - c. Computation of Chargeable Gains
 - d. Artificial and Fictitious Transactions
 - e. Exemptions and Reliefs
7. **Value Added Tax (VAT) and Stamp Duties** **10%**
- a. **Value Added Tax**
 - i. Administration
 - ii. Registration
 - iii. Taxable Persons, Activities and Services
 - iv. Preparing and filing of VAT Returns
 - v. Input and Output VAT
 - vi. Exempted Goods and Services
 - vii. VAT Records and Returns
 - viii. Output VAT Records
 - ix. Recovery
 - x. Zero-Rated Supplies
 - xi. Offences and Penalties
 - xii. VAT Tribunal
 - b. **Stamp Duties**
 - i. Nature and Objectives
 - ii. Forms of Stamp Duties and Computation
 - iii. Methods of Stamping and Adjudication
8. **Tertiary Education Tax** **5%**

- a. Management and Administration of the Education Tax Fund
- b. Assessment and Collection
- c. Rate and Payment
- d. Offences and Penalties

RECOMMENDED TEXTS

1. ATSWA Study Pack on Preparing Tax Computations and Returns
2. Ariwodola J.A. - Personal Taxation in Nigeria including Capital Gains Tax, A.A. Nigeria Ltd, Lagos.
3. Ali-Nakyea Abdallah - Taxation in Ghana, Principles, Practice & Planning
4. Taxation Journals and Government Circulars
5. Fasoto, G.F, Nigerian Tax Companion (Third Edition), 2013
6. Soyode, L and Kajola, S.O (2006): Taxation: Principles and Practice in Nigeria, 1st Edition, Ibadan, Silicon Publishers.
7. ICAN Taxation Study Pack (2014), VI Publishers, Lagos.

CHAPTER ONE

INTRODUCTION AND BACKGROUND TO TAXATION

CHAPTER CONTENTS

- (a) Introduction
- (b) Definition of Tax
- (c) Essentials of a Good Tax System
- (d) Tax Cut
- (e) The Nigerian Tax System
- (f) Historical Background of Taxation in Nigeria
- (g) Brief History of the Introduction of Taxation in Ghana
- (h) Objectives of Taxation
- (i) Tax Administration in Nigeria
- (j) Tax Administration in Liberia
- (k) Principles of Taxation
- (l) Classification of Taxes
- (m) Sources of Tax Laws
- (n) Distinction Between Taxes and Levies
- (o) Basic Concept in Taxation
- (p) Goods and Services Tax in Liberia
- (q) Chapter Summary

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; and
- c) sources of tax laws.

1.0 INTRODUCTION

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.

1.1. DEFINITION OF TAX

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 taxpayers' 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) Petroleum Profits Tax Act Cap P13 LFN 2004(as amended);
- (iv) Capital Gains Tax Act Cap C1 LFN 2004;
- (v) Value Added Tax Act Cap V1 LFN 2004(as amended);
- (vi) Tertiary Education Tax Act Cap E4 LFN 2004; and
- (vii) Stamp Duties Act Cap S8 LFN 2004.

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.

1.5 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.

1.6 BRIEF HISTORY OF THE INTRODUCTION OF TAXATION IN GHANA

Taxation was first introduced in Ghana, then Gold Coast, in 1943 by the British Colonial Government at the time when the World War II was raging. It should be noted, however, that before the introduction of income tax in 1943, several attempts had already been made, for example, as far back as April 1852. The Poll Tax Ordinance was passed to raise money to finance the increased cost of British Administration.

Under the Ordinance, every man, woman or child residing in districts under British protection was to pay one shilling (1/-) per head per year. These early experiments of the introduction of direct taxation failed because of weaknesses inherent in the system of collection and the fact that the first proceeds were mainly used to pay the increased salaries of British Officials and not for the construction of roads and schools.

The first Income Tax Law was thus the Income Tax Ordinance (No. 27), 1943. This Ordinance was modelled to a large extent on the general principles underlying the Income Tax Act then in force in the United Kingdom. It imposed the tax generally on incomes having their sources in Ghana so that foreign source income was not liable unless it was remitted to Ghana. One characteristic feature of this Ordinance was the numerous personal reliefs and deductions that it contained.

Since then, the Income Tax Law has seen several changes through amendments, and modifications, such as the Income Tax (Amendment) Ordinance 1952. The first

consolidated edition of the Income Tax Ordinance was published in March, 1953. The following Acts then introduced amendments to the Consolidated edition – Act 68 in 1961, followed by Acts 178 and 197 in 1963; Act 312 in 1965. The second consolidated edition was published in September, 1966 (i.e. the Income Tax Decree, 1966 – No. 78). The current Income Tax Law is the Internal Revenue Act, 2000 (Act 592).

1.7 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.

1.8 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.

1.9 TAX ADMINISTRATION IN LIBERIA

1.9.1 Tax Law

The Revenue Code of Liberia 2000 governs taxation in the Republic of Liberia. Every person is obliged to pay the taxes that the person is liable and no one person may be required to pay taxes that are not provided for by the Revenue Code 2000.

1.9.2 Taxes in Republic of Liberia

The taxes in effect in the Republic of Liberia are:

- a) The Personal and Business Income Tax
- b) The Goods and Services Tax
- c) The Excise Taxes
- d) Custom Duties
- e) The Real Property Tax

1.9.3 Persons Regulated by Tax Legislation in Liberia

The following persons are involved in the operations of the Tax Code of Liberia, 2000:

- a) Natural and Legal persons considered taxpayers in accordance with this Code:
- b) All persons considered tax agents in accordance with the Code:
- c) Tax offices, agencies, and their employees, including offices, agencies, and employees of the Internal Revenue Service's;
- d) Customs offices, agencies and their employees (in cases where responsibility for the collection of tax or tariff under the Revenue Code devolves upon Commissioner of Customs);
- e) The Ministry of Finance, finance agencies (in cases where tax receipt, collection, or withholding responsibility assigned by the Code to finance agencies);
- f) Other agencies and officials responsible for tax collection, receipt, or enforcement;
- g) Members of the Board of Tax Appeals; and
- h) Any other persons whose rights and authority are determined by the Code.

1.10 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.

1.11 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:

1.11.1 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 specific; in which case, a fixed amount is imposed on a commodity per unit or, it could be ad-valorem 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.

1.11.2 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.

1.11.3 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)

1.12 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.

In Ghana, we have the Central Government as the sole authority to impose taxes and duties which is done through Parliament. We have the Internal Revenue Act, 2000 (Act 592) governing Direct Taxes (i.e. Income Tax, Capital Gains Tax and Gift Tax). For Indirect Taxes we have the Customs, Excise and Preventive Service (Management) Law 1993 (P.N.D.C.L. 330) and the Value Added Tax Act, 1998 (Act 564);

- 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.

1.13 DISTINCTION 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.

1.14 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) 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.

1.15 GOODS AND SERVICES TAX IN LIBERIA

(1) GOODS TAX

A goods tax is imposed on the following taxable supplies and import:

(a) (i) Taxable supply of goods means:

- ◆ any sale, exchange, or other transfer of the right to dispose of the goods as owner, or
- ◆ an application of goods to own use where the goods were acquired pursuant to an exempt supply, or
- ◆ the grant of the use or right to use any goods under lease, a hire purchase agreement, or finance lease

(ii) Supply of services incidental to a supply of goods is part of the supply of the goods

(b) Taxable Import

(i) *Taxable import means:*

- ◆ the bringing of goods into Liberia
- ◆ a supply of services incidental to an import of the goods. This includes the services giving rise to commission, packaging, transportation, insurance, and warranty costs payable on, or by reason of the import.

(c) Amount of Tax

Tax payable on supplies and imports is seven percent (7%) of the amount of the taxable supplies and import respectively.

(d) Person Liable for Tax

For taxable supplies, tax payable on a taxable supply is to be accounted for by the registered manufacturer making the supply to the Minister, while the importer, (where the importer is not a registered manufacturer) accounts to the Minister.

(e) Goods Tax Recoverable From Recipient

The goods tax payable by a registered manufacturer is recoverable by the manufacturer from the recipient of the supply.

Payment of Goods Tax: The goods tax payable in respect of taxable supplies made during a tax period is due on the date the goods tax return for that period is due; and that of a taxable import is due on the date of arrival of the import at the port of entry.

(f) Exempt Supply

The following supplies are exempted from goods tax:

- (i) foodstuffs for human consumption for the general use of educational, and philanthropic institutions certified as such by the Minister excluding goods for the personal use of the members and employees of such institutions and organizations (but not when served as a meal or as cooked or prepared food)

- (ii) supply of goods for the relief of distressed persons in the case of natural disasters or other humanitarian emergencies
- (iii) a supply of pharmaceutical or medicinal preparation
- (iv) a supply of medical aids or appliances specifically designed for persons with an illness or disability
- (v) a supply of textbooks or other instructional materials designed for use in schools or adult educational programs
- (vi) a supply to a registered manufacturer, or to a person in the business of mining or forestry, of raw materials or other inputs for use directly in manufacturing, or capital goods
- (vii) a supply of goods as part of transfer of a manufacturing business as a going concern by a registered manufacturer to another manufacturer.

(2) SERVICE TAX

Supply of service is the performance of services for another person.

Service tax is imposed at seven percent (7%) on every supply of taxable services in Liberia by a registered services provider.

Taxable Services include the following:

- a) electricity services,
- b) telecommunications services;
- c) the provision of water for a fee;
- d) board, lodging, and incidental services by hotel or similar facility;
- e) gambling services in a casino, lottery ticket sales or betting;
- f) sales of tickets by international transport services (air, sea and land);
- g) services of travel agency or travel arranger including the issuing of tickets; and
- h) sporting services or game arranger including the issuing of tickets.

Taxable Amount

The taxable amount of a supply of taxable services is the consideration payable for that supply. The taxable amount of a supply of taxable services between related persons for no consideration or for a consideration that is less than the fair market value of the supply is the fair value of the supply.

Registration of Manufacturers / Service Providers

- (i) Every person who carries on any business of manufacturing/ providing services has obligation to register at the end of any period of twelve months where, during the period, the person made taxable supplies / provide services of \$5,000,000 or more; or
- (ii) at the beginning of any period of twelve months where there are reasonable grounds to expect that the total taxable amount of taxable supplies/ services to be made by the person during that period will equal or exceed \$5,000,000
- (iii) The Minister may include in the person's taxable supplies/ services, the taxable supplies /services made by another person who is a related person.
- (iv) every person who has an obligation to register shall apply shall apply to the Minister for registration within 21 days of becoming so required.

Cancellation of Registration

A registered manufacturer / service provider shall apply in writing to the minister for cancellation of registration if the person has ceased to make taxable supplies/services: or where the value of the taxable supplies / services provided during the most recent twelve (12) month period does not exceed the amount specified in Education Tax Act No.7 of 1993 and Stamp Duties Act Cap 411 LFN 1990

In Ghana, the following are notable tax legislations:

Internal Revenue Act, 2000 (Act 592);

Customs, Excise and Preventive Service (Management) Law 1993 (P.N.D.C.L. 330); and

Value Added Tax Act, 1998 (Act 564).

There are various machineries set up by the government to ensure strict compliance of all concerned. Non-compliance with these laws attracts penalties and fines.

In Ghana, taxation is administered by the Central Government. The revenue agencies are the Internal Revenue Service (IRS), Customs, Excise and Preventive Service (CEPS) and the Value Added Tax Service (VATS). These revenue agencies have a common board, the Revenue Agencies Governing Board (RAGB) to oversee its operations.

1.16 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.

MULTIPLE-CHOICE QUESTIONS

1. The following are the objectives of taxation EXCEPT
 - A. To provide fiscal tool for stimulating economic growth and development
 - B. To promote healthy competition among different tiers of government
 - C. For revenue generation to meet the needs of the government
 - D. To redistribute income wealth in order to reduce inequality
 - E. To provide income for government for use of Social Responsibility

2. The following are the examples of indirect taxes EXCEPT
 - A. Import duties
 - B. Value added tax
 - C. Excise duties
 - D. Withholding tax
 - E. Export Duties

3. The following are the cannons of taxation EXCEPT
 - A. Accountability
 - B. Equity
 - C. Economy
 - D. Ability to pay
 - E. Flexibility

4. The following are the sources of tax EXCEPT
 - A. Opinion of income tax experts
 - B. Court judgement until overruled
 - C. Opinion of a member of House of Assembly of any State
 - D. Constitution
 - E. Accepted recommendations of commission on enquiry

5. Tax system includes 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

SHORT ANSWER QUESTIONS

1. One of the purposes of _____ is to raise funds to provide public goods.
2. A principle of an ideal tax system that accepts that the structure and rates of tax should be capable of being altered without much difficulty is known as _____
3. The technical name given to a tax borne by a person other than the taxpayer is called _____
4. The relevant law that deals with taxation of individuals is _____
5. Give any TWO examples of indirect tax.

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. Taxation
2. Flexibility
3. Indirect tax
4. Personal Income Tax Act CAP LFN 2004 (as amended)
5. Import Duty, Export Duty, Stamp Duty, Value Added Tax

WORKED EXAMPLES

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. What is the main purpose of taxation in a country?

SUGGESTED SOLUTIONS

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.

In Ghana, low tax rates are applicable to manufacturing companies located in rural areas of Ghana to encourage the expansion of their activities to such areas to create jobs in a bid to curb the rural-urban drift of the youthful population.

(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 Profits Tax Act Cap P13 LFN 2004;
- iv. Capital Gains Tax Act Cap C1 LFN 2004;
- v. Value Added Tax Act Cap V1 LFN 2004 (as amended);
- vi. Education Tax Act Cap E4 LFN 2004; and
- vii. Stamp Duties Act Cap S8 LFN 2004.

(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.

Sources of Ghana Tax Laws and Practices are

- i) The 1992 Constitution of the Republic of Ghana
- ii) Tax Laws passed by the Parliament of Ghana
- iii) Practice Notes and Private Rulings issued by the Commissioners of the Revenue Agencies
- iv) Court judgments on decided tax cases
- v) To raise funds.

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 changes 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. **To generate revenue for economic development**

In Ghana, taxation is administered by the Central Government. The revenue agencies are the Internal Revenue Service (IRS), Customs, Excise and Preventive Service (CEPS) and the Value Added Tax Service (VATS). These revenue agencies have a common board, the Revenue Agencies Governing Board (RAGB) to oversee its operations.

CHAPTER TWO

GENERAL ADMINISTRATION OF TAXES

CHAPTER CONTENTS

- (a) Introduction
- (b) Structure of Tax Administration in Ghana
- (c) Composition and Duties of Revenue Agencies in Nigeria
- (d) Tax Administration and Procedures in Liberia
- (e) Tax Collection in Nigeria
- (f) Objections and Appeals – The Position in Nigeria
- (g) Offences and Penalties – The Position in Nigeria
- (h) Returns-The Position in Nigeria
- (i) Pre-operation Levy
- (j) Types of Assessments in Nigeria
- (k) Tax Clearance Certificate in Nigeria
- (l) Introduction to Ethical Issues.
- (m) Payment of Minimum Tax
- (n) Structure of Tax Administration in Liberia
- (o) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the reader should know and thoroughly understand:

- (a) the structure, composition and duties of various organs of tax administration;
- (b) techniques of tax collection;
- (c) procedure for raising objections and appeals; and
- (d) offences and penalties.

2.0 INTRODUCTION

A tax system comprises of tax laws, tax policies and tax administration. To achieve effective administration, there is a need for efficient organs of tax administration in any country.

2.1 STRUCTURE OF TAX ADMINISTRATION

2.1.1 The Tax Structure in Ghana

In Ghana, the Revenue Agencies Governing Board (RAGB) is the central governing body for the revenue agencies comprising the Internal Revenue Service (IRS), the Customs, Excise and Preventive Service (CEPS), and the Value Added Tax Service (VATS). The RAGB is governed by the Revenue Agencies (Governing) Board Act, 1998 (Act 558).

(a) Membership of the Revenue Agencies Governing Board

The RAGB consists of:

- (i) a Chairman;

- (ii) the Governor of the Bank of Ghana;
- (iii) the Executive Secretary of the RAGB;
- (iv) the Commissioner of the Customs, Excise & Preventive Service;
- (v) the Commissioner of the Internal Revenue Service;
- (vi) the Commissioner of the Value Added Tax Service;
- (vii) a Representative of the Ministry of Finance not below the rank of a Director; and
- (viii) four other persons at least two of whom shall be women.

(b) Functions of the Revenue Agencies Governing Board

The functions of the RAGB are as follows:

- (i) to ensure supervision and co-ordination of the activities of the Internal Revenue Service, the Customs, Excise & Preventive Service and the Value Added Tax Service in the performance of their functions under the Internal Revenue Service Law, 1986 (P.N.D.C.L. 143) as amended, the Customs, Excise & Preventive Service (Management) Law 1993 (P.N.D.C.L. 330) as amended, and Value Added Tax Act, 1998 (Act 546) as amended, respectively and under any other enactment;
- (ii) to cause to be prepared plans for developing and maintaining an effective, fair and efficient revenue collection system and ensure that the plans are implemented;
- (iii) to effect the restructuring of any of the revenue agencies as and when necessary;
- (iv) to ensure the effective, efficient and optimum collection of taxes, penalties and interest due to the State under the enactments establishing the three revenue agencies and under any other law;
- (v) to direct generally the revenue agencies on revenue related policies;
- (vi) to monitor the performance of the revenue agencies in carrying out their functions;
- (vii) to ensure that all amounts collected by the revenue agencies are paid into the Consolidated Fund unless otherwise provided by an enactment;
- (viii) to recommend to the Minister of Finance measures for effective collection of taxes and non-tax revenue;
- (ix) to delimit customs and surveillance zones, approve routes for customs purposes and cause to be built and managed government warehouses for the purposes of revenue collection;
- (x) to cause systems to be developed and maintained, whether by computer or other means, for co-ordinating, and supervising the collection, storage and retrieval of information;
- (xi) to arrange for the training and manpower development programmes for employees of the revenue agencies;
- (xii) to establish a system for the exchange of information among the revenue agencies;
- (xiii) to initiate and sustain programmes for public education on tax payment;
- (xiv) to establish and maintain a financial and accounting system in accordance with prescribed government accounting practice;

- (xv) to draw up a scheme of service for the staff of the revenue agencies; and
- (xvi) to perform such other functions in relation to revenue as the Minister of Finance may direct or as may be conferred on it by any other law.

c) The Commissioner of Internal Revenue Service

The Commissioner of Internal Revenue Service (CIR) is the head of the Internal Revenue Service and shall be appointed by the President in accordance with the advice of the Internal Revenue Service Board given in consultation with the Public Services Commission.

The functions to be performed by the CIR are:

- (i) to administer the Internal Revenue Act. The CIR sees to ensuring that provisions of the Act are carried into effect and complied with;
- (ii) to identify taxpayers. The CIR sees to the determination of taxable persons and getting them roped into the tax net;
- (iii) to assess taxpayers to tax. The CIR ensures that taxpayers are served with the relevant assessment based on the taxpayers' earnings and capacity, as well as the category in which the taxpayer falls;
- (iv) to collect taxes, penalties and interest due to the State. All taxes duly assessed are payable to the CIR, as well as all penalties and interest charged by the CIR on defaulting taxpayers. The CIR is thus tasked with ensuring that such monies are duly collected; and
- (v) to pay into the Consolidated Fund monies collected on behalf of the State. All tax revenue belongs to the State; hence all collections are to be paid into the Consolidated Fund by the CIR.

d) Powers of the Commissioner of Internal Revenue Service

To enable the CIR duly carry out the functions assigned to him/her as outlined above, he/she is empowered to facilitate the execution of the functions. There are powers that are exclusive to the CIR, that is, these powers cannot be delegated as they are the preserve of the CIR only. These powers are as follows:

- (i) the power to remit taxes, penalties, and interest;
- (ii) the power to exempt a person from the 5% withholding tax on contract payments as provided for under section 84 (4) (b) of Act 592;
- (iii) the power to determine whether the appropriate tax to be paid by a taxpayer in respect of capitalization of profits has been be paid;
- (iv) the power to determine whether a company controlled by not more than five persons have distributed a reasonable part of its income as dividend. This is to enable the CIR invoke section 45 of Act 592 which governs undistributed profits of companies; and
- (v) the power to compound an offence other than to the Solicitor of the Service;

The other powers that the CIR possesses can be delegated to Senior Officers of the Service, authorised by the CIR, to enable them fully carry out their functions. These are:
The power to determine objections:

- ❖ the power to summon witnesses;
- ❖ the power to prosecute in the Courts;
- ❖ the power to collect taxes by distress, that is, by seizing property to recover tax;
- ❖ the power to garnishee monies due to taxpayers, that is, orders a third party to pay amounts due to the taxpayer directly to the CIR;
- ❖ the power to impose penalties;
- ❖ the power to enter premises, search and seize documents and items;
- ❖ the power to extend time to furnish returns;
- ❖ the power to appoint a person to prepare and furnish a return on behalf of a person who has failed to furnish a return; and
- ❖ the power to adjust the chargeable income of a person in tax avoidance cases.

The above notwithstanding, there are some powers of the CIR which can be delegated to only officers of the rank of Senior Inspector of Taxes up to Deputy Commissioners of Internal Revenue Service. These powers are:

- ❖ the power to extend the due date for payments of taxes and vary tax instalments;
- ❖ the delegation of powers other than the exclusive powers of the Commissioner; and
- ❖ the power to authorise an officer to exercise the audit search and seizure or to demand the production of information.

e) The Commissioner of Customs, Excise and Preventive Service (CEPS)

The Commissioner of CEPS is the head of the Customs, Excise and Preventive Service and performs the following **functions**:

- (i) responsible for the day to day administration of the Service;
- (ii) the collection of duties, taxes and penalties due to the State; and
- (iii) the payment of the amounts collected into the Consolidated Fund.

f) Powers of the Commissioner of Customs, Excise and Preventive Service

The CEPS Management Law, 1993 has provided the Commissioner of CEPS with the following powers to enable him/her further carry out the functions assigned to him/her as stated above:

- (i) Powers of Police. All officers of CEPS have the same powers, authority and privileges as are given by law to Police Officers.
- (ii) Power to search persons. Any officer of CEPS may search a person he has reason to suspect is carrying or has any unaccustomed or prohibited goods or excisable goods on his person or in his/her possession or in his/her baggage, the duties on which have not been paid. It should be noted, however, that a female shall be searched by a female. Furthermore, no officer shall be liable to any prosecution, an action or suit on account of a search made in good faith and in accordance with the provisions of the law.

- (iii) Officers of CEPS have power to seal off premises, buildings, etc. which are suspected to be harbouring, keeping or in which are concealed or being kept unaccustomed, prohibited, restricted goods or goods on which excise duty or Input VAT have not been paid or secured by certificate.
- (iv) Officers of CEPS have power to stop ships, aircraft or vehicle upon reasonable suspicion that any unaccustomed, prohibited or restricted goods or any goods on which duties or taxes have not been paid or secured by certificate are loaded.
- (v) They also have the power to board a ship or aircraft within Ghana to conduct a search, request for books or other documents which ought to be on board, etc.
- (vi) They have the power to arrest tax evaders, e.g. smugglers.
- (vii) They have the power to patrol freely.
- (viii) They have the power to enter any factory.
- (ix) They have the power to examine stock to ensure that the requisite and adequate duties and taxes thereon have been paid.
- (x) They have the power to search premises.
- (xi) They have the power to seize aircraft or ship found to have been carrying unaccustomed goods, etc.
- (xii) They have the power to prosecute tax defaulters in Court.
- (xiii) They have the power to impose penalties.
- (xiv) They have the power to levy distress for excise and sales tax.

g) The Commissioner of Value Added Tax Service (VATS)

The Commissioner of VAT Service is the head of the Value Added Tax Service and performs the following functions:

- (i) responsible for the day to day administration of the Service;
- (ii) the collection of Value Added Taxes, National Health Insurance Levy (NHIL), Ghana Education Trust Fund Levy (Get Fund) and penalties and interest due to the State; and
- (iii) the payment of the amounts collected into the Consolidated Fund, Ghana Educational Trust Fund (GetFund) and National Health Insurance Fund.

h) Powers of the Commissioner of Value Added Tax Service (VATS)

The VAT Act, 1998 has provided the Commissioner of VAT with the following powers to enable him/her further carry out the functions assigned to him/her as stated above:

- (i) the power to take samples. Any officer of the VAT Service may take samples of goods from the possession of any person where he considers it necessary to protect revenue against mistake of fraud.
- (ii) the power to seal off premises. The Commissioner of VAT or any officer authorised by him may apply to a Court to seal off, lock up or in any physical

manner prevent any person from entering or gaining access to the premises of any person or taxable person who, there are reasonable grounds to believe has not paid the tax due or has made a false claim for repayment of his tax.

- (iii) the power of inspection and warrants. An officer of the VAT Service may at any reasonable time enter premises used in any way for business purposes, including premises where taxable goods are stored, and the officer may open any packaging and inspect and take stock of any goods and examine business records, accounts and correspondence on the premises.
- (iv) the power to compound an offence. It should be noted that this power is the exclusive right of the Commissioner of VAT.
- (v) the power to impose penalties.
- (vi) the power to prosecute tax defaulters in Court.
- (vii) the power to garnishee amounts owed to a tax debtor.
- (viii) the power to levy distress.

i) Collection of Tax by Distress (Attachment) and Garnishment

All the three Commissioners have power to collect tax and debt due their respective Service by Distress (Attachment) and by Garnishment (issuing of Garnishee Order), hence the need to explain what these entail. Commissioner, as used below will then apply to all the Commissioners of the three revenue agencies.

j) Collection of Tax by Distress/Attachment

The Commissioner may recover any unpaid tax by distress proceedings against the movable property of a person liable to pay tax, referred to as the “tax debtor”, by issuing an order in writing specifying

- (i) the person against whose property the proceedings are authorised;
- (ii) the location of the property; and
- (iii) the tax liability to which the proceedings relate.

The Commissioner may require a police officer to be present while distress is being executed, and the Commissioner may, at any time, enter any house or premises described in the order authorising the distress proceedings to execute the distress. Any property distrained shall be identified by the pasting or hanging of a piece of ribbon or cloth determined by the Commissioner to or on a conspicuous place of the property.

Where the property concerned is perishable goods, they shall be kept at the premises where the distress is levied or the Commissioner may determine any other place where they should be kept, at the cost of the tax debtor. The goods may be sold after a reasonable period determined by the Commissioner, either by auction or any other manner directed by the Commissioner. The proceeds of a disposal shall then be applied by the auctioneer or seller towards

- ◆ the cost of taking, keeping, and selling the property distrained upon;
- ◆ then towards the tax due and payable; and

- ◆ the remainder of the proceeds, shall be given to the tax debtor

Where the proceeds are not sufficient to meet the costs of the distress and the tax due, the Commissioner may sue for and recover the amount due with full costs of suit in any Court. Where a tax debtor is the owner of landed property situated in Ghana, the Commissioner may, by notice in writing, notify the tax debtor of the intention to apply to the Chief Registrar of Lands, for the landed property to be the subject of security for tax as specified in the notice. It is only after the tax due has been settled will the “notice of direction” to the Chief Registrar be cancelled.

k) Recovery of Tax from Person Owing Money to Tax Debtor (Garnishment)

Where the tax debtor has not paid tax which is due, the Commissioner may, by notice in writing, require any other person

- (i) owing or who may owe money to the tax debtor,
- (ii) holding or who may subsequently hold money for, or on account of, the tax debtor,
- (iii) holding or who may subsequently hold money on account of a third person for payment to the tax debtor, or
- (iv) having authority from a third person to pay money to the tax debtor, to pay the money to the Commissioner on the date set out in the notice, up to the amount of tax due.

The tax debtor will be served a copy of the notice. A person served with notice, as enumerated above, who is unable to comply with the notice by reason of lack of moneys owing to or held for the tax debtor, shall, as soon as is practicable notify the Commissioner accordingly in writing setting out the reasons for the inability to comply. Such notice shall not be later than the payment date specified in the notice by the Commissioner. Upon receipt of such notice from a person, the Commissioner may, by notice in writing, accept the notification and cancel or amend the notice issued or reject the notification. A person dissatisfied with such a decision of the Commissioner may only challenge the decision under the objection and appeal procedures specified in the tax laws.

A person making payment pursuant to a notice by the Commissioner to pay amounts due the tax debtor to the Commissioner, as discussed above, is deemed to have been acting under the authority of the tax debtor and of all other persons concerned and is thus indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra-judicial, notwithstanding any provisions to the contrary in any written law, contract, or agreement. The effect of this is that such a person who complies with the Commissioner’s notice is seen to have settled his debt with the tax debtor and no moneys are due from that person to the tax debtor again in respect of the debt owed the tax debtor.

2.1.2 The Tax Structure In Nigeria

In Nigeria, the tax laws allow all tiers of government to establish their own tax authorities. The administration of taxes is therefore vested in various tax authorities depending,

however, on the type of tax under consideration. This is explained in greater detail in subsequent sections.

2.2 COMPOSITION AND DUTIES OF REVENUE AGENCIES IN NIGERIA

2.2.1 State Board of Internal Revenue

The Finance (Miscellaneous Taxation Provisions) Amendment Decree No.3 of 1993 made provision for the establishment of an operational arm known as the State Internal Revenue Service. It must be noted that section 87 of PITA establishes the State Board of Internal Revenue.

Composition

The State Board consists of:

- (a) The Executive Head of the State Internal Revenue Service as Chairman. He is often appointed by the Governor;
- (b) The Directors and Heads of Departments within the Internal Revenue Services;
- (c) Three other persons nominated by the Commissioner for Finance in the State on their personal merits;
- (d) A Director from the State Ministry of Finance;
- (e) A Legal Adviser from the State Ministry of Justice; and
- (f) The Secretary of the State Internal Revenue Service, who shall be an ex-officio member.

Quorum

Notice that any five members of the State Board, of whom one must be the chairman or a Director, shall constitute a quorum.

Duties

The duties of the State Board of Internal Revenue include:

- (i) Ensuring the effectiveness and optimum collection of all taxes and penalties due to the Government under the relevant tax laws;
- (ii) Doing all such things as may be deemed necessary and expedient for the assessment and collection of the tax, accounting for all amounts so collected in a manner to be prescribed by the Commissioner;
- (iii) Issuing instructions or directives on technical aspects of assessment including interpretation of Income Tax Act to their various officers;
- (iv) Advising the government, through the Commissioner for Finance, on tax matters which include amendments to tax laws; and
- (v) Appointing, promoting, transferring and imposing disciplinary measures on employees of the State Service.

2.2.2 Technical Committee

(a) Composition

The composition of the Committee consists of the following:

- (i) Chairman of the State Board of Internal Revenue as chairman;
- (ii) The Directors within the State Service;
- (iii) The Legal Adviser to the State Service; and
- (iv) The Secretary of the State Service.

(b) Functions:

The functions are as follows:

- i. It has power to deploy additional staff from within the State service for the purpose of discharging its duties;
- ii. It advises the State Board in all its powers and duties;
- iii. It considers all matters that require professional and technical expertise and makes recommendations to the State Board; and
- iv. It attends to other matters referred to it by the Board from time to time.

2.2.3 Local Government Revenue Committee

(a) Composition

The composition of the Committee comprises:

- 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 Government on their personal merits.

(b) Functions

The Committee shall:

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

2.2.4 Federal Inland Revenue Service Board (FIRSB)

The Board was first established under Section 3 of the repealed Income Tax Administration Ordinance 1958 and amended by subsequent Acts and Decrees. The

Finance (Miscellaneous taxation provisions) (Amendment) Decree No.3 of 1993 provided for an operational arm to be known as the Federal Inland Revenue Service.

(a) Composition

The FIRSB comprises:

- i. An Executive Chairman who shall be a person within the service experienced in taxation to be appointed by the President;
- ii. The Directors and Heads of Departments of the service;
- iii. The Officer from time to time holding or acting in the post of Director with responsibility for planning, research and statistics matters in the Federal Ministry of Finance;
- iv. A member of the Board of the National Revenue Mobilization, Allocation and Fiscal Commission;
- v. A member from the Nigeria National Petroleum Corporation, not lower in rank than an Executive Director;
- vi. A Director from the National Planning Commission;
- vii. A Director from the Department of Customs and Excise;
- viii. The Registrar-General of the Corporate Affairs Commission (CAC); and
- ix. The Legal Adviser who shall be an ex-officio member of the Board.

b) Duties

The duties are as follows:

- i. Advising the Federal Government through the Minister of Finance on tax matters which include any amendment to the existing law;
- ii. Assessment and collection of companies income tax;
- iii. Issuing instructions on the financial aspects of assessment including interpretation on income tax Acts;
- iv. Reviewing and approving the strategic plans of the service;
- v. Employ and determine the terms and conditions of service including disciplinary measures of the employees of the service; 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.

2.2.5 Joint Tax Board (JTB)

The Joint Tax Board was established under Section 85(1) of the Personal Income Tax Decree 1993 as amended

a) Composition

The JTB comprises:

- i. Chairman of the Federal Board of Inland Revenue who is also the chairman;
- ii. One member from each state, being a person experienced in income tax matters nominated by the Commissioner for Finance of the State;
- iii. Secretary who is not a member but only in attendance for purpose of maintaining records of the Board's proceedings. He is appointed by the Federal Public Service Commission; and
- iv. Legal Officer – who is not a member but attends meetings in advisory capacity.

b) Quorum

Note that at any meeting, any seven members or their representative shall constitute a quorum.

c) Duties

The duties are as follows:

- i. To settle disputes between the States as regards tax matters especially disputes as to residence and remittance;
- ii. To promote uniformity both in the application and incidence of the provisions of tax laws on individuals throughout the country;
- iii. To advise the government on request in respect of double taxation arrangements, rates of capital allowances and other tax matters; and
- iv. To impose its decisions on matters of procedure and interpretation of the Act, on any state, for purposes of conforming with agreed procedure or interpretations.

2.2.6 Joint State Revenue Committee

The Joint State Revenue Committee was established by section 92 of the Personal Income Tax Act 1993 (as amended) for each State of the federation.

a) Composition

The Committee consists of the following:

- i. Chairman of the State Internal Revenue Service as the Chairman;
- ii. The chairman of each of the Local Government Revenue Committees;
- iii. A representative of the Revenue Mobilization Allocation and Fiscal Commission as an observer;
- iv. A representative of the Bureau on Local Government Affairs not below the rank of a Director;
- 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) Duties

The duties of the Joint State Revenue Committee are as follows:

- i. advise the Joint Tax Board and the State and Local Government on revenue matters;
- ii. implement the decisions of the Joint Tax Board;
- 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 prescribed from time to time by the Joint Tax Board.

2.2.7 Tax Appeal Tribunal

This is usually established by the Minister of Finance or State Commissioner for Finance by notice in the Gazette.

An Appeal Commissioner shall be appointed from among persons with experience in tax matters, accountancy or law in Nigeria.

The Appeal Commissioner shall hold office for a term of three (3) years, renewable for another term of three years only and no more, from the date on which he assumes his office or until he attains the age of 70 years whichever is earlier. He may resign as an Appeal Commissioner by notice in writing. He may, however, be allowed to sit at any further hearing in a case in which he has already sat before that date of resignation to hear an appeal until a final decision has been given on such appeal. He may, however, cease to hold such office if the State Commissioner determines that his office be vacant and due notice is given in gazette, or on his acceptance of a political appointment.

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

2.3 TAX ADMINISTRATION AND PROCEDURE IN LIBERIA

In the Republic of Liberia, the following are the procedure for filing and payment of tax in Liberia:

2.3.1. Time and Place of Filing and Payment of Tax

(a) *Timely Filing and Payment:*

A taxpayer's return is considered to have been timely filed if it is received at the taxpayer's designated place for filing by the due date, and any accompanying payment is considered to have been timely made.

(b) *Due Date:*

A taxpayer's income tax return and turnover tax return and tax payments are due not later than 5.00pm on the date provided in the Code under the personal and business income tax. A taxpayer's sales or services tax return and tax payments are

due not later than 5.00pm on the date provided in the Code under the goods and services tax.

(c) ***Extension of Time to File Return.***

Upon application in writing by a person required to file a return under any provision of the Revenue Code, the Minister may, where good cause is shown, extend the period within which to file return. This does not however alter the due date for payment of the tax.

(d) ***Extension of Time to Pay Tax.***

Upon application in writing by a person liable for tax under the Revenue Code, the Minister may, where good cause is shown, extend the time for payment of tax by the person and may impose requirements appropriate to ensure the payment of the tax due. An extension does not alter the due date for payment of tax for the purpose of calculating interest.

(e) ***Designated Place for Filing and Payment.***

A taxpayer's tax return and tax payments are to be received on or before the due date in the Minister's office in Moronvia. Taxpayers resident or domiciled outside Liberia and required to file a tax return or make a tax payment may file return or make payment at the place designated by the Ministry for receiving returns in their country of domicile or in the Ministry office in Moronvia, if no location is designated, the place of filing is in the Ministry office in Moronvia.

2.3.2 Penalty for Late Filing or Failure to File

For Penalty for Late Filing or Failure to File, Section 51 of the Revenue Code provides as follows:

- a) ***Late Filing:*** A tax return is subject to the following late - filing penalty if it is received after the due date at the taxpayer's designated place of filing
 - i) The penalty for late filing of a tax return (other than a tax return that is required to be filed monthly) is one percent (1%) of the tax required to be shown on the return, and the penalty increases by one percent (1%) per month or part of a month that the return is late
 - ii) The penalty for late filing of a tax return that is required to be filed monthly is \$200 or five percent (5%) of the tax required to be shown on the return, whichever is greater for each day that the return is late.
- b) ***Failure to File:*** If a taxpayer fails to timely file a return (other than a tax return that is required to be filed monthly), and the failure continues for more than three months after the deadline, the taxpayer is considered to have failed to file as of the first day after three – month period and is subject to the failure-to-file penalty. If a taxpayer fails to timely file a return that is required to be filed monthly, and the failure continues for more than one month after the deadline, the taxpayer is considered to have failed to file as of the first day after the expiration of one calendar month after the

filing due date and is subject to the failure-to-file penalty. Calculation of the penalty are:

- (i) The penalty for late filing of a tax return (other than a tax return that is required to be filed monthly) is ten percent (10%) of the tax required to be shown on the return, and the penalty increases by five percent (5%) per month (or part of a month) that the failure continues, not to exceed one hundred percent (100%) of the tax required to accompany the return.
- (ii) The penalty for failure to file a tax return that is required to be filed monthly is:
 - (1) \$5,000 or twenty percent (20%) of the tax required to be shown on the return (whichever is greater),
 - (2) increased by ten percent (10%) per month that the failure continues, except that the amount is limited to the amount determined in (a) above.
 - (3) If the taxpayer is convicted of willful failure to file, the penalty is doubled and the taxpayer may also be subjected to a term of imprisonment of up to five (5) years

c) *Tax Return for Tax Required to be Collected on Import.*

On the import of goods for which a Customs consumption entry is required, evidence of payment of any tax required to be collected on import is sufficient to satisfy the return filing requirement with respect to those goods (and the Customs consumption entry form is evidence of the amount and type of tax paid).

(d) *Application of Penalties.*

If the conditions for the importation of both the late-filing penalty and the failure-to-file penalty apply, both penalties are imposed. The penalty for willful failure to file can be imposed only if the taxpayer is duly convicted in a criminal court proceeding as authorized under the Criminal Justice Law of Liberia.

Penalty for Late Payment of Tax or Failure to Pay Tax

(a) *Late Payment*

A taxpayer has an obligation to make timely payment of tax due for a tax period. Tax is timely paid if it is received in the taxpayer's designated place for payment by the due date.

(b) *Penalty for Late Payment*

The minimum penalty for late payment is two percent (2%) of the unpaid tax, and the penalty increases by two percent (2%) per month or part of a month that the return is late, but not in excess of fifty percent (50%) of the unpaid tax. Interest on a late payment is at the market rate published by the Central Bank of Liberia.

(c) ***Penalty for Failure to Pay Tax***

If a taxpayer fails to timely payment, and the failure continues for more than three months after the deadline, the taxpayer is considered to have failed to pay tax and is subject to the failure-to-pay penalty. The minimum penalty for failure to pay is ten percent (10%) of the unpaid tax, increased by ten percent (10%) per month (or part of a month) during which the tax remains unpaid, not to exceed two hundred percent (200%) of the unpaid tax. Calculation of the penalty begins as of the day the taxpayer is deemed to have failed to pay. If the taxpayer is convicted of wilful failure to pay, the penalty is doubled and the taxpayer may also be subjected to a term of imprisonment of up to ten (10) years.

(d) ***Tax Return for Tax Required to be Collected on Import.***

On the import of goods for which a Customs consumption entry is required, evidence of payment of any tax required to be collected on import is sufficient to satisfy the tax payment requirement with respect to those goods (and the Customs consumption entry form is evidence of the amount and type of tax paid). Failure to pay at the time of import any tax required to be paid on import is subject to the penalties provided under the Customs law for failure to pay Custom duties.

Duties of Minister and Deputy Minister for Revenue

- (a) **Minister:** The Minister is authorized and required to oversee all of the operations of Ministry of Finance, including any matters assigned under the Revenue Code, through the agencies, officers, and employees of the Ministry, delegating such responsibilities as Minister may deem appropriate; except that the Minister may not delegate the authority to approve the remittance or reduction of tax otherwise due.
- (b) **Deputy Minister:** The Deputy Minister is authorized and required to oversee all of the operations of Revenue Department of the Ministry of Finance, including application of the Revenue Code, through the agencies, officers, and employees of the Ministry, delegating such responsibilities as Deputy Minister may deem appropriate; except that the Deputy Minister may not delegate the authority to approve the remittance or reduction of tax otherwise due.

- **Right of Appeal**

The taxpayer has the right to appeal a determination of the Minister to the Board of Tax Appeals provided that the taxpayer first pays the tax due or provides a bond or other security for payment. If a taxpayer has appealed a determination, the Minister may not enforce that determination until the decision of the Board of Tax Appeals is final.

- **Board of Tax Appeals**

The Board of Tax Appeals has seven (7) members that hears taxpayer appeals from determinations by the Minister and emergency protests of the Minister's actions. The Board is independent of the Ministry and is administered under the authority of the Ministry. It has the authority to approve, modify, or reverse a determination.

The Minister or the taxpayer may appeal an unfavourable decision to Liberia Tax Court, provided that the appeal is lodged within 30 days and is in conformity with the rules of the court.

- **Composition of the Board**

The members of the Board are to be appointed by the President with the concurrence of the Senate for a term of five years, for no more than two consecutive terms. Members must meet the following qualifications:

- a) Members must have been awarded a university degree;
- b) The members shall not be a current member of the board of directors or officer of any Liberian legal person; shall not be related to an employee of the Ministry; or be related to a Liberian legal person
- c) The member must have experience or training in at least one of the following areas: law, accounting, banking, business administration, finance or economics.
- d) At least three (3) board members out of seven (7) must be lawyers

- **Hearing of Appeal**

A person who objects to a determination by the Minister with respect to any tax under the Revenue Code, including the amount of tax withheld in accordance with any withholding provisions of the Code, or who objects to the seizure or confiscation of goods or accounts carried out in the tax collection process may appeal to the Board of Tax Appeals for a review of the Minister's determination.

- **Decision**

The Board is to render its decision in writing within the period for decision, which is sixty (60) days after the date the hearing is concluded. A party dissatisfied with the decision may appeal to a court of competent jurisdiction provided that the appeal is made within thirty (30) days of the date of the board's decision has been served on the party. The Board's decision is not final until the thirty (30) day period for appeal has ended or, if the Board's decision is appealed, at the time the decision of the court becomes final. All decisions of the Board are to be available as public records as soon as practicable, but not later than ten (10) working days after the decision is entered.

Assessment – The Position in Liberia

(a) **General Rule**

An assessment of tax payable by a person is made in one or more of the following ways:

- i) by self assessment in the form of the taxpayer's statement of tax due on a return for a tax year;
- ii) in the case of a tax collected by withholding, by the act of withholding;

- iii) if the Minister is not satisfied with a return or withholding statement filed by a person, or if a person fails to file a required return or if no return or withholding statement is required, by making a determination
- iv) before the due date for filing a return or payment of tax, if the Minister has reasonable grounds to believe payment of tax is in jeopardy, in accordance with regulations the Minister shall provide, by making jeopardy assessment.

(b) Amendment of Assessment

The Minister may, within the assessment period stated in (d), amend an assessment by making such alterations or additions to the assessment as the Minister considers necessary and following the procedures required for an assessment, except that the amendments to jeopardy assessments are subject to the jeopardy procedures.

(c) Assessment Date

Assessment is considered to be made:

- i) on the due date for filing the return or on the date the return is filed, whichever is later;
- ii) on the date the tax is required to be withheld, or the date the withholding occurs, whichever is later
- iii) on the due date of the return or the date the return is filed, whichever is later, or, if no return is filed, when the Minister first issues a notice of determination with respect to the tax year; and
- iv) on the date on which the jeopardy is assessment is made.

(d) Period of Assessment

The period for the Minister to make an assessment under (a)(iii), or an amended assessment under (b) above, ends five years after the date on which the return was required to be filed or the tax is withheld except

- i) if a person is required to file a return or to withhold tax, but the return is not filed or the withholding does not occur, then the assessment period ends ten (10) years after the due date for filing the return or making the withholding; or
- ii) if a taxpayer is not required to file a return, but tax should have been paid and was not, then the assessment period ends five (5) years after the last day of the tax year for which tax should have been paid.

(e) Notice of Assessment

Where an assessment has been made and the tax has not been paid on or before the assessment date:

- 1) the Minister shall serve a notice of the assessment on the person assessed stating
 - i) the amount of tax payable under the assessment,

- ii) a date on which the assessed tax is to be paid immediately if the assessment is jeopardy assessment, and in other cases no sooner than ten (10) days after the notice of assessment
 - iii) the time place and manner of appealing the assessment; or
- 2) if the assessment is made by the Minister's determination, a notice of assessment shall be served only when the determination becomes final.

(f) Payment of Tax under Assessment

Tax payable under the notice of assessment is due on or before the due date specified in the notice of assessment.

(g) Turnover Assessment

A person with gross income of less than \$5,000,000 for a tax year does not have an obligation to pay income tax, but is subject to a presumptive tax on gross income at the rate of four percent (4%) (the turnover tax).

2.4 TAX COLLECTION IN NIGERIA

2.4.1 Jurisdiction of the Federal Inland Revenue Service Board

In Nigeria, the administration of the following taxes falls under the jurisdiction of the Federal Inland Revenue Service Board:

- a) Companies Income Tax;
- b) Withholding Taxes on companies and residents of Federal Capital Territory (FCT) Abuja and non-residents;
- c) Petroleum Profits tax;
- d) Value Added Tax;
- e) Education Tax;
- f) Capital Gains Tax;
- g) Stamp Duties on corporate bodies and non-residents; and
- h) Personal Income Tax in respect of members of Armed Forces of the Federation and Police Force, residents of FCT and staff of Foreign Affairs and non-residents.

Note that, the Board may, by notice, in the Federal Gazette or in writing authorize any person to exercise on behalf of the Board any power or duty conferred on the Board other than the duties specified in the First Schedule to the Companies Income Tax Act C20 LFN 2004 (as amended) the Board, with the consent of the Minister may also, authorize the Joint Tax Board to perform or exercise any power conferred on the Board including the power or duties specified in the First Schedule.

2.4.2 Taxes Collectible by State Governments in Nigeria

In Nigeria, the types of taxes collectible by State Governments are:

- a) Pay-As-You-Earn (PAYE);
- b) Direct taxation (Self assessment);

- c) Withholding Taxes (individuals only);
- d) Capital Gains Tax on individuals only;
- e) Stamp duties on instruments executed by individuals;
- f) Pools betting and casino taxes;
- g) Road taxes;
- h) Development levy for individuals only;
- i) Naming of street registration fee in State capital;
- j) Right of occupancy on land by State government in urban areas;
- k) Market taxes and levies where State finances are involved; and
- l) Business premises registration fees for:
 - a) Urban areas (i) ₦10,000 for registration
(ii) ₦5,000 for annual renewal
 - b) Rural areas – ₦2,000 (registration), ₦1,000 (renewal)

2.4.3 The Levies and Dues Collectible by Local Governments in Nigeria

These include:

- a) Shops and Kiosks rates;
- b) On-off liquor licence fees;
- c) Slaughter slab fees;
- d) Tenement rates;
- e) Market taxes and levies excluding any market when state finance is involved;
- f) Customary burial ground permit fees;
- g) Bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck’
- h) Marriage birth and death registration fees;
- i) Cattle tax payable by cattle farmers only;
- j) Merriment and road closure levy;
- k) Radio and TV licence fee;
- l) Vehicle radio licence fees;
- m) Wrong parking fees;
- n) Street naming registration fees excluding any streets in the State capital;
- o) Motor park levies;
- p) Domestic annual licence fees;
- q) Signboard and advertisement permit fees;
- r) Religious places establishment permit fees; and

- s) Public convenience sewage and refuse disposal fees.

2.4.4 Techniques/Procedure of Tax Collection and Assessment in Nigeria

For each year of assessment, a taxable person shall file a return of income in the prescribed form and containing the prescribed information with the tax authority of the State within 90 days from the commencement of every year of assessment.

Where a taxable person has delivered a return, the relevant tax authority may either accept the return and make an assessment accordingly or refuse to accept the return, and to the best of its judgment, determine the amount of the assessable, total or chargeable income and make an assessment accordingly. There may be additional assessment, if the tax authority later discovers that the taxable person has been assessed at a lower amount, within the year of assessment or within six years after the expiration thereof.

The tax authority should send to the taxable person the Notice of Assessment which should state the following:

- a) amount of any assessable, total or chargeable income;
- b) tax charged;
- c) place at which payment should be made; and
- d) rights of objection (if any) of the taxable person.

2.4.5 Determination of an Objection or Appeal

On the determination of an objection or appeal (if applicable) the tax shall be payable within one (1) month of the date of service of the notice on the taxable person.

2.4.6 Tax Returns

Every company is required to file its tax returns, audited accounts, income tax and capital allowances computations with the Federal Inland Revenue Services within:

- a. Six months after the end of the company's accounting year in the case of an old company; or
- b. In the case of a newly incorporated company, eighteen months from the date of incorporation, or six months after the end of its first accounting period, whichever is earlier.

Every company including a company granted exemption from incorporation shall at least once a year without notice or demand there from, file a return with the Board in a prescribed form and containing prescribed information together with the following:

- a) Self-assessment return in the prescribed form;
- b) audited financial statements;
- c) capital allowances computation; and
- d) a true and correct statement in writing containing the amount of its profits from each and every source computed, and declaration on the truth and fairness of computed amounts and signed by a director or secretary of the company.

2.4.7 Penalty for Late Returns

Any company which fails to file returns shall be liable to pay as penalty an amount of ₵25,000 in the first month in which the failure occurs and ₵5,000 for each subsequent month in which the failure continues.

2.4.8 Tax Returns by Companies Operating in the Capital Market

Every company operating in the capital market shall file with the relevant tax authority not later than seven (7) days after the end of each calendar month a return in the prescribed term of its transactions during the preceding calendar month, which will include the following information if it is in the primary market:

- a) type of offer;
- b) services rendered; and
- c) amount of value added tax payable.

If in the secondary market:

- i. number and value of transactions;
- ii. commission received;
- iii. amount of tax deducted at source; and
- iv. amount of value added tax payable.

2.4.9 Various Taxes Operating in Ghana

In Ghana, the following tax laws are currently in force and cover the taxes indicated:

- a) Internal Revenue Act, 2000 (Act 592) which covers
 - i. Income Tax – Personal, Corporate, Partnerships and Body of Persons
 - ii. Gift tax
 - iii. Capital Gains Tax
- b) Minerals and Mining Law, 1986 (P.N.D.C. Law 153) which governs taxation of companies in the minerals and mining sector.
- c) Minerals (Royalties) Regulations L.I. 1349 governing taxation of royalties to be paid by owners of mining concessions.
- d) Petroleum Income Tax Law, 1987 (P.N.D.C. Law 188) governing the taxation of companies in the petroleum exploration sector.
- e) Stamp Act, 1965 (Act 311) which covers the duty payable on instruments, stated capital, etc.
- f) Customs, Excise and Preventive Service (Management) Law, 1993 (P.N.D.C. Law 330) governing
 - i. import duties,
 - ii. export duties,
 - iii. excise duties

- iv. Import VAT,
 - v. vehicle import tax,
 - vi. petroleum tax,
 - vii. National Health Insurance Levy on imported goods,
 - viii. Special tax,
 - ix. ECOWAS Levy,
 - x. Export Development and Investment Fund (EDIF) Levy.
- g) Value Added Tax Act, 1998 (Act 546) which governs value added tax.

2.5 OBJECTIONS AND APPEALS – THE POSITION IN NIGERIA

In Nigeria, if a person disputes an assessment, he may apply to the relevant tax authority by putting up a letter of objection stating precisely the grounds of objection to the assessment. This letter of objection shall be made within thirty (30) days from the date of service of the Notice of the Assessment. An aggrieved taxable person, having failed to agree with relevant tax authority, may appeal against the assessment on giving notice within thirty (30) days after the date of service of Notice of Refusal of the relevant tax authority to amend the assessment as desired.

2.5.1 The Notice of Appeal, which must be in writing, must contain the following:

- a) The name and address of the applicant;
- b) The official number and the date of the relevant notice of assessment;
- c) The amount of the assessment, total or chargeable income and of the tax charged as shown by that notice and the year of assessment concerned;
- d) The precise grounds of appeal;
- e) Address for service of any notice or other document to be given to the applicant; and
- f) The date on which the applicant was served with notice of refusal by the relevant tax authority to amend the assessment as desired.

2.5.2 Objections and Appeals – The Position in Ghana

In Ghana, the Internal Revenue Act, 2000 (Act 592) provides for administrative resolution of disputes arising from objections and judicial resolution of disputes.

a) Objection to Assessment

The taxpayer is permitted under section 128 of Act 592 to settle disputes amicably with the Commissioner by way of objections to assessments raised on him. This is the administrative resolution of disputes. Under the Act, any person dissatisfied with an assessment made on him has to object to the assessment within 30 days of the service of the assessment on him.

For a person who pays tax by instalments, objection should be made within nine (9) months of the commencement of the basis period to which the said provisional assessment relates.

The objection would be considered in the process below:

- i. Objection must be in writing stating precisely the grounds upon which it is made.
- ii. Objectors can ask for an extension of time for lodging objection with the Commissioner on grounds of objector's absence from Ghana, sickness or other reasonable cause.
- iii. Objection may be granted partially or wholly by the Commissioner thereby amending the assessment or disallowing the objection.
- iv. Commissioner is to serve Notice of decision of disallowance on the objector.
- v. Where ninety (90) days after lodging the objection, the Commissioner does not act on the objection, the objector should deem it that the Commissioner has disallowed his objection.
- vi. Objector should with effect from that date serve notice on Commissioner electing to treat his silence as having disallowed his objection.

If before this point, the Commissioner and the Objector agree or the Objector is satisfied with the Commissioner's objection decision in respect of an amendment to assessment or an allowance of the objection, then this closes the chapter on the administrative dispute resolution.

b) Judicial Resolution of Disputes

This is provided for under Section 129 of Act 592. Appeals against the decision of the Commissioner are commenced at the High Court. The objector should lodge this with the Registrar of the High Court within thirty (30) days after the service of the notice of the Commissioner.

c) Appeals against the Decisions of the Commissioner

The Appeal must be served on the Commissioner within five (5) working days after it has been filed at the High Court and must be instituted against the Attorney General.

d) Extension of Time for filing Appeals in Court

Appeals can only be lodged later than thirty (30) days if the delay in lodging the notice of appeal is due to:

- i. The objector's absence from the country (Ghana);
- ii. Sickness (i.e. if the objector is sick);
- iii. Other reasonable cause; or
- iv. There is no unreasonable delay on the part of the objector.

No action would be entertained without objection and appeal procedure being followed.

e) Power of the High Court

During the trial, the High Court may confirm, reduce, increase or annul the assessment on which the decision is based or make an appropriate order.

f) Appeal to Court of Appeal and Supreme Court

Under Section 130 of Act 592, the Commissioner or the appellant may appeal against the decision of the High Court to the Court of Appeal on a matter of law only. An appeal against a decision of the Court of Appeal shall lie as of right to the Supreme Court. An appeal to the Court of Appeal or the Supreme Court is to be instituted within thirty (30) days after the relevant decision has been given.

g) Payment of Deposit by Objector on Appeal

An objector is required under Section 131 of Act 592 to pay an amount not less than the amount payable in the first quarter of that year in respect of provisional assessment before an appeal can be heard. Unless this is paid no court shall entertain the objection.

h) Burden of Proof

Section 132 of Act 592 is to the effect that, as in all tax cases the burden of proof is on the taxpayer, to show, on the balance of probabilities that the assessment on him is either excessive or erroneous.

2.6 OFFENCES AND PENALTIES – THE POSITION IN NIGERIA

In Nigeria, income tax charged based on an assessment which is not or has been the subject of an objection or appeal shall be payable, after the deduction of any amount to be set out for the purposes of collection, or any amount deposited against the tax, at the place stated in the notice of assessment within two (2) months after the date of service of that notice. However, if the period of two months expires before the fourteenth day of December within the year of assessment for which the income tax has been charged, and the aggregate of the tax to be deducted and of any income tax paid for that year within that period amounts to not less than one-half of the tax so charged, then payment of any balance of such tax may be made not later than that day, December 14 of the assessment year.

2.6.1 Late Payment of Assessment

If any income charged by any assessment is not paid within the prescribed period, a sum equal to 10 percent per annum of the tax shall be added thereto. A penalty imposed in this way shall not be deemed to be part of the tax paid for purpose of claiming relief. If payment is not made within one month from the date of the service of the demand notice, the relevant tax authority may proceed to enforce payment.

2.6.2 Penalty for Late Payment

The tax due from a taxable person shall carry compounded interest at bank based lending rate from the date when the tax becomes payable until it is paid.

In the case of Pay-As-You-Earn, any employer is required to file returns not later than thirty first of January of each year 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 in the sub-paragraph 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 the case of a body corporate and ₦50,000 in the case of an individual .

2.6.3 Offences and Penalties – The Position in Ghana

The various offences and related penalties under the Internal Revenue Act, 2000 (Act 592), as amended are as follows.

- a) Failure to keep books of accounts is an offence which attracts a penalty of 5% of the amount of tax payable by that person for the year under review.
- b) Where a taxpayer fails to furnish a return, this is an offence and the penalty is as follows:
 - i) One penalty unit in the case of a company;
 - ii) Half penalty unit in the case of a self employed.

in respect of each day of default. A penalty unit is the current equivalent of N120,000.

- c) Failure to pay tax on due date constitutes an offence and the attendant penalty is as follows:
 - i) Failure of not more than three (3) months; 10% of tax debt, plus tax debt.
 - ii) Failure exceeding three (3) months; 20% of tax debt, plus tax debt.
- d) Understating estimated tax payable by instalment, in the case of Self-Assessment is an offence. Thus, where a person who pays tax by self-assessment underestimates his chargeable income to a figure less than 90% of his actual chargeable income computed for that year, he becomes liable to pay a penalty equal to 30% of the difference between the tax computed in respect of his estimate and the tax computed in respect of 90% of his actual chargeable income for the year.
- e) Making false and misleading statement is an offence and the related penalty is as follows:
 - i. Where the misleading or false statement is made without reasonable excuse, the penalty is double the underpayment of tax which may result if not detected. In addition, where the amount involved exceeds 100 currency points, to a fine of not less than 25 penalty units or not more than 100 penalty units or to imprisonment for a term of not less than 3 months or not more than one year or both; and in any other case, to a fine of not less than 5 penalty units and not more than 25 penalty units or imprisonment for a term of not less than three months and not more than one year or both.

- ii. Where the false and misleading statement is made knowingly and/or recklessly, the penalty is treble the amount of the underpayment of the tax which may result if not detected. In addition, where the amount of tax involved exceeds 100 currency points, to a fine of not less than 50 penalty units and not more than 200 penalty units or imprisonment for a term of not less than one year or not more than two years or both; and in any other case, to a fine of not less than 10 penalty units and not more than 50 penalty units or imprisonment for a term of not less than six months and not more than one year or both.

- f) Aiding and abetting. A person who aids or abets any person to commit an offence or who counsels or induces any person to commit an offence is liable to pay a penalty equal to treble the underpayment of tax which may result if the offence were committed and went unnoticed.
In addition where the amount of tax involved exceeds 100 currency points, to a fine of not less than 50 penalty units and not more than 200 penalty units or imprisonment for a term of not less than one year and not more than two years or both, and in any other case, to a fine of not less than 10 penalty units and not more than 50 penalty units or imprisonment for a term of not less than six months and not more than one year or both.

- g) Where a person fails to comply with the Internal Revenue Act, 2000 (Act 592), resulting in an underpayment of tax of more than five hundred (500) currency points he/she commits an offence and is liable to a fine of not less than 50 penalty units and not more than 300 penalty units. In any other case between 10 and 100 penalty units. (A currency unit is the current equivalent of N10,000).

- h) Failure to withhold tax. Where a person fails to withhold tax as prescribed under the Act, that person commits an offence and the penalty is personal liability to pay to the Commissioner the tax due but not withheld.

- i) Impeding Tax administration. Where a person impedes tax administration, that person commits an offence and is liable to a fine of not less than 25 penalty units and not more than 200 penalty units or imprisonment for a term of not more than two years or both.

- j) Offences by Authorized and Unauthorized Persons. A fine of not less than 50 penalty units or to imprisonment for a term of not less than one year and not more than three years or both. A person who contravenes the Official Secrecy provisions under section 127 of Act 592 is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding one year, or both.

- k) Failure to pay tax. Where the amount involved exceeds 100 currency points, a fine of not less than $12\frac{1}{2}$ penalty units and not more than 100 penalty units or imprisonment for a term of not less than 3 months and not more than one year or both. In any other case, to a fine of not less than 5 penalty units and not more than 25 penalty units or imprisonment for a term not less than one month and not more than 3 months or both.

2.7 RETURNS – THE POSITION IN NIGERIA

Introduction

In Nigeria, we have individual taxpayer's returns and corporate tax returns.

2.7.1 Individual Taxpayer's Returns

At the end of each year, every employer is expected to make returns to the relevant tax authority – the State Board of Internal Revenue under the Pay-As-You-Earn (PAYE) Scheme, of all emoluments paid to its employees not later than 31 January of every year in respect of all employees in its employment in the preceding year.

Such returns usually include the following:

- (a) Certificate of Tax Deduction of the employees. This shows the:
 - i) total number of employees;
 - ii) amount of tax deducted in respect of all employees; and
 - iii) amount of tax actually paid to the tax authority in respect of the deductions made.
- (b) Completed tax deduction cards of all the employees duly signed by employer or representative.
- (c) A duly signed statement showing the following:
 - i) name of each employee;
 - ii) employee's taxable income;
 - iii) amount of tax deducted; and
 - iv) particulars of tax receipts issued.

At the beginning of each year of assessment, an employee is expected to submit a complete income tax declaration form, on the basis on which, the employee will be 'coded'. This will be the basis of ascertaining the personal and other reliefs of the employee for the year of assessment.

2.7.2 Contents of a Tax Deduction Card

A tax deduction card is usually issued by the tax authority to an employer based on the information already given on such employee. This card contains the following:

- a) year of assessment;
- b) name of the employer;
- c) name of the employee;
- d) place of residence of the employee for the year of assessment; and
- e) employee's reference number.

This tax deduction card also has columns for the following:

- (i) gross pay for each month;
- (ii) gross pay to date;
- (iii) free pay to date;

- (iv) taxable pay to date;
- (v) tax due to date;
- (vi) deduction up to the end of the previous month; and
- (vii) tax deducted for the month (v-vi).

The employer usually completes all the columns at the end of each month except the column of free pay to date which is always completed by the tax authority before the card is issued to the employer.

2.7.3 Introduction

It is expected that every company, at least once a year without notice or demand, file a return with the relevant tax authority – the Federal Inland Revenue Service Board in the prescribed form and containing prescribed information together with the following:

- a) The audited financial statements, capital allowances and tax computations and a true and correct statement in writing containing the amounts of its profits from each and every source; and
- b) Such particulars in relation to any relevant profits, allowances, reliefs and deductions.

The form of returns shall contain a declaration which shall be signed by a director or secretary of the company that the return contains a true and correct statement of the amount of its profit computed in respect of all sources and that the particulars given in such returns are true and complete.

2.7.4 Timing of Filing of Returns

It is important that a company that has been operating for more than eighteen months must file returns and audited financial statements with the Board, not more than six months after the close of the company's accounting year. However, in the case of newly incorporated company, within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever is earlier.

2.7.5 Penalty for Late or Non Filing of Returns

Failure to comply with the filing of returns as and when due attracts penalty as follows:

- (a) ₦25,000 in the first month in which the failure occurs; and
- (b) ₦5,000 for each subsequent month in which the failure continues.

It is important to also note that person who connives to commit the above offence shall be deemed to be guilty of the offence and shall on conviction be liable to a fine of ₦100,000 or imprisonment for 2 years or to both such fine and imprisonment.

2.7.6 Application for Extension of Time of Filing Returns

A company may apply in writing to the Board for an extension of the time within which to file returns provided:

- (i) such request is made before the expiration of the time specified for making the returns; and

- (ii) the company shows good reason for its inability to comply.

2.7.7 Expectation from Banks in Filing of Returns

The banks are also expected, in addition of filing financial statements, submit a return within 7 (seven) days after the end of each month specifying the names and addresses of new customers of the bank in respect of the preceding month.

2.7.8 Documents Required to be Submitted to the Relevant Tax Authority When Sending the First Returns Include:

- a) Copy of the certificate of incorporation;
- b) Certified true copy of the Memorandum and Articles of Association;
- c) Letter of appointment of External Auditors and Tax Consultant and letters of acceptance;
- d) Certified true copy of form CAC 7 (particular of Directors);
- e) Capital allowances and tax computations;
- f) Audited financial statements; and
- g) Other information on
 - Date of commencement of business
 - Accounting year end
 - Registered address
 - Business address, if different from the registered office.

2.8 PRE-OPERATION LEVY

This applies to a company which is yet to commence business after at least 6 months of incorporation. The levy payable for each year it obtains a tax clearance shall be:

- (a) ₦20,000 for the first year; and
- (b) ₦25,000 for every subsequent year, before a Tax Clearance Certificate is issued.

2.9 TYPES OF ASSESSMENTS IN NIGERIA

2.9.1 Introduction

In Nigeria, we have different types of assessments namely Self Assessment, Provisional Assessment and Best of Judgement (BOJ).

2.9.2 Self – Assessment Scheme

A taxpayer can compute the tax payable for the year of assessment, file the returns and pay the tax due. Such payment can be made in one lump sum or in monthly instalments (not more than six). Suffice it to say that the taxpayer can forward with the returns a bank certified cheque for payment of the whole or part of the tax due. However, the request for installmental payment must be made and accompanied with a bank certified cheque for the first instalment.

Self assessment scheme if well implemented is a subtle way of increasing tax revenue base of the government without coercion.

The merits of the scheme include:

- a) it enhances the pace of tax collection as there is no need to wait for the computation, processing and raising of assessment.
- b) it is democratic in nature as the taxpayer is allowed to participate in assessment.
- c) it gives the taxpayer a sense of belonging and responsibility thereby making him more responsible citizen.
- d) it reduces the cost of collection by shifting the cost of collection to the individual taxpayer.

The limitations of Self – Assessment Scheme include:

- i) there might be lower compliance rate as a result of high illiteracy level in the country.
- ii) there could be high level of understatement of tax liability due to high degree of desire to evade tax in Nigeria.

2.9.3 Provisional Assessment

This is made where a taxpayer has not delivered a return and the Board is of the opinion that such a company is liable to pay tax. In this case, the Board may determine the amount of the total profits of such taxpayer and make assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such a taxpayer by reason of its failure or neglect to deliver a return.

Likewise, the Board can make an assessment upon a taxpayer for any year before the expiration of the time within which such taxpayer is required to deliver a return or to give notice.

However, any taxpayer that disputes the assessment may apply to the Board, by notice of objection in writing, to review and revise the assessment. Such application must be made within thirty days from the date of service of the notice of assessment and must contain the grounds of objection, the amount of assessable and total profit and the amount of tax payable.

It is pertinent to state that provisional tax is still a statutory provision of the tax law but no longer relevant as every company is now required by the provisions of companies Income

Tax Act Cap C21 Lfor 2004 (as amended) to file self assessment return and pay the tax stated thereon. Self assessment filers are expected from payment of provisional tax. It is pertinent to state that provisional tax is still a statutory provision of the tax law but no longer relevant as every company is now required by the provisions of Companies Income Tax Act Cap C21 for 2004 (as recorded) to file self assessment return and pay the tax stated thereon. Self assessment filers are exempted from payment of provisional tax.

2.9.4 Additional Assessment

This occurs when the Board discovers that any taxpayer liable to tax has been assessed at a less amount than which ought to have been charged, the Board may, within a year of assessment or within six years after the expiration thereof, assess such taxpayer at such additional amount as ought to have been charged. Such taxpayer can however appeal.

2.9.5 Best of Judgement

Where a taxpayer has filed its financial statements and returns, the tax authority may refuse to accept the return, and, to the best of its judgement, determine the amount of the total profits of the taxpayer and make an assessment accordingly. Best of Judgement assessment can also apply in a situation where a taxpayer refuses to make available financial statements and books of account to the Board or any of its agents for the purpose of assessment.

2.10 TAX CLEARANCE CERTIFICATE IN NIGERIA

2.10.1 Introduction

A Tax Clearance Certificate is issued whenever the Board feels that the tax assessed on profits or income of a taxpayer has been fully paid or that no tax is due on such profits or income. This certificate should be issued by the Board to the person within two weeks of the demand, if not, the relevant authority must give reasons for the delay or denial.

2.10.2 Contents of a Tax Clearance Certificate

The following shall be disclosed in a Tax Clearance Certificate in respect of the last three years of assessment:

- a) Name, Address and Taxpayer's Identification Number (TIN) of the company;
- b) total profits or chargeable income;
- c) tax payable;
- d) tax paid;
- e) tax outstanding or alternatively a statement to the effect that no tax is due;
- f) nature of business;
- g) type of assessment (BOJ, Self – Assessment, etc.); and
- h) expiry date.

2.10.3 Transactions Requiring Presentation of a Tax Clearance Certificate

Any Ministry, department or agency of Government or any commercial bank with whom any person has any dealing with can demand from such person a tax clearance certificate of three years immediately preceding the current year of assessment in the following transactions:

- a) application for government loan for industry or business;
- b) registration of motor vehicles and change of vehicle ownership;
- c) application for firearms licence;
- d) application for foreign exchange;
- e) application for certificate of occupancy;
- f) application for awards of contracts by government and its agencies;
- g) application for trade licence;
- h) application for approval of building plans;
- i) application for import or export licence;
- j) application for plot of land;
- k) application for pools or gaming licence;
- l) application for distributorship;
- m) application for stamping of guarantor's form for Nigerian passport;
- n) application for registration of a limited liability company or of a business name;
- o) application for allocation of market stalls;
- p) stamping of the statement the nominal share capital of a company to be registered and any increase in the registered share capital of any company;
- q) stamping of statement of the amount of loan capital;
- r) application of transfer of real property; and
- s) appointment or election into public office.

Ministries Department and Agencies (MDAs) and banks are required to verify TCCs submitted to them with the issuing relevant tax authority.

2.11 INTRODUCTION TO ETHICAL ISSUES

2.11.1 Introduction

The administration of Companies Income Tax and Personal Income Tax in Nigeria is vested in the Federal Inland Revenue Service Board and the State Internal Revenue Service Board respectively.

The officials of these relevant tax authorities as well as the tax practitioners are expected to regard and deal with all documents, information, returns and assessments with utmost confidentiality and there should not be any conflict of interest in the performance of their duties.

2.11.2 Penalty for Failure to Fulfil Obligation of Secrecy

A person shall be guilty of an offence under the obligation of secrecy if he communicates or attempts to communicate such taxpayer's information to another person.

2.11.3 Conditions for Disclosure of Information

Information on taxpayers may be disclosed under the following conditions:

- (i) if information is necessary by government for purpose of double taxation relief; and
- (ii) if information is required by the Auditor-General of the Federation or any other officer authorized by him for the performance of his official duties.

Notice that, no employee of the tax authority is expected to produce in any court any return, document or assessment or to divulge or communicate to any court any matter or thing coming under his/her notice in the performance of his/her duties except as may be necessary for the purpose of instituting a prosecution for any offence committed in relation to any tax on income or profits in Nigeria.

It must be noted also that it is only in the name of the Board that proceedings for an offence against this obligation for secrecy can be taken. The consent of the Attorney-General of the Federation must be sought before such proceedings can be taken in any other person's name.

2.11.4 Conflict of Interest

A tax practitioner is not expected to act for two opposing parties. Notice of any attempt to do this must be sent across to the parties to seek their consent. Suffice it to say that the service of a tax practitioner to a party must not be performed at the detriment of the other client having the same interest in a tax issue.

2.12 PAYMENT OF MINIMUM TAX IN NIGERIA

2.12.1 Introduction

A company is expected to pay a minimum tax in a situation where, in any year of assessment, the ascertainment of total assessable profit from all sources results in a loss or where it is ascertained that tax on profits is less than the minimum tax computed based on provisions of Section 33 of the companies Income Tax Act Cap C21 LFN 2004 (as amended).

Such a company must have been in business for more than four calendar years and such company is not in agricultural trade. Any company with at least 25% of imported equity capital is also exempted. This is to encourage inflow of foreign capital.

In the case of an individual, 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 taxable income produces tax payable lower than minimum tax.

The minimum tax payable for individuals and partnership is calculated at the rate of 1% of total income.

2.12.2 Conditions for Minimum Tax

Note that the minimum tax provisions can only apply to any company on the following conditions:

- (h) when a company has no total profits as a result of the capital allowances and losses incurred;
- (ii) the company must have carried on business for not less than four calendar years; and
- (iii) when a minimum tax liability is higher than the tax liabilities arising from the normal tax computations.

2.12.3 Limitation of Minimum tax

The limitation of this tax is that some companies might be forced to pay tax liability from their capital thereby limiting their growth.

2.12.4 Computation of Minimum Tax

In the case of companies, computation is based on whether the taxpayer has a revenue of over ₦500,000 and below or a revenue of over ₦500,000.

A taxpayer with a revenue of ₦500,000 and below pay the highest of:

- 0.5% of Gross Profit, or
- 0.5% of the Net Assets, or
- 0.25% of Paid-up Capital or,
- 0.25% of Revenue for the year.

In the case of companies with revenue of more than ₦500,000, it is the minimum tax calculated as in situation of companies with ₦500,000 and below plus (actual revenue less ₦500,000) x 0.125%.

2.13 Structure of Tax Administration in Liberia; (Membership of the Revenue Agencies Governing Board and their Functions and Powers. No information yet)

2.13.1 Tax Administration and Procedure in Liberia

In the Republic of Liberia, the following are the procedure for filing and payment of tax in Liberia:

2.13.2 Time and Place of Filing and Payment of Tax

- (a) *Timely Filing and Payment:*

A taxpayer's return is considered to have been timely filed if it is received at the taxpayer's designated place for filing by the due date, and any accompanying payment is considered to have been timely made.

(b) ***Due Date:***

A taxpayer's income tax return and turnover tax return and tax payments are due not later than 5.00pm on the date provided in the Code under the personal and business income tax. A taxpayer's sales or services tax return and tax payments are due not later than 5.00pm on the date provided in the Code under the goods and services tax.

(c) ***Extension of Time to File Return.***

Upon application in writing by a person required to file a return under any provision of the Revenue Code, the Minister may, where good cause is shown, extend the period within which to file return. This does not however alter the due date for payment of the tax.

(d) ***Extension of Time to Pay Tax.***

Upon application in writing by a person liable for tax under the Revenue Code, the Minister may, where good cause is shown, extend the time for payment of tax by the person and may impose requirements appropriate to ensure the payment of the tax due. An extension does not alter the due date for payment of tax for the purpose of calculating interest.

(e) ***Designated Place for Filing and Payment.***

A taxpayer's tax return and tax payments are to be received on or before the due date in the Minister's office in Moronvia. Taxpayers resident or domiciled outside Liberia and required to file a tax return or make a tax payment may file return or make payment at the place designated by the Ministry for receiving returns in their country of domicile or in the Ministry office in Moronvia, if no location is designated, the place of filing is in the Ministry office in Moronvia.

2.13.3 Penalty for Late Filing or Failure to File

For Penalty for Late Filing or Failure to File, Section 51 of the Revenue Code provides as follows:

- a) ***Late Filing:*** A tax return is subject to the following late - filing penalty if it is received after the due date at the taxpayer's designated place of filing The penalty for late filing of a tax return (order than a tax return that is required to be filed monthly) is one percent (1%) of the tax required to be shown on the return, and the penalty increases by one percent (1%) per month or part of a month that the return is late

- i) The penalty for late filing of a tax return that is required to be filed monthly is \$200 or five percent (5%) of the tax required to be shown on the return, whichever is greater for each day that the return is late.
- b) *Failure to File:* If a taxpayer fails to timely file a return (other than a tax return that is required to be filed monthly), and the failure continues for more than three months after the deadline, the taxpayer is considered to have failed to file as of the first day after three – month period and is subject to the failure-to-file penalty. If a taxpayer fails to timely file a return that is required to be filed monthly, and the failure continues for more than one month after the deadline, the taxpayer is considered to have failed to file as of the first day after the expiration of one calendar month after the filing due date and is subject to the failure-to-file penalty. Calculation of the penalty are:
 - (i) The penalty for late filing of a tax return (other than a tax return that is required to be filed monthly) is ten percent (10%) of the tax required to be shown on the return, and the penalty increases by five percent (5%) per month (or part of a month) that the failure continues, not to exceed one hundred percent (100%) of the tax required to accompany the return.
 - (ii) The penalty for failure to file a tax return that is required to be filed monthly is:
 - ❖ \$5,000 or twenty percent (20%) of the tax required to be shown on the return (whichever is greater),
 - ❖ increased by ten percent (10%) per month that the failure continues, except that the amount is limited to the amount determined in (a) above.
 - ❖ If the taxpayer is convicted of wilful failure to file, the penalty is doubled and the taxpayer may also be subjected to a term of imprisonment of up to five (5) years.
- (c) *Tax Return for Tax Required to be Collected on Import.*
On the import of goods for which a Customs consumption entry is required, evidence of payment of any tax required to be collected on import is sufficient to satisfy the return filing requirement with respect to those goods (and the Customs consumption entry form is evidence of the amount and type of tax paid).
- (d) *Application of Penalties.*
If the conditions for the importation of both the late-filing penalty and the failure-to-file penalty apply, both penalties are imposed. The penalty for wilful failure to file can be imposed only if the taxpayer is duly convicted in a criminal court proceeding as authorized under the Criminal Justice Law of Liberia.

2.13.4 Penalty for Late Payment of Tax or Failure to Pay Tax

- (a) *Late Payment*
A taxpayer has an obligation to make timely payment of tax due for a tax period.

Tax is timely paid if it is received in the taxpayer's designated place for payment by the due date.

(b) Penalty for Late Payment

The minimum penalty for late payment is two percent (2%) of the unpaid tax, and the penalty increases by two percent (2%) per month or part of a month that the return is late, but not in excess of fifty percent (50%) of the unpaid tax. Interest on a late payment is at the market rate published by the Central Bank of Liberia

(c) Penalty for Failure to Pay Tax

If a taxpayer fails to make timely payment, and the failure continues for more than three months after the deadline, the taxpayer is considered to have failed to pay tax and is subject to the failure-to-pay penalty. The minimum penalty for failure to pay is ten percent (10%) of the unpaid tax, increased by ten percent (10%) per month (or part of a month) during which the tax remains unpaid, not to exceed two hundred percent (200%) of the unpaid tax. Calculation of the penalty begins as of the day the taxpayer is deemed to have failed to pay. If the taxpayer is convicted of wilful failure to pay, the penalty is doubled and the taxpayer may also be subjected to a term of imprisonment of up to ten (10) years.

d) Tax Return for Tax Required to be Collected on Import.

On the import of goods for which a Customs consumption entry is required, evidence of payment of any tax required to be collected on import is sufficient to satisfy the tax payment requirement with respect to those goods (and the Customs consumption entry form is evidence of the amount and type of tax paid). Failure to pay at the time of import any tax required to be paid on import is subject to the penalties provided under the Customs law for failure to pay Custom duties.

2.13.5 Duties of Minister and Deputy Minister for Revenue

- (a) Minister:** The Minister is authorized and required to oversee all of the operations of Ministry of Finance, including any matters assigned under the Revenue Code, through the agencies, officers, and employees of the Ministry, delegating such responsibilities as Minister may deem appropriate; except that the Minister may not delegate the authority to approve the remittance or reduction of tax otherwise due.
- (b) Deputy Minister:** The Deputy Minister is authorized and required to oversee all of the operations of Revenue Department of the Ministry of Finance, including application of the Revenue Code, through the agencies, officers, and employees of the Ministry, delegating such responsibilities as Deputy Minister may deem appropriate; except that the Deputy Minister may not delegate the authority to approve the remittance or reduction of tax otherwise due.

2.13.6 Right of Appeal

The taxpayer has the right to appeal a determination of the Minister to the Board of Tax Appeals provided that the taxpayer first pays the tax due or provides a bond or other security for payment. If a taxpayer has appealed a determination, the Minister may not enforce that determination until the decision of the Board of Tax Appeals is final.

2.13.7 Board of Tax Appeals

The Board of Tax Appeals has seven (7) members that hears taxpayer appeals from determinations by the Minister and emergency protests of the Minister's actions. The Board is independent of the Ministry and is administered under the authority of the Ministry. It has the authority to approve, modify, or reverse a determination.

The Minister or the taxpayer may appeal an unfavourable decision to Liberia Tax Court, provided that the appeal is lodged within 30 days and is in conformity with the rules of the court.

2.13.8 Composition of the Board

The members of the Board are to be appointed by the President with the concurrence of the Senate for a term of five years, for no more than two consecutive terms. Members must meet the following qualifications:

- a) Members must have been awarded a university degree;
- b) The members shall not be a current member of the board of directors or officer of any Liberian legal person; shall not be related to an employee of the Ministry; or be related to a Liberian legal person
- c) The member must have experience or training in at least one of the following areas: law, accounting, banking, business administration, finance or economics.
- d) At least three (3) board members out of seven (7) must be lawyers

Hearing of Appeal

A person who objects to a determination by the Minister with respect to any tax under the Revenue Code, including the amount of tax withheld in accordance with any withholding provisions of the Code, or who objects to the seizure or confiscation of goods or accounts carried out in the tax collection process may appeal to the Board of Tax Appeals for a review of the Minister's determination.

Decision

The Board is to render its decision in writing within the period for decision, which is sixty (60) days after the date the hearing is concluded. A party dissatisfied with the decision may appeal to a court of competent jurisdiction provided that the appeal is made within thirty (30) days of the date of the board's decision has been served on the party. The Board's decision is not final until the thirty (30) day period for appeal has ended or, if the Board's decision is appealed, at the time the decision of the court becomes final. All decisions of the Board are to be available as public records as soon as practicable, but not later than ten (10) working days after the decision is entered.

2.13.9 Assessment – The Position in Liberia

(a) General Rule.

An assessment of tax payable by a person is made in one or more of the following ways:

- i) by self assessment in the form of the taxpayer's statement of tax due on a return for a tax year;
- ii) in the case of a tax collected by withholding, by the act of withholding;
- iii) if the Minister is not satisfied with a return or withholding statement filed by a person, or if a person fails to file a required return or if no return or withholding statement is required, by making a determination
- iv) before the due date for filing a return or payment of tax, if the Minister has reasonable grounds to believe payment of tax is in jeopardy, in accordance with regulations the Minister shall provide, by making jeopardy assessment.

(b) Amendment of Assessment

The Minister may, within the assessment period stated in (d), amend an assessment by making such alterations or additions to the assessment as the Minister considers necessary and following the procedures required for an assessment, except that the amendments to jeopardy assessments are subject to the jeopardy procedures.

(c) Assessment Date

Assessment is considered to be made:

- i) on the due date for filing the return or on the date the return is filed, whichever is later;
- ii) on the date the tax is required to be withheld, or the date the withholding occurs, whichever is later
- iii) on the due date of the return or the date the return is filed, whichever is later, or, if no return is filed, when the Minister first issues a notice of determination with respect to the tax year; and
- iv) on the date on which the jeopardy is assessment is made.

(d) Period of Assessment

The period for the Minister to make an assessment under (a)(iii), or an amended assessment under (b) above, ends five years after the date on which the return was required to be filed or the tax is withheld except

- i) if a person is required to file a return or to withhold tax, but the return is not filed or the withholding does not occur, then the assessment period ends ten (10) years after the due date for filing the return or making the withholding; or
- ii) if a taxpayer is not required to file a return, but tax should have been paid and was not, then the assessment period ends five (5) years after the last day of the tax year for which tax should have been paid.

(e) Notice of Assessment:

Where an assessment has been made and the tax has not been paid on or before the assessment date:

- i. the Minister shall serve a notice of the assessment on the person assessed stating
 - the amount of tax payable under the assessment,
 - a date on which the assessed tax is to be paid immediately if the assessment is jeopardy assessment, and in other cases no sooner than ten (10) days after the notice of assessment.
 - the time place and manner of appealing the assessment; or
- ii. if the assessment is made by the Minister's determination, a notice of assessment shall be served only when the determination becomes final.

(f) Payment of Tax under Assessment

Tax payable under the notice of assessment is due on or before the due date specified in the notice of assessment.

(g) Turnover Assessment

A person with gross income of less than \$5,000,000 for a tax year does not have an obligation to pay income tax, but is subject to a presumptive tax on gross income at the rate of four percent (4%) (the turnover tax).

2.14 CHAPTER SUMMARY

The tax system in any country depends on the political structure of the country. Countries have their unique tax policies, tax laws and system of tax administration. In Nigeria, for instance, the tax laws allow all tiers of government to establish their own tax authorities. The administration of taxes is therefore, vested in various tax authorities depending of course, on the type of tax under consideration. On the other hand, in Ghana, there is a Central Government, thus all taxes and duties are administered by Central Government.

MULTIPLE-CHOICE QUESTIONS

1. The following are the duties of the Joint Tax Board in Nigeria **EXCEPT**
 - A. To enlighten members of the public generally on Federal and State government revenue matters.
 - B. To settle disputes between the states as regards tax matters.
 - C. To promote uniformity both in the application and incidence of the provision of tax laws on individuals throughout the country.
 - D. To advise the government on request in respect of double taxation arrangements, rates of capital allowances and other tax matters.
 - E. To impose its decision on States on matters of procedure

2. A forum is formed at any meeting of the State Internal Revenue Board where there is in attendance.
 - A. The chairman and three other members
 - B. The chairman or a Director and two other members.
 - C. The chairman or a Director and four other members
 - D. The chairman and seven other members
 - E. Chairman and one Director

3. Appeals can only be lodged later than 30 days if the delay in lodging the Notice of Appeal is due to the following **EXCEPT**
 - A. The objector's absence from the country
 - B. Sickness of objector
 - C. Other reasonable clause
 - D. There is no unreasonable delay on the part of the objector.
 - E. Wedding of objector

4. A Tax Clearance Certificate discloses in respect of the last three years of assessment of the following **EXCEPT**
 - A. Chargeable income
 - B. Tax payable
 - C. Tax paid
 - D. Projected income
 - E. Tax outstanding or a statement to the effect that no tax is due.

5. Tax is evaded through the following ways **EXCEPT**
 - A. Refusing to register with the relevant tax authority
 - B. Failure to furnish returns
 - C. Incorporating taxpayer's sole proprietor into limited liability company
 - D. Entering into artificial transactions
 - E. Overstating expenses so as to reduce taxable profit.

SHORT ANSWER QUESTIONS

1. The administration of income tax in each state of the Federation is vested _____
2. The relevant tax authority for members of the Nigerian Police Force is _____
3. For an objection to assessment to be valid, Notice of Objection must be filed within _____ after the date of service of Notice of Assessment.
4. A term that best describes when the tax authority refuses to accept a taxpayer's Return but imposes its own assessment is known as _____
5. An appeal to the Federal High Court based on the decision of the Tax Tribunal can be made only on points of _____

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. State Board of Internal Revenue
2. Federal Inland Revenue Service
3. 30 days
4. Best of Judgement
5. Law

WORKED EXAMPLES

QUESTIONS

1. List out any **FOUR** contents of a Notice of appeal
2. Explain briefly the penalty for failure to pay assessed tax within the prescribed period.
3. List any **FIVE** offences that may be committed by a taxpayer for which penalties are imposed.
4. Explain briefly the **TWO** dispute resolution mechanisms provided under the Internal Revenue Act, 2000, Act 592 for resolving disputes arising from objections to tax assessments.
5. Explain briefly the requirements for filing returns in respect of income of an individual.
6. Under the Personal Income Tax Act Cap P8 LFN 2004 in Nigeria, a taxpayer who is not satisfied with the income assessment made upon him by a relevant tax authority may file an appeal in writing within 30 days.

Required: State those items to be set out in the Notice of Appeal.

SUGGESTED SOLUTIONS

1. The Notice of Appeal, must contain the following, among others:
 - (a) The name and address of the applicant;
 - (b) The official number and the date of the relevant notice of Assessment;
 - (c) The amount of the assessment, total or chargeable income and of the tax charged as shown by that notice and the year of assessment; and
 - (d) The precise grounds of appeal.
2. Failure to pay any assessed tax within prescribed period attracts 10 percent penalty. This penalty is not part of the tax paid for the purpose of claiming relief. The tax due shall also carry interest at bank based lending rate until the payment of tax.
3. The offences that may be committed by a taxpayer for which penalties are imposed include:
 - (a) Failure to keep books of accounts;
 - (b) Failure to furnish a return;
 - (c) Failure to pay tax on due date;
 - (d) Understating estimated tax payable by instalment; and
 - (e) Making false and misleading statements.
4. The Internal Revenue Act 2000, Act 592 provides for administrative resolution of disputes and judicial resolution of disputes arising from objections. The administrative resolution mechanism allows for the tax payer to settle disputes in respect of tax assessments amicably with the Commissioner. This is done by the tax payer objecting to the assessment by writing to the Commissioner within 30 days of the service of the assessment on him. The time limit is 9 months, in the case of a person who pays tax by instalments.

The judicial resolution mechanism is available by way of an appeal against the decision of the Commissioner and has to be commenced at the High Court. The appeal should be lodged with the Registrar of the High Court within 30 days after the service of the notice of the Commissioner. The Commissioner should be served with a copy of the appeal within 5 days after it has been filed at the High Court and the action must be instituted against the Attorney General. A deposit is required to be made before the appeal will be entertained.

5. Requirements for Filing Returns – (Income of an Individual)

The requirements include:

- (a) The taxable person must be resident within the territory of the relevant tax authority;
- (b) The return should be filed within 90 days from the commencement of every assessment year;

- (c) The return shall contain a declaration on the fact that a true and correct statement of incomes had been computed; and
- (d) A taxable individual should file return of his incomes from all sources in prescribed form to the relevant tax authority without notice or demand.

6. **Items to be stated in the Notice of Appeal include:**

- (a) The name and address of the applicant;
- (b) The official date and number of the relevant notice of assessment;
- (c) The amount of the assessable, total or chargeable income and of the tax charged as shown by the notice and the year of assessment concerned;
- (d) The precise grounds of appeal against the assessment;
- (e) The date on which the applicant was served with Notice of Refusal by the relevant tax authority to amend the required assessment; and
- (f) The address for service of any notice of other documents for the Applicant.

CHAPTER THREE

BASES OF ASSESSMENT

CHAPTER CONTENTS

- a) Introduction - The Position in Nigeria
- b) Basis of Assessment
- c) Basis Period - The Position in Ghana
- d) Development in the System of Assessment – Basis Period
- e) Preceding Year Basis
- f) Current Year Basis – The Position in Ghana
- g) Accounting Year Basis – The Position in Ghana
- h) Commencement of Business – The Position in Ghana
- i) Cessation of Business – The Position in Ghana
- j) Change of Accounting Date – The Position in Ghana
- k) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the reader should be conversant with:

- a) the meaning and application of the concept of basis period;
- b) the rules on commencement of business;
- c) the rules on cessation of business; and
- d) the rules governing change of accounting date.

3.0 INTRODUCTION – THE POSITION OF NIGERIA

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.

An assessment year, which incidentally, is the same as the government fiscal year, is a calendar year running from 1 January of a year to 31 December, of the same 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, 1 January – 31 December) or commence in a year and end the following year (for example, 1 July – 30 June).

3.1 BASES OF ASSESSMENT

Since Adjusted Profit is computed based on the profit of 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".

3.1.1 Subsisting Business

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 profit, 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.

It should be noted that the above basic principles will only apply when a company has been in business for some years and there is no change of accounting date.

It cannot be strictly applied where a company has just commenced business, or there is a cessation of business, or a change of accounting date.

In these circumstances, the company may not have (12) months accounting period ended in the previous tax year and therefore, will be unable to strictly apply the PYB of assessment. Special rules are provided under CITA to take care of each of the peculiar situations stated above.

3.1.2 Basis of Assessment on Commencement of Business

The rules for ascertaining the Assessable Profits of a company from a new trade or business under the Companies Income Tax Act, can be summarised as follows:

Assessment Year Basis Period for Assessment

- (a) 1st year - Assessable Profit is the **actual profit** from the date of commencement of business to December 31 following, (that is, to the end of the first year of assessment).
- (b) 2nd year - Assessable Profit is **profit of the first twelve (12) months** from the date of commencement of business.
- (c) 3rd year - Assessable Profit is the **profit of a twelve-month (normal) accounting period ended in the preceding year of assessment.**

However, where the accounting period ended in the preceding tax year, less than 12 months, the FIRS practice is to require the basis of assessment in the 3rd year to be the same as in the 2nd year of assessment.

The above rules can be illustrated using the following example:

Illustration 3.1

Lion Ltd commenced business on 1 October 2011, and prepared the first set of accounts to 30 June 2012. Thereafter, accounts are prepared to June 30 of each year.

The company's Adjusted profits are as follows:

-	9 months period to 30 June 2012	-	₦ 5million
-	Year ended 30 June 2013	-	₦3.5million

Required:

Determine the basis period as well as the Assessable Profit for the first 4 years of assessment.

Suggested Solution 3.1

LION LIMITED

Determination of the basis periods and Assessable Profits for the relevant years of assessment.

Assessment Year	Basis Period	Workings	Assessable Profits ₦'000	Profits ₦'000
2011	1/10/11 – 31/12/11	(3/9 x ₦5m)		1,667
2012	1/10/11 – 30/9/12	1/10/11 – 30/6/12	5,000	
		1/7/12 – 30/9/12		
		3/12 x ₦3.5m	<u>875</u>	5,875
2013		1/10/11 – 30/9/12		5,875
2014		1/7/12 – 30/6/13		<u>3,500</u>
Total Assessable Profits				<u>16,917</u>

Note:

In the application of the above rules, some of the profits assessable on the company may suffer tax more than once.

For instance, in the above illustration, the actual profits of the company for a period of twenty-one (21) months, was assessed to tax over four assessment years due to overlap in basis period of assessment as demonstrated below:

	₦'000	₦'000
Total assessable profits for assessment years		
2011-2014 (see above)		16,917

Less:

- Actual profits of 21 months, namely:

- 9 months to 30/9/12	5,000	
- 12 months ended 30/6/13	<u>3,500</u>	<u>8,500</u>

Profits assessed more than once due to overlapping basis period

8,417

In order to reduce the effect of overlapping basis period on the taxpayer, there is a provision which confers a right of election on the taxpayer, to have the assessable profits for the second and third assessment years revised to actual basis.

The conditions to be satisfied to be able to exercise this right of election, are as follows:

- (a) Notice of intention to exercise the right must be given in writing to the FIRS;
- (b) The notice must be given within two years after the end of the second year of assessment;
- (c) The election to be assessed on actual basis must be for the second and third years together and not for one or the other; and
- (d) Notice to revoke the right of election must be given in writing within twelve months after the end of the third year of assessment, if the taxpayer so decides.

The application of the provision in respect of the exercise of the right of election by a taxpayer is better illustrated as follows:

Illustration 3.2

Glory Limited commenced business on 1 June 2008 and Adjusted Profits are as follows:

N		
Seven months ended	31 December 2008	7,000
Year ended	31 December 2009	24,000
Year ended	1 December 2010	18,000
Year ended	31 December 2011	9,600

Required:

Compute the Assessable Profits for all relevant assessment years, assuming the company takes advantage of any option open to it to minimise its tax liability.

Suggested Solution 3.2

GLORY LIMITED COMPUTATION OF ASSESSABLE PROFITS ON COMMENCEMENT OF BUSINESS

Without Taxpayer's Election		With Taxpayer's Election		
Tax Year	Basis Period	Assessable Profit N	Basis Period	Assessable Profit N
2008	1/6/08-31/12/08	<u>7,000</u>	1/6/08-31/12/08	<u>7,000</u>
2009	1/6/08-31/5/09	17,000	1/1/09-31/12/09	24,000

2010	1/1/09-31/12/09	<u>24,000</u>	1/1/10-31/12/10	<u>18,000</u>
			<u>41,000</u>	<u>42,000</u>
2011	1/1/10-31/12/10	18,000	1/1/10-31/12/10	18,000
2012	1/1/11-31/12/11	9,600	1/1/11-31/12/11	9,600

Comments and Recommendation

The taxpayer is better-off not exercising his right of election to be assessed on actual basis for the second and third years of assessment. Tax will be saved on Assessable Profits of ₦1,000 by not exercising the option.

Working:

Without taxpayer's election

2009 Tax Year

Basis Period	Assessable Profit
	₦
- 1/6/08-31/12/08	7,000
- 1/1/09-31/5/09- (5/12 x N24, 000)	<u>10,000</u>
	<u>17,000</u>

It will be worth the while for a taxpayer to elect to be assessed on actual basis for the second and third years of assessment when profit is declining after commencement of business.

This is because the profits that will be assessed to tax more than once during the opening years will be the higher profit of earlier years.

Illustration 3.3

XYZ Ltd, commenced business on 1 July 2008, and the Adjusted profits are as follows:

	Adjusted Profits	
	Scenario I	Scenario II
	₦	₦
6 months ended 31 December 2008	1,050,000	5,000,000
Year ended 31 December 2009	2,040,000	3,200,000
Year ended 31 December 2010	3,000,500	2,650,000

Required:

Compute the Assessable profits for the first four years of commencement of business under each scenario, taking into consideration the taxpayer's right of election on commencement of business.

Suggested Solution 3.3

SCENARIO I

XYZ LIMITED COMPUTATION OF ASSESSABLE PROFITS

Assessment Year	Without Election		With Election	
	Basis Period	Assessable Profits ₦	Basis Period	Assessable Profits ₦
2008	1/7/08 - 31/12/08	<u>1,050,000</u>	1/7/08 - 31/12/08	<u>1,050,000</u>
2009	1/7/08 - 30/6/09(w)	2,070,000	1/1/09 - 31/12/09	2,040,000
2010	1/1/09 - 31/12/09	<u>2,040,000</u>	1/1/10 - 31/12/10	<u>3,000,500</u>
		<u>4,110,000</u>		<u>5,040,500</u>
2011	1/1/10 - 31/12/10	<u>3,000,500</u>	1/1/10 - 31/12/10	<u>3,000,500</u>

Working:

2009 Assessment Year

Assessable Profit:	₦
- 1/7/08 - 31/12/08	1,050,000
- 1/1/09 - 30/6/09	
- 6/12 x ₦2,040,000	<u>1,020,000</u>
	<u>2,070,000</u>

SCENARIO II

XTZ LIMITED COMPUTATION OF ASSESSABLE PROFITS

Tax Year	Without Election		With Election	
	Basis Period	Assessable Profits ₦	Basis Period	Assessable Profits ₦
2008	1/7/08-31/12/08	<u>5,000,000</u>	1/7/08-31/12/08	<u>5,000,000</u>

2009	1/7/08-30/6/09(W)	6,600,000	1/1/09-31/12/09	3,200,000
2010	1/1/09-31/12/09	<u>3,200,000</u>	1/1/10-31/12/10	<u>2,650,000</u>
		<u>9,800,000</u>		<u>5,850,000</u>
2011	1/1/10-31/12/10	2,650,000	1/1/10-31/12/10	2,650,000

Working:

2009 Assessment Year

Assessable Profit:	N
- 1/7/08-31/12/08	5,000,000
- 1/1/09-30/6/09- 6/12 x N3,200,000	<u>1,600,000</u>
	<u>6,600,000</u>

Comments

A comparison of the two scenarios above, shows that, it pays the taxpayer better to exercise his right of election when the company's profits is declining after commencement of business.

In scenario I, additional profit of N930,500 (N5,040,500 – N4,110,000) will be assessed to tax, if the right of election for second and third years of assessment is exercised, while profit of N3,950,000 (N9,800,000 – N5,850,000), will be saved in scenario II, if right of election for second and third assessment years is exercised.

3.1.3 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 decide.

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 3.4

Green & White Limited for many years prepared accounts to 31 December, but in 2009 decided to prepare a sixteen-month accounts to 30 April. The Adjusted Profits are as follows:

	N
12 months to 31 December 2006	180,000
12 months to 31 December 2007	240,000
16 months to 30 April 2009	336,000
12 months to 30 April 2010	144,000

Required:

Compute the Assessable Profits for the relevant years of assessment.

Suggested Solution 3.4

GREEN & WHITE LIMITED
COMPUTATION OF ASSESSABLE PROFITS

OLD BASIS			NEW BASIS		
Tax Year	Basis Period	Assessable Profits ₦	Basis Period	Assessable Profits ₦	
2008	1/1/07 - 31/12/07	240,000	1/5/06-30/4/07(w.iii)	200,000	
2009	1/1/08 - 31/12/08(w.i)	252,000	1/5/07-30/4/08(w.iv)	244,000	
2010	1/1/09 - 31/12/09(w.ii)	<u>180,000</u>	1/5/08-30/4/09(w.v)	<u>252,000</u>	
		<u>672,000</u>		<u>696,000</u>	

Based on the foregoing, the Revenue would assess on the new basis, since this would produce higher Assessable Profits for 2008 –2010 Assessment Years. Consequently, final Assessable Profits will be as follows:

Assessment Year	Assessable Profits ₦
2008	200,000
2009	244,000
2010	<u>252,000</u>
	<u>696,000</u>

Workings:

(a) Old basis		Assessable Profits
(i) 2009 Assessment Year		₦
- 1/1/08 – 31/12/08 = 12/16 x ₦336,000	=	<u>252,000</u>
2010 Assessment Year		
- 1/1/09 – 30/4/09 = 4/16 x ₦336,000	=	84,000
- 1/5/09 – 31/12/09 = 8/12 x ₦144,000	=	<u>96,000</u>
		<u>180,000</u>
(b) New basis		Assessable Profits
(i) 2008 Assessment year		₦
- 1/5/06 – 31/12/06 = (8/12 x ₦180,000)	=	120,000

	$- 1/1/07 - 30/4/07 = (4/12 \times \text{N}240,000)$	=	<u>80,000</u>
			<u>200,000</u>
(ii)	2009 Assessment year		Assessable Profits
			N
	$- 1/5/07 - 31/12/07 = (8/12 \times \text{N}240,000)$	=	160,000
	$- 1/1/08 - 30/4/08 = (4/16 \times \text{N}336,000)$	=	<u>84,000</u>
			<u>244,000</u>
(iii)	2010 Assessment Year		Assessable Profit
	$1/5/08 - 30/4/09 = (12/16 \times \text{N}336,000)$	=	<u>N252,000</u>

3.1.4 Basis of Assessment on Cessation of Business

On cessation of trade or business by a company, the bases of assessment of profits for the year of cessation (ultimate year) and the immediately preceding year of assessment (penultimate year), are as follows:

Year of Assessment	Basis of Assessment
Ultimate Year (year of cessation)	Actual profit for the year of cessation (1 January – date of cessation)
Penultimate Year	Higher of the Assessable Profits based on: (a) Actual basis; and (b) Preceding year basis

Illustration 3.5

ADP Limited ceased business on 31 October 2009. Its Adjusted Profits/(loss) for tax purposes are as follows:

	N
Year ended 30 September 2006	6,000
Year ended 30 September 2007	(9,000)
Year ended 30 September 2008	24,000
Period 1 October 2008 to 31 October 2009	19,500

Required:

Compute the Assessable Profit/Loss for the year of cessation as well as the penultimate year.

Suggested Solution 3.5

ADP LIMITED
COMPUTATION OF ASSESSABLE PROFITS/(LOSS)
ON CESSATION OF BUSINESS

Tax Year	Basis Period	Assessable ₦	Profits ₦
2008 (Penultimate year)			
	Higher of (a) 1/10/06-30/9/07(PYB)		<u>(9,000)</u>
and	(b) 1/1/08 – 31/12/08 (Actual)		
	- 1/1/08 – 30/9/08		
	- (9/12 x ₦24,000)	18,000	
	- 1/10/08 – 31/12/08		
	- (3/13 x ₦19,500)	<u>4,500</u>	22,500
2009 (Ultimate year)	- 1/1/09 – 31/10/09		
	- (10/13 x ₦19,500)		15,000

Notes:

- (a) The FIRS would revise the assessment for the penultimate year, that is, A.Y. 2008 on actual as this will result in higher tax payable by the taxpayer.
- (b) The following points should be noted on cessation of trade:
 - (i) The effect of a sudden change in the basis of assessment from preceding year basis to actual basis, is that, part of the company's profits will escape tax. The best the tax authority can do is to minimise the amount of profit escaping tax;
 - (ii) The magnitude of profit that will escape tax on cessation will depend on the trend of profit, that is, whether it is increasing or decreasing, towards cessation as well as the date cessation occurs;
 - (iii) Where profit is decreasing towards cessation of trade, the likelihood is that the tax authority will not revise the assessment for the penultimate year to actual basis. Otherwise, higher profits of earlier years will escape tax. The converse is true, where profit is increasing towards cessation of trade; and
 - (iv) Where profits are falling towards cessation period, it is better to cease trading earlier, for the taxpayer to minimise the profits chargeable to tax.

Illustration 3.6

Ultimate Limited has been in business for so many years and is engaged in the importation and distribution of greeting cards and souvenirs.

Due to declining profits, the company decided to cease trading. However, the Chairman of the company could not make up his mind whether or not to cease trading on 31 December 2012 or 31 January 2013.

Recent accounts adjusted for tax purposes, have revealed the following Adjusted profits:

		PROFITS
		₦
Year ended 30 September	2008	55,000
Year ended 30 September	2009	46,000
Year ended 30 September	2010	38,000
Year ended 30 September	2011	28,600
Year ended 30 September	2012	22,200
3 months ended 31 December	2012	5,000

Required:

Determine Assessable Profits from 2009 Assessment Year up to cessation and indicate what difference it would make if business ceased on 31 January 2013, assuming profit of ₦8,000 for 4 months to 31 January 2013.

Suggested Solution 3.6

(a) **ULTIMATE LIMITED
COMPUTATION OF FINAL ASSESSMENTS
ASSUMING BUSINESS CEASED ON 31/12/2012**

Tax Year	Basis Period	Assessable ₦	Profits ₦
2009	1/10/07 – 30/9/08		55,000
2010	1/10/08 – 30/9/09		46,000
2011 Higher of:			
(i)	1/10/09 – 30/9/10 (PYB)	<u>38,000</u>	
and			38,000
(ii)	1/1/11 -31/12/11 (Actual)		
	1/1/11 -30/9/11		
	- 9/12 x ₦28,600	21,450	
	1/10/11/ -- ₦ 31/12/11		
	- 3/12 x N22,200	<u>5,550</u>	

		<u>27,000</u>	
2012	1/1/12 – 31/12/12		
	1/1/12 – 30/9/12		
	(9/12 x ₦22,200)	16,650	
	1/10/12 – 31/12/12	<u>5,000</u>	
			<u>21,650</u>
Assessable Profits (2009 – 2012 Assessment Years)			160,650
Adjusted Profits (per 2008 – 2012 accounts)			<u>194,800</u>
Profits escaping charge to tax			<u>34,150</u>

(b) **ASSUMING BUSINESS CEASED ON 31/1/2013**

Tax Year	Basis Period	Assessable ₦	Profits ₦
2009	1/10/07 – 30/9/08		55,000
2010	1/10/08 – 30/9/09		46,000
2011	1/10/09 – 30/9/10		38,000
2012	Higher of:		
	(a) 1/10/10 – 30/9/11 (PYB)	<u>28,600</u>	28,600
and	(b) 1/1/12 – 31/12/012 (Actual)		
	- 1/1/12 – 30/9/12		
	- 9/12 x ₦22,200	16,650	
	(1/10/12 – 31/12/12)		
	- 3/4 x ₦8,000	<u>6,000</u>	
		<u>22,650</u>	
2013	1/1/13 – 31/1/13		
	- 1/4 x ₦8,000		<u>2,000</u>
Assessable Profits (2009 – 2013 Assessment Years)			169,600
Adjusted Profits (per 2008 – 2013 accounts)			<u>197,800</u>
Profits escaping charge to tax			<u>28,200</u>

A comparison between the two dates of cessation reveals the following:

Date of Cessation	31/12/12	31/1/13
	₦	₦
2011	38,000	38,000
2012	21,650	28,600
2013	-	2,000
	<u>59,650</u>	<u>68,600</u>

Comments

- (i) It is better to cease trading on 31 December 2012, because more profits will escape tax.
- (ii) If the company's profits have been increasing towards cessation, it would be better- off ceasing business on 31 January 2013, as more of its profits will escape tax by continuing business beyond 31 December 2012.

Illustration 3.7

Assume the same facts as in illustration 3.6 except that Adjusted Profits are as follows:

	₦
Year ended 30/9/08	22,200
Year ended 30/9/09	28,600
Year ended 30/9/10	38,000
Year ended 30/9/11	46,000
Year ended 30/9/12	55,000
3 months ended 31/12/12	18,000
4 months to 31/1/13	20,000

Suggested Solution 3.7

(a) **ULTIMATE LIMITED**
COMPUTATION OF FINAL ASSESSMENTS
(ASSUMING BUSINESS CEASED ON 31/12/2012)

Tax Year	Basis Period	₦	Assessable Profits ₦
2009	1/10/07 – 30/9/08		22,200
2010	1/10/08 – 30/9/09		28,600
2011 Higher of:			
	(i) 1/10/09 – 30/9/10 (PYB)	<u>38,000</u>	
	- 1/1/11/ -30/9/11		
	(9/12 x ₦46,000)	34,500	
	- 1/10/11/ - 31/12/11		
	(3/12 x ₦55,000)	<u>13,750</u>	
		<u>48,250</u>	48,250
2012 - 1/1/12 – 31/12/12			
	- 1/1/12 – 30/9/12		
	- 9/12 x ₦55,000	41,250	
	- 1/10/12 – 31/12/12	<u>18,000</u>	
		<u>59,250</u>	<u>59,250</u>

Assessable profits (2009 – 2012 Assessment years)	158,300
Adjusted profits (per 2008 – 2012 accounts)	<u>207,800</u>
Untaxed profits	<u>49,500</u>

(b) **ULTIMATE LIMITED**
ASSUMING BUSINESS CEASED 31/1/2013

Tax Year	Basis Period	Assessable Profits
		₦
2009	1/10/07 – 30/9/08	22,200
2010	1/10/08 – 30/9/09	28,600
2011	1/10/09 – 30/9/10	38,000
2012 Higher of:		
	(i) 1/10/10 – 30/9/11 (PYB)	<u>46,000</u>
	(ii) 1/1/12 - 30/9/12	
	9/12 x ₦55,000 =	41,250
	1/10/12 - 31/12/12	<u>18,000</u>
		<u>59,250</u>
2013	1/1/12 – 31/12/13	
	(1/4 x ₦ 20,000)	<u>5,000</u>
Assessable Profits (2009 – 2012 Assessment Years)		153,050
Adjusted Profits (per 2008 – 2013 accounts)		<u>209,800</u>
Untaxed Profits		<u>56,750</u>

Comparison between the two dates of cessation under decreasing and increasing profits:

Date of cessation	Increasing Profit		Decreasing Profit	
	31/12/12	31/1/13	31/12/12	31/1/13
	₦	₦	₦	₦
Assessable profits	158,300	153,050	160,650	169,600
Adjusted profit	<u>207,800</u>	<u>209,800</u>	<u>194,800</u>	<u>197,800</u>
Profits escaping tax	<u>49,500</u>	<u>56,750</u>	<u>34,150</u>	<u>28,200</u>

Note:

The above analysis shows that it is better to cease trading on 31/1/13, where profit is increasing towards cessation or on 31/12/12, where profit is decreasing.

3.1.5 Ascertainment of Total Profits

Total Profits as provided for in Section 31 (1) CITA, is the amount of a company's "total Assessable Profits from all sources for that year", **plus** balancing charge, **less deductions** for:

- (a) Any loss incurred in any preceding assessment year; and
- (b) Capital allowances in respect of qualifying capital expenditure incurred by the company.

The above can be explained in simple terms, using a proforma layout as follows:

ABC LIMITED

PROFORMA COMPUTATION OF TOTAL PROFITS AND TAX LIABILITIES ASSESSMENT YEAR 2013

	₦	₦
Assessable Profit		XX
Add:		
Balancing Charge		<u>XX</u>
		XX
Unrelieved Loss brought forward		<u>(X)</u>
		XX
Capital allowances:		
- For the year	X	
- Brought forward	X	
- Investment allowance	<u>X</u>	
<u>(XX)</u>		
Total Profit		<u>XX</u>

The Total Profit of a company is the amount of its profits for an assessment year that is chargeable to companies Income Tax

3.2 BASIS PERIOD – THE POSITION IN GHANA

This means the period by reference to which assessable income of any person is computed in accordance with the provision of the Internal Revenue Act, 2000 (Act 592).

The basis period of an individual or a partnership is the calendar year from 1 January to 31 December of each year. However, under Section 169 (8) of Act 592, individuals and partnerships being assessed on the accounting year basis before the coming into force of Act 592 will continue to have their basis period as such unless the Commissioner determines otherwise.

The basis period of a company or a body of persons is the accounting year of the company or body. A company or body of persons shall not change its accounting date unless it obtains prior approval in writing from the Commissioner of Internal Revenue and complies with any condition that may be attached to the approval. It is worthy of note that if a company or body of persons fails to comply with the conditions attached to the approval, the Commissioner may by notice in writing, revoke an approval granted a company or body of persons.

Illustration 3.8

Asante Limited commenced business on 3 September, 2006, preparing accounts to 30 April each year. The company presented the following agreed profits for the first four years of its operations:

	¢	
Period to 30/04/07		48,000,000
Year to 30/04/08		56,000,000
Year to 30/04/09		64,000,000
Year to 30/04/10		92,000,000

You are required to determine the company's assessable income for all the relevant years of assessment.

Suggested Solution 3.8

Year of		
Assessment	Basis Period	Assessable Income
		¢
2007	03/09/06 – 30/04/07	48,000,000
2008	01/05/07 – 30/04/08	56,000,000
2009	01/05/08 – 30/04/09	64,000,000
2010	01/05/09 – 30/04/10	92,600,000

Illustration 3.9

Nandom Limited commenced business on 1 October, 2006 preparing accounts to March 31 each year. Its agreed profits for tax purposes were reported for assessment as follows:

	¢
Period to 31/03/08	31,000,000
Year to 31/03/09	46,000,000
Year to 31/03/10	54,000,000
Year to 31/03/11	82,000,000

You are required to determine the company's assessable income for all the relevant years of assessment.

Suggested Solution 3.9

Year of		
Assessment	Basis Period	Assessable Income
		€
2007	01/10/06 – 31/03/07	10,333,333 (6/18 x €31,000,000)
2008	01/04/07 – 31/03/08	20,666,667 (12/18 x €31,000,000)

2009	01/04/08 – 31/03/09	46,000,000
2010	01/04/09 – 31/03/10	54,000,000
2011	01/04/10 – 31/03/11	82,000,000

3.3 DEVELOPMENTS IN THE SYSTEM OF ASSESSMENT – BASIS PERIOD

The system of assessing a taxpayer to tax has undergone several reforms worth explaining. The following three systems have been operated at one point in time over the years:

- Preceding Year Basis
- Current Year Basis
- Accounting Year Basis

3.4 PRECEDING YEAR BASIS

This system was in operation between the years 1944/45 and 1981/82. The income other than employment income to be assessed to tax should be income earned in the year immediately preceding the year of assessment. The government fiscal year was 1 July to 30 June of the following. For example for Year of Assessment 1980/81, the Basis Period would be as follows for the following incomes, and for a company preparing accounts to 31 December each year:

Income from Employment	1/7/80 – 30/6/81
Income from Investment, e.g. Royalties	1/7/79 – 30/6/80
Income from Trade	1/1/79 – 31/12/79

3.5 CURRENT YEAR BASIS – THE POSITION OF GHANA

This was the system introduced by P.N.D.C.L. 61, which abolished the Preceding Year system. The Current Year system operated from 1983 to 1986. Under this system, all sources of income are assessed on the current year basis, that is, tax is payable in the same year of assessment as the basis period. This system was introduced in 1983 when the government's fiscal year, that is, the year of assessment, was also changed to 1 January to 31 December of the same year.

For example:

Year of Assessment	1 January, 1987 – 31 December 1987
Basis Period	1 January 1987 – 31 December 1987

3.6 ACCOUNTING YEAR BASIS – THE POSITION OF GHANA

The Accounting Year system was introduced by P.N.D.C.L. 192 in 1987. This system requires that income from trade, business, profession and vocation should be subject to tax on the accounting year basis. That is, the income reported by the taxpayer based on his accounting year is subjected to tax. It should be noted that income from employment and

other sources are still assessed on current basis. The current year system was thus not abolished but rather a proviso was made to the law which introduced the accounting year system to operate alongside the current year system.

E.g. if a business prepared accounts to 30 June each year, its year of assessment and basis period for 1999 year of assessment will be as follows:

Year of Assessment 1 January, 1999 – 31 December, 1999

Basis Period 1 July, 1998 – 30 June, 1999

3.7 COMMENCEMENT OF BUSINESS – THE POSITION OF GHANA

3.7.1 Individuals, that is, employees, Self-employed and Partners of a Partnership

The rule is that the individual is assessed from the date of appointment or commencement of business to the end of the year of assessment in which the appointment was made or the business was commenced.

For example, if Alfred Aikins commences business on 1 April, 2005, his basis period will be 1/4/2005 – 31/12/2005 in the year of assessment 2005.

3.7.2 Companies and Bodies of Persons

In the case of a company or a body of persons, the rule is that the accounting year of the company or body of persons will be taken.

For example, if Guo Company Limited commenced business on 1 April, 2004 using 30 March as its accounting date, the basis periods will be:

1/4/2004 – 31/3/2005 for 2005 Year of Assessment; and

1/4/2005 – 31/3/2006 for 2006 Year of Assessment.

3.8 CESSATION OF BUSINESS – THE POSITION OF GHANA

3.8.1 Individuals, that is, Employees, Self-employed and Partners of a Partnership

The rule is that the individual is assessed on his income from the commencement of the year of assessment to the date of cessation of the employment or business in the same year.

For example if in the example of Alfred Aikins above he ceases business on 30 October 2006, his basis period will be:

1/1/2006 – 30/10/2006 for the 2006 Year of Assessment

3.8.2 Companies and Bodies of Persons

The rule is that in the case of companies or body of persons, the assessment for the cessation year is based on the period commencing from the beginning of the last accounting year to the date of cessation.

For example, in the example of Guo Company Limited above, if the company ceases business on 30 November, 2006 the basis period will be:

1/4/2006 – 30/11/2006 in 2006 Year of Assessment

3.9 CHANGE OF ACCOUNTING DATE – THE POSITION OF GHANA

It is provided for under section 24 (3) and (4) of the Internal Revenue Act, 2000 (Act 592) that a company or body of persons shall not change its accounting date unless it obtains prior approval in writing from the Commissioner and complies with any condition that may be attached to the approval. It is worthy of note that the Commissioner may by notice in writing, revoke an approval granted a company or body of persons as stated above if the company or body fails to comply with any of the conditions attached to the approval.

3.10 CHAPTER SUMMARY

This chapter highlights the difference between Accounting Profit/Loss and Total Profit.

This chapter explains the concepts of bases of assessments as they relate to the rights of a company on commencement of business and that of the Revenue on cessation and change of accounting date.

MULTIPLE-CHOICE QUESTIONS

1. Basis of assessment for an old business is
 - (A) Actual basis
 - (B) Preceding year basis
 - (C) Succeeding year basis
 - (D) Accruals basis
 - (E) Continuity basis

2. On commencement of a new business, the taxpayer's right of election to have 2nd and 3rd years of assessment to be on actual basis should be made in writing within
 - (A) 6months after the end of the 2nd Year of Assessment
 - (B) 12 months after the end of the 3rd Year of Assessment
 - (C) 12 months after the end of the 2nd Year of Assessment
 - (D) 24months after the end of the 2nd Year of Assessment
 - (E) 36months after the end of the 3rd Year of Assessment

3. Notice of revocation of election for 2nd and 3rd Years of Assessment to be assessed on actual basis should be made in writing within
 - (A) 3months after the end of the 2nd Year of Assessment
 - (B) 6months after the end of the 2nd Year of Assessment
 - (C) 12months after the end of the 2nd Year of Assessment
 - (D) 12months after the end of the 3rd Year of Assessment
 - (E) 18months after the end of the 3rd Year of Assessment

4. Revenue's option to revise an in assessment to actual basis on cessation of business is for
 - (A) Pre-penultimate year
 - (B) Penultimate year
 - (C) Pre-penultimate and Penultimate year
 - (D) Cessation year
 - (E) Accounting year

5. Taxpayer's right of election on commencement of business is for
- (A) Only the 2nd year of Assessment
 - (B) Only the 3rd year of Assessment
 - (C) The first three years of assessment
 - (D) Both the 2nd and 3rd Years of Assessment
 - (E) First Year of assessment

SHORT ANSWER QUESTIONS

1. The basis of assessment in the first year of a new business is _____
2. The basis of assessment in the second year of a new business is _____
3. The basis of assessment in the third year of a new business is _____
4. The basis of assessment in the year of cessation is _____
5. Taxpayer's right of election or commencement of business covers _____

SUGGESTED SOLUTIONS MULTIPLE-CHOICE QUESTIONS

1. B
2. D
3. D
4. B
5. D

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. Actual basis
2. First 12 months
3. Preceding year basis or same as second year if there was no normal accounting year end in the previous year.
4. Actual
5. 2nd and 3rd Years of Assessment together

WORKED EXAMPLES

QUESTIONS

1. Tanyaga Company Limited commenced business on 1 October, 2008 preparing accounts to 30 September each year. Owing to problems of raw material supply the company ceased operations on 30 April, 2011. The operating profits of the company, adjusted for tax purposes were as follows:

Year to 30/09/2009	-	€600,000,000
Year to 30/09/2010	-	€820,000,000
Period to 30/04/11	-	€400,000,000

You are required to:

Determine the company's assessable income for the relevant years of assessment.

2. Dyson Limited is a company which commenced business on 1 January 2010.

Its Profit and Loss Account for the year ended 31 December 2012 showed a profit of ₦2million.

After applying the rules for deductible expenses and taxable income, the company had an Adjusted Profit of ₦3million for the year ended 31 December 2012.

The company's Adjusted Profits for the two previous years are as follows:

	₦
Year ended 31 December 2010	1.5million
Year ended 31 December 2011	2.2million

Required:

Determine the basis periods and Assessable profits for all relevant years of assessment.

3. Mr. James Akpako was advised by his accountant to incorporate a limited liability company in order to obtain financial assistance from his bankers. Based on the foregoing, James Akpako Nigeria Limited was incorporated on 31 December 2007.

The company which was into importation of cement posted profits for so many years. Due to a change in government policy, the importation of cement was banned on 1 January 2013. The company could not cope with the new policy, hence it ceased trading on 30 November 2013.

The Adjusted Profits of James Akpako Nigeria Limited since incorporation are as follows:

	₦
Year ended 31 December 2008	50,000
Year ended 31 December 2009	65,000
Year ended 31 December 2010	82,500
Year ended 31 December 2011	125,000
Year ended 31 December 2012	180,000
Period ended 30 November 2013	35,000

Required:

Compute the Adjusted Profits of James Akpako Nigeria Limited for 2012 and 2013 Assessment Years, taking into consideration the options available to the relevant tax authority.

4. Fumi Company Limited has been in operation for the past ten years preparing accounts to February each year. The company's accounts submitted for tax purposes for the last three years are as follows:

Year to 28/02/04	-	€500,000,000
Year to 28/02/05	-	€320,000,000
Year to 28/02/06	-	€200,000,000

Owing to the dwindling fortunes of the company, the shareholders agreed with the Board of Directors, chaired by Fumi Amuzu, to cease operations on 20th January, 2007. The accounts of the company for the period to 20/01/07 showed a profit of €50,000,000.

You are required to:

Determine the company's chargeable income for the relevant years of assessment.

5. Ultimate Limited changed its accounting date from 30 June to 31 December. The following information is made available.

	N
12 months to 30/6/2007	160,000
12 months to 30/6/2008	192,000
18 months to 31/12/2009	120,000
12 months to 31/12/2010	288,000
12 months to 31/12/2011	320,000

Required:

Compute the Assessable Profits for the relevant assessment years.

SUGGESTED SOLUTIONS

1. Tanyaga Company Limited

Determination of Assessable Income

Year of Assessment	Basis Period	Assessable Income
		€
2009	1/10/2008 – 30/09/2009	600,000,000
2010	1/10/2009 – 30/09/2010	820,000,000
2011	1/10/2010 – 30/04/2011	400,000,000

2. **DYSON LIMITED**

On preceding year basis, the Assessable profits for all relevant years will be as follows:

Assessment Year	Basis Period	Assessable Profits ₦
2010	1/1/10 - 31/12/10	1.5million
2011	1/1/10 - 31/12/10	1.5million
2012	1/1/11-31/12/11	2.2million
2013	1/1/12-31/12/12	3.0million

3 **JAMES AKPAKO NIGERIA LIMITED
COMPUTATION OF ADJUSTED PROFITS
FOR 2012 AND 2013 ASSESSMENT YEARS**

Original Assessments		₦
A.Y. 2012	- On preceding year basis	125,000
A.Y 2013	- On preceding year basis	180,000

On cessation, the Adjusted profits will be reviewed as follows:

		₦
A.Y 2012	-On Actual basis (1/1/12 31/12/12)	180,000
A.Y 2013	-On Actual basis (1/1/13 30/11/13)	35,000

Since the Adjusted profit for A.Y 2012 on actual basis is greater than that on preceding year basis, the Revenue will amend the 2012 assessment to actual profit earned during that year.

The final assessment will be		₦
A.Y 2012	on actual basis	180,000
A.Y 2013	on actual basis	35,000

4. **FUMI COMPANY LIMITED – DETERMINATION OF CHARGEABLE INCOME**

Year of Assessment	Basis Period	Chargeable Income ₪
2004	01/03/03 - 28/02/04	500,000,000
2005	01/03/04 – 28/02/05	320,000,000
2006	01/03/05 – 28/02/06	200,000,000
2007	01/03/06 – 20/01/07	50,000,000

Note: The rule is that in the case of companies the assessment for the cessation year is based on the period commencing from the beginning of the last accounting year to the date of cessation.

5. **ULTIMATE LIMITED
COMPUTATION OF ASSESSABLE PROFITS
FOR 2009, 2010 AND 2011 ASSESSMENT YEARS**

OLD ACCOUNTING DATE

Year of Assessment	Basis Period	Amount ₦
2009	1/7/07 - 30/6/08	192,000
2010	1/7/08 - 30/6/09 (¹² / ₁₈ x or ₦120,000)	80,000
2011	1/7/09 - 30/6/10 (⁶ / ₁₈ x ₦120,000) + (⁶ / ₁₂ x ₦288,000) = N40,000 + N144,000	184,000

NEW ACCOUNTING DATE

Year of Assessment	Basis Period	Amount ₦
2009	1/1/08 - 31/12/08 (⁶ / ₁₂ x ₦192,000 + (⁶ / ₁₈ x ₦120,000) (₦96,000 + ₦40,000)	136,000
2010	1/1/09 - 31/12/09 (¹² / ₁₈ x ₦120,000)	80,000
2011	1/1/10 - 31/12/10	288,000

Ultimate Limited's business did not make its accounts to 30 June 2009, hence 2009 is the year of change and the next two assessment years are 2010 and 2011.

The tax authority would assess the taxpayer for 2009 – 2011 Assessment Years using the higher Assessable profits obtained by comparing the old with the new bases.

Year of Assessment	Assessable Profit Old Basis ₦	Assessable Profit New Basis ₦
2009	192,000	136,000
2010	80,000	80,000
2011	<u>184,000</u>	<u>288,000</u>
	<u>456,000</u>	<u>504,000</u>

NB: The tax authority would assess the Assessment Years 2009-2011, using the new accounting date because it gives a higher Assessable Profit of N504,000.

CHAPTER FOUR

CAPITAL ALLOWANCES

CHAPTER CONTENTS

- a) Introduction
- b) Conditions for Granting Capital Allowances
- c) Definition and Types of Qualifying Plant Expenditure
- d) Capital Allowances – The Position in Ghana
- e) Types of Capital Allowances – The Position in Nigeria
- f) Capital Allowances Under Hire Purchase Transactions
- g) Basis Period for Capital Allowances
- h) Restriction on Capital Allowances Claimable
- i) Terminal Capital Allowances
- j) Replacement of Old Plant and Machinery
- k) Investment Allowance - Definition
- l) Rates of Capital Allowances in Nigeria
- m) Rural Investment Allowance in Nigeria
- n) Export Processing Zone Allowance in Nigeria
- o) Investment Allowance
- p) Restriction on Capital Allowances
- q) Position in Liberia
- r) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the reader should:

- a) know the meaning, types and the purposes of capital allowances, and
- b) be able to apply these to various qualifying plant expenditure in Nigeria, Ghana and Liberia.

4.0 INTRODUCTION

Capital allowances are granted in place of depreciation which is disallowed by the income tax law in computing assessable income. Different rates and policies of depreciation are adopted by different individuals, partnership or corporate bodies, but with capital allowances, there is a uniform treatment as specified fixed rates are assigned to different classes of assets. Suffice it to say that capital allowances are a form of standardized depreciation given on certain specified qualifying capital expenditure under the tax laws. Granting capital allowances is supposed to encourage those who trade or engage in business to develop, modernize and equip their businesses.

In Nigeria, section 36(1) of the Personal Income Tax Act Cap P8 LFN 2004, provides that the total income of an individual for the relevant year of assessment shall be the aggregate assessable income together with the addition and or subtraction of items referred to in the Fifth Schedule to the PITA 1993. In the same vein, the Companies Income Tax Act

(CITA) Cap C21 LFN 2004 (as amended) provides for deduction from the incomes of companies in the form of capital allowances in second schedule.

4.1 CONDITIONS FOR GRANTING CAPITAL ALLOWANCES

The following conditions must be satisfied in order to qualify for capital allowances:

- (a) The qualifying capital expenditure must be owned by the taxpayer as at the end of the basis period. However, an asset acquired through a hire-purchase agreement can be subject of a capital allowance claim;
- (b) The capital allowances must be claimed for by the taxpayer except where the tax authority is of the opinion that it is just and reasonable to grant allowance without a claim;
- (c) The expenditure must be used the purpose of the trade or business;
- (d) The qualifying capital expenditure must be incurred in the basis period; and
- (e) The claimant must incur qualifying capital expenditure as defined in the tax law-schedule 2 of CITA Cap C21 LFN 2004.

Note: A period of temporary disuse is ignored for the purpose, provided that the asset is brought into use before disposal.

4.2 DEFINITION AND TYPES OF QUALIFYING PLANT 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:

- (a) Qualifying Building expenditure - that is, expenditure on buildings, structures or work of a permanent nature;
- (b) Qualifying industrial building expenditure, that is, expenditure on buildings or structure in regular use, such as a mill factory, mechanical workshops, dock, port and wharf;
- (c) Qualifying mining expenditure (expenditure on working a mine, oil well, etc.);
- (d) Qualifying plant expenditure - that is, expenditure incurred on plant, machinery and fixtures;
- (e) Qualifying plantation expenditure (expenditure incurred on clearing of land for planting, etc);
- (f) Qualifying research and development expenditure, that is, expenditure incurred on equipment, facilities, patent and licences, etc;
- (g) Qualifying agricultural expenditure (expenditure incurred on plant in use for agricultural trade or business); and

- (h) Qualifying public transportation, new mass transit coach expenditure.

4.3 CAPITAL ALLOWANCES – THE POSITION IN GHANA

In Ghana, the Pool System of capital allowances is what is being applied. This system provides for six classes of depreciable assets and allows two methods of depreciation – the reducing balance method and the straight-line method. The classification of depreciable assets and the rates applicable in each case are as follows:

Class	Assets Included	Rate
1	Computers and data handling equipment	40%
2	(i) Automobiles; buses and minibuses, goods vehicles; construction and earth-moving equipment, heavy general purpose or specialised trucks; trailers and trailer-mounted containers; plant and machinery used in manufacturing; (ii) Assets in respect of long term crop planting costs of a capital nature. The long term crops referred to are timber, large scale rubber, oil palm, or other long term crop.	30%
3	(i) Mineral and petroleum exploration and production rights; costs in respect of mineral and petroleum prospecting, exploration, and development costs; (ii) Buildings, structures and works of a permanent nature used in respect of mineral and petroleum prospecting, exploration, and development costs which are likely to be of little or no value when the rights are exhausted or the prospecting, exploration, or development ends, as the case requires; (iii) Plant and Machinery used in mining or petroleum operations.	80%/50%
The rate is applied as 80% of the cost base of the assets added to the pool during the basis period and 50% of the balance of the pool if any.		
4	Railroad cars, locomotives, and equipment; vessels, barges, tugs, and similar water transportation equipment; aircraft; specialised public utility plant, equipment, and machinery; office furniture, fixtures, and equipment; any depreciable asset not included in another class.	20%
5	Buildings, structures, and works of a permanent nature other than those mentioned in class 3 above.	10%

- 6 Intangible assets, other than those mentioned in class 3. This will include Copyright, Patent, Trade Mark, etc. The rate applicable is in proportion to the useful life of the asset on a straight line basis.

4.3.1 Straight Line Method of Computation

The computation is on asset-by-asset basis, hence this method pro-rates the allowance if the basis period is less than a year. A basis period, sometimes, happens to be less than a year in cases of commencement, change of accounting date and cessation years. The straight line method of computation is applied to depreciable assets in classes 5 and 6.

The formula to be applied in calculating capital allowance using the straight line method for Class 5 assets is:

$$\text{Capital Allowance} = \text{Cost Base} \times \text{Rate of 10\%} \times \frac{\text{No. of days in basis period}}{365}$$

For Class 6 assets, the formula is:

$$\text{Capital Allowance} = \frac{\text{Cost of Asset}}{\text{Useful life of asset}} \times \frac{\text{No. of days in basis period}}{365}$$

The restriction here is that cumulative capital allowances granted on Classes 5 and 6 assets shall not exceed the cost base of the asset.

4.3.2 Reducing Balance Method of Computation

The Third Schedule enjoins businesses to place each group of assets in class 1 to 4 in a separate pool for the purpose of the computation of capital allowances.

Capitalization of exchange loss is allowed and these are to be placed in a pool and depreciated at a rate of 10%. The significant difference of the pool system from individual unit system is the loss of identity of items in the pool.

Class 1, 2, and 4

The formula for computing capital allowance for these classes of fixed assets is:

$$\text{Written Down Value} \times \text{Depreciation Rate} \times \frac{\text{No. of days in Basis Period}}{365}$$

Example of Capital Allowances Computation in Ghana

Mr. Ali Seidu, trading as Fashoshu Consult, started his business as a Management Consultant on September 1, 2008 and prepares his accounts to December 31 each year. In the year 2008 when he commenced, he acquired the following assets for his business:

	€
Fax Machine	4,600,000
Computer	15,000,000
Office Furniture	12,000,000

In the year 2009, he acquired the following assets to compliment his asset base:

	€
Office Equipment	25,000,000
Computer Software	32,000,000
Mercedes Benz Saloon Car	180,000,000

You are required to compute the capital allowance for the relevant years of assessment.

Solution

Ali Seidu
T/A Fashoshu Consult
Computation of Capital Allowance
2008 to 2009 Years of Assessment

Y/A 2008. Basis Period - 01/09/08 - 31/12/08

ASSET	Rate	W.D.V.	Cost or	Proceeds	Balance in	Depreciation	W.D.V.
	D.A	01/09/2001	Additions	on Disposals	Pool	Allowance	31/12/2001
	%	N	N	N	N	N	N
Class 1	40	-	15,000,000	-	15,000,000	2,005,479	12,994,521
Class 2	30	-	-	-	-	-	-
Class 4	20	-	16,600,000	-	16,600,000	1,109,699	15,490,301
		-	31,600,000	-	31,600,000	3,115,178	28,484,822

Y/A 2009. Basis Period - 01/01/09 - 31/12/09

ASSET	Rate	W.D.V.	Cost or	Proceeds	Balance in	Depreciation	W.D.V.
	D.A	01/01/2002	Additions	on Disposals	Pool	Allowance	31/12/2002
	%	N	N	N	N	N	N
Class 1	40	2,994,521	32,000,000	-	44,994,521	17,997,808	26,996,713
Class 2	30	-	180,000,000	-	180,000,000	54,000,000	126,000,000
Class 4	20	15,490,301	25,000,000	-	40,490,301	8,098,060	32,392,241
		28,484,822	237,000,000	-	265,484,822	80,095,868	185,388,954

Note: that the first year, 2008, did not have a basis period which is a year (01/09/08 to 31/12/08). It was 122 days so the depreciation allowance is so apportioned appropriately.

Capital Allowances- The Case of Liberia

Capital allowances arise for both the self-employed person and for a company, in respect of assets used for the purposes of the trade. Capital allowance is computed using the basis period in which the asset was purchased

To qualify for capital allowances, an asset must be in use at the end of the basis period. Once an asset is in use at the end of the basis period, even if only for one day, a full year capital allowance is calculated and granted without restriction.

Normally, a motor vehicle will be in use at the end of a basis period. However, an asset delivered before a company's year end, but not put into use until the day after the company's year end will not qualify for capital allowance in the tax year.

4.3.3 Rate / Method Used In Calculation:

There are 2 rates and 1 method to be used for all assets purchased after 2nd December 2002:

Rate	Method	Asset
4%	Straight Line on cost	Industrial Building
12 ½ %	Straight Line on cost	Plant, Machinery, Fixtures & Fittings, Cars & Vans

For assets purchased prior to that date, the rate for plant, machinery and fixtures and fittings were 15% up to 2000 and 20% for 2001 & 2002.

The rule in calculating capital allowances for an asset is that it is imperative to identify the basis period in which the asset was purchased and put into use.

To compute capital allowance, the first step is to identify the basis periods to use, is it Commencement, Cessation or an Ongoing business? Then determine the accounting year end follows each asset transaction? Match each basis period end to tax year end, according to the rules.

4.3.4 Restriction on Capital Allowances

Once an asset is in use at the end of the basis period even if only for 1 day, a full year capital allowance is calculated and granted without restriction.

There are two occasions where a restriction arises:

- (a) where there is private use, restrict the amount granted to the official use; and
- (b) where the basis period is less than 12 months, restrict the amount calculated to the number of months in the basis period

a) Restriction For Private Use

If there is private use, carry out the calculation as normal and restrict the amount granted to the taxpayer to the official use

b) Restrict account periods less than 12 months:

This can arise in (a) Commencement (b) Cessation

In these situations, the capital allowances that are calculated are restricted to the number of months in the accounting period.

c) Commencement:

In commencement, Year 1 is commonly a short year with an overlapping period with the second year. In such situations, asset purchases/disposals of the “overlap” belong to the earlier period.

d) Cessation:

In cessation, there will usually be a short final year and a “gap” between the final year and the penultimate year. In such situations, asset purchases/disposals of the “gap” belong to the penultimate year.

e) Disposal:

When an asset is disposed of:

- i) Remove the asset from the Capital Allowances Computation table at the Tax Written Down Value (TWDV); and
- ii) Carry out a balancing allowance/charge computation.

4.4 TYPES OF CAPITAL ALLOWANCES - THE POSITION IN NIGERIA

4.4.1 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.

4.4.2 Initial Allowance

This is one of the types of capital allowances which may be claimed once and in the year when the qualifying capital expenditure is first put to use. It can only be prorated if there is an element of private use. The prorating could then be between business use and the private use. Apart from this situation, initial allowance cannot be prorated unlike annual allowance.

4.4.3 Annual Allowance

This allowance is claimed over the estimated useful life of the qualifying capital expenditure. It is computed by dividing the difference between the cost of the asset and initial allowance by the estimated useful life, provided that an amount of ₦10 is retained in the account for tax purposes until the asset is disposed of.

In the case, where the number of months in the basis period for Assessable Profits is not up to 12 months, the annual allowance computed must be prorated.

Illustration 4.1

James commenced business in May 2009 and bought a motor vehicle at a cost of ₦2,000,000. Assume that the initial allowance rate is 25% and annual allowance rate is 20%.

Required:

Compute the capital allowances claimable up to 2011 Assessment Year.

Suggested Solution 4.1

	₦	₦
A.Y. 2009		
Cost		2,000,000
Initial Allowance (I.A) (25%)	(N500,000)	500,000
Annual Allowance (A.A) (20%)	<u>(N2,000,000 - N500,000)</u>	
	5	
(For 8 months)	= $\frac{8}{12} \times$ N300,000	
	= (200,000)	<u>200,000</u>
W.D.V. c/f to A.Y. 2010		<u>(700,000)</u> 1,300,000
A.Y. 2010		
Annual Allowance (12 months i.e. $\frac{12}{8} \times$ ₦200,000)		<u>(300,000)</u>
W.D.V. c/f to A.Y. 2011		1,000,000
A.Y. 2011		
A.A (12 months)		<u>(300,000)</u>
W.D.V. c/f to A.Y. 2012		700,000

4.4.4 Balancing Charge

Balancing charge is one of the components of balancing adjustment, which is obtained when an asset is disposed of. 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 income. However, the maximum amount taxable should not exceed the total capital allowances claimed on the asset before the disposal of the capital expenditure.

Illustration 4.2

Given that an asset with a written down value of ₦975,000 is sold for ₦1,200,000, compute the Balancing Charge.

Suggested Solution 4.2

	₦
TWDV	975,000
Sales proceeds	<u>1,200,000</u>
Balancing charge	<u>225,000</u>

Illustration 4.3

Assuming that the total capital allowances claimed up to the date of sale of the asset totalled ₦123,000, can the taxpayer still suffer tax on the Balancing charge of ₦ 225,000?

Suggested Solution 4.3

The maximum amount subject to tax should not exceed the total capital allowances claimed on the asset before the disposal, that is, N123,000

4.4.5 Balancing Allowance

This occurs where the sales proceeds on disposal of qualifying capital 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 in the trade or business for the purposes of which the qualifying expenditure was incurred.

4.4.6 Investment Allowance

A company is granted investment allowance in a situation where it has incurred expenditure on Plant, Equipment and Machinery. This allowance is granted at a rate of 10 percent of qualifying expenditure. It is usually not considered when computing the written down value of the asset.

Illustration 4.4

Assuming a qualifying capital expenditure in the class of Plant and Machinery was bought for N10million, what is the investment allowance that will be given by the relevant tax authority to the taxpayer who purchased the asset?

Suggested Solution 4.4

The Investment allowance on such Plant and Machinery is $(10\% \times \text{₦}10,000,000)$
 $= \text{₦} 1,000,000$

4.5 CAPITAL ALLOWANCES UNDER HIRE PURCHASE TRANSACTIONS

An interest element usually charged as part of cost for late payment, cannot be included in the amount of the qualifying expenditure as this element is a deductible expense for tax purposes. The relevant aspect is the principal portion of instalment.

There is often the possibility of extending the life of the qualifying capital expenditure beyond that which is recommended by the law due to the peculiar nature of instalmental payment in hire purchase transactions. This is overcome by progressively reducing the denominator used in calculating annual allowance by one as the asset increases in age.

It is important also to deduct the notional residual value of ₦10 only from the last instalment in order to avoid the temptation of retaining ₦10 on each instalment since each deposit and instalment is always regarded as an addition to asset.

Illustration 4.5

A qualifying capital expenditure was purchased on hire purchase with an initial deposit of ₦150,000 and an annual instalmental payment of ₦60,000 payable over 3 years. This amount includes annual interest of ₦10,000.

Required:

Compute the Capital allowances for the first year assuming Initial allowance of 20% and Annual allowance of 25%.

Suggested Solution 4.5

$$\begin{aligned}\text{Total cost} &= \text{Initial payment} + \text{principal element of first instalment} \\ &= \text{₦150,000} + \text{₦ 50,000}\end{aligned}$$

Total cost for first year is ₦200,000

$$\text{Initial Allowance } \text{₦200,000} \times 20\% = \text{₦40,000}$$

$$\begin{aligned}\text{Annual Allowance } &(\text{₦ 200,000} - \text{₦ 40,000}) \times 25\% \\ &= \text{₦40,000}\end{aligned}$$

In Ghana, under a hire purchase system, the purchaser deposits an amount and arranges to settle the balance over a period of time. Allowances are thus granted on the amount paid down. Thereafter, allowances are granted on each instalmental payment made as if they are payment for the acquisition of separate depreciable assets of the same class.

4.6 BASIS PERIOD FOR CAPITAL ALLOWANCES

4.6.1 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.

4.6.2 Under the abnormal basis period regime, where two basis periods overlap or when there are gaps in between basis periods, it is impracticable for the basis period for Assessable profit to coincide with the basis period of capital allowances. Unlike in a continuing business, the preceding year basis applicable to Assessable profit also applies to Capital allowances.

4.6.3 Overlapping of basis periods occurs mostly under the commencement rule and, oftentimes, under the change of accounting date when expenditure can be incurred in a period which is used as the basis for two years of assessment.

Where two basis periods overlap, the period common to both shall be deemed to fall in the basis period ending at the earlier date and in other basis except for the purpose of making an annual allowance.

Illustration 4.6

Kayoed Ltd commenced business on 1 May 2009 and chose 31 July every year as accounting year end. You are provided with the following information on the qualifying capital expenditure.

Qualifying Capital Expenditure	Date of Acquisition
Building	20 April 2009
Plant and Machinery	28 September 2009
Motor Vehicle	17 March 2010
Furniture and Fittings	29 June 2010

Required:

Determine the basis period for capital allowances of each qualifying capital expenditure.

Suggested Solution 4.6

Tax Years	Basis period for Assessable profit	Basis period for Capital allowance	Qualifying capital expenditure
2009	1/5/09 - 31/12/09	1/5/09 - 31/12/09	Building, Plant and Machinery
2010	1/5/09 - 30/04/10	1/1/10 – 30/4/10	Motor vehicle
2011	1/8/09 - 31/7/10	1/5/10 - 31/7/10	Furniture and Fittings

Note: Where an asset is acquired before the date of commencement of business, such an asset is deemed to have been acquired on the first day of the new business. Hence, the building acquired on 20/4/09 was deemed to have been acquired on 1/5/09.

However, where two basis periods coincide, the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the latter year of assessment.

4.6.4. Basis Period When There is a Gap

When there is a gap or an interval between the basis period for two assessment years, the gap shall be deemed to be part of the second basis period provided there is no cessation of business in the second aforementioned year of assessment. However, if there is a gap between the end of the basis period for the year of assessment preceding the year of cessation of business and the basis period for the year of cessation, the gap shall be deemed to form part of the first basis period.

Illustration 4.7

Ali Ltd which had financial statements made up to 31 May every year, ceased business on 30 July 2010.

You are required to determine the tax year when initial allowance will be claimed on a motor vehicle acquired on 19 December 2009.

Suggested Solution 4.7

Tax Years	Basis period for Assessable profit	Basis period for Capital allowance	Qualifying Capital expenditure
2009	1/6/07 - 31/5/08	1/6/07 - 31/12/09	Motor vehicles
2010	1/1/10 - 30/7/10	1/1/10 – 30/7/10	

4.7 RESTRICTION ON CAPITAL ALLOWANCE CLAIMABLE

In Nigeria, the 1985 Financial (Miscellaneous Taxation Provisions) Act introduced restrictions of an amount of capital allowance claimable in any year of assessment. This amount is restricted to $66 \frac{2}{3}$ per cent of Assessable Profit for non-manufacturing and non-agricultural businesses.

4.8 TERMINAL CAPITAL ALLOWANCE

In Nigeria, the law permits a business that ceases operation, to carry backward any unutilized capital allowance for relief against the Chargeable profit for a maximum of five tax years preceding the year of cessation. In this case, any tax paid during such year, and for which relief has been claimed should be refunded to the taxpayer, suffice it to say that any unutilized capital allowance after the maximum five years would be deemed to be permanently lost.

4.9 REPLACEMENT OF OLD PLANT AND MACHINERY

In Nigeria, the tax law allows any plant and machinery acquired in replacement for old ones, to enjoy 95 per cent rate of capital allowance once and for all in the first year. The balance of 5 per cent should be retained until the qualifying capital expenditure is disposed of. This became effective 1 January 1996.

4.10 INVESTMENT ALLOWANCE

4.10.1 Definition of Investment Allowance

Investment Allowance is an incentive granted to certain taxpayers that have incurred some particular qualifying capital expenditure such as:

- a) Plant and machinery bought to replace old ones (in manufacturing) - rate 15%; and
- b) Plant and Machinery (general) – 10%

Investment Allowance is claimable once and for all and it is not deducted from the cost of asset to arrive at the residue of expenditure, that is, the tax written down value to be carried forward to subsequent assessment years.

4.10.2 Events that May Lead to Cancellation of Investment Allowance

- (i) Any transfer of the qualifying expenditure to a person acquiring the asset for chargeable purposes or for scrap.
- (ii) Any appropriation of the asset by the transfer for a purpose other than the chargeable purpose.
- (iii) Any sale or transfer or other dealings with the asset by the taxpayer where the expenditure seems to be incurred in anticipation of being granted the investment allowance.

4.10.3 Other Allowances

There are some other incentives the Nigerian tax laws provide for taxpayers. For instance, with effect from 1 January 1996, businesses engaged in research and development activities on commercial scale are to enjoy 20 percent investment tax credit on their qualifying capital expenditure.

This apart, all businesses that engage wholly in the fabrication of tools, spare parts and simple machinery for local consumption and export are to enjoy 25 per cent investment tax credit.

In the same vein, all taxpayers who purchase locally made Plant and Machinery are to enjoy 15 per cent investment tax credit on the fixed asset.

4.11 RATES OF CAPITAL ALLOWANCES IN NIGERIA

The rates are as follows:

<u>Qualifying Expenditure</u>	<u>Initial Rate</u>	<u>(%) Annual</u>
Non-Industrial Building	15	10
Industrial building	15	10
Mining	95	Nil
Plant: Agricultural Production	95	Nil
Office equipment	50	25
Plant and Machinery - Others	50	25

Furniture and Fittings	25	20
Motor vehicles	50	25
Public transportation	95	Nil
Plantation equipment	95	Nil
Housing Estate	50	25
Ranching and Plantation expenditure	30	50
Research and Development expenditure	95	Nil

4.12 RURAL INVESTMENT ALLOWANCE IN NIGERIA

This is an allowance given in addition to an initial allowance to a company which incurs capital expenditure on 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.

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% ; and
- (d) No tarred road 15% .

The rural investment allowance shall be made against the profits of the year in which the date of completion of the said facility falls and the allowance or any balance shall not be available for carry forward to any subsequent year whenever all allowance is not fully absorbed because there is no assessable profit or assessable profit is less than the total allowance for the year the investment was made.

No investment allowance can be given on the same asset in respect of which rural investment allowance has been granted.

Note: Prior to 2011, Rural Investment Allowance was granted in respect of telephone facilities provided by a taxpayer.

4.13 EXPORT PROCESSING ZONE ALLOWANCE IN NIGERIA

This 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 granted is 100 per cent capital allowance in any year of assessment. This company shall not be entitled to an investment allowance.

4.14 INVESTMENT ALLOWANCE

4.14.1 Introduction

This is an allowance granted to a company which incurs an expenditure on plant and machinery. This allowance is granted in addition to an initial allowance. The rate at which this allowance is allowed is 10 per cent of the actual expenditure incurred on such plant and equipment.

This allowance shall not be taken into consideration in ascertaining the residue of qualifying expenditure in respect of an asset.

4.14.2 Conditions for Granting Investment Allowance

Furthermore, no investment allowance shall be made in respect of any qualifying expenditure incurred on the new asset if any of the following events occur within a period of five years beginning with the date on which the expenditure was incurred:

- (a) any sale or transfer of the asset representing the expenditure made by the company otherwise than to a person acquiring the asset for a chargeable purpose or for scrap.
- (b) any appropriation of the asset to a purpose other than a chargeable purpose.
- (c) any sale, or transfer or other dealing with the asset incurred solely for the purpose of obtaining tax allowances or the incurring of the expenditure is not for bonafide business transactions.

If allowance has been made before occurrence of the above mentioned events, such allowance shall be withdrawn.

4.14.3 Penalty

The taxpayer shall give notice to the Board if any of the events occur at any time before the expiration of five years beginning with the date when the expenditure was incurred. Any notice of a sale or transfer shall state the name and address of the person to whom the sale or transfer is made. Where an asset in respect of which such allowances has been made is sold or transferred, it shall be the duty of the purchaser or transferee or representative authorized by the Board to give that officer all such information as he may require. Failure to do this attracts a penalty not exceeding N100 plus the amount of tax lost by the granting of the allowance.

4.15 RESTRICTION ON CAPITAL ALLOWANCES

Once an asset is in use at the end of the basis period even if only for 1 day, a full year capital allowance is calculated and granted without restriction.

There are two occasions where a restriction arises:

where there is private use, restrict the amount granted to the official use; and

where the basis period is less than 12 months, restrict the amount calculated to the number of months in the basis period

4.15.1 Restriction for Private Use

If there is private use, carry out the calculation as normal and restrict the amount granted to the taxpayer to the official use.

4.15.2 Restriction When Basis Period is Less Than 12 Months:

(a) **Commencement:**

In commencement, Year 1 is commonly a short year with an overlapping period with the second year. In such situations, asset purchases/disposals of the “overlap” belong to the earlier period.

(b) **Cessation:**

In cessation, the capital allowances that are calculated are restricted to the member of months in the accounting period. There will usually be a short final year and a “gap” between the final year and the penultimate year. In such situations, asset purchases/disposals of the “gap” belong to the penultimate year.

(c) **When an asset is disposed of:**

- (i) Remove the asset from the capital allowance computation table; and
- (ii) Compute the balancing allowance/charge.

4.16 CAPITAL ALLOWANCES - POSITION IN LIBERIA

Introduction

Capital allowances arise for both the self-employed person and for a company, in respect of assets used for the purposes of the trade. Capital allowance is computed using the basis period in which the asset was purchased

To qualify for capital allowances, an asset must be in use at the end of the basis period. Once an asset is in use at the end of the basis period, even if only for one day, a full year capital allowance is calculated and granted without restriction.

Normally, a motor vehicle will be in use at the end of a basis period. However, an asset delivered before a company’s year end, but not put into use until the day after the company’s yearend will not qualify for capital allowance in the tax year

Rate / method used in calculation:

There are 2 rates and 1 method to be used for all assets purchased after 2 December 2002:

Rate	Method	Asset
4%	Straight Line on cost	Industrial Building
12 ½ %	Straight Line on cost	Plant, Machinery, Fixtures & Fittings, Cars & Vans

For assets purchased prior to that date, the rate for plant, machinery and fixtures and fittings were 15% up to 2000 and 20% for 2001 & 2002.

The rule in calculating capital allowances for an asset is that it is imperative to identify the basis period in which the asset was purchased and put into use.

To compute capital allowances, the first step is to identify the basis periods to use, is it Commencement, Cessation or an Ongoing business? Then determine the accounting year end follows each asset transaction? Match each basis period end to tax year end, according to the rules.

4.17 CHAPTER SUMMARY

In this chapter, efforts were made to throw light on the meaning and purpose of capital allowances. The types of capital allowances, initial and annual allowances, balancing charge, balancing allowance, investment allowance, were well explained as well as the types of the qualifying plant expenditure and their treatment under different basis periods.

In addition, explanations were made on how basis period is determined when there are overlapping basis periods and when a gap exists between basis periods.

MULTIPLE-CHOICE QUESTIONS

1. Allowance usually granted in lieu of depreciation for 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 must be making use of the qualifying capital expenditure
 - 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. An acceptance certificate must be obtained from the Federal Ministry of Industry where the value of the qualifying capital expenditure is less than ₦500, 000

3. The following are types of capital allowances **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. Which one of the investment allowances is currently **NOT** available?
 - A. 10% investment allowance is available on Production Machinery in use by manufacturing concern
 - B. 10% investment allowance on the Plant and Machinery of businesses in the agricultural sector
 - C. 15% investment on Plant and Machinery acquired in replacement for obsolete ones
 - D. 25% investment tax credit on the assets of companies engaged in the local fabrication of small tools and machine
 - E. 75% investment allowance is available on companies involved in lottery.

SHORT ANSWER QUESTIONS

1. Granting capital allowances to a company Total Profit.
2. Capital allowances computation is usually based on the life of an asset.
3. Unutilised capital allowances of a business ceasing operation is carried backward for
4. In case of second-hand building, no allowance can be claimed.
5. The computation of annual allowance is on a Basis.

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. Reduces
2. Useful/unexpired life
3. 5 assessment years before year of cessation
4. Initial
5. Straight line.

WORKED EXAMPLES

QUESTIONS

1. Octopus Nigeria Limited normally makes up its accounts to June 30 each year and acquired assets as follows:

Date	Assets Purchased	Cost
31/12/10	Building	N5million
15/5/11	Jeep motor vehicle	N3million
30/7/11	Machinery	N2million
13/3/13	Furniture	N1.5million

Required:

Determine the basis period and compute the Capital allowances for all the relevant Assessment Years.

2. XYZ Limited is a company engaged in the entertainment business. It commenced business on 1 September 2005 and made up accounts as follows:
- 9 months ended 30 June 2006
 - Year ended 30 June 2007

Required:

Determine the basis period of assessment for each of the first four years of assessment of the company.

3. Peters Nigeria Limited commenced business as a textile manufacturing company on 1 June 2011, even though it was incorporated on 15 March 2001. Its accounts for the first few years of its operations showed the following adjusted profits:

	N'000
Ten (10) months period ended 31 March 2012	7,500
Year ended 31 March 2013	12,000
Year ended 31 March 2014	18,000

The company incurred the following qualifying capital expenditure:

	N'000
25 March 2011 – Factory Building	3,500
18 May 2011 – Machinery	2,800
15 October 2011 – Furniture	750
28 February 2012 – Delivery van	500
20 May 2012 – Motor car	1,200
21 January 2013 – Office Equipment	600

Required:

- (a) Determine the basis period for assessment and for capital allowances for the first five (5) assessment years; and
 - (b) Compute the Capital allowances due for five (5) years of assessment in respect of the qualifying capital expenditure incurred by the company.
4. Optimum (Nigeria) Limited is engaged in catering business. Its recent accounts showed the following adjusted profits.

	N
Year ended 30/9/01	280,000
Year ended 30/9/02	360,000
Fifteen (15) months to 31/12/03	525,000
Year ended 31/12/04	728,000

Required:

Determine the basis periods for Assessments and Capital Allowances.

5. First Nigeria Limited has been in business for several years. The company makes up its accounts to December 31, every year. The following information is made available on its Non-current Assets as at December 31 2005;

Asset	Cost	Unexpired Years	Tax Written Down Value (TWDV)
	N		N
Office Building	5,500,000	7	3,272,000
Motor Vehicle	1,800,000	2	450,000
Office Equipment	7,400,000	3	2,775,000
Office Furniture	3,520,000	1	880,000

The following assets were purchased in year 2005

Item	Amount
	N
Motor vehicle	1,500,000
Office equipment	2,400,000
Office furniture	220,000

It is the policy of the company to retain N10 in the Non-Current Assets Register .

You are required to compute Capital Allowances for the relevant years of assessment.

- (a) Initial Allowance
(b) Annual Allowance

The following rates are provided:

Capital Allowances	Initial (%)	Annual (%)
Office equipment	50	25
Motor vehicle	50	25
Office building	15	10
Furniture & Fittings	25	20
Industrial building	15	10

Non-Industrial building	15	10
Non-industrial building - Agric. Production	95	Nil
Plant and Machinery – Others	50	25

SUGGESTED SOLUTIONS

1. OCTOPUS NIGERIA LIMITED (i) DETERMINATION OF BASIS PERIOD

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2012	1/7/10 – 30/6/11	1/7/10 – 30/6/11
2013	1/7/11 – 30/6/12	1/7/11 – 30/6/12
2014	1/7/12 – 30/6/13	1/7/12 – 30/6/13

(ii) COMPUTATION OF CAPITAL ALLOWANCES

	Building	Motor Vehicle	Machinery	Furniture	Total Allowances
Initial allowance (%)	15	50	50	25	
Annual allowance (%)	<u>10</u>	<u>25</u>	<u>25</u>	<u>20</u>	
	(‘000)	(‘000)	(‘000)	(‘000)	(‘000)
	₦	₦	₦	₦	₦
<u>Assessment Year-2012</u>					
31/12/10-Building	5,000				
15/5/11-Jeep		3,000			
Allowances					
Initial allowance	(750)	(1,500)			2,250
Annual allowance (w.1)	<u>(425)</u>	<u>(375)</u>			800
Written Down Value c/f	3,825	1,125			<u>3,050</u>
<u>Assessment Year-2013</u>					
30/7/11-Machinery			2,000		
Initial allowance	-	-	(1000)		1,000
Annual allowance	<u>(425)</u>	<u>(375)</u>	<u>(250)</u>		<u>(1,050)</u>
Written Down Value c/f	3,400	750	750		<u>2,050</u>
<u>Assessment Year-2014</u>					
13/3/13-Furniture				1,500	
Initial allowance	-	-	-	(375)	375

Annual allowance	(425)	(375)	(250)	(225)	1,275
Written Down Value c/f	2,975	375	500	900	<u>1,650</u>

Workings

$$(a) \text{ Annual allowance} = \frac{\text{N}5,000 - \text{N}750}{10 \text{ years}} \quad \frac{\text{N}3,000 - \text{N}1,500}{4 \text{ years}} \quad \frac{\text{N}2,000 - \text{N}1,000}{4 \text{ years}} \quad \frac{\text{N}1,500 - \text{N}375}{5 \text{ years}}$$

$$= 425 \quad 375 \quad 250 \quad 225$$

(b) Investment allowance
 N2,000,000 at 10% = **N200,000 (A.Y. 2013)**

NOTES:

The preceding year basis of assessment is applicable only in a situation where a normal (12-months) accounting period ended in the preceding year of assessment.

However, this is usually not the case on commencement, cessation of business or change of accounting date. The problems normally associated with the determination of basis period in these situations are two, namely:

- (i) Overlapping basis period, and
- (ii) Gap between basis periods.

2. XYZ LIMITED DETERMINATION OF BASIS PERIOD FOR ASSESSMENT

Assessment Year	Basis Period of Assessment	Overlapping Period
2005	1/9/05–31/12/05(Actual)	-
2006	1/9/05–31/8/06(1 st 12 months)	1/9/05 - 31/12/05
2007	1/9/05–31/8/06(1 st 12 months)	1/9/05 - 31/8/06
2008	1/7/06–30/6/07(PYB)	1/7/06 - 31/8/06

Since basis period for capital allowances is derived from that for assessment of profit, the question that arises is: When will the initial allowance be given in respect of assets purchased during the overlapping basis period?

Suppose, the company purchased a motor vehicle on 15 December, 2005, in which of the assessment years, will the initial allowance be given since the period 1/9/05 – 31/12/05 is common to three (3) years of assessment.

Rule: When There is Overlapping Basis Period

When there is an overlapping basis period between two years of assessment, the period common to both is deemed to form part of the earlier year of assessment, for the purpose of determining the assessment year to which the initial allowances is allocated.

Applying the rule on overlapping basis period to XYZ Limited, the basis period for assessment and for capital allowances are as follows:

DETERMINATION OF BASIS PERIOD FOR ASSESSMENT YEARS AND CAPITAL ALLOWANCES

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2005	1/9/05–31/12/05	1/9/05–31/12/05
2006	1/9/05 – 31/8/06	1/1/05 – 31/8/06
2007	1/9/05 – 31/8/06	-
2008	1/7/06 – 30/6/07	1/9/06 – 30/6/07

3. PETERS NIGERIA LIMITED

(a) DETERMINATION OF BASIS PERIOD FOR THE ASSESSMENT YEARS AND CAPITAL ALLOWANCES

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2011	1/6/11 - 31/12/11	1/6/11- 31/12/11
2012	1/6/11 - 31/5/12	1/1/12 - 31/5/12
2013	1/6/11 - 31/5/12	-
2014	1/4/12 - 31/3/13	1/6/12 - 31/3/13
2015	1/4/13 - 31/3/14	1/4/13 - 31/3/14

Note: Basis periods for 2nd and 3rd years overlap, therefore basis period for Capital Allowances will be same for 2nd Assessment Year so no Capital Allowances since already claimed in 2nd year.

(b) COMPUTATION OF CAPITAL ALLOWANCES

	BUILDING	P&M	F&F	MV	EQUIP	Total Allowances
	%	%	%	%	%	
Initial Allowance	15	50	25	50	50	
Annual Allowance	10	25	20	25	25	

N'000 N'000 N'000 N'000 N'000 N

'000

Assessment Year 2011

25/3/11-Factory Building 3,500

18/5/11 – Machinery		2,800	
15/10/11 – Furniture			750
Allowances:			
Initial allowance	(525)	(1,400)	(188)
2,113			
Annual allowance (w.1)	<u>(174)</u>	<u>(204)</u>	<u>(66)</u>
<u>444</u>			
Written down value c/f	2,801	1,196	496
<u>2,557</u>			

Assessment Year-2012

Additions

- 28/2/12-Delivery van			500
- 20/5/12 – Motor car			<u>1,200</u>
			1,700

Allowances:

Initial allowance	-	-	-	(850)	850
Annual allowance (w.2)	<u>(297)</u>	<u>(350)</u>	<u>(112)</u>	<u>(212)</u>	<u>971</u>
W.D.V.c/f	2,504	846	384	638	<u>1,821</u>

Assessment Year 2013

Annual allowance	<u>(297)</u>	<u>(350)</u>	<u>(112)</u>	<u>(212)</u>	<u>971</u>
W.D.V. c/f	2,207	496	272	426	

Assessment Year 2014

Addition

-12/1/04-Office Equip.				600	
Allowances:					
Initial allowance	-	-	-	-	(300)
Annual allowance	<u>(297)</u>	<u>(350)</u>	<u>(112)</u>	<u>(212)</u>	<u>(75)</u>
W.D.V.c/f	1,910	146	160	214	225
					<u>1,346</u>

Assessment Year 2015

Annual allowance	<u>(297)</u>	<u>(136)</u>	<u>(112)</u>	<u>(204)</u>	<u>(75)</u>
W.D.V.c/f	1,613	10	48	10	150
					<u>824</u>

Workings:

- (i) Annual allowance – 2011 Assessment Year
-
- (7 months' basis period)

$$= \begin{array}{cccccc} \text{N297} & \times & 7/12 & \text{N350} & \times & 7/12 & \text{N112} & \times & 7/12 & - & - \\ = & & \text{N174} & & \text{N204} & & \text{N66} & & - & - & - \end{array}$$

- (ii) Annual allowance: 2012 – 2015 Assessment Years (12months basis period)

$$\begin{array}{ccccc} \frac{3,500 - 525}{10 \text{ years}} & \frac{2,800 - 1,400}{4 \text{ years}} & \frac{750 - 188}{5 \text{ years}} & \frac{1,700 - 850}{4 \text{ years}} & \frac{600 - 300}{4 \text{ years}} \\ = & \text{N297} & \text{N350} & \text{N112} & \text{N212} & \text{N75} \end{array}$$

- (iii) Investment

$$\text{Allowance at 10\%} = \begin{array}{cccccc} - & \text{N280} & - & - & - & \text{N60} \end{array}$$

Note:

Qualifying capital expenditure incurred before date of commencement of business is deemed to have been incurred on the first day of commencing business. Consequently, factory building and machinery purchased on 25/3/11 and 18/5/11 respectively, that is, before commencement date are deemed to have been incurred on 1/6/11, that is, date of commencement of business.

Keys

IB	=	Industrial Building
P&M	=	Plant and Machinery
F&F	=	Furniture and Fittings
MV	=	Motor Vehicles
Equip	=	Equipment

4. OPTIMUM (NIGERIA) LIMITED**Rule: when there is a gap in between basis periods**

When there is a gap or an interval between the basis period for two assessment years, for the purpose of capital allowances, the gap is deemed to form part of the basis period for the latter assessment year, except, where the latter year is a year of cessation, in which case, it forms part of the basis period for the earlier (penultimate) year of assessment.

Applying this rule to the above illustration, the basis periods for assessments and capital allowances of Optimum Nigeria Limited are as follows:

Assessment Year	Basis period for Assessment	Basis Period for Capital Allowance
2002	1/10/00 – 30/9/01	1/10/00 – 30/9/01
2003	1/1/02 – 31/12/02	1/10/01 – 31/12/02
2004	1/1/03 – 31/12/03	1/1/03 – 31/12/03
2005	1/1/04 – 31/12/04	1/1/04 – 31/12/04

5. FIRST NIGERIA LIMITED

COMPUTATION OF CAPITAL ALLOWANCES FOR 2006 YEAR OF ASSESSMENT

	BUILDING	MV	OE	OF	Total Allowances
		%	%	%	
Initial Allowance	15	50	25	25	
Annual Allowance	10	25	20	20	

	Office Building	Motor Vehicle	Office Equipment	Office Furniture	Total Allowances
	₦	₦	₦	₦	₦
TWDV b/f	3,272,000	450,000	2,775,000	880,000	
Addition	<u>---</u>	<u>1,500,000</u>	<u>2,400,000</u>	<u>220,000</u>	
	3,272,000	1,950,000	5,175,000	1,100,000	
Initial Allowance	(-----)	(750,000)	(1,200,000)	(55,000)	2,005,000
Annual Allowance:					
- Old	(467,429)	(225,000)	(925,000)	(879,990)	2,497,419
- New	<u>-</u>	<u>(187,500)</u>	<u>(300,000)</u>	<u>(33,000)</u>	<u>520,500</u>
TWDV c/f	2,804,571	787,500	2,750,000	132,010	<u>5,022,919</u>

CHAPTER FIVE

PERSONAL INCOME TAX

CHAPTER CONTENTS

- a) Introduction
- b) Taxation of Incomes of Individuals
- c) Employment Income
- d) Trade and Vocation Income
- e) Badges of Trade
- f) Trade and Vocation Income
- g) Distinction between Employment and Self-employment
- h) Benefits –in- Kind
- i) Allowable and Non-allowable Deductions
- j) Reliefs and Allowances
- k) Personal Reliefs under Ghana Taxation
- l) Taxable Income of an Individual in Liberia
- m) Pensions and Gratuities
- n) Taxation of Incomes of Communities and Families
- o) Filing of Returns
- p) Taxable Income of Individuals in Liberia
- q) Settlements, Trusts and Estates
- r) Taxation of Investment Income
- s) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the reader should be able to determine/compute:

- a) what makes up the taxable income of the individual taxpayer;
- b) the ‘relief’ or allowances to be set-off against taxable income;
- c) tax computations; and
- d) procedure for filing tax returns.

5.0 INTRODUCTION

The Personal Income Tax is the tax that is imposed on individuals who are employees or those in partnership. In Nigeria, the taxation of individuals is guided by the provisions of Personal Income Tax Act C 8 LFN 2004.

5.1 TAXATION OF INCOMES OF INDIVIDUALS

5.1.1 The sources of incomes of an individual that are liable to tax include:

- a) gains or profit from trade, business, profession or vocation;
- b) emoluments from employment, benefits in kind and bonus,
- c) dividend, interest or rent; and
- d) any charge or annuity.

5.1.2 Place of Residence – The Position in Nigeria

- a. In the case of an individual, residence is a place, which is available for domestic use of such individual in Nigeria on the first day in a relevant tax year. This does not include any hotel, rest house or other place that is a temporary residence, unless no more permanent place is available for his/her use on that day.
- b. The principal place of residence will include the following where an individual has more than one place of residence on the relevant day:
 - (i) Individual holding a Nigerian employment – the place where he normally resides;
 - (ii) Individual holding foreign employment – the territory in which the principal office of the employer is situated;
 - (iii) Where there is earned income other than pension or employment – the state where the individual is normally resident or the place nearest to his place of work or the state where all the income is derived. The principal place will be the Federal Capital if the income is derived from more than one state;
 - (iv) Where there is unearned income – the principal place will be the place where the individual usually resides;
 - (v) Body of individuals – the place where the principal office is situated; and
 - (vi) In the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situated provided that the operational site shall include Oil Terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction Site with a minimum of 50 workers.

It is pertinent to state that the period of residency in Nigeria now includes the period of annual leave or temporary period of absence.

5.1.3 Itinerant Worker

This is an individual who works in more than one place in Nigeria or who earns daily wages. This does not include members of the armed forces.

In computing his tax, the individual's gross income to date, the tax paid to date and the free pay to date in any other tax authority shall be recognized and utilized. Furthermore, the unpaid tax before leaving a tax jurisdiction will be kept in abeyance until he returns and he will be given credit for payments made in other tax jurisdictions.

Amendment of Section 108 of the Principal Act has however redefined itinerant worker to include "an individual irrespective of his status who works at anytime in any state during a year of assessment (other than a member of the armed forces) for wages, salaries or livelihood by working more than one state for a minimum of twenty (20) days in at least three (3) months of every assessment year". The implication of this amendment is that employees, executives or other workers who by nature of their work move from state to state may fall under the definition of itinerant workers.

Amendment also provides that “notwithstanding anything in the Principal Act, the relevant tax authority in a State shall have powers to collect tax under this Act from itinerant workers”. The implication of this amendment is that individuals who now fall under the definition of itinerant workers may now be liable to tax in more than one state.

5.2 EMPLOYMENT INCOME

- b. This is income earned by a person who is engaged by another under a contract of employment. Income tax is paid under the Pay-As-You-Earn (PAYE) system. It is the responsibility of every employer to deduct income tax from the pay of his/her employee for onward remittance to the relevant tax authority.
- c. The returns of income and claim for allowances and reliefs are filed, at the commencement of each tax year, by each employee with the relevant tax authority. The tax office would then calculate the allowances due to the employee based on the returns and enter these on the **tax deduction card**. This card together with the notice of total free pay allowance is sent to the employer to be used to compute the amount of tax to be deducted from the employee’s emoluments each month.
- d. In arriving at the tax to be deducted monthly, the cumulative gross earnings is usually considered. This includes the aggregate of basic salary, overtime, bonuses, housing allowances and transport, (both in excess of maximum allowable), commission, etc. The total allowances from the tax free pay up to the month under consideration is deducted to arrive at the amount on which tax is payable. The amount of tax due on this sum would be ascertained from the tax liable for that particular month. From this figure, the cumulative tax is deducted up to the end of the previous month to give the tax payable in the month under consideration. However, if the new cumulative tax figure is less than the previous cumulative tax figure, the difference would be refunded to the employee. It is important that any tax deducted from employee’s salary must be remitted to the relevant tax authority within 10 days after the end of the month under consideration.
- e. In the case where an employee leaves an organization, such employee must collect a certificate in form of a duplicate copy of form ‘E’; the original would be sent to the tax office while his tax deduction card would be marked off with the word ‘left’ and date of leaving clearly indicated.
- f. Every employer is required to file a return with relevant tax authorities of all emoluments paid to its employees, not later than 31 January of every year in respect of all employees in its employment in the proceeding year.
- g. Any employer who contravenes the provisions of this section will be liable on conviction to a penalty of ₦500,000 in the case of a body corporate and ₦50,000 in the case of an individual.

5.3 TRADE AND VOCATION INCOME

5.3.1 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.

5.3.2 What Constitutes a Trade

The difficulty in determining what constitutes a trade has led to many litigation 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 fact. However, Lord Atkins offered a guide in the case of Fry v Burma Corporation Ltd.

Case 1:

Fry v Burma Corporation Ltd – Lord Atkins interpreted the word ‘trade’ to mean the various activities of commerce, these includes, 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 constitute a trade.

Case 2:

Glasgow Heritable Trust Ltd 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 Ltd 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.

5.4 BADGES OF TRADE

The Royal Commission on the taxation of profit and income gave a summary of considerations that influenced the identification of the badges of trade and they include:

- (a) The subject matter of the realization;
- (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 realized;
- (e) The circumstances that were responsible for the realization; and
- (f) The motive.

Case 4: 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.

5.5 TRADE AND VOCATION INCOME

- a) The Statement of Profit And Loss must be established for the purpose of identifying taxable income and allowable expenses in subjecting a sole trader to taxation. An expense will be allowable if it is **wholly, reasonably, exclusively and necessarily** incurred for the purpose of the trade or business.
- b) Residence is very important in taxation as tax could be imposed only by the State in which the individual is deemed to be resident for that year. In a situation where the individual has more than one place of residence, Personal Income Tax (Amendment) Act, 2011 refers to his ‘principal place of residence’. That is:
 - i) For an individual with a source of earned income other than employment – that place nearest to his usual place of work on a relevant day – where he holds employment on the first day of January in the year of assessment
 - ii) For an individual with sources of unearned income in Nigeria, that place in which he usually resides – or principal place of residence on the first day of the assessment year.
 - iii) Where an individual holds a foreign employment and performs his duties in Nigeria, the individual is regarded as resident in Nigeria.
 - iv) In the case of an individual who works in the branch office or operational site of a company, or body corporate, the place at which the branch office or operational site is situated provided that the operational site shall include Oil Terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction Site with a minimum of 50 workers.

5.6 DISTINCTION BETWEEN EMPLOYMENT AND SELF-EMPLOYMENT

The distinction between employment and self-employment can be viewed from the following perspectives:

a) Employer

In employment, a person is engaged by another person under a contract of employment while he is engaged in his own vocation or business in case of self-employment.

b) Relationship

Under employment, there is master/servant relationship whereas under self-employment, a person is his/her own master.

c) System of Payment

In employment, income taxes are paid under Pay-As-You-Earn (PAYE) system while income tax is paid under a direct assessment system under self-employment

d) Mode of Payment

Under employment, income taxes are paid monthly in form of deductions from salaries and wages while income tax of a self-employed is paid en-bloc upon assessment by the tax authority.

e) Participation in Other Statutory Contributions

In employment, individuals are expected to participate in all contributions, e.g. Nigeria Social Insurance Fund (NSIF), (in Ghana, Social Security and National Insurance Trust (SSNIT)) Retirement Benefits Scheme and National Housing Fund Scheme while participation in these statutory contributions is not compulsory under self-employment.

5.6.1 Assessable Income

This is the aggregate of the taxpayer's income from all sources after the allowable deductions including losses. These include:

- a) Gains and profits from any trade, business or profession;
- b) Employment emoluments such as salaries, wages, fees and allowances (note that gratuity is not taxable);
- c) Interests and commissions, annuities and royalties;
- d) Gains and profits resulting from rent on property. Note that rent received in advance can be apportioned only for a maximum of 5 years; and
- e) Share options granted to employees (however, liability will only arise when option is exercised).

5.6.2 Incomes Exempted from Tax

This is the reimbursement to the employees of 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. Examples are:

- a) Refund of medical or dental expenses
- b) Cost of uniform
- c) Compensation for loss of office.
- d) Any reasonable removal or relocation expenses
- e) Any cost of passage to and from Nigeria in respect of expatriates

- f) Pension granted to a person under the provisions of the Pensions Act relating to widows and orphans.
- g) Retirement gratuities
- h) Any dividend from a pioneer company

The Personal Income Tax (Amendment) Act, 2011, having amended Section 3 (1) of the Principal Act by substituting for paragraph (b) a new paragraph (b) which states that “ any salary, wage, 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, free tax allowances specified by the former paragraph (b), hitherto enjoyed by employees remain deleted with the exception of reimbursement of expenses incurred by the employee in the performance of his duties.

Additions have been made to the list of tax exempt incomes in the Third Schedule by the amended PITA of 2011 to include, interests on the following instruments

- i) Bonds issued by the Federal, State or Local Governments and their agencies
- ii) Bonds issued by corporate and supreme national
- iii) Interest earned by holders of bonds and short term securities listed in (i) and (ii) above.

5.6.3 Incomes Exempt from Tax in Ghana

In Ghana, the following incomes are exempt from tax:

- a) Interest paid
 - i. To an individual by a resident financial institution; or
 - ii. To an individual on bonds issued by the Government of Ghana.

This provision covers interest paid by banks on bank accounts of individuals and interest on Treasury Bills and Bonds issued by the Government of Ghana.

- b) Capital sums paid to a person as compensation or a gratuity in relation to
 - i. Personal injuries suffered by that person; or
 - ii. The death of another person.

Payments such as workmen’s compensation come under the purview of this provision.

- c) The interest, dividend or
 - i. Any other income of an approved unit trust scheme or mutual fund,
 - ii. Any other income payable under an approved unit trust scheme or mutual fund to a holder or member of that scheme.
- d) The income of a person receiving instruction at an educational institution from a scholarship, exhibition, bursary or similar educational endowment. This provision covers

such payments as the Social Security and National Insurance Trust Student Loans Scheme, Ghana Cocoa Board Scholarships, scholarships and bursaries granted by the Scholarship Secretariat, etc.

- e) The income of an individual entitled to privileges under the Diplomatic Immunities Act, 1962 (Act 148) or a similar enactment to the extent provided in that Act or similar enactment or under Regulations made under that Act or similar enactment. This covers Diplomats and their staff in most cases but does not include Ghanaians working in the Diplomatic Missions.
- f) The income of an individual entitled to privileges under an enactment giving effect to the convention on the Privileges and Immunities of the United Nations and the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations to the extent provided in that enactment. This will cover UN Staff in UN agencies like UNDP, UNICEF, UNFPA, WHO, etc. but not Ghanaian staff working in these agencies in Ghana.
- g) The salary, allowances, pension and gratuity of the President.
- h) The income of a local authority, other than income from activities which are only indirectly connected with the local authority's status as a local authority.
- i) The income of a statutory or registered building society or statutory or registered friendly society, other than income from any business carried on by the society.
- j) Income accruing to or derived by an exempt organisation other than income from any business.
- k) The income of a non-resident person from any business of operating ships or aircraft, provided the Commissioner is satisfied that an equivalent exemption is granted by that person's country of residence to persons resident in Ghana.
- l) The income of a public corporation or institution exempted from tax under any enactment.
- m) The income of an individual to the extent provided for in an agreement between the Government of Ghana and a foreign government or a public international organisation for the provision of technical service to Ghana where
 - (i) the individual is a non-resident person or an individual who is resident solely by reason of performing that service; and
 - (ii) the President has concurred in writing with the tax provisions in the agreement; and
 - (iii) it is in accordance with the Constitution of the Republic of Ghana.
- n) The income of a person from an employment in the public service of the government of a foreign country provided
 - (i) that person is either a non-resident person or an individual who is resident solely by reason of performing that service;
 - (ii) that person does not exercise any other employment or carry on any business in Ghana;
 - (iii) the income is payable from the public funds of the foreign country; and
 - (iv) the income is subject to tax in the foreign country.

It is worthy of note that under section 10(2) of Act 592, the Minister for Finance, in consultation with the Commissioner, may grant a waiver or variation of tax imposed by Act 592 in favour of any person or authority. This act is however subject to the approval of Parliament by resolution in accordance with clause (2) of article 174 of the 1992 Constitution of Ghana.

5.6.4 Non-Taxable Income

These include:

- a) Any profit on the disposal of an investment;
- b) Any profit on the disposal of a fixed asset; and
- i) Any reversal with income of a previously disallowed expense e.g. depreciation and general provision for doubtful debt.

5.7. BENEFITS-IN-KIND

These are benefits other than cash enjoyed by employees in the course of their employment. Examples of benefits-in-kind are:

- a) Free company car;
- b) Rented or hired equipment in the use of employment;
- c) Asset in the accommodation provided by the employer; and
- d) Electricity bills by the employer.

Suffice it to say that any employee living in official quarters would be liable to 5 per cent of the rate-able value of such quarters. Any benefit attracts tax chargeable at the rate of 5 per cent of the cost of such assets such as furniture, and fittings and official car, or the market value of the asset the time of the acquisition (if cost cannot be ascertained). Meals generally provided in any canteen, non-assignable luncheon vouchers, protective clothing and removable expenses are not taxable.

For the purpose of clarity, “ gross emoluments “ as per the new subsection (2) of Section 33 of the Principal Act as amended, , means “ wages, salaries, allowances (including benefits-in-kind), gratuities, superannuation and any other incomes derived solely by reason of employment.

5.8. ALLOWABLE AND NON-ALLOWABLE DEDUCTIONS

5.8.1 Allowable Deductions

In ascertaining the income derived from sole proprietorship, vocation, profession or any other trading concern or self-employment, the Personal Income Tax Act Cap P8 LFN 2004 stipulates the following allowable expenses:

- a) a sum payable by way of interest;
- b) rent for that period;
- c) any expense incurred for repair of premises, plant or fixtures or renewal;
- d) bad debts or doubtful debt provision to the extent to which it is specific; and
- e) expenses on research.

5.8.2 Non-Allowable Deductions

These include:

- a) Private expenses;
- b) Capital withdrawn from trades and any expenditure of a capital nature;
- c) Any loss or expenses recoverable under an insurance or contract of indemnity.
- d) Depreciation of asset;
- e) Defalcations or pilferage by the employees so far as they are recoverable under an insurance policy;
- f) Any reserve or appropriations of profits not allowed;
- g) Tax penalties, traffic offence penalties;
- h) Withdrawal of stock for private purpose is not allowed. The market value of such is added back;
- i) Entertainment expenses unless in respect of customers;
- j) Expenses of travelling from home to office by the employees are not allowed. Travelling expenses while at work or between offices are allowed; and
- k) Donations are not allowed unless they are for benefit of the employees or to approved charitable organizations as stated in the statutes.

5.9. RELIEFS AND ALLOWANCES

In arriving at the taxable or chargeable income, reliefs and allowances are granted against the statutory total income which is the addition of the earned and unearned income. The reliefs and allowances are as follows:

5.9.1 Consolidated Relief Allowance

Every individual is entitled to a Consolidated Relief Allowance of ₦ 200,000 subject to a minimum of 1 % of gross income, whichever is higher, plus 20% of the gross income.

5.9.2 Life Assurance Allowance

Tax relief is usually granted in respect of the premium paid by the taxpayer or his spouse on life insurance policy. There is no more limit on the amount claimable on life assurance. Any premium paid is fully allowed.

5.9.3 General Charges

These are allowable deductions for tax purposes. They include:

- a. Professional Subscription.
Any subscription paid to a professional body is allowed
- b. Mortgage loan interest
Any interest on a mortgage loan obtained for the purpose of building an owner-occupier structure is treated as a general charge.

5.9.4. Deductions that are Tax Exempt

Paragraph 2 of the new Sixth Schedule has specified the deductions which are tax exempt.

These are:

- a) National Housing Fund Contribution
- b) National Health Insurance Scheme
- c) Life Assurance Premium
- d) National Pension Scheme
- e) Gratuities

After granting the Consolidated Relief Allowance and deductions that are tax exempt from the gross emoluments of an employee, the balance of income shall be taxed as follows:

- i) First ₵ 300,000 @ 7 % (Seven per cent)
- ii) Next ₵ 300,000 @ 11% (Eleven per cent)
- iii) Next ₵ 500,000 @ 15% (Fifteen per cent)
- iv) Next ₵ 500,000 @ 19% (Nineteen per cent)
- v) Next ₵ 1,600,000 @ 21% (Twenty one per cent)
- vi) Above ₵ 3,200,000 @ 24% (Twenty four per cent)

5.10 PERSONAL RELIEFS UNDER GHANA TAXATION

A tax relief is a legally approved deductible allowance intended to reduce one's taxable income and thereby lessen the tax burden. It is intended to cushion the effect of tax on the individual and to make it bearable for him/her to pay the tax. The relief is based on the individual's circumstances and the equity principles earlier mentioned are applied. The Assessable Income of an individual for a year of assessment shall be reduced by the following amounts:

5.10.1 Marriage Relief: ₵300,000 in the case of an individual with a dependent spouse or at least two dependent children. Only one spouse is entitled and the relief will only be granted on production of a marriage certificate or certified copy of the registration of the marriage to support the claim. Dependent child, spouse or relative in respect of an individual means a child, spouse or relative of the individual for whom that individual provides the necessities of life and who does not have income for the year of assessment exceeding ₵200,000.

5.10.2.Disabled Relief: 25% of that individual's assessable income from any business or employment in the case of a disabled individual.

5.10.3 Old Age Relief: the lesser of ₵300,000 or the total income in the case of an individual who is 60 or more years of age and derives an assessable income during the year from an employment or business.

5.10.4 Children's Education Relief: ₵240,000 per child or ward in the case of an individual's children or wards in any recognized registered educational institution in Ghana. The individual may only claim a relief in respect of three children or wards. Where two or more persons qualify in respect of the same child or ward, only one relief shall be granted. The

relief will be granted only on the production of a certificate issued by the Head of the educational institution concerned, stating that the child or ward is a pupil of that institution.

5.10.5 Aged Dependants Relief: ₵200,000 in the case of an individual with a dependant relative, other than a child or spouse, who is 60 or more years of age. This relief may be claimed in respect of two dependant relatives. Where two or more persons qualify in respect of the same relative, only one relief shall be granted.

5.10.6 Training and Development Relief: ₵500,000 of the cost of training in the case of an individual if it is to update the professional, technical or vocational skills or knowledge of that individual.

5.10.7 Life Assurance Relief: - The assessable income of an individual for a year of assessment shall be reduced by any insurance premium paid by that individual in Ghana currency during a basis period ending within the year to a person carrying on Life insurance business in Ghana with respect to insurance on the individual's life. The amount to be allowed shall not exceed the lesser of:

- (a) 10% of the sum assumed or
- (b) 10% of the individual's total assessable income for the year less any deduction for a contribution made to a retirement fund

5.11 TAXABLE INCOME OF AN INDIVIDUAL IN LIBERIA

Taxable income of individual for a tax year is that person's gross income less

- b. items of income specifically excluded;
- c. the amount of deductions allowed; and
- d. the amount of personal allowances granted to the taxpayer and dependants.

Gross Income: This is the aggregate of economic benefits the taxpayer derives during a tax year. These include:

- (i) earnings from employment, including benefits received in the form of non cash property;
- (ii) income from business, profession, vocation, trade or proprietorship;
- (iii) interest, rents, royalties, and dividends;
- (iv) payments received under a pension, retirement, or annuity arrangement;
- (v) distributions from a trust or an estate; and
- (vi) gains on the disposition of a property (whether real or personal, tangible or intangible) used in a business or held for investment, but not gains from the sale of property held for personal use unless the amount derived from the sale is \$1,600,000 or more.

Residents and Non residents

The gross income of a resident includes all economic benefits regardless of the source. The gross income of a non resident includes only those economic benefits having a source in Liberia, and is subject to Liberian tax.

Taxable Persons

Tax is imposed on the income of the following categories of persons:

- a) Resident Natural Persons: Tax is imposed on the income of every natural person resident in Liberia for a tax year determined in accordance with the following rate schedule:

	If the Taxable Income is				
1		Up to but not over	12,000	2%	
2	12,001	Up to but not over	50,000	240 + 5%	Of excess over 800,0000
3	50,001	Up to but not over	100,000	2,140 + 10%	Of excess over 800,0000
4	100,001	Up to but not over	200,000	7,140 + 15%	Of excess over 800,0000
5	200,001	Up to but not over	400,000	22,140 + 20%	Of excess over 800,0000
6	400,001	Up to but not over	800,000	62,140 + 25%	Of excess over 800,0000
7	800,001	Up to but not over	1,200,000	162,140 + 30%	Of excess over 800,0000
8	Over 1,200,000			282,140 + 35%	Of excess over 1,200,000

If a natural person files an income tax return, or a turnover tax return and that person is a partner in a partnership or a beneficiary of a trust that pays tax, the amount of tax paid by the partnership or trust is creditable against tax owed by the partners or the beneficiaries and is apportioned among them in accordance with their interests in the partnership or their interest in the trust.

- b) Other Resident Persons: The annual taxable income of every other person resident in Liberia for a tax year is taxed at thirty five percent (35%), except that life insurance companies, or mixed type insurance companies that will be taxed at thirty percent (30%) or more of their business from life insurance.

Incomes Exempted from Tax in Liberia

- (a) Sickness, Disability, or Death Benefits: Payments received on account of illness, injury, or death of a natural person, are excluded from income of the recipient. These include amounts received as a proceed of health insurance or disability insurance or benefits; as damages for or in settlement of a claim of damages for injury to a natural person; or as proceeds of a life insurance policy or as a death benefit.
- (b) Gifts and Transfers by Death: Property received by way of donation or transfer by death is excluded from the income taxable in the hands of the recipient.
- (c) Benefits in Kind: Benefits provided by an employer, not in cash, to an employee are valued at 100% of fair market value and are excluded from the income of the employee if the value does not exceed \$100,000 per tax year.

- (d) Government Obligations: Interest on an obligation issued by the Republic of Liberia and declared by the Government to be tax exempt obligation is excluded from the income of the holder of the obligation.
- (e) Personal-use Property: Gains from the sale of personal-use property are exempted from tax unless the amount is equal to or more than \$1,600,000.
- (f) Interest for small savers: Interest of less than \$200 per year is excluded from income and is not subject to tax withholding.

Allowable Deductions

The following are deductions allowed for generating income:

- (a) Expenses reasonably incurred in generating income during the tax year
- (b) Losses incurred in a business during the tax year, including a loss from the disposition of property used in a business, provided the loss is not compensated for by insurance. Such losses are available for deduction from profit of the business in subsequent years but such carry forward is not allowed after the fifth succeeding tax year.
- (c) Bad Debts: Deduction for bad debts is allowed provided
 - (i) the amount was previously included in gross income; and
 - (ii) if it is a financial institution, agreed with the rules and regulations of the Central Bank of Liberia.

Non Allowable Deductions

- (a) Personal expenses
- (b) Any expenditure of a capital nature. Capital expenditure means the cost of property or services with useful life of more than one year, unless the value is less than \$5,000.
- (c) Any expense in respect of income not included in the gross income
- (d) Any amount inform of Liberian or foreign income tax, fines or penalties imposed by law, or for bribes
- (e) Any expense for which the taxpayer is unable to adequately substantiate.

FORMAT FOR COMPUTATION OF CHARGEABLE INCOME IN NIGERIA

The Sixth Schedule of the Personal Income Tax (Amendment) Act, 2011, introduced the following format:

	₦	₦
Consolidated Salary/Gross Emoluments		xx
Less:		
(i) Consolidated Relief Allowance (CRA)	x	
(ii) National Housing Fund Contribution (NHF)	x	
(iii) National Health Insurance Fund Contribution (NFI)	x	

(iv) Life Assurance Premium (LAP)	x	
(v) Gratuities	x	
(vi) National Pension Scheme	<u>x</u>	<u>xx</u>
Chargeable Income		<u>xx</u>

Table of Tax for Nigeria is as follows:

Tax Income Rates (Tax Band) is as follows:

- First ₦300,000 at 7%
- Next ₦300,000 at 11%
- Next ₦500,000 at 15%
- Next ₦500,000 at 19%
- Next ₦1,600,000 at 21%
- Above ₦3,200,000 at 24%

FORMAT FOR COMPUTING OF CHARGEABLE INCOME FROM EMPLOYMENT IN GHANA

	c	c
Basic Salary		xxx
Add: Cash Allowances:		
Inconvenience Allowance	xxx	
Responsibility Allowance	xxx	
Risk Allowance	xxx	
Child Education Allowance	<u>xxx</u>	<u>xxx</u>
Total Cash Emoluments (TCE)		xxx
Add: *Car Element (% of TCE)	xxx	
Rent Element (% of TCE)	<u>xxx</u>	<u>xxx</u>
Assessable Income		xxx
Less: Reliefs		
Social Security (5% of Basic Salary)	xxx	
Marriage	xxx	
Children's Education	xxx	
Aged Dependants	xxx	
Old Age	xxx	
Professional Training	xxx	

Disabled Person	xxx	
Life Insurance	<u>xxx</u>	<u>xxx</u>
		xxx
Add: Non-Cash Benefits		
Cooking Gas	xxx	
Toilet Rolls	xxx	
Drinks	<u>xxx</u>	<u>xxx</u>
Chargeable Income		<u>xxx</u>

Table of Tax for Ghana is as below:

The rate of personal income tax is as follows (with effect from 1 January 2006)

2006 PERSONAL INCOME TAX RATES

ANNUAL

	Chargeable Income	Rate	Tax	Cumulative Income	Cumulative Tax
	C	%	C	C	C
First	2,400,000	Free	-	2,400,000	-
Next	2,400,000	5	120,000	4,800,000	120,000
Next	12,000,000	10	1,200,000	16,800,000	1,320,000
Next	79,200,000	17.5	13,860,000	96,000,000	15,180,000
Exceeding	96,000,000	25			

MONTHLY

	Chargeable Income	Rate	Tax	Cumulative Income	Cumulative Tax
	C	%	C	C	C
First	200,000	Free	-	200,000	-
Next	200,000	5	10,000	400,000	10,000
Next	1,000,000	10	100,000	1,400,000	110,000
Next	6,600,000	17.5	1,155,000	8,000,000	1,265,000
Exceeding	8,000,000	25			

5.12 PENSIONS AND GRATUITIES

5.12.1 Pension

Pension is always received after leaving employment where the taxpayer has been in service for more than 5 years, any sum withdrawn or received by an employee from a pension, product or other approved retirement benefits funds are exempted from tax.

5.12.2 Gratuities

With effect from 1 January 1996, any gratuities received by employee either in the public or private sector are no more subjected to tax in Nigeria. Gratuity is viewed as a sort of reward for work performed by employee during his tenure of office.

5.12.3 Redundancy Benefits or Compensation for loss of Office

Any amount received as redundancy benefits is not taxable in the hands of the recipient.

5.13 TAXATION OF INCOMES OF COMMUNITIES AND FAMILIES

5.13.1 Income of a Community.

According to Personal Income Tax, Act P8 LFN 2004, tax is imposed for any year only in line with the law of that territory in which the community is situated. The tax may be charged on either of the following:

- a. The amount of any communal income that is impracticable to apportion with certainty between its members; or
- b. The estimated total income of those of its members whose income is difficult to assess individually in the opinion of the relevant tax authority; or
- c. The estimated total income of all the members of the community.

5.13.2 Families Income

In a case of families income in which the several interests of family members are uncertain, tax is usually imposed only by the territory in which the member of that family who, by custom, receives that income resides in the first instance in Nigeria.

5.14 FILING OF RETURNS

5.14.1 Chargeable Person

This taxable person is answerable to all tax matters and is expected to file returns.

In Nigeria, apart from an individual whose total income does not exceed ₦300,000, all other taxpayers are expected to file tax returns annually to the relevant tax authority. It is important to note that the ₦300,000 exempt income relates to earned income which is made up of employees basic salary, plus allowances and other remuneration derived from employment. The minimum tax of 1% of total income is always payable.

5.14.2 Procedure for Filing Returns

As stated above, every taxable person (apart from individual whose total income is below ₦300,000) is expected without notice or demand to prepare and deliver a true and correct statement in a specified form of his total income from all sources together with the particulars applicable to him for the granting of reliefs, allowances etc. This income tax return contains a declaration which should be signed by the taxpayer to the effect that a true and correct statement of his affairs has been rendered.

Every taxable person is expected to file returns within 90 days from the commencement of every year of assessment. Where a return has been delivered by the taxpayer, the relevant tax authority may accept the return and make assessment accordingly. Alternatively, in the absence of a satisfactory return, refuse to accept the return and, determine the right assessable income to the best of its judgment. However, a taxpayer who is aggrieved by the income tax assessment may file an appeal in writing.

Illustration 5.1

Mallam Sule Yusuf is an employee of Temidire Ltd. His salary is ₦ 500,000 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 Ltd. 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 ₦6,000 on his aged father and ₦7,000 on his aged mother. Both have no source of income due to old age
- c. He was retired on 31 December 2010 and was paid a gratuity of ₦300,000
- d. He was also paid a lump sum of ₦ 100,000 for loss of office.

Required:

Compute his tax liability for the relevant year of assessment.

SUGGESTED SOLUTION TO ILLUSTRATION 5.1

Mallam Sule Yusuf

Computation of Tax Liability For 2010 Assessment Year

Gross Income:	₦	₦
Salary		500,000
Benefits in kind:		
Company accommodation	180,000	
Official car	<u>100,000</u>	280,000
Gratuity		<u>300,000</u>
Gross Income		1,080,000

Reliefs:

(i) Consolidated Relief Allowance		
(₦ 200,000+20% of ₦1, 080,000)	416,000	
(ii) Gratuity	300,000	
(iii) Life Assurance Relief	30,000	
(iv) Contribution to Pension Scheme	<u>12,000</u>	<u>758,000</u>
Chargeable Income		<u>322,000</u>

Tax Payable	₦	₦
First	300,000 @ 7%	21,000
Next	<u>22,000</u> @ 11%	2,420
	<u>322,000</u>	
Tax payable		<u>23,420</u>

5.15 TAXABLE INCOME OF INDIVIDUALS IN LIBERIA

Taxable income of individual for a tax year is that person's gross income less

- items of income specifically excluded;
- the amount of deductions allowed; and
- the amount of personal allowances granted to the taxpayer and dependants.

5.15.1 Gross Income: This is the aggregate of economic benefits the taxpayer derives during a tax year. These include:

- a) earnings from employment, including benefits received in the form of non cash property;
- b) income from business, profession, vocation, trade or proprietorship
- c) interest, rents, royalties, and dividends
- d) payments received under a pension, retirement, or annuity arrangement;
- e) distributions from a trust or an estate,
- f) gains on the disposition of a property (whether real or personal, tangible or intangible) used in a business or held for investment, but not gains from the sale of property held for personal use unless the amount derived from the sale is \$1,600,000 or more.

5.15.2 Residents and Non residents

The gross income of a resident includes all economic benefits regardless of the source. The gross income of a non resident includes only those economic benefits having a source in Liberia, and is subject to Liberian tax.

5.15.3 Taxable Persons

Tax is imposed on the income of the following categories of persons:

- a. **Resident Natural Persons:** Tax is imposed on the income of every natural person resident in Liberia for a tax year determined in accordance with the following rate schedule:

	If the Taxable Income is				
1		Up to but not over	12,000	2%	
2	12,001	Up to but not over	50,000	240 + 5%	Of excess over 800,0000
3	50,001	Up to but not over	100,000	2,140 + 10%	Of excess over 800,0000
4	100,001	Up to but not over	200,000	7,140 + 15%	Of excess over 800,0000
5	200,001	Up to but not over	400,000	22,140 + 20%	Of excess over 800,0000
6	400,001	Up to but not over	800,000	62,140 + 25%	Of excess over 800,0000
7	800,001	Up to but not over	1,200,000	162,140 + 30%	Of excess over 800,0000
8	Over 1,200,000			282,140 + 35%	Of excess over 1,200,000

If a natural person files an income tax return, or a turnover tax return and that person is a partner in a partnership or a beneficiary of a trust that pays tax, the amount of tax paid by the partnership or trust is creditable against tax owed by the partners or the beneficiaries and is apportioned among them in accordance with their interests in the partnership or their interest in the trust.

- (b) **Other Resident Persons:** The annual taxable income of every other person resident in Liberia for a tax year is taxed at thirty five percent (35%), except that life insurance companies, or mixed type insurance companies that will be taxed at thirty percent (30%) or more of their business from life insurance.

5.15.4 Income Exempted from Tax in Liberia

- (a) **Sickness, Disability, or Death Benefits:** Payments received on account of illness, injury, or death of a natural person, are excluded from income of the recipient. These include amounts received as a proceed of health insurance or disability insurance or benefits; as damages for or in settlement of a claim of damages for injury to a natural person; or as proceeds of a life insurance policy or as a death benefit.
- (b) **Gifts and Transfers by Death:** Property received by way of donation or transfer by death is excluded from the income taxable in the hands of the recipient.
- (c) **Benefits in Kind:** Benefits provided by an employer, not in cash, to an employee are valued at 100% of fair market value and are excluded from the income of the employee if the value does not exceed \$100,000 per tax year.
- (d) **Government Obligations:** Interest on an obligation issued by the Republic of Liberia and declared by the Government to be tax exempt obligation is excluded from the income of the holder of the obligation.
- (e) **Personal-use Property:** Gains from the sale of personal-use property are exempted from tax unless the amount is equal to or more than \$1,600,000.
- (f) **Interest for small savers:** Interest of less than \$200 per year is excluded from income and is not subject to tax withholding.

5.15.5 Allowable Deductions

The following are deductions allowed for generating income:

- (a) **Expenses** reasonably incurred in generating income during the tax year
- b) **Losses** incurred in a business during the tax year, including a loss from the disposition of property used in a business, provided the loss is not compensated for by insurance. Such losses are available for deduction from profit of the business in subsequent years but such carry forward is not allowed after the fifth succeeding tax year.
- (c) **Bad Debts:** Deduction for bad debts is allowed provided
 - (i) the amount was previously included in gross income; and
 - (ii) if it is a financial institution, agreed with the rules and regulations of the Central Bank of Liberia.

5.15.6 Non Allowable Deductions

- (a) Personal expenses
- (b) Any expenditure of a capital nature. Capital expenditure means the cost of property or services with useful life of more than one year, unless the value is less than \$5,000.
- (c) Any expense in respect of income not included in the gross income
- (d) Any amount in form of Liberian or foreign income tax, fines or penalties imposed by law, or for bribes
- (e) Any expense for which the taxpayer is unable to adequately substantiate.

5.16 SETTLEMENTS, TRUSTS AND ESTATES

5.16.1 Settlements

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.

5.16.2 Trusts

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.

5.16.3 Estates

Estate is the aggregate of the properties possessed by a person, including his/her goods, money etc. or other types of property.

5.16.4 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 i.e. 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:
 - (g) A **Specific Legatee** is named in a will to receive a particular thing (e.g. black horse); and
 - (h) A **Residual Legatee** is a person who receives the residue (i.e. the remainder; what is left) of the personal property after specific legacies have been settled.
- (i) **“Devisee”** is a person who receives real property under a Will.
- (j) **“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.
- (k) **“Life Tenant”** is the person(s) who has a right to the income or property held in trust for life.
- (l) **“The Remainder Man”** is the person(s), who has the right to the capital of the settlement when the life interest terminates.
- (m) **“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.

5.16.5 Persons Chargeable

The persons liable to pay the tax due from Settlements, Trusts and Estate include:

- (a) The beneficiary including any annuitant
On their proportion of the share of income from the settlement or estate.
- (b) The Trustee or Executor
On the remainder, if any, after deducting all amounts apportioned to beneficiaries.
- (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.

5.16.6 Basis Period

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.

5.16.7 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.

5.16.8 Computed Income

The Computed income of a Settlement, Trust or Estate is simply the difference between the Total income and 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 authorized by the Trust deed or Will.
- (b) Any fixed annuity paid out of income under the deed or Will.

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.

5.16.9 Capital Allowances - Deceased Individuals

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.

5.16.10 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.

5.16.11 Discretionary Payments

These are fixed amounts payable to direct beneficiary or beneficiaries as authorized by the Trust deed. A trustee or executor has no power to make discretionary payments to the beneficiaries unless authorized by the instrument appointing him. Where the instrument authorizes 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.

5.16.12 Infants' Income under a Settlement

Income from any Settlement or Trust paid to an infant (who is unmarried) child of the Settler during the lifetime of the settler is treated as the income of the settler 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 settler does not exceed N500, it shall not be treated as the income of the Settler. If the Settler 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 Settler shall not be treated as the income of the Settler.

5.16.13 Special Provisions as to Settlement on Unmarried Children

Where, by virtue or in consequence of a Settlement and during the life of the settler, an income is paid to or for the benefit of a child of the settler 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 settler for that year and not as the income of any other person.

Income paid to or for the benefit of a child of a settler 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 (N500).

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 settler in the future (where on the fulfillment 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 settler 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 settler, 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 settler 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 settler 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 settler (paragraph 4 of this Schedule) shall, subject to the provisions of this paragraph, have effect in relation to each settler as if he were the only settler.

In the case of a settlement as aforesaid, income originating from that settler or person may, for the purposes of paragraph 4 of this Schedule, be taken into account, in relation to any settler, as income paid by virtue or in consequence of the settlement to or for the benefit of a child of the settler.

5.16.14 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.

5.16.15 Assessable Income and Tax

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 to 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 settler or person creating the trust, as the case may be, if:

- (a) That settler 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 settler or person makes use, directly or indirectly, by borrowing or otherwise, of any part of the income arising under the settlement or trust, or
- (c) The Settlement or Trust is revocable in circumstances whereby that settler 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 settler, or person, or the spouse thereof, in the event of a beneficiary pre-deceasing that settler 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 course 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 amount 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.

5.16.16 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.

5.17 TAXATION OF INVESTMENT INCOME

5.17.1 Introduction

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.

5.17.2 Basis of Assessment

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.

5.17.3 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 (PITA) 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

5.17.4 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.

5.17.5 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.

5.17.6 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.

5.17.7 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; and

- (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 dividend 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 Nigeria 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.

5.17.8 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 foreign company or person regardless of what form the payment takes and wherever the payment is made.

5.17.9 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.

5.17.10 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.

5.17.11. 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 1/1/96, 100% of certain foreign incomes are exempted from tax provided that such incomes are repatriated into Nigeria in convertible currency and paid into a domiciliary account in a bank approved by government. Income falling into this category include interest earned from abroad and brought into Nigeria by a Nigeria resident;
- (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 1st Jan. 1997 to a person engaged in:
- (i) agricultural trade or business;
 - (ii) the fabrication of any local plant and machinery; and
 - (iii) as working capital for any cottage industry established by the person under the Family Economic Advancement Programme, if the moratorium is not less than 18 months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted

5.17.12 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.

5.17.13 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.

5.17.14 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.

5.17.15 Disallowable Expenses

These include:

- (a) Any expenses not incurred for the purpose of earning rental income;
- (b) Any expenditure of capital nature;
- (c) Depreciation of the building; and
- (d) Appropriation of profit including income tax, drawings, reserves, etc.

5.17.16 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.

Royalties are often expressed as a percentage of the revenues obtained using the owner's property, but can be negotiated to meet the specific needs of an arrangement. The use of royalties is common in situations where an inventor or original owner chooses to sell their product to a third party in exchange for royalties from the future revenues it may generate.

5.17.17 Royalty 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 Government.

5.17 CHAPTER SUMMARY

This chapter explains with appropriate illustrations the various aspects of Personal Income Tax, namely sources of income, allowable and non-allowable deductions, reliefs, benefits in kind for individuals, and taxation of income of communities and families. The regulations relating to filing of Returns were also examined.

Additionally, this chapter provided a detailed explanation of the various investment incomes including, dividend, interest, rent and royalty. It also highlights investment incomes that are tax exempt.

MULTIPLE-CHOICE QUESTIONS

1. Unearned income means
 - A Income received by way of gift
 - B Income from trade, business, profession and employment of a person
 - C Income from business only
 - D Income from other sources (apart from trade, business, vocation or employment) such as rent, dividend, etc
 - E Income from employment only

2. In computing the gain or profit from rental income for tax purposes, the following expenses are allowable deductions **EXCEPT**
 - A Tenement rates
 - B Water rates
 - C Commission paid to agent
 - D Bad debt incurred
 - E Depreciation of the building

3. Benefits-in-kind is
 - A The official non-monetary remuneration of an employee
 - B The remuneration of the management staff
 - C The official allowance of the management staff
 - D The official end of year bonus of employee
 - E Benefits from different angles

4. 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 is called

 - A Trust
 - B Estate
 - C Settlement
 - D Annuity
 - E Investment

5. Personal Income Tax in Nigeria covers the following **EXCEPT**
 - A Taxation of employees
 - B Taxation of sole traders
 - C Taxation of small limited liability company
 - D Partnership assessment
 - E Taxation of Estate, Trusts and Settlement

SHORT ANSWER QUESTIONS

1. Under Personal Income Tax (Amendment) Act 2011, an employee living in official quarters would be liable to of the rateable value of such quarter.

- 2 Private expense is deduction for tax purposes.
- 3 Refund of dental expenses to an employee is from tax.
- 4 A person who receives a gift of personal property by Will is known as.....
- 5 The person who has a right to the income or property held on trust for life is called.....

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

- 1 5%
- 2 Disallowable
- 3 Exempt.
- 4 Legatee
- 5 Benefits-In Kind

WORKED EXAMPLES.

QUESTIONS

1. Mr. Prince Agamatey has been employed as the Administrative Manager of Beo Security Systems Limited on a consolidated salary of C10,000,000 per month. In addition, he is paid professional allowance of C1,000,000 as well as risk allowance of C500,000. He also enjoys responsibility allowance of C1,500,000.
Mr. Agamatey has been provided with furnished accommodation and a saloon car. He contributes to the Social Security Fund.

Required:

Determine Mr. Agamatey's taxable pay for the month.

2. Mr. David Boateng was employed by Good Works Associates as a Consultant on a consolidated monthly salary of C10,000,000. He also enjoys Child Education Allowance of C1,000,000, Responsibility allowance of C1,500,000 and General Service allowance of C500,000, all monthly. He was given non-cash benefit valued at C500,000 a month.

Mr. Boateng is also provided with furnished accommodation in respect of which he pays rent of C1,000,000 a month to his employers. He was given a car and was supplied with fuel. He contributes to the social security fund.

Mr. Boateng is married with three children who are in second cycle educational institutions in Ghana and also takes care of his mother who is 75 years old.

Required:

Determine Mr. Boateng's annual chargeable income.

3. In relation to provisions of the Second schedule to PITA 2004 as amended, **you are required** to explain briefly the following:

- (a) Settlement;
- (b) Trust;
- (c) Estate;
- (d) Settlor; and
- (e) Will.

4. Baba Ali Musa is the Trustee of a Settlement made by late Mallam Junaid Dikko in favour of his four children, grand children and others. He submitted the following information to the Zamfara State Board of Internal Revenue for assessment purposes for the fiscal year ended 31 December 2013:

	₦
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	450,000
2% of total Computed Income	
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 allowances agreed with relevant tax authority - N4,200,000.

Required:

- (a) Compute The Net income assessable in the hands of the trustee.
- (b) Assessable income in the hands of the each beneficiary

5. Mr. Chukwuemeka Okoye completed the construction of his building, a two wing duplex located in Gwagwalada, Abuja on 31 December 2011. He rented out both flats with effect from 1 January 2012 through an estate agent for an in and received rent for two years. He made available the following details of his income and expenses for the period of the rental:

	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 allowance agreed with the relevant tax authority for 2012 and 2013 were ₦480,000 and ₦120,000.
- (ii) Repairs and maintenance comprised:
- | | | |
|---------------------------------------|---------|---------|
| Depreciation | 100,000 | 85,000 |
| Repairs of tenant's bathroom | | 180,000 |
| Repairs of Mr. Chukwuemeka's resident | 120,000 | 185,000 |
- (iii) Tenement rate includes tenement rate of ₦5,000 and ₦12,000 paid on the private residence of Mr. Chukwuemeka for 2012 and 2013.

Required:

Compute the amount of rental income assessable to tax for the relevant tax years.

SUGGESTED SOLUTIONS

1. Mr. Prince Agamatey

Determination of Taxable Pay

	€	€
Consolidated Basic Salary		10,000,000
Add: Professional allowance	1,000,000	
Risk allowance	500,000	
Responsibility allowance	<u>1,500,000</u>	
		<u>3,000,000</u>
Total Cash Emoluments		13,000,000
Add: Rent element (15% x C13,000,000)	1,950,000	
Car element (7.5% x C13,000,000)		
= C975,000 Restricted to	<u>150,000</u>	
		<u>2,100,000</u>
Total Income		15,100,000
Less: Social Security Contribution		
(5% x C10,000,000)		<u>500,000</u>
Taxable Pay		<u>14,600,000</u>

2. Mr. David Boateng

Determination of Annual Chargeable Income

	€	€
Consolidated Basic Salary (€10,000,000 x 12)		120,000,000
Add: Child Education allowance (€1,000,000 x 12)	12,000,000	
Responsibility allowance (€1,500,000 x 12)	18,000,000	
General Service allowance (C500,000 x 12)	<u>6,000,000</u>	
		<u>36,000,000</u>
Total Cash Emoluments		156,000,000
Add: Rent element (15% x C156,000,000)	23,400,000	
Less: Rent paid to employer (C1,000,000 x 12)	<u>12,000,000</u>	
	11,400,000	
Car element (15% x C156,000,000) = C23,400,000 Restricted to	<u>3,600,000</u>	
		<u>15,000,000</u>
Total Income		171,000,000
Less: Social Security Contribution (5% x C120,000,000)	6,000,000	
Marriage Relief	300,000	
Children's Education Relief (C240,000 x 3)	720,000	
Aged Dependants Relief	<u>200,000</u>	
		<u>(7,220,000)</u>
		163,780,000
Add: Non-Cash Benefit (C500,000 x 12)		<u>6,000,000</u>
Chargeable Income		<u>169,780,000</u>

3. (a) **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.
- (b) **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.
- (c) **Estate:** Estate is the aggregate of the properties possessed by a person, including his/her goods, money etc. or other types of property.
- (d) **Settler:** 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.

4.

(a) **MALLAM JUNAID DIKKO SETTLEMENT**

COMPUTATION OF ASSESSABLE INCOME IN THE HAND OF THE TRUSTEE FOR 2014 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 allowances	<u>(4,200,000)</u>	13,800,000
Miscellaneous income		<u>3,200,000</u>

Total Computed Income		33,000,000
Allowable expenses:		
Trustee's remuneration:		
Fixed	450,000	
Variable– 2% of Computed Income (2% x ₦33,000,000)	660,000	
Fixed annuity to grandchildren:		
Aminat	50,000	
Danladi	30,000	
Admin expenses	<u>2,600,000</u>	<u>(3,790,000)</u>
Net Computed Income		29,210,000
Less: discretionary payments:		
Wakilu	150,000	
Aishat	200,000	
Illyasu	250,000	
Badamasi	<u>180,000</u>	<u>(780,000)</u>
Amount available for distribution		28,430,000
Less: Distribution: ($\frac{2}{3}$ x ₦28,430,000)		
Wakilu	3,158,888	
Aishat	3,158,889	
Illyasu	3,158,889	
Badamasi	3,158,889	
Aminat	3,158,889	
Danladi	<u>3,158,889</u>	<u>(18,953,333)</u>
Net Distributed Income		9,476,667
Franked Investment Income:		
Dividend (Gross)		<u>(8,000,000)</u>
Balance assessable in the hands of the Trustee		<u>1,476,667</u>

(b) **MALLAM JUNAID DIKKO SETTLEMENT**

COMPUTATION OF ASSESSABLE INCOME IN THE HANDS OF EACH BENEFICIARY

	Wakil	Aisha	Illyasu	Badamasi	Aminat
Danladi					
N	N	N	N	N	N
Fixed annuity 30,000	0	0	0	0	50,000
Discretionary payment 0	150,000	200,000	250,000	180,000	0
Distributed income <u>3,158,889</u>	<u>3,158,888</u>	<u>3,158,889</u>	<u>3,158,889</u>	<u>3,158,889</u>	<u>3,158,889</u>
Beneficiary's Assessable Income	<u>3,308,888</u>	<u>3,358,889</u>	<u>3,408,889</u>	<u>3,338,889</u>	<u>3,208,889</u>
<u>3,188,889</u>					

5.

Mr. Chukwuemeka Okoye
Computation of Rental Income Assessable to Tax in 2013 and 2014
Assessment Years

	2013		2014	
	N	N	N	N
Rent received		3,500,000		3,500,000
Less: Allowable Expenses:				
Repairs and maintenance				
Repairs of tenant's bathroom	0		180,000	
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	<u>20,000</u>	<u>(622,000)</u>	<u>20,000</u>	<u>(879,000)</u>
Assessable rent		2,878,000		2,621,000
Capital allowances		<u>(480,000)</u>		<u>(120,000)</u>
Chargeable rent		<u>2,398,000</u>		<u>2,501,000</u>

CHAPTER SIX

TAXATION OF INCOMES OF PARTNERS IN PARTNERSHIPS

CHAPTER CONTENTS

- a) Introduction
- b) Treatment of Losses and Profits
- c) Loss Relief
- d) Amalgamation of Partnerships
- e) Conversion into a Limited Liability Company
- f) Taxation of Partnerships under Ghana Tax Law
- g) Chapter Summary

LEARNING OBJECTIVES

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

- a) know what constitutes the income of a partner for taxation purposes;
- b) know the treatment of profits and losses in partnerships;
- c) understand the tax implications of amalgamation of partnerships; and
- d) determine the tax implications of conversion of a partnership into a limited liability company.

6.0 INTRODUCTION

Partnership is defined by Partnership Act 1893 “as a relationship which subsists between persons that carry on a business in common with a view to making profit”. A partnership cannot be subjected to taxation, it is the incomes of the individuals making up the partnership that can be separately subjected to taxation under the Personal Income tax LFN 2004 1993 (as amended)

6.1 TREATMENT OF LOSSES AND PROFITS

The following are chargeable to tax in the hands of a partner in a partnership:

- a) Interest on Capital: it is 10% per annum if there is no agreement;
- b) Salaries of Partners;
- c) Leave Passages; and
- d) Share of Profit or Loss

The Partnership income is computed as the income of a sole trader. However, remuneration, interest on capital and cost of passages are allowed in the partnership account and taxed in the hands of the recipients accordingly. The partnership income arrived at after allowable deductions, is apportioned to each of the partners in accordance with the agreed profit (loss) sharing ratio.

6.2 LOSS RELIEF

In a situation where a partner incurs a loss as a result of the loss incurred by the partnership, such a loss is available for relief. However, where a partner incurred a loss, where the partnership has not incurred a loss, such a loss is not available for relief. The determination of the income or loss from a partnership of a partner is made by the relevant tax authority.

The relevant tax authority for a year of assessment is the tax authority of the territory in which the principal office or place of business of the partnership is situated on the first day of that year.

It is important to note that commencement rules apply to a situation where a new partner is admitted into a partnership and cessation rules apply to a situation where a partner resigns or retires or in a case of death of a partner. If the Partners so agree, the business can be regarded as an ongoing business without the commencement and cessation provisions.

6.3 AMALGAMATION OF PARTNERSHIP

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.

6.4 CONVERSION INTO 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 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.

Illustration 6.1

Segun and Sanni have been in partnership (Sesa & Co) for many years. The principal office of Sesa & Co is in Abeokuta, Ogun State of Nigeria. Segun normally resides in Lagos whereas Sanni resides in Abeokuta. Accounts are made up to 31 August every year.

Required:

Determine the relevant tax authority in relation to the partnership stating the duties of the relevant tax authority in accordance with the relevant Nigerian tax law.

Suggested Solution 6.1

The relevant tax authority in relation to the partnership is the Ogun State Board of Internal Revenue since the principal place of the partnership business is in Abeokuta, Ogun State.

It is the duty of the Ogun State Board of Internal Revenue to request for a certified copy of the Partnership Deed or Agreement. It is also the duty of the Board to determine the partnership income or loss and its apportionment between the partners in any year of assessment.

The Board, having determined the partnership income or loss, supplies the other tax authority, the Lagos Board of Internal Revenue with the information regarding the income of the partner who is resident in Lagos State.

6.5 TAXATION OF PARTNERSHIPS UNDER GHANA TAX LAWS

In Ghana, a partnership is not liable to pay tax on the income of the partnership; rather the income of a partnership is taxed to the partners in the partnership. This is governed by sections 40 to 43 of the Internal Revenue Act, 2000 (Act 592). Partnership income is thus the assessable income of the partnership for the year from all sources. Capital allowance is granted to the partnership before the chargeable income is shared to the partners according to the share of partner's contributions.

It is interesting to note that losses incurred by the partnership are not shared among the members but carried forward and taken into account in ascertaining the partnership income of subsequent years. This is applicable where the persons are carrying on farming, manufacturing and mining business since these are the only sectors of operation entitled to carry forward losses.

A partner's share of partnership income shall be equal to the partner's percentage interest in the income of the partnership as set out in the partnership agreement. Where the allocation of income in the partnership agreement does not reflect the contribution of the partners to the partnership's operations, a partner's share of partnership income shall be equal to the partner's percentage interest in the capital of the partnership.

The following issues need to be addressed when the accounts of a partnership are being examined for tax purposes:

- Salary paid to a partner is a distributed profit, as partners cannot employ themselves. The amount involved should thus be added to the respective partner's income and taxed.
- Interest on capital is also treated likewise since partners cannot trade with themselves.

6.6 TAXATION OF INCOME OF PARTNERSHIPS IN LIBERIA

Generally in Liberia, a partnership is liable to pay tax on its income for the partnership's tax year. Income tax paid by the partnership is to the credit of the partners in proportion of their shares of partnership income.

A partner's interest in a partnership is treated as investment property of the partner.

The relationship between the partners is not determined by the presence or absence of a written agreement.

Taxation of Partners

The gross income of a partner includes the partner's share of the partnership income for the tax year. If the partnership records net operating loss for a tax year, the loss is not passed to the partners but is carried forward to future tax years of the partnership while the partnership's net investment loss is also carried forward to future tax years of the partnership.

6.7 TREATMENT OF CAPITAL ALLOWANCES OF A PARTNERSHIP

Capital allowances are computed and granted against the income of the Partnership just in the same way as any taxpayer, i.e. company or individual. It is not allocated to partners as in the case of a tax credit.

6.8 COMMENCEMENT AND CESSATION OF A PARTNERSHIP

It should be remembered that since a member of a partnership is treated as an individual taxpayer, all the rules regarding commencement and cessation of individual taxpayers do apply to members of the partnership wherever necessary.

Illustration 6.2: Where all partners commence business at the same time

Bowale and Ali met at the Abuja Keep Fit Club in 2000 and decided to form a partnership. They have been in partnership since then and share profits and losses equally. The adjusted profit of the partnership for the year ended 31/12/2010 was ₦20,000,000. Capital Allowance was also ₦5,000,000.

What will be the chargeable income of each partner?

Suggested Solution 6.2

	₦
Adjusted Profit for tax purposes	20,000,000
Deduct: Capital allowance claimable	<u>5,000,000</u>
Chargeable Income	<u>15,000,000</u>
Share of Chargeable Income:	
Bowale (50%)	7,500,000
Ali (50%)	<u>7,500,000</u>
	<u>15,000,000</u>

Illustration 6.3: Where One Partner commences and is joined later by another person

Anao has been in business for some time preparing accounts to 31 December each year. On 1 July 2010, Kayode joined as an equal partner. The chargeable income of the partnership for the year ended 31 December 2010 was ₦40,000,000. What will be the chargeable income of each partner, assuming that profits accrued evenly through the year?

Suggested Solution 6.3

The chargeable income from 01/01/10 to 30/06/10 accrues to Anao only, whereas that from 01/07/10 to 31/12/10 will be shared equally by the partners.

€

Anao:

Income from 01/01/10 – 30/06/10	
(i.e. 6/12 x €40,000,000)	20,000,000
Share of income from 01/07/10 – 31/12/10)	
(i.e. 50% x €20,000,000)	<u>10,000,000</u>
Total Chargeable Income	<u>30,000,000</u>

Kayode:

Share of income from 01/07/10 – 31/12/10)	
(i.e. 50% x €20,000,000)	<u>10,000,000</u>
Total Chargeable Income	<u>10,000,000</u>

Illustration 6.4: Cessation of business

Asante and Boafo have been in business for many years as equal partners, preparing accounts to 31st December every year. The adjusted profits of the firm were as follows:

Year ended	31/12/09	€200,000,000
Year ended	31/12/10	€400,000,000

Boafo withdrew from the partnership on 30/6/02. What will be the assessment of each partner for the relevant years?

Suggested Solution 6.4

Asante's Assessment:

2009 Year of Assessment; Basis Period 01/01/09- 31/12/09	€
Share of Chargeable Income (50% x €200,000,000)	<u>100,000,000</u>

2010 Year of Assessment; Basis Period 01/01/09 – 31/12/10	
Share of Chargeable Income [01/01/10 – 30/06/10]	
[50% x (6/12 x €400,000,000)]	100,000,000
Chargeable Income [01/07/10 – 31/12/10]	

(6/12 x ₦400,000,000)]	<u>200,000,000</u>
Total Chargeable Income	<u>300,000,000</u>

Boafo's Assessment:

2009 Year of Assessment; Basis Period 01/01/09- 31/12/09	₦
Share of Chargeable Income (50% x ₦200,000,000)	<u>100,000,000</u>

2010 Year of Assessment; Basis Period 01/01/09 – 30/06/10	
Share of Chargeable Income [01/01/10 – 30/06/10]	
[50% x (6/12 x ₦400,000,000)]	<u>100,000,000</u>

Generally in Liberia, a partnership is liable to pay tax on its income for the partnership's tax year. Income tax paid by the partnership is to the credit of the partners in proportion of their shares of partnership income.

A partner's interest in a partnership is treated as investment property of the partner.

The relationship between the partners is not determined by the presence or absence of a written agreement.

6.9 TAXATION OF INCOMES OF PARTNERS

The gross income of a partner includes the partner's share of the partnership income for the tax year. If the partnership records net operating loss for a tax year, the loss is not passed to the partners but is carried forward to future tax years of the partnership while the partnership's net investment loss is also carried forward to future tax years of the partnership.

6.10 CHAPTER SUMMARY

In this chapter, the salient issues in the taxation of income of partnerships were discussed. Topics such as treatment of losses and profits, amalgamation and conversion into a limited liability company were explained in detail with emphasis on situations in Nigeria and Ghana.

MULTIPLE -CHOICE QUESTIONS

1. Partnership Deed usually contains the following **EXCEPT**
 - A. Each partner's capital contribution
 - B. The interest of any to be paid to each partner on his capital
 - C. Partner's salaries
 - D. Profit/loss sharing ratio
 - E. Partners' bio data

2. The income of each partner includes the following **EXCEPT**
 - A. His salary
 - B. His interest on capital
 - C. Entertainment cost on behalf of partnership
 - D. His private passage cost
 - E. His share of the computed income.

3. Which one of these is **NOT** a change in partnership structure for tax purposes?
 - A. Admission of a new partner
 - B. Amalgamation of two or more partnership
 - C. Retirement of an old partner
 - D. Relocation of a partner to another town
 - E. Death of an old partner

4. The following are deemed to have happened if a partnership is converted into a limited liability company **EXCEPT**
 - A. A new business is deemed to have come into existence. Commencement rule applies
 - B. The old partnership ceases to operate, licence cessation rule applies
 - C. All qualifying capital expenditure transferred are deemed to have been transferred at agreed values, hence, balance adjustment can be computer in hand of old partnership
 - D. Capital allowance computation shall be based on the unexpired tax life of the asset
 - E. Capital allowance computation shall be based on the total cost of the asset

5. Which of the following is not chargeable to tax in the hands of a partner in a partnership?
 - A. Interest received on the firm's fixed bank deposit
 - B. Interest on Capital
 - C. Salaries
 - D. Leave Passages
 - E. Share of Profit

SHORT ANSWER QUESTIONS

1. When a partnership incurs a loss, and a partner also incurs a loss, such a loss is available for
2. Where a partner retires, rule applies to the retiring partner.
3. rule applies in a situation where a new partner is admitted into partnership.
4. In partnership assessment, is subject to tax.
5. Salary paid to a partner constitutes an income in the hand of

SUGGESTED SOLUTIONS TO MULTIPLE CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. Relief
2. Cessation
3. Commencement
4. Income of each partner
5. The partner

WORKED EXAMPLES

QUESTIONS

1. Abu, Gbenga and Uche are partners in Agu & Co. Their net trading profit for the year 31December 2010 was ₦2,880,000 after charging the following

	Abu	Gbenga	Uche
Interest on Capital	120,000	150,000	170,000
Salary	300,000	350,000	330,000

The partners have agreed to share profits or losses equally.

Required

Compute the income of each partner for the relevant tax year.

2. Anao, Kayode and Ali have been in partnership for many years trading as ATS Hardware and preparing accounts to 30 September each year. Their agreement has revealed that they share profits in the ratio 3:2:1 respectively.

The assets used in their operations as at 30 September 2005, are as follows:

	€
Office Equipment	135,000,000
Pick –up trucks	68,000,000
Motor Car	20,500,000

Ali resigned from ATS Hardware on 1 July 2007 and on his exit; the remaining partners continued the business agreeing to share profits equally.

The engine of the Motor Car was replaced on 15 March 2006 at a cost of €10,000,000 whereas additional assets were acquired by the firm as follows:

- i. A building was purchased at a cost of €520,000,000 on 15 May 2007
- ii. A Nissan Patrol 4x4 was acquired at a cost of €250,000,000 on 31 August 2007.

Some of the office equipment were sold on 15 October 2007 for €20,500,000.

The firm's Adjusted Profits for tax purposes are reported as follows:

Year to 30/09/06	€250,000,000
Year to 30/09/07	€320,000,000
Year to 30/09/08	€385,000,000

Required

Compute the chargeable income of each partner for the relevant years of assessment on the assumption that no other income accrued to any of the partners.

3. Fadeke, Femi, Kolawole and Gbenga have been in partnership as accountants for many years. During the year ended 31 December 2011, the accounting records of the partnership revealed the following:

	₦	₦
Gross Profit		4,200,000
Deduct:		
Staff Salaries and wages	540,000	
Rent and rates	250,000	

Insurance	120,000	
Transport and travelling	360,000	
Office expenses	62,500	
Professional fees	250,000	
Bank charges and Commissions	116500	
Interest on Capital – Fadeke	75,000	
- Femi	60,000	
-Kolawole	50,000	
- Gbenga	40,000	
Interest on loan paid to Fadeke	50,000	
Provision for bad and doubtful debts	71,000	
Depreciation	480,000	
Passages and leave allowance of partners:		
Fadeke	20,000	
Femi	18,000	
Kolawole	15,000	
Gbenga	12,000	
Partners' Salaries:		
Fadeke	120,000	
Femi	110,000	
Kolawole	100,000	
Gbenga	<u>80,000</u>	(3,000,000)
Net Profit		<u>1,200,000</u>

You are given the following information:

- (i) Partners' profit sharing ratio among Fadeke, Femi, Kolawole and Gbenga is 5: 4: 3: 2 respectively;
- (ii) Capital allowances agreed with the Revenue – N140,000
- (iii) Fadeke maintains her aged mother who had no income of her own during the relevant assessment year; and
- (iv) Femi has a life assurance policy of N500,000, on which he pays N12,500 as annual premium.

You are required to compute:

- (a) The Computed Income of the Partnership; and
- (b) Income of each partner chargeable to tax for the relevant year of assessment.

- 4, Pen, Pencil and Marker have been in business for many years sharing profits and losses in the ratio 2:2:1. On 1 June 2009, Pen retired and Eraser was admitted on the same day on a salary of ₦270,000 per annum. For him to enjoy the profit sharing ratio of Pen, he brought in a capital of ₦252,000. The following are the Adjusted Profits of the partnership:

Year ended 31 December 2007	₦2,160,000
Year ended 31 December 2008	₦2,475,000
Year ended 31 December 2009	₦3,600,000
Year ended 31 December 2010	₦3,300,000

The following additional information is provided:

- i. The capital accounts of the partners are:

Pen	₦225,000
Pencil	₦450,000
Marker	₦315,000
- ii. Interest on Capital is to be 10% p.a
- iii. Partners' salaries were agreed as follows:

Pen	₦540,000
Pencil	₦360,000
Marker	₦270,000

Required:

- (a) Compute each partner's income from the partnership for 2009 Year of Assessment. (10 Marks)
 - (b) State how a partner's income is determined from the gains or profits from a partnership. (5 Marks)
- (Total 15 Marks)**

SUGGESTED SOLUTIONS

1. Agu & Co

Computation of Assessible income for each Partner for Year 2011 Assessment year

Abu

	₦
Interest on Capital	120,000
Salary	300,000
Share of profit	<u>960,000</u>
	<u><u>1,380,000</u></u>

Gbenga

	₦
Interest on capital	150,000
Salary	350,000
Share of Profit	<u>960,000</u>
	<u>1,460,000</u>

Uche

	₦
Interest on capital	170,000
Salary	330,000
Share of profit	<u>960,000</u>
	<u>1,460,000</u>

2. Anao, Kayode and Ali

T/A ATS Hardware

Computation of Capital Allowances

For 2006 to 2008 Years of Assessment

	Pool 2	Pool 4	Pool 5	Total
Rate	(30%)	(20%)	(10%)	
	₦	₦	₦	₦
2006 Year of Assessment				
B.P. 01/10/05 – 30/09/06				
Balance in Pool b/f	88,500,000	135,000,000		
Additions	<u>10,000,000</u>	<u>0</u>		
Balance in Pool	98,500,000	135,000,000		
Depreciation Allowance	<u>29,550,000</u>	<u>27,000,000</u>		<u>56,550,000</u>
Balance in Pool c/f	<u>68,950,000</u>	<u>108,000,000</u>		
2007 Year of Assessment				
B.P. 01/10/06 – 30/09/07				
Balance in Pool b/f	68,950,000	108,000,000	0	

Additions	<u>150,000,000</u>	<u>0</u>	<u>520,000,000</u>	
Balance in Pool	218,950,000	108,000,000	520,000,000	
Depreciation Allowance	<u>65,685,000</u>	<u>21,600,000</u>	<u>52,000,000</u>	<u>139,285,000</u>
Balance in Pool c/f	<u>153,265,000</u>	<u>86,400,000</u>	<u>468,000,000</u>	

2008 Year of Assessment

B.P. 01/10/07 – 30/09/08

Balance in Pool b/f	153,265,000	86,400,000	468,000,000	
Proceeds from Disposal	<u>0</u>	<u>20,500,000</u>	<u>0</u>	
Balance in Pool	153,265,000	65,900,000	468,000,000	
Depreciation Allowance	<u>45,979,500</u>	<u>13,180,000</u>	<u>52,000,000</u>	<u>111,159,500</u>
Balance in Pool c/f	<u>107,285,500</u>	<u>52,720,000</u>	<u>416,000,000</u>	

Note: Remember that Class 5 assets are granted capital allowance on a straight line basis whereas other classes are pooled and granted allowance on a reducing balance basis. Proceeds from the sale of an asset are credited to the pool as is shown with respect to the sale of some office equipment.

Anao, Kayode and Ali
T/A ATS Hardware

Computation of Chargeable Income

2006 to 2008 Years of Assessment

Year of Assessment	2006	2007	2008
Basis Period	01/10/05 – 30/09/06	01/10/05 – 30/09/06	01/10/05 – 30/09/06
	€	€	€
Adjusted Profit	250,000,000	320,000,000	385,000,000
Less: Capital Allowance	<u>56,550,000</u>	<u>139,285,000</u>	<u>111,159,500</u>
Chargeable Income	<u>193,450,000</u>	<u>180,715,000</u>	<u>273,840,500</u>

Shared to Partners as follows:

Anao	Kayode	Ali
€	€	€

2006 Year of Assessment

B.P. 01/10/05 – 30/09/06

Share of Chargeable Income	<u>96,725,000</u>	<u>64,483,333</u>	<u>32,241,667</u>
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2007 Year of Assessment

B.P. 01/10/06 – 30/06/07 (Part I)

Share of Chargeable Income	67,768,125	45,178,750	22,589,375
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B.P. 01/07/07 – 30/09/07 (Part II)

Share of Chargeable Income	<u>22,589,375</u>	<u>22,589,375</u>	<u>0</u>
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Total	<u>90,357,500</u>	<u>67,768,125</u>	<u>22,589,375</u>
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2008 Year of Assessment

B.P. 01/10/07 – 30/09/08

Share of Chargeable Income	<u>136,920,250</u>	<u>136,920,250</u>	<u>0</u>
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Notes:

- i. Since the partnership has been in existence for many years, it is presumed the firm existed before the coming into force of Act 592, hence the partners can maintain their accounting date of 30 September each year.
- ii. Since Ali resigned part way through the year 2007, he is entitled to share in the profits up to the date of resignation, hence the categorization of these periods as Parts I and Part II to give effect to which period's income he could partake in.

3(a). FADEKE, FEMI, KOLAWOLE AND GBENGA

**COMPUTATION OF THE COMPUTED INCOME OF THE PARTNERSHIP FOR
2012 YEARS OF ASSESSMENT**

	₦	₦
Net Profit per accounts		1,200,000
Add:		
Depreciation	480,000	
Provision for bad and doubtful debts	<u>71,000</u>	<u>551,000</u>
Computed Income		<u>1,751,000</u>

(c) COMPUTATION OF PARTNERS' CHARGEABLE INCOME

	FADEKE	FEMI	KOLAWOLE	GBENGA	TOTAL
	N	N	N	N	N
EARNED INCOME					
Interest on Capital	75,000	60,000	50,000	40,000	225,000
Passage and leave allowance	20,000	18,000	15,000	12,000	65,000
Salaries	120,000	110,000	100,000	80,000	410,000
Share of Profit	<u>625,357</u>	<u>500,286</u>	<u>375,214</u>	<u>250,143</u>	<u>1,751,000</u>
	840,357	688,286	540,214	382,143	2,451,000
UNEARNED INCOME					
Interest on loan	<u>50,000</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>50,000</u>
	890,357	688,286	540,214	382,143	2,501,000
Deduct:					
Capital allowance [5:4:3:2]	<u>50,000</u>	<u>40,000</u>	<u>30,000</u>	<u>20,000</u>	<u>140,000</u>
Gross Income	840,357	648,286	510,214	362,143	2,361,000
Deduct: Reliefs					
Consolidated Relief Allowance	368,071	329,657	302,043	272,429	1,272,200
Life Assurance Premium	<u>-</u>	<u>12,500</u>	<u>-</u>	<u>-</u>	<u>12,500</u>
Chargeable Income	<u>472,286</u>	<u>306,129</u>	<u>208,171</u>	<u>89,714</u>	<u>1,076,300</u>

4. (a) PEN, PENCIL & MARKER (IN PARTNERSHIP)

COMPUTATION OF ASSESSABLE INCOME OF EACH PARTNER FOR 2009
YEAR OF ASSESSMENT

	Pen	Pencil	Marker	Eraser
	₦	₦	₦	₦
Salary (5 months)	225,000	360,000	270,000	157,500
Interest @ 10% per annum	9,375	45,000	31,500	14,700
Share of Profit	<u>600,000</u>	<u>990,000</u>	<u>495,000</u>	<u>840,000</u>
Partners' Income	<u>834,375</u>	<u>1,395,000</u>	<u>796,500</u>	<u>1,012,200</u>
Basis Period of Partners	1/1/09 – 31/5/09	1/1/08 – 31/12/08	1/1/08 – 31/12/08	1/6/07 – 1/6/07
	(Actual)	(PYB)	(PYB)	(Actual)

Notes	(i)	(iii)	(iii)	(i)
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Year of cessation is 2009 when a partner retired.

- i. Pen is assumed to have ceased business on 31/5/2009 since he retired the following day when a new partner Eraser was admitted. The basis period on cessation will be for the first 5 months of operation i.e. 1/1/2009 – 31/5/2009. His income from the partnership will be as follows:

	₦	
Salary – 1/1/2009 – 31/5/2009 (i.e. $\frac{5}{12} \times \text{₦}540,000/1$)	225,000	
Interest on capital (10% x ₦225,000 x $\frac{5}{12}$)	9,375	
Share of actual profit for the year ended 31/12/2009 ($\frac{2}{5} \times \text{₦}3,600,000 \times \frac{5}{12}$)	<u>600,000</u>	

The Revenue Board may revise Pen's assessment to preceding year basis if the revision will produce a higher assessable income than the normal actual basis.

- ii. Commencement rule will apply to Eraser

Since he was admitted on 1/6/2009, the assessable income will be for a period of 1/6/2009 and 31/12/2009 as follows:

	₦	
Salary – ($\frac{7}{12} \times \text{₦}270,000/1$)	157,500	
Interest @ 10% per annum ($10\% \times \text{₦}252,000/1 \times \frac{7}{12}$)	14,700	
Share of profit (₦ 3,600,000 x $\frac{7}{12} \times \frac{2}{5}$)	840,000	

- iii. Since both Pencil and Marker are continuing partners, profit from partnership business will be based on preceding year basis i.e. profit for the year ended 31st December 2008.

Adjusted profit for the year ended 31/12/08	<u>2,475,000</u>	
Share of profit		
Pen – $\frac{2}{5} \times 2,475,000$	-	990,000
Pencil - $\frac{2}{5} \times 2,475,000$	-	990,000
Marker - $\frac{1}{5} \times 2,475,000$	-	<u>495,000</u>
		<u>2,475,000</u>

Note: Pen's share of ~~₦~~990,000 is higher than the actual profit shared based on cessation rule. Pen's share of ~~₦~~990,000 may therefore be assessed to tax instead of the actual figure that produced lower assessable profit.

(b) **HOW GAINS OR PROFITS FROM A PARTNERSHIP INCOME WILL BE DETERMINED**

The income of a partner from a partnership business shall be deemed to be derived from the territory of the relevant tax authority in relation to that partnership.

The gains or profits from a partnership of a partner therein shall be the sum of:

- (i) Any remuneration, interest on capital, or the cost of passages to or from Nigeria, wholly or mainly undertaken for the purpose of leave or recreation, which is charged in the partnership accounts in respect of that partner; and
- (ii) His share in the income of partnership, after the deduction of charges, to which paragraph (i) above applies in respect of all partners, but before deduction of any other expenses of the partnership, referable to a partner, which would have been private or domestic expenditure, if incurred directly by that partner.

CHAPTER SEVEN

COMPANIES INCOME TAX

CHAPTER SUMMARY

- a) Introduction – The Position in Nigeria
- b) Persons Chargeable to Companies Income Tax
- c) Allowable and Disallowable Expenses
- d) Non-taxable and Taxable Incomes
- e) Normal Basis for Computing Companies Income Tax Payable
- f) Other Bases of Computing Companies Income Tax Payable
- g) Categories of Assessments
- h) Chargeable Profits and Tax Liabilities – The Position in Ghana
- i) Taxation of Export Free Zone Enterprises – The Position in Nigeria
- j) Local Plants and Fabrication of Spare Parts
- k) Information Technology Tax
- l) Small Business Tax
- m) Luxury Tax in Nigeria
- n) Principles of Corporation Tax in Liberia
- o) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the reader should be thoroughly familiar with:

- (a) the various forms of assessments that companies are subject to;
- (b) the mode of assessing companies to tax;
- (c) the type of expenses that are allowable for tax purposes and those that are not; and
- (d) how to compute a company's Total Profit and tax liabilities.

7.0 INTRODUCTION – THE POSITION IN NIGERIA

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:

ABC LTD
STATEMENT OF PROFIT OR LOSS FOR THE YEAR ENDED 31
DECEMBER 2015

	'000
Revenue	xxx
Cost of Sales	<u>(xx)</u>
Gross Profit	xxx
Deduct:	
Overhead expenses	<u>(xx)</u>
Net Profit/(Loss)	<u>xx</u>

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 of 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 allowability/disallowability of some expenses. Simply put, the conversion is achieved using a pro-forma computation for the purpose of illustration as follows:

ABC LIMITED
COMPUTATION OF ADJUSTED PROFIT FOR THE YEAR ENDED 31
DECEMBER 2015

	'000
Net Profit per accounts	xxx
Deduct:	
Non-taxable incomes	<u>(xx)</u>
	xxx
Add:	
Disallowable expenses	<u>xx</u>
Adjusted Profit/(Loss)	<u>xxx</u>

7.1 PERSONS CHARGEABLE TO COMPANIES INCOME TAX

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).

Persons Chargeable to Companies Income Tax – Section 47 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 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 CITA).

7.2 ALLOWABLE AND DISALLOWABLE EXPENSES

7.2.1 Allowable Expenses

Unless otherwise provided, for the purposes of ascertaining the Total 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) Interest on money borrowed or employed as capital in generating the profits of the company;
- (b) Rent and premium paid by the company for the period of assessment in respect of land or building, occupied and used for the purpose of generating the profit;

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) 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.

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 Profit of the company for that year before deducting the reserve/provision.

Companies and other organisations engaged in research and development activities for commercialization shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose.

7.2.2 Disallowable Expenses Section 27 CITA 2004)

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) Expenses incurred in earning management fees unless prior approval of an agreement giving rise to the management fee has been obtained from the Minister of Finance; and
- (f) Any expense of any description incurred as management fee unless under an agreement for which prior approval of the Minister of Finance has been obtained.

7.2.3 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.

7.3 NON-TAXABLE AND TAXABLE INCOME

7.3.1 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 1 April 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	100
(ii) 5 – 7 years	Not less than 18 months	70
(iii) 2 – 4 years	Not less than 12 months	40
(iv) Below 2 years	Nil	Nil

Illustration 7.1

Loan interest payable in respect of a foreign loan granted to a Nigerian company in 1990 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	<u>400,000</u>
		<u>1,000,000</u>

Required:

Compute the loan interest exempted from tax.

Solution to Illustration 7.1

The loan interest exempted from tax based on the application of the Third schedule to CITA is computed as follows:

Repayment Period (including moratorium)	Grace Period	Loan Interest Payable ₦	Percentage Interest Exempted %	Exempt Loan Interest ₦
Above 7 years	2 years	-	100	-
5 – 7 years	18months	600,000	70	420,000
2 – 4 years	12months	400,000	40	160,000
Below 2 years	Nil	-	Nil	-
		<u>1,000,000</u>		<u>580,000</u>

(b) Interest on any loan granted by a bank on or after 1 January 1997 to a company:

(i) Engaged in

- agricultural trade or business; or
- local fabrication of any plant and machinery; or

(ii) As working capital for any cottage industry established by the company under the Family Economic Advancement Programme (FEAP) provided moratorium is not less than eighteen (18) months and interest is not more than base lending rate at the time the loan was granted.

(c) Interest on a loan granted by a bank on or after 1 April 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**

Examples are as follows:

- (i) Dividend distributed by a Unit trust;
- (ii) Dividends derived by a company from another company incorporated in Nigeria provided the recipient of the dividend:
 - is the beneficial owner of not less than ten percent of the equity capital of the company paying the dividend; and
 - wholly paid for its equity participation in the company paying the dividend, in foreign currency or by asset brought into or imported into Nigeria, between 1 January 1987 and 31 December 1992;

- (iii) Profits of a company engaged in petroleum operations, within the meaning of Section 2 of the Petroleum Profits Tax Act CAP P13 LFN 2004, to the extent that such profits are subject to tax under that Act;

Profits of a company engaged in petroleum marketing are liable to Companies Income Tax as their business does not fall within the definition of petroleum operations as contained in Section 2, PPTA;

- (iv) Dividend, interest, rent, royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels;

Government approved channel means Central Bank of Nigeria (CBN) or any bank or other body corporate appointed by the Minister as authorised dealer under the Second-Tier Foreign Exchange Market Act;

- (v) Interests on deposit account of a foreign non-resident company provided the deposits are in respect of foreign currencies transferred into the account on or after 1 January 1990 through government approved channels;
- (vi) Dividend received from small companies engaged in manufacturing during the first five (5) years of their operations;
- (vii) Dividend received from investments in wholly export oriented business;
- (viii) Dividend of a Nigerian company in respect of goods exported from Nigeria provided, that proceeds from such export are repatriated to Nigeria and used exclusively for the purchase of raw materials, plant, equipment and spare parts; and
- (ix) Dividend received by a Nigerian company from another Nigerian company after deduction of withholding tax shall be regarded as Franked Investment Income in the hands of the recipient company and shall not be subject to further Companies Income Tax as part of the profits of the recipient company. The concept of Franked Investment Income is that the dividend has been paid out of a profit that has been subjected to corporate tax.

The implication of this is that the Franked Investment Income (FII) is excluded in computing the Adjusted profit of the recipient company, since such income is excluded from taxable profit, it is not necessary to gross up the dividend received. It is just appropriate to exclude whatever has earlier been credited, which invariably will be the net dividend received for tax purposes. It should be noted that where the

recipient company includes in its own accounts the Franked Investment Income, and re-distributes same as dividend to its own shareholders, and Withholding tax is to be accounted for on the gross amount of the dividend, the company may set-off the Withholding tax which it has itself suffered on the same income.

- (x) Interest earned on bonds issued by the Federal, State or Local Government and their agencies with effect from 14 June 2011.
- (xi) Interest earned on Bond issued by corporate and supra-nationals.
- (xii) Interest earned by holders of bonds and short term securities listed in (ix) and (x) above.

7.3.2 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.
- (e) Fees, dues and allowances (wherever paid) for services.

7.4 NORMAL BASIS FOR COMPUTING COMPANIES INCOME TAX PAYABLE

CITA provides that Companies Income Tax shall be levied and payable for each year of assessment at the rate of thirty kobo for every Naira in respect of a company's Total Profit.

This means that income tax payable is charged at the rate of 30% of a company's Total Profit for an assessment year.

To assist readers, the format of the computation of Companies Income Tax payable is stated below:

**COMPANIES INCOME TAX
ASCERTAINMENT OF TOTAL PROFIT (SECTION 27)**

	N	N
Profit as per Accounts		XXX
Add Back: All disallowed items, for example:		
Depreciation	XX	
Capital expenses on shares	XX	
Rent disallowed	XX	
Donations	XX	
Gen. prov. for bad debts	XX	
Diminution in value of invest.	<u>XX</u>	<u>XXX</u>
		<u>XXX</u>
Less: Profit on sale of Non-current assets	XX	
Profit on export sales	XX	
Non-taxable incomes (Interest on Agric or Export loans)	<u>XX</u>	<u>XXX</u>
		XXX
Add: Assessable Profit (AP) (Ed. Tax: 2% of AP)		XXX
Balancing charge (Schedule 2)		<u>XXX</u>
		<u>XXX</u>
Less: Loss Relief (Sec. 27)		<u>(XXX)</u>
		<u>XXX</u>
Less: Investment Allowance (Sec. 28)		<u>XXX</u>
		<u>XXX</u>
Less: Capital Allowance (Schedule 2)		
Initial	XX	
Annual	XX	
Balancing Allowance (Sch. 2)	XX	
Restricted to 66 2/3% of Ass. Profit	<u>(XX)</u>	<u>(XX)</u>
Capital Allowance c/f	XX	
Total Profit		<u>XXX</u>
Companies Income Tax payable (30% of Total Profit) =		<u>XXXX</u>
Tertiary Education Tax payable (2% of Assessable Profit) =		<u>XXXX</u>

7.5 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 CITA
- (b) Turnover basis - Section 30 CITA
- (c) Dividend basis - Section 19 CITA

7.5.1 Minimum Tax Basis - Section 33 CITA

Minimum tax is levied and payable by a company for any year of assessment where:

- (a) In the ascertainment of Total Assessable Profits from all sources, a loss occurs; or
- (b) Tax on Total Profits is less than the minimum tax as determined below:
 - (i) Where revenue is ₦500,000 or below, minimum tax payable shall be the highest of:
 - 0.5% of Gross Profits;
 - 0.5% of Net Assets;
 - 0.25% of Paid-up Capital; or
 - 0.25% of Revenue for the year.
 - (ii) Where revenue is above ₦500,000, minimum tax payable shall be the sum of:
 - Highest factor in (i) above; plus
 - 0.125% of revenue in excess of ₦500,000

However, minimum tax is not applicable to a company where:

- it is carrying on agricultural trade or business;
- at least 25% of its equity is imported; and
- the company has not been in operations for more than four years (i.e. for the first 4 calendar years of its commencement of business).

Illustration 7.2

Computer Services Limited is a company engaged in the marketing and sale of computer hardware.

Its results for the year ended 30 June 2003, revealed the following:

Statement of Profit or Loss

	₦ '000
Revenue	<u>23,000</u>
Gross Profit	7,820
Deduct:	
Overhead expenses	<u>4,950</u>
Net profit	<u>2,870</u>

(a) **Notes:**

The overhead expenses include:

- (i) Depreciation - ₦500,000
- (ii) Share issue expenses - ₦250,000
- (iii) Non-current assets costing below ₦25,000

(b) Revenue was overstated by ₦650,000

(c) Statement of Financial Position as at 30 June 2013 (extract)

	N '000
Non-current Assets	16,500
Current Assets	<u>108,000</u>
Total Asset	<u>124,500</u>

Financed by:

Share Capital	78,700
Reserves	<u>27,000</u>
Total Equity	105,700
Current Liabilities	<u>18,800</u>
Total Equity and Liabilities	<u>124,500</u>

Notes:

Capital allowances for the year including capital expenses written off	N2,200,000
Unrelieved losses brought forward	N350,000

Required:

Compute the Companies Income Tax liability for the relevant assessment year.

Solutions to Illustration 7.2

**COMPUTER SERVICES LIMITED
COMPUTATION OF COMPANIES INCOME TAX LIABILITY
FOR THE YEAR ENDED 30 JUNE 2013 (ASSESSMENT YEAR 2014)**

	₦'000	₦ '000
Net Profit per accounts		2,870
Add:		
Depreciation	500	
Share issue expenses	250	
Capital expenditure written off	<u>25</u>	<u>775</u>
		3,645

Deduct:		
Overstatement of Revenue		<u>(650)</u>
Adjusted Profit		2,995
Deduct:		
Unrelieved loss brought forward		<u>(350)</u>
		2,645
Capital allowances - For the year	2,200	
Restricted to 662/3% of N2,995,000	<u>(1,997)</u>	(1,997)
Unrelieved capital allowances c/f	<u>203</u>	
Assessable Profit		<u>648</u>
Income Tax Payable:		
Higher of (a) N648,000 at 30%	<u>194,400</u>	
and (b) Minimum Tax (see comp. below)	<u>552,562</u>	
Income tax payable invest		<u>552,562</u>

COMPUTATION OF MINIMUM TAX PAYABLE

	N	N
(a) 0.5% of Gross profit (N7,170,000)		<u>35,850</u>
(b) 0.5% of Net assets (N105,050,000)		<u>525,250</u>
(c) 0.25% of paid-up capital (N78,700,000)		<u>196,750</u>
(d) 0.25% of N500,000	<u>1,250</u>	
0.125% of N21,850,000 [N22,350,000 – N500,000]	27,312	
Plus		
The highest of (a) – (c)	<u>525,250</u>	<u>552,562</u>

The minimum tax liability is ~~N~~552,562.

Workings

(a) Computation of Gross Profit

	N
Gross Profit per accounts (N124,500 less N18,860)	7,820,000
Less:	
Overstatement of turnover	<u>(650,000)</u>
	<u>7,170,000</u>

(b) Re – Statement of Net Assets

Net assets per accounts	105,700,000
Less:	
Overstatement of reserves	<u>(650,000)</u>
Adjusted Net assets	<u>105,050,000</u>

(c) Re- Statement of Turnover	₦
Turnover per accounts	23,000,000
Less:	
Overstatement	<u>(650,000)</u>
	<u>22,350,000</u>

7.5.2 Turnover Basis – Section 30 CITA

The Federal Inland Revenue Service is given the discretionary power, by virtue of the provision of Section 30 CITA, to assess and charge a company to tax on a fair and reasonable percentage of the Revenue 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.

Illustration 7.3

Mutual (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 2014.

	₦'000
Revenue	<u>100,000</u>
Assessable Profit	5,850
Balancing charge	<u>500</u>
	6,350
Less:	
Unrelieved loss brought forward	<u>1,200</u>
	5,150
Capital allowance	<u>2,500</u>
Total Profit	<u>2,650</u>
Companies Income Tax payable	
₦2,650,000 at 30%	<u>795,000</u>

An extract from the company's financial statements revealed the following additional information:

	₦'000
Gross Profit	<u>9,780</u>
Net Assets	<u>48,500</u>
Share Capital	<u>30,000</u>
Shareholders' Funds	<u>48,500</u>

A desk examination by the Inland Revenue officials revealed the following:

- (a) Revenue was understated by N5million
- (b) Expenses were overstated by N1.5million

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 2014 Assessment Year.

Suggested Solution 7.3

MUTUAL (NIGERIA) LIMITED COMPUTATION OF COMPANIES INCOME TAX LIABILITY ASSESSMENT YEAR 2014

	N'000
Revised Assessable Profit i.e (105m (100m+5m) x 25%)	26,250
Add:	
Balancing Charge	<u>500</u>
	26,750
Deduct:	
Unrelieved Losses brought forward	<u>(1,200)</u>
	25,550
Capital allowances	<u>(2,500)</u>
Total Profit	<u>23,050</u>
Companies income tax payable Higher of (a) N23,050,000 at 30% Increase and (b) Minimum tax (see below)	<u>6,915,000</u> <u>373,125</u>

Computation of Minimum Tax Payable

Highest of:

	N	N
(i) 0.5% of N14,780,000 (N 9.78m + N 5m)	<u>73,900</u>	
(ii) 0.5% of N48,500,000	<u>242,500</u>	242,500
(iii) 0.25% of N30,000,000	<u>75,000</u>	
(iv) 0.25% of N500,000	<u>1,250</u>	
Add: 0.125% of N104,500,000 [N105,000,000 - N500,000]		<u>130,625</u> <u>373,125</u>

7.5.3 Dividend Basis – Section 19 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 rate of 30% 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.

Assume that during the year ended 31 December, 2012 ABC Limited paid a dividend of N35 million while its Total profit for 2013 Assessment Year (based on the accounts to 31 December 2012) was N20 million.

Invoking the provision of Section 19 CITA, the Federal Inland Revenue Service would revise the company's tax liability for 2013 Assessment Year by substituting N35m for the company's Total profit of N20 million.

The implication is that the company pays more tax as the amount due would be revised from N6m (N20m at 30%) to N10.5m (N35m at 30%).

Illustration 7.4

Abdulahi (Nigeria) Limited engages in the marketing and sale of spare parts. Its financial statements for the year ended 30 September 2013, revealed the following:

Profit and Loss Account

	₦ '000
Revenue	500,000
Gross Profit	<u>288,000</u>
Administrative expenses	(163,000)
Operating profit	125,000
Interest expenses	<u>(10,000)</u>
Operating profit	115,000
Income tax expense	<u>(46,000)</u>
Profit for the year	69,000
Dividend paid	<u>(60,000)</u>
Retained Profit	<u>9,000</u>

Notes:

(a) Operating profit is after charging:

Depreciation	5,000
Loan interest	2,500
Loss on sale of fixed assets	500

(b) Taxation Account

	N '000
Income tax at 30% on Assessable profit	12,050
Prior year under provision for tax	25,000
Tertiary Education tax at 2% of assessable profit	2,410
Provision for deferred tax	6,540
Per Profit and Loss account	46,000

(c) Additional information revealed:

Capital allowances for the year	N85m
Unrelieved losses brought forward	N2m

Required:

Compute the Companies Income Tax payable for 2014 Assessment Year.

Suggested Solution 7.4

**ABDULAHI (NIGERIA) LIMITED OMPUTATION OF INCOME TAX LIABILITY
2014 ASSESSMENT YEAR**

	N'000	N'000
Operating profit		115,000
Add:		
Depreciation	5,000	
Loss on sale of fixed assets	<u>500</u>	<u>5,500</u>
Adjusted/Assessable Profit		120,500
Deduct:		
Unrelieved losses brought forward		<u>(2,000)</u>
		118,500
Capital allowances for the year	85,000	
Restricted to $66\frac{2}{3}\%$ x (₦ 120,500,000)	<u>(80,333)</u>	(80,333)
Unrelieved capital allowances c/f	<u>4,667</u>	
Total Profit		<u>38,167</u>

However, since Total Profit of ₦38,167,000 is less than dividend of ₦60,000,000 paid, the latter will be substituted for the former. Therefore, Companies Income Tax payable is ₦60,000,000 at 30% = ₦18,000,000.

7.6 CATEGORIES OF ASSESSMENT**7.6.1 Best of Judgement Assessment – The Position in Nigeria**

This is a term used to describe the estimation used by the relevant tax authority as the basis of assessment in a situation where no financial records or returns are submitted by the tax payer to the tax authority. This may also be used in circumstances where the financial records are found to be unreliable.

7.6.2 Provisional Tax Assessment- The Position in Ghana

Under Section 76 of Internal Revenue Act, 2000 (Act 592), the Commissioner of Internal Revenue Service has an option to raise provisional assessment computed according to his/her best judgment after the commencement of the basis period of the persons who pay tax by instalments.

The statement would state:

- a) the estimated chargeable income
- b) the estimated tax payable
- c) the amount and timing of instalment payments, and
- d) the time, place and manner of objecting to the assessment

Section 128 of the Act provides that a person who is dissatisfied with the Commissioner's provisional assessment may object to the assessment in writing within 9 months after the commencement of the basis period to which the provisional assessment relates. The objection should be in writing and state precisely the grounds of the disagreement.

7.6.3 The Self-Assessment- The Position in Ghana

A Self-Assessment is provided for under section 78 of the Act. This is a system where a person who pays tax by instalment is allowed by the Commissioner to estimate his chargeable income and tax payable thereon for a year of assessment. The authorization is by notice in a Gazette or in the print media. The estimate shall conform to the Commissioner's prescription on or before the commencement of a basis period. The taxpayer may revise his estimate during the basis period and a statement of reasons for the change should accompany it.

Where the Commissioner is not satisfied with the self-assessment i.e. the estimates/revised estimates, or the person fails to furnish him/her with the estimates, he/she can make provisional assessment on the person.

7.6.4 Final Assessment- The Position in Ghana

The Commissioner is empowered under Section 77 of Act 592 to make a final assessment on the basis of the Commissioner's best judgment where a person defaults in furnishing a return of income for a year of assessment or where a person has furnished a return of income for a year of assessment but the Commissioner is not satisfied with the return furnished by a person. Where a final assessment is made, the Commissioner shall serve a notice of the assessment on that person stating -

- (a) the amount of chargeable income,
- (b) the amount of tax payable,
- (c) the amount of tax paid, if any, and
- (d) the time, place, and manner of objecting to the assessment.

7.6.5 Additional Assessments- The Position in Ghana

The Commissioner may, in accordance with Section 79 of Act 592, make an additional assessment amending an assessment previously made. This can be done within 3 years. However, where the need for making additional assessment arises as a result of fraud by, or on behalf of a taxpayer then time limitation does not arise.

7.7 CHARGEABLE PROFITS AND TAX LIABILITY- THE POSITION IN GHANA

7.7.1 Incomes Chargeable

The chargeable income of a person in business for a year of assessment is the total of that person's assessable income for the year from each business and investment less the total amount of deductions allowed to that person for the year, as allowed under the Internal Revenue Act, 2000 (Act 592). The assessable income of a person for a year of assessment from any business is,

- (a) in the case of a resident person, the full amount of the person's income from the business or investment accruing in, derived from, brought into, or received in Ghana during any basis period of the person ending within the year of assessment;
- (b) in the case of a non-resident person, the full amount of the person's income from business or investment accruing in or derived from Ghana during any basis period of the person ending within the year of assessment, but does not include exempt income.

The amounts described include

- (a) any amount from an income accruing or derived from outside Ghana which is remitted to or transmitted into Ghana;
- (b) any amount from an income accruing or derived from outside Ghana which is applied in whole or partial satisfaction of any debt incurred in Ghana; or
- (c) any amount from an income accruing or derived from outside Ghana which is applied to purchase a moveable property which is brought into Ghana.

A person's income from a business is that person's gains or profits from any business carried on for whatever period of time by that person. This includes any investment income earned by a person that is attributable to the business. Business is defined to include any trade, profession or vocation but excludes employment.

It is worthy of note that the gains or profits of a person from an investment include any dividends from a non-resident company, interest, charge, annuity, royalties, rent, natural resource payment, or other income accruing to or derived by that person from the investment other than an amount included in ascertaining that person's income from business.

Trade includes every trade, manufacture, adventure or concern in the nature of trade. Trade refers to normal regular routine commercial activity, because it connotes the idea of continuity.

Whether or not an activity is a trade in its extended sense is a mixed question of law and fact. A person is engaged in trade if he is involved in the buying and selling or rendering of services. Thus if there is regular buying and selling or rendering of services, this is clearly trading and the annual profits or gains thereof are assessable to tax. On the other hand, an isolated or casual transaction may be "an adventure or concern in the nature of trade" if it is of a commercial nature.

Profession involves the idea of an occupation requiring either purely intellectual skill, or manual skill controlled by the intellectual skill of the operator. Profession thus normally refers to intellectual or specialised skill, e.g. doctors, lawyers, accountants, engineers, etc.

Vocation means "the way a person passes his life". The way a person earns his living thus passes for a vocation, e.g. carpenters, mechanics, etc.

7.7.2 Allowable and Non-allowable Deductions- The Position in Ghana

Under Section 13 of Act 592, for expenditure to be allowed as a deduction when calculating business, employment, or investment income for tax purposes,

- the expenditure must not be of a capital nature; and
- the expenditure must be wholly, exclusively and necessarily laid out and expended for the purpose of producing the income.

Capital Expenditure has examples in the form of fixed assets (e.g. business premises), expenditure incurred in anticipation of the commencement of trading (e.g. the cost of forming a company). Expenditure which is made once and for all is normally capital expenditure, whereas recurrent expenditure (or expenditure which is likely to recur) is revenue expenditure.

Wholly, exclusively and necessarily laid out for the purpose of producing the income has the following connotations.

“Exclusively” means the expenditure should be for business purposes only. Thus where expenditure is incurred for a dual purpose, one a business purpose and one not, no part of the expenditure is deductible. However, where the taxpayer admits some degree of non-business purpose by claiming a percentage deduction for private use from the total expenditure, disallowance of the whole should not follow, rather disallowance should be of the private element.

“Wholly” refers to quantum of the amount expended. The total amount should be for business purposes.

“Necessarily” means the expenditure should be incurred as of necessity for the production of the income.

a) **Deductions Allowed For Tax Purposes - The Position in Ghana**

- (i) **Research and development.** This includes additions to business products and business processes. However, it excludes any expense incurred for the acquisition of an asset for research and development (R & D) in relation to which a person is entitled to capital allowance. “Research and development expenditure” is explained in section 19(2) of Act 592 as any outgoing or expense incurred by a person for the purpose of developing that person’s business and improving business products or process but does not include any outgoing or expense incurred for the acquisition of an asset in relation to which that person is entitled to a capital allowance.
- (ii) **Bad debts.** Bad debt refers to a debt claim of a person in respect of which that person has taken all reasonable steps to pursue payment and which that person reasonably believes will not be satisfied. Such claims are thus allowable deductions for tax purposes. The conditions to be satisfied for the allowance of this expenditure are that:
 - (a) The amount of the debt claim should have been included in ascertaining the person’s assessable income with respect to any prior basis period; or
 - (b) The debt claim is in respect of advances made by that person in the normal course of business other than advances made on capital account.

This implies that it should be a debt claim occasioned by the business the person is carrying out.

General provisions for bad debt are not allowed but specific provisions are allowed. Specific debts proved to be bad are allowed because when the goods are supplied to a customer, the transaction is entered as part of his profits for the period when the amount becomes due; hence if later the customer does not pay, the sum involved has to be allowed as a deduction. However, if the bad debt is allowed and the debt is later paid, the amount must be brought in as a trading receipt of the year when it is paid.

A debt claim of a bank regulated under the Banking Law, 1989 (PNDCL 225) is considered a bad debt where the debt is written off in accordance with the standards of the Bank of Ghana.

(iii) **Donations- The Position in Ghana**

- ❖ Contributions to charities. Contributions to a charitable institution or fund approved by the government, e.g. Ghana National Trust Fund, Osu Children's Home, etc. (Regulation 2 of L.I. 1675).
- ❖ Scholarships. Contributions to a scholarship scheme approved by the government for technical, professional or other course of study may. (Regulation 3 of L.I. 1675).
- ❖ Donations for rural and urban development approved by the Government. (Regulation 4 of L.I. 1675). This will enable companies to undertake development projects in their area of operation. An application has to be made to the appropriate governmental ministry or body for approval to make such expenditure tax deductible.
- ❖ Donations for sports development and promotion approved by the government. (Regulation 5 of L.I. 1675).
- ❖ Donations to Government for worthwhile causes approved by the Commissioner of Internal Revenue (CIR), e.g. Donations to the Stadium Disaster Fund, a Fund instituted to take care of victims and dependants of victims of the collapse of the Ohene Djan Sports Stadium in Accra. (Regulation 6 of L.I. 1675). Taxpayers need to apply to the CIR.

(iv) **Rent paid for business premises.** Rent paid for a business premise is deductible in computing taxable profits, even if the premises are temporarily out of use. If premises are used partly for business and partly for domestic purposes, the Internal Revenue Service will allow a deduction in respect of such part of the rent as is attributable to the business but disallow the remainder.

(v) **Repairs of fixed assets.** The purpose of repairs is to make an asset functional or bring it back to its normal state before the damage. Repairs in this sense covers the repair of any premises, plant, machinery, or fixtures, or the renewal, repair, or alteration of any implement, utensil, or article to the extent

that the premises, plant, machinery, fixtures, implement, utensil, or article is employed by that person in the production of the income. However, if repairs involve improvement or additions then that element constitutes capital expenditure and would be disallowed.

- (vi) **Advertising.** Normal advert in the media is allowed. Advert by a permanent signboard, or neon sign is treated as capital expense.
- (vii) **Defalcations on the part of employees are** normally allowed but that on the part of the Managing Director is not allowed.
- (viii) **Legal and Professional Expenses** are allowable provided they are incurred in connection with the trade and are not related to capital items. Legal expense, for example, are allowed in the following cases
 - Defending rights or title to, say, fixed assets
 - Protecting assets
 - Collecting trade debts
 - Current company matters
- (ix) **Removal Expenses** are not allowed if the removal is due to an expansion scheme. The cost of forced removal or voluntary removal not connected with any expansion scheme may be allowed. Cost of dismantling and re-erecting of fixtures, machinery, etc. are included in such cases.
- (x) **Subscriptions** are allowable if they are in connection with the business. For example, trade or professional association subscriptions are normally deductible since they will be made wholly, exclusively and necessarily for the purposes of the trade, e.g. Medical Journals subscribed by a Doctor.
- (xi) **Welfare Expenditure** e.g. recreational grounds, canteen, etc. but not structures. This is because the structures are of a capital nature and can enjoy capital allowances.
- (xii) **Travelling Expenses.** The cost of travelling on business is a deductible expense. Cost of all private travelling expenditure is disallowed.
- (xiii) **Salaries and Wages** are allowed as they are expenses incurred in earning income. In the case of self-employed person who pay these amounts to their wife and/or children, there is the need to scrutinize the age, qualifications and respective grades of such associates to see if they do qualify, then these could be allowed. However, if the checks prove otherwise then these should be disallowed. The same should necessarily apply to family relations.
- (xiv) **General expenses.** There is the need for a breakdown to show the details of this expenditure as capital items included therein are not allowed and so also are expenses of a private nature rather than for business purposes.
- (xv) **Loans.** Advances made in the normal course of business are allowed if they prove irrecoverable. What this means is that if money is lent by a trader and

the loan is not repaid, a deduction is allowed only if the trade is, or includes, money lending.

- (xvi) **Fines and Penalties** incurred by a trader for breaches of the law committed in the course of trading are not allowable.
- (xvii) **Interest.** Any interest incurred during the period of a person's business in respect of a borrowing employed by that person in the production of the income is allowed for tax purposes.
- (xviii) **Capital Allowances.** Capital allowance calculated in accordance with the Third Schedule to the Internal Revenue Act, 2000 (Act 592) are allowed to be deducted from assessable income. This is a relief granted in lieu of depreciation which is disallowed for tax purposes.
- (xix) **Foreign Exchange Losses.** Foreign currency exchange losses, other than a loss that is capital in nature, incurred in the production of income during the period in respect of any debt claim, debt obligation, or foreign exchange currency holding of that person is an allowable deduction for tax purposes.

A foreign exchange loss of a capital nature may be capitalized and capital allowance granted at the rate of 10%.

To qualify for a deduction as aforementioned, the following conditions have to be satisfied:

- ❖ a person has to notify the Commissioner of Internal revenue in writing of the existence of the debt claim, debt obligation, or foreign currency holding which gave rise to the loss
- ❖ the notification should be done by the due date for furnishing of that person's return of income for the year of assessment in which the basis period in which the debt arose or foreign currency was acquired ends.

The Commissioner may allow an extension of the time period in (b) above. This provision does not apply to financial institutions

For the purpose of persons who engage in foreign currency exchange transactions, including hedging, no deduction is allowed

- where the amount of loss exceeds that part of the gain included in the assessable income of that person or associate,
- where the transaction giving rise to the gain or loss would not have been entered into, or might reasonably be expected not to have been entered into, if the transaction giving rise to the gain or loss had not been entered into.

“Hedging contract” refers to a contract entered into by a person in order to eliminate or reduce the risk of adverse financial consequences which might result for that person under another contract from currency exchange rate fluctuation.

- (xx) **Carryover of Losses.** Losses incurred by persons engaged in farming, manufacturing, mining business, agro-processing, tourism or information

communication technology (ICT) shall be deductible for a period of five years following the year in which the loss was incurred. It should be noted that where that person has incurred more than one such loss, the losses shall be deducted in the order in which they were incurred. This is a semblance of the stock valuation method of first in, first out.

Losses are to be deducted from the sources of income from which they were incurred. For example, if a person is engaged in ICT as well as farming and is reporting losses from the farming business but profits from the ICT business, that person cannot set off losses from the farming business against the profits from ICT.

It should be noted that “manufacturing business” is defined to mean a business that manufactures mainly for export, thus persons that manufacture mainly for local consumption are not covered by this provision. For the tourism industry, this provision covers only those operators registered with the Ghana Tourist Board and for ICT, it covers persons engaged in software development.

- (xxi) **Investment in Venture Capital Subsidiaries.** Financial institutions, which invest in venture capital subsidiaries, are entitled to a chargeable income tax deduction equal to 100% of their investment.

b) Deductions Disallowed

Generally expenses to be disallowed include:

- i) Capital Expenditure, e.g. business premises (fixed assets), expenditure incurred in anticipation of the commencement of trading (e.g. the cost of forming a company). Expenditure which is made once and for all is normally capital expenditure, whereas recurrent expenditure (or expenditure which is likely to recur) is revenue expenditure.
- ii) Any domestic or private expenses. “Domestic or private outgoing or expense” incurred by a person includes outgoings or expenses incurred by that person
 - in travelling between that person’s home and place of business;
 - in the maintenance of that person, or that person’s family or home;
 - in acquiring clothing worn to work, other than clothing that is not suitable for wearing outside work; and
 - in the education of that person not directly relevant to that person’s business, and education leading to a degree, whether or not it is directly relevant to that person’s business.
- iii) Non-trading losses
- iv) General provisions
- v) Depreciation of any fixed asset.
- vi) Income Tax Payments, profit tax, or similar tax and penalties on Income Tax incurred by a person during the year in Ghana or elsewhere other than a relief from double taxation. Penalties incurred by a trader for breaches of the law committed in the course of business are not allowable.

vii) Drawings.

viii) In respect of the following, legal expenses are not allowed

- Formation of companies or partnerships
- Sale of property or acquiring new assets
- Income Tax Appeals
- Breaches of the Law.
- Fees arising as a result of issuing new shares of a company

7.7.3 Computation Of Chargeable Profit And Tax Liability

Illustration 7.5

The following is the Profit and Loss Account of Anaobowali Limited for the year ended 31/12/05.

	¢'000	¢'000
Gross Profit b/f		22,966,700
Rent Income		<u>650,000</u>
		23,616,700
<u>Less: EXPENSES</u>		
Salaries and wages	5,172,750	
Subscriptions and donations	305,000	
Audit Fees	450,000	
Depreciation	1,450,000	
Legal Expenses	300,000	
Office Rent	865,500	
Repairs and maintenance	750,000	
Bank Charges	677,720	
Registration and Licence	150,500	
Electricity and Water	865,550	
Sundry Expenses	<u>575,600</u>	
	<u>11,562,620</u>	
Net Profit		<u>12,054,080</u>

Notes:

- a) Bank charges include loss on exchange rate adjustment of ¢576,320,000.
- b) Sundry expenses include Quarterly Income Tax paid amounting to ¢450,000,000.
- c) Subscriptions and donations include miscellaneous donations of ¢74,800,000.
- d) Capital allowances for the year amounted to ¢2,232,400,000.
- e) Unutilised capital allowance brought forward was ¢1,540,000,000.

You are required to compute the company's chargeable income and tax payable for the 2010 year of assessment, given that the corporate tax rate is 28%.

Suggested Solution 7.5**Anaobowali Limited****Computation of Chargeable Income and Tax Payable**

Year of Assessment – 2010

Basis Period: 1/1/10 – 31/12/10

	¢'000	¢'000
Net Profit per accounts		12,054,080
<u>Less:</u> Rent Income		<u>650,000</u>
		11,404,080
 <u>Add Back:</u>		
Miscellaneous donations	74,800	
Depreciation	1,450,000	
Loss on exchange	576,320	
Quarterly Income Tax Paid	<u>450,000</u>	
		<u>2,551,120</u>
Adjusted Profit/Assessable Income		13,955,200
 <u>Less:</u> Capital Allowances:		
Unutilized balance b/f	1,540,000	
Current	<u>2,232,400</u>	
		<u>3,772,400</u>
Chargeable Trading Income		10,182,800

Add: Chargeable Rent Income:

Gross Rent Income	650,000
Less: 30% Standard Allowance	
(30% x N650,000,000)	<u>195,000</u>
	<u>455,000</u>
Total Chargeable Income	<u>10,637,800</u>
Tax thereon @ 28%	<u>2,978,584</u>

Illustration 7.6

Guo Ghana Limited declared profit before tax as per its financial statements for the year ended 31/12/10 to the tune of ₵5,000,000,000. Included in its operating expenses are the following:

	₵
Audit fees	8,000,000
Directors remuneration	24,000,000
Provision for bad and doubtful debts	300,000,000
Occupancy costs	70,000,000
Depreciation	166,000,000
Provident fund – Employers contribution	40,000,000
Provision against long outstanding items	129,000,000
Salaries	360,000,000
Medical benefits	16,000,000
Exchange gains	362,000,000

Guo Ghana Limited has capital allowances brought forward from 2009 to the tune of ₵250,000,000 and that for the current year is ₵65,000,000. Included in the reported profit is an amount of ₵9,000,000 received as net dividend from the company's investment in Kayodialianao Limited. The exchange gain is unrealised as at the year end.

You are required to compute Guo Ghana Limited's tax liability for the 2010 year of assessment. Corporate tax rate is 28%.

Solution to Illustration 7.6

Guo Ghana Limited

Computation of Tax Liability

2010 Year of Assessment

Basis Period: 1/1/10 – 31/12/10

	¢	¢
Profit before tax as per accounts		5,000,000,000
<u>Add Back:</u>		
Depreciation	166,000,000	
Provision for bad and doubtful debts	300,000,000	
Provident fund – Employers contribution	40,000,000	
Provision against long outstanding items	<u>129,000,000</u>	
		<u>635,000,000</u>
		5,635,000,000
<u>Deduct:</u>		
Exchange gain (unrealised)	362,000,000	
Net dividend received	<u>9,000,000</u>	
		<u>371,000,000</u>
Adjusted Profit/Assessable Income		5,264,000,000
<u>Less:</u> Capital Allowance		
Unutilised balance brought forward	250,000,000	
Current	<u>65,000,000</u>	
	<u>315,000,000</u>	
Chargeable Income		<u>4,949,000,000</u>
Tax thereon @ 28%		<u>1,385,720,000</u>

Note: Tax on dividend is a final withholding tax of 10%, hence the net dividend is not to be subject to tax again.

7.8 TAXATION OF EXPORT FREE ZONE ENTERPRISES – THE POSITION IN NIGERIA

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, 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.

7.9 LOCAL PLANTS AND FABRICATION OF SPARE PARTS

The profits of any company in respect of goods exported from Nigeria of which the proceeds of the goods are repatriated to Nigeria and used exclusively for the purchase of Plant and Equipment and spare parts are exempted from tax.

This applies to those companies which manufacture or fabricate spare parts which can be used as input for exportable goods.

7.10 INFORMATION TECHNOLOGY TAX

This tax is payable at applicable rate of 1% of Profit before Tax by specified companies with a turnover of ₦100 million and above.

These specified companies 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

This tax is assessed by the Federal Inland Revenue Service and it is payable within 60 days of service of a Notice of assessment. The penalty for non-compliance attracts 2 per cent of tax payable.

The tax when paid is tax deductible for company income tax purposes.

7.11 SMALL BUSINESS TAX

This applies to a business with a turnover of N1,000,000 or less per annum. The applicable rate of tax is 20% on the taxable profit as against 30% for normal business. It is instructive to note that the small business tax is applicable for the first five assessment years of the business. This tax does not apply to a company set up to acquire part or whole of an existing business.

The lower rate will be applicable to companies engaged in the business of either manufacturing, or agricultural production, or mining of solid minerals, or wholly export trade.

7.12 LUXURY TAX IN NIGERIA

Effective 2015, the government introduced special levies on luxury items as follows:

Yachts – A 39% import surcharge on purchase of luxury Yachts;

Airline Tickets – Business and first class tickets will be surcharged at N15,000 per ticket on foreign travels;

Private Jets – Owners of private jets are expected to pay 10% of import surcharge on new private jets purchased;

Luxury Cars – These cars will attract a 5% surcharge;

Wines, Spirits and Champagnes – The purchase of these items will attract 3% luxury surcharge;

Mansions – Any property which has a value of N300 million and above attracts 1% mansion tax on residential properties within Federal Capital Territory, Abuja.

7.13 PRINCIPLES OF CORPORATION TAX IN LIBERIA

Taxable income of corporation for a tax year is the gross income of the corporation less

- a) items of income specifically excluded; and
- b) the amount of deductions allowed

Gross Income: This is the aggregate of economic benefits the taxpayer derives during a tax year.

Residents and Non residents

The gross income of a resident includes all economic benefits regardless of the source. The gross income of a non resident includes only those economic benefits having a source in Liberia, and is subject to Liberian tax.

A dividend received by a resident corporation from another resident corporation is exempted from taxation. This does not however apply to a dividend received by a corporation by virtue of its ownership of redeemable shares in the corporation paying the dividend, or if the dividend is paid in a dividend stripping arrangement as defined in regulations.

7.14 CHAPTER SUMMARY

This Chapter explains the taxation of corporate income, examination of incomes chargeable to tax, allowable and disallowable expenses. It is important to note the criteria for allowing or disallowing expenses as there are key to determining how much a company should pay as tax.

It is also important to realize that companies are examined on a case by case basis on certain expenses in determining whether these are incurred wholly, exclusively,

necessarily or reasonably in earning the income; it is not an analysis done across board, but on specific basis.

Apart from the normal rate of 30%, the conditions for using other bases such as, Minimum Tax, Revenue and Dividend and conditions relating thereto, are also fully covered.

MULTIPLE-CHOICE QUESTIONS

1. The responsibility for taxation of all limited liability companies in Nigeria is vested in:
 - A. State Board of Internal Revenue
 - B. Joint Tax Board
 - C. Stamp Duties Office
 - D. Internal Revenue Office
 - E. Federal Inland Revenue Service Board

2. Under the provisions of Companies Income Tax Act Cap C21 LFN 2004 in Nigeria, the following are allowable expenses **EXCEPT**
 - A. Contribution to a pension fund approved by Joint Tax Board
 - B. Any interest for purpose of business.
 - C. Bad debt written off
 - D. Rent on accommodation for staff even if higher than annual basic salary of such staff
 - E. Specific provision for doubtful debt.

3. The following conditions are necessary before a donation' could be allowed under CITA **EXCEPT**
 - A. It must have been made out of profit
 - B. It must not exceed 10% of the company is Total Profit before any deduction for donation
 - C. It must not be capital in nature
 - D. It must have been made to one of the approved bodies
 - E. It must be made to ruling party

4. The following are NOT allowable expenses **EXCEPT**
 - A. Specific provision for doubtful debt
 - B. Depreciation
 - C. Expenditure of a capital nature
 - D. Cost of defending traffic office
 - E. Income tax provision

5. The following dividends are exempted from taxation **EXCEPT**
 - A. Dividend received from a pioneer company
 - B. Dividend received by way of a bonus issue of share
 - C. Dividend from ordinary course of business
 - D. Dividend from a Trust Scheme

- E. Dividend received by a company from another one

SHORT ANSWER QUESTIONS

1. In Nigeria, the taxation of companies will be charged at of Total profit.
2. Contribution to a Pension Fund must be approved by before it can be allowed as expense for tax purposes.
3. Allowable donation must be made out of
4. Income tax provision is for tax purposes.
5. For the purposes of ascertaining the Total Profit of Loss of any company, only expenses incurred wholly, exclusively, necessarily and ----- in the production of the profits shall be allowable as deduction for tax purposes.

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. 30%
2. Joint Tax Board
3. Profit
4. Not allowed
5. Reasonably

WORKED EXAMPLES

QUESTIONS

1. Tanyaga Limited is engaged in the manufacture of pharmaceutical products for export and has provided the following accounts to the Internal Revenue Service for the year ended December 31, 2005.

	¢	¢	
Gross Profit for the year			272,960,000
Add: Profit on sale of fixed assets	50,000,000		
Dividend received	<u>25,500,000</u>		<u>75,500,000</u>
Gross Profit			348,460,000
Deduct: Depreciation	21,550,000		
Legal Expenses	18,736,000		
Provision for doubtful debts	3,030,000		
Audit fees	7,200,000		
Salaries and wages	28,410,000		
Administrative expenses, etc.	39,020,000		
Plant maintenance expenses	8,160,000		
Utilities	14,232,000		
Stationery	2,400,000		
Subscription and donations	22,914,000		
Repairs of vehicles, office, etc.	25,968,000		
Rent and rates	17,500,000		
Fuel and lubricants	<u>10,500,000</u>		<u>219,620,000</u>
Net Profit			<u>128,840,000</u>

The Notes to the accounts of the company showed the following details and breakdowns:

- a) General provision of C2,000,000 is included in the amount declared as provision for doubtful debts.
- b) The amount paid in respect of subscriptions and donations is made up of

	¢
Subscription to Chamber of Commerce	2,900,000
Nandom-Guo Citizens in Accra	5,000,000
Hearts Supporters Union	<u>15,014,000</u>
	<u>22,914,000</u>

- c) Repairs of vehicles, office, etc. includes an amount of ₦15,560,000 spent on new iron gates for the factory.
- d) Legal expenses is made up of
- | | |
|-------------------------|-------------------|
| | ₦ |
| Income Tax Appeals | 5,700,000 |
| Sale of property | 3,200,000 |
| Current company matters | <u>9,836,000</u> |
| | <u>18,736,000</u> |
- e) Capital allowances available to the company for the current year amounts to ₦25,500,000.
- f) The company incurred a loss of ₦38,000,000 in the preceding year.

You are required to:

Determine the company's chargeable income as well as tax liability for the 2005 Year of Assessment. The corporate tax rate is 25%.

2. Faith Ltd is a Nigerian company engaged in the manufacture of textile materials. For the year ended 31 December 2013, the company's accounts disclosed a Net Profit of ₦5million after charging the following:

	N'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 totalled ₦2 million.

Required:

Compute the Adjusted profit of the company for the year ended 31 December 2009.

3. ABC Nigeria Limited is owned by Nigerians and has been in business since 2003. The results of the company as at 31 December 2008 are as follows:

	N	N
ASSETS EMPLOYED		180,000,000
Non-Current Assets		
Current Assets	550,000,000	
Less: Current Liabilities	<u>360,000,000</u>	
Net Current Assets		<u>190,000,000</u>
Net Assets		<u>370,000,000</u>
 FINANCED BY:		
Share Capital		140,000,000
Statutory Reserves		60,000,000
General Reserves		100,000,000
Long Term Loans		<u>70,000,000</u>
		<u>370,000,000</u>

You are provided with the following additional information:

- (i) The Revenue of the company during the year ended 31 December 2008 was N240,000,000.
- (ii) Gross Profit was N35,000,000.
- (iii) Assessable Profit was N2,100,000.
- (iv) Unrelieved capital allowances brought forward from 2007 Year of Assessment was N600,000.
- (v) Capital allowances for 2008 Year of Assessment amounted to N950,000.

Required:

Compute the company's minimum tax liability for 2009 Year of Assessment.

4. Confidence Holding Company (CHC) is essentially a Holding entity that was only engaged in the Treasury and Finance operations of its four Subsidiaries in Logos State of Nigeria.

The following are extracts from its books of accounts in respect of the year ended 31 December 2011:

	N'000
Net Profit per accounts	107,000
Depreciation	18,500
Balancing charge	5,200
Donations	12,500
Capital Allowances (unrestricted)	22,300
Diminution in Value of Investments	25,000

Profit on Export Sales	5,200
Loss relief	15,200
Bad debt provision	32,000

Additional notes:

- (i) Income from sale of assets included in the Holding Company's results for the year amounted to N60million.
- (ii) Dividend Income (Net of Withholding Tax) from subsidiaries included in the Holding Company's account amounted to N105million.
- (iii) Dividend proposed to shareholders of Compass Holding Company for the year was N165million.

As the Tax Consultant to the Board of CHC, **you are required** to advise on the following:

- (a) The tax implications of the dividend proposed by the Board.
- (b) The tax liability of the company for the relevant assessment year.

5. Below is an extract of the Profit and Loss Account of ABWATS Limited for the year ended December 31, 2006. From the information provided **you are required** to compute the chargeable income of the company for 2006 year of assessment.

	C	C
Gross Profit b/d		240,000,000
Profit on sale of asset		<u>5,000,000</u>
		245,000,000
LESS: Expenses		
Salaries and wages	60,000,000	
Repairs	25,000,000	
Rents	12,000,000	
Postage and telephone	8,000,000	
Vehicle expenses	40,000,000	
Entertainment	2,000,000	
Legal expenses	10,000,000	
Bad debts	2,000,000	
Advertising	15,000,000	
Depreciation	<u>7,000,000</u>	
		<u>181,000,000</u>
Net Profit		<u>64,000,000</u>

The following notes were attached to the accounts:	C
(a) Details of repairs were given as follows:	
Painting of office buildings	15,000,000
Construction of burglar proof doors to premises	<u>10,000,000</u>
	<u>25,000,000</u>
(b) Legal expenses was incurred as follows:	
Collection of company's debts	6,000,000
Defending motor traffic offence	<u>4,000,000</u>
	<u>10,000,000</u>
(c) C 2,000,000 of the figure for entertainment was for the Managing Director's wedding reception.	
(d) Advertisement cost was incurred as follows:	
Permanent Neon sign	6,000,000
Newspaper advertising	8,000,000
Advertisement tax	<u>1,000,000</u>
	<u>15,000,000</u>
(f) Vehicle expenses include:	
Cost of new engine for company vehicle	25,000,000
Fuel and lubricants	<u>15,000,000</u>
	<u>40,000,000</u>
(g) The profit on sale of asset is the excess income after crediting the capital allowance schedule of the balance required to reduce the pool to zero.	
(h) The company's capital allowance claimable for 2006 is C5,000,000.	

SUGGESTED SOLUTIONS

1. Tanyaga Limited

Determination of Chargeable Income and Tax Liability

2005 Year of Assessment

Basis Period: 1/01/2005 – 31/12/2005

	C	C
Net Profit per accounts		128,840,000
Less: Profit on sale of fixed assets	50,000,000	

Dividend received	<u>25,500,000</u>	<u>75,500,000</u>
		53,340,000
Add Back:		
Depreciation	21,550,000	
Legal Expenses on:		
Income Tax Appeals	5,700,000	
Sale of Property	3,200,000	
General provision for doubtful debts	2,000,000	
Subscriptions and donations to:		
Nandom-Guo Citizens in Accra	5,000,000	
Hearts Supporters Union	15,014,000	
New iron gates for factory	<u>15,560,000</u>	<u>68,024,000</u>
Assessable Income		121,364,000
Deduct:		
Loss brought forward from 2004		<u>38,000,000</u>
		83,364,000
Less:		
Capital allowances		<u>25,500,000</u>
Chargeable Income		<u>57,864,000</u>
Tax thereon @ 25%		<u>14,466,000</u>

**2. FAITH LIMITED
COMPUTATION OF ADJUSTED PROFIT
FOR THE YEAR ENDED 31 DECEMBER 2013 (ASSESSMENT YEAR 2014)**

	N '000	N'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	<u>(750)</u>	
Excess rent disallowed		<u>750</u>
Adjusted Profit		<u>6,350</u>

3. ABC NIGERIA LIMITED
Computation of Minimum Tax Liability
2009 Assessment Year

	₦	₦
(a) (i) 0.5% of Gross Profit i.e. 0.5% of N35,000,000	175,000	
(ii) 0.5% of Net Assets i.e. 0.5% of N370,000,000	1,500,000	1,850,000
(iii) 0.25% of Paid-up Capital i.e 0.25% of N140,000	<u>350,000</u>	
(b) 0.25% of Turnover i.e N500,000	<u>1,250</u>	
0.125% of N240,000,000 – N500,000		<u>299,375</u>
		<u>2,149,375</u>

4.(a) The Chairman,
Board of Directors
Confidence Holding Company
10, Oko-oba Lane
Lagos.

Dear Sir,

RE: TAX IMPLICATIONS OF THE PROPOSED DIVIDEND

We acknowledge the receipt of your letter reference CHC/Z1811V/08/2012, in respect of the above subject.

We have gone through the content of your letter, and our comments are as follows:

- (i) On the tax implications of the dividend proposed, the provision of section 19 of the Companies Income Tax Act (CITA) in relation to a Nigerian Company stipulates that:

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

- ◆ No Total Profits or
 - ◆ Total Profits which are less than the amount of the Dividend which is paid, whether or not the recipient of the Dividend is a Nigerian Company; the company paying the dividend shall be charged to tax at the rate prescribed in sub-section (1) of section 40 of the Act (i.e 30%) as if the dividend is the Total profit of the company for the year of assessment to which the accounts from which the dividend was declared relate.
- (ii) Based on the above provision, it is evident that the dividend proposed (N165,000,000) is more than the total profit (NIL). It would appear that what is being proposed is the dividend income of N105,000,000 and the income from sales of assets of N60,000,000.
- ct (CITA) section 80(3) which stipulates that dividend income from subsidiaries of a Holding Company (net of Withholding Tax), is regarded as Franked Investment Income and therefore regarded as final tax.

- (iv) Based on point above, the dividend income (N105,000,000) is not to be taxed.
- (v) The balance of N60,000,000 representing the proceeds from sale of assets is already included in the income of the Holding Company and at the time of redistribution of the dividends to Compass Holding Shareholders, the dividends would not be subjected to further tax.
- (vi) Confidence Holding Company therefore is expected to gross-up the dividends from its subsidiaries and offset the Withholding Tax suffered at source against the Withholding Tax deductible on distribution to the shareholders.
In our opinion, the only tax payable is the Tertiary Education Tax of N496,000. Should you require further clarification on any of the issues highlighted above, please do not hesitate to contact us.

We use this opportunity to thank you for your patronage.

Yours faithfully,
for: **XYX & CO.**

A. James
Managing Partner

(b) **CONFIDENCE HOLDING COMPANY (CHC)**

COMPUTATION OF TAX LIABILITY FOR 2012 TAX YEAR

	N 000	N 000
Net Profit per Accounts		107,000
Add Back:		
Depreciation	18,500	
Donations	12,500	
Diminution in investment	25,000	
Bad debt provision	<u>32,000</u>	<u>88,000</u>
		195,000
Less:		
Profit on Export sales	5,200	
Income from sale of assets	60,000	
Dividend treated as Franked Investment Income	<u>105,000</u>	<u>170,200</u>
Assessable Profit		24,800
Add: Balancing charge		<u>5,200</u>
		30,000
Less: Loss Relief		<u>15,200</u>
		14,800
Less: Capital allowance	22,300	
Limited to 2/3 of N24,800	<u>14,800</u>	<u>14,800</u>

Unrecouped Capital Allowance c/f	7,500	
Total Profit		<u>NIL</u>
Tax Payable (Please see comment a(i) above)		<u>NIL</u>
Tertiary Education Tax payable		<u>496,000</u>

5. ABWATS LIMITED
COMPUTATION OF CHARGEABLE INCOME YEAR OF ASSESSMENT – 2006
Basis Period: 1/1/06 – 31/12/06

	C	C
Net Profit per accounts		64,000,000
<u>Add Back:</u>		
Repairs – Construction of burglar proof	10,000,000	
Depreciation	7,000,000	
Cost of new engine	25,000,000	
Neon Sign	6,000,000	
Advertisement Tax	1,000,000	
Entertainment – wedding ceremony	2,000,000	
Legal expenses in respect of traffic offence	<u>4,000,000</u>	
	<u>55,000,000</u>	
Adjusted Profit/Assessable Income		9,000,000
<u>Less:</u> Capital Allowances		<u>5,000,000</u>
Chargeable Income		<u>4,000,000</u>

CHAPTER EIGHT

LOSS RELIEFS

CHAPTER CONTENTS

- a) Introduction
- b) Types of Loss Reliefs
- c) Rules on Loss Relief-The Position in Nigeria
- d) Limitation and Priority of Relief
- e) Treatment of Losses Under Ghana Income Tax Law
- f) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, readers should become familiar with:

- a) the types and methods of relieving losses; and
- b) the limitation and priority of relief.

8.0 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.

Prior to May 2007, losses could only be carried forward for four assessment years commencing from the year following that in which the loss occurs, except for a company engaged in agro-allied trade or business. However, with effect from May 2007, the restriction has been removed for all companies except insurance companies.

8.1 TYPES OF LOSS RELIEFS

8.1.1 Current Year Loss Relief

This is one of the methods of relieving losses. It is applicable to only individuals. In this case, losses incurred from a particular source of income can be relieved against other sources. For example, loss from any source of earned income can be relieved against unearned income.

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.

It is important to note that the Current Year Loss Relief is available only in the first year when the loss is incurred, any unrelieved balance can only be set off against profit from the source from which the loss was incurred. **In Ghana**, this position does not apply.

8.1.2 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. This position is the same for Ghana, except one has to be qualified to claim such relief as indicated under 8.4 below. A person, in Ghana tax law, includes a partnership, company or body of persons.

8.2 RULES ON LOSS RELIEF – THE POSITION IN NIGERIA

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) 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, subject to the four (4) – year loss relief period for insurance companies; and
- (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.

There is no provision under the Nigerian tax system for carry-back of terminal loss.

Illustration 8.1

Hope Nigeria Limited has been sustaining losses for many years but made a good recovery in 2007. The adjusted results of the company for the following years are as follows:

			N
Year ended Dec 31	2002	Loss	350,000
Year ended Dec 31	2003	Loss	250,000
Year ended Dec 31	2004	Loss	457,000
Year ended Dec 31	2005	Loss	75,000
Year ended Dec 31	2006	Profit	79,000
Year ended Dec 31	2007	Profit	450,000

Capital allowances for the periods are as follows:

Assessment Year	N
2003	25,000
2004	37,500
2005	32,000
2006	45,000

Required:

Compute the company's tax liabilities for 2003 – 2006 Assessment Years .

Suggested Solution 8.1

**HOPE NIGERIA LIMITED
COMPUTATION OF COMPANY'S TAX LIABILITIES
FOR ASSESSMENT YEARS 2003 – 2006**

	N	N
Assessment Year 2003 (Based on 1/1/02-31/12/02)		
Loss for the year		(350,000)
Add:		
Capital allowances for the year		<u>(25,000)</u>
Unrelieved loss and Capital allowance c/f	<u>(375,000)</u>	
Assessment Year 2004 (Based on 1/1/03 - 31/12/03)		
Loss for the year		(250,000)
Add:		
Unrelieved Loss b/f		<u>(350,000)</u>
		(600,000)
Capital allowances - for the year	37,500	
- b/f	<u>25,000</u>	<u>(62,500)</u>
Unrelieved losses and Capital allowances c/f		<u>(662,500)</u>
Assessment Year 2005 (Based on 1/1/04-31/12/04)		
Loss for the year		(457,000)
Add:		
Unrelieved losses b/f		<u>(600,000)</u>
		(1,057,000)
Capital allowances – For the year	32,000	
- b/f	<u>62,500</u>	<u>(94,500)</u>

Unrelieved losses and Capital allowances c/f		<u>(1,151,500)</u>
Assessment Year 2006 (Based on 1/1/05-31/12/05)		
Loss for the year		(75,000)
Add:		
Unrelieved losses b/f		<u>(1,057,000)</u>
		(1,132,000)
Capital allowances – For the year	45,000	
- b/f	<u>94,500</u>	<u>(139,500)</u>
Unrelieved losses & Capital allowances c/f		<u>(1,271,500)</u>

8.3 LIMITATION AND PRIORITY OF RELIEF

8.3.1 Commencement Rule

Where commencement rule applies, losses aggregated may be greater than the actual loss incurred but it must be noted that losses cannot be relieved for an amount that is greater than the actual amount of loss.

8.3.2 Priority of Earlier Loss over a Current Year Loss

It should also be emphasized that relief in respect of an earlier loss has a priority over a current year loss. Relief is normally given before the relief for Capital allowance is considered.

Illustration 8.2

Ado has been trading for many years. His financial records show the following results:

Year ended 31 December 2007	₦1,250,000
Year ended 31 December 2008	₦1,500,000 (loss)
Year ended 31 December 2009	₦2,000,000

Required:

Compute the Assessable Income stating how the loss would be relieved.

SUGGESTED SOLUTION 8.2

ADO

COMPUTATION OF ASSESSABLE INCOME

<u>Year of Assessable</u>	<u>Basis Period</u>		<u>Assessable Income</u>
		₦	₦
2008	1/1/07 – 31/12/07 =	1,250,000	
	less: Current loss relief	<u>(1,500,000)</u>	
	Unrelieved loss c/f	(250,000)	Nil
2009	1/1/08 – 31/12/08 =	1,500,000 (loss)	Nil
2010	1/1/09 – 31/12/09 =	2,000,000	
	less: Unrelieved loss b/f	<u>(250,000)</u>	<u>1,750,000</u>
			<u>1,750,000</u>

8.4 TREATMENT OF LOSSES UNDER GHANA INCOME TAX LAW

Losses incurred by persons engaged in

- (a) farming,
- (b) manufacturing for export,
- (c) mining business,
- (d) agro-processing,
- (e) tourism, and
- (f) information communication technology (ICT)

shall be deductible for a period of five years following the year in which the loss was incurred. It should be noted that where that person has incurred more than one such loss, the losses shall be deducted in the order in which they were incurred. This is a semblance of the stock valuation method of first in, first out.

Losses are to be deducted from the sources of income from which they were incurred. For example, if a person is engaged in ICT as well as farming and is reporting losses from the farming business but profits from the ICT business, that person cannot set off losses from the farming business against the profits from ICT. This means losses from one source are not allowed to be set off against profits from another source to arrive at net total profit or loss.

It should be noted that “manufacturing business” is defined to mean a business that manufactures mainly for export, thus persons that manufacture mainly for local consumption are not covered by this provision. For the tourism industry, this provision covers only those operators registered with the Ghana Tourist Board and for ICT, it covers persons engaged in software development.

Illustration 8.3

Dongsire Naakyire is into poultry farming and also has a tourism business registered with the Ghana Tourist Board. His records for tax purposes, agreed with the Tax Authorities is as follows:

Year of Assessment	Tourism Income ¢	Income from Farming ¢
2008	480,000,000	(200,000,000)
2009	600,000,000	(300,000,000)
2010	720,000,000	1,000,000,000

You are required to determine Dongsire's chargeable income for the relevant years of assessment.

Suggested Solution 8.3

<u>2008</u>	¢
Income from Tourism	480,000,000
Income from Farming	
Chargeable Income	<u>480,000,000</u>
Loss from Farming carried forward to 2009	200,000,000

<u>2009</u>	¢
Income from Tourism	600,000,000
Income from Farming	-
Chargeable Income	<u>600,000,000</u>

Loss from Farming brought forward from 2008	200,000,000
Loss from Farming in 2009	<u>300,000,000</u>
Loss from Farming carried forward to 2010	<u>500,000,000</u>

<u>2010</u>	¢	¢
Income from Tourism		720,000,000
Income from Farming	1,000,000,000	

Less: Loss brought forward

2008	200,000,000		
2009	<u>300,000,000</u>	<u>(500,000,000)</u>	<u>500,000,000</u>
Total Chargeable Income			<u>1,220,000,000</u>

8.5 CHAPTER SUMMARY

This chapter fully addresses the methods for relieving losses and the main characteristics of each of the methods. It also covers the limitation and priority of relief.

MULTIPLE - CHOICE QUESTIONS

1. The conditions for granting loss relief include the following **EXCEPT**
 - A. In case of Current Year Less Relief, a written claim must be made within 12 months after the end of the year of assessment which the loss arose.
 - B. The period of carrying forward any unabsorbed loss shall be indefinite save insurance companies
 - C. The aggregate deductions from an Assessable Profit shall not exceed the amount of such loss
 - D. A deduction shall not exceed the amount of the Assessable income or Profit
 - E. No loss deduction shall be made unless it is claimed with 24 months
2. Which of the following is **NOT** a feature of Current Year Loss Relief?
 - A. It is applicable to only individuals.
 - B. Application must be made within 12 months after the end of the assessment. It is not automatic
 - C. The relief can be set against all sources of income for that year including investment income
 - D. Loss relief is available only in the first year when the loss is incurred, any unrelieved balance can only be set off against profit from the same source
 - E. It must be claimed within a period of 36 months after the end of the year of assessment
3. **ONE** of the following is **NOT** a feature of Carry Forward Loss Relief system
 - A. It applies to both individual and companies
 - B. Aggregate deduction from Assessable Profit in respect of any loss cannot exceed the amount of such loss
 - C. Loss relief is automatically granted
 - D. The relief is useful where profits are increasing
 - E. When the taxpayer ceases to carry on trade, any unused losses can be made use of by the new purchaser of the trade

4. Under limitation and priority of loss relief, the following apply **EXCEPT**
 - A. Losses aggregated may be greater than the actual loss incurred
 - B. Losses cannot be relieved for an amount that is greater than the actual amount of loss
 - C. Relief in respect of earlier loss has a priority over a current year loss
 - D. Relief is normally given before the relief for capital allowance
 - E. Relief is useful where profits are decreasing

SHORT ANSWER QUESTIONS

1. Current Year Loss Relief applies to only.....
2. Under Current Year Loss Relief, loss from any source of earned income can be relieved against
3. The Current Year Loss Relief is applicable to a loss incurred only in the
4. Carry Forward Loss Relief applies to both
5. Carry Forward Loss Relief is available only against profit from the of income where the loss originally occurred.
6. In Ghana, what is the meaning of “manufacturing business” for the purpose of loss relief?

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

1. E
2. E
3. E
4. E

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. Individuals
2. Unearned income
3. First year
4. Individuals and companies
5. Same Source.
6. “Manufacturing business” is defined to mean a business that manufactures mainly for export.

WORKED EXAMPLES

QUESTIONS

1. Explain the following
 - a) Current Year loss Relief
 - b) Carry Forward Loss Relief
2. Mrs Ashante commenced her business on 1 August 2004 and makes up her accounts to 30 April every year. Her financial results are as follows:
1/8/2004 – 30/4/05 - 9 months loss ₵2,000,000
1/5/2005 – 30/4/2006 - Profit ₵3,000,000

Required:

Compute the Assessable Profit for the relevant years of assessment stating the loss for carry forward.

3. What are the rules governing the claim for loss relief under Ghana Tax Law?
4. Bassey Enterprises commenced business on 1 September 2009 and the Adjusted loss/profit are as follows:

Year ended 31 August 2010	N240,000 Loss
Year ended 31 August 2011	N400,000 Profit
Year ended 31 August 2012	N320,000 Profit

Required:

Compute the amount of loss that can be relieved assuming that Bassey Enterprises does not exercise its right of election.

5. Dongsire Company Limited is into farming operations in Ghana. The results of operations for the three (3) years to 31st December, 2006 are as follows:

Dongsire Farms

Year to 31/12/04	-	Profit ₵250,000,000
Capital Allowance	-	₵150,000,000
Year to 31/12/05	-	Loss (₵50,000,000)
Capital Allowance	-	₵250,000,000
Year to 31/12/06	-	Profit ₵420,000,000
Capital Allowance	-	₵80,000,000

The company has approached you to assist in determining its chargeable income for the relevant years of assessment. **You are required** to set out your computation for the company.

SUGGESTED SOLUTIONS

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 earned income can be relieved against income unearned income.

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.

MRS. ASHANTE COMPUTATION OF ASSESSABLE PROFITS

Tax Year	Basis Period	Assessable Profit	Unrelieved Loss Carried Forward
2004	1/8/04-31/12/04 i.e. $\frac{5}{9} \times 200,000$	Nil	₦ (200,000)
	Proportion of loss (1,111,110)		
2005	1/8/04-31/7/05 i.e. $\frac{3}{12} \times 300,000$	(2,000,000) <u>750,000</u>	
	Unrelieved loss	<u>(1,250,000)</u>	Nil (1,250,000)
2006	Same as above	Nil	(500,000)

3. **The rules governing loss relief can be listed as follows:**
- a) Losses are deductible for a period of five years following the year in which the loss was incurred.
 - b) Where a person has incurred more than one loss, losses shall be deducted in the order in which they were incurred.
 - c) 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 farming income only.
 - d) Claiming relief for losses takes precedence over claim for capital allowances.

4 BASSEY ENTERPRISES

COMPUTATION OF TOTAL LOSS RELIEVED FOR THE RELEVANT ASSESSMENT YEARS

	₦	₦
A.Y 2009		
Adjusted Loss		80,000
Loss relieved		<u>-</u>
Unrelieved Loss c/f		80,000
A.Y 2010		
Adjusted Loss	240,000	
Unrelieved Loss b/f	<u>80,000</u>	
	320,000	
Restricted to actual loss of	<u>240,000</u>	240,000
A.Y 2011		
Adjusted Loss	240,000	
Unrelieved Loss b/f	<u>240,000</u>	
	480,000	
Restricted to actual loss of	240,000	240,000
A.Y 2012		
Adjusted Profit		400,000
Unrelieved Loss b/f from A.Y. 2011		<u>(240,000)</u>
Assessable Profit		<u>160,000</u>
A.Y 2013		
Adjusted Profit		320,000
Loss relieved		<u>-</u>
Assessable Profit		<u>320,000</u>

The loss relieved amounted to N240,000, that is, the actual loss incurred.

5. DONGSIRE COMPANY LIMITED – COMPUTATION OF CHARGEABLE INCOME

Year of Assessment	Basis Period	₦
2004	01/01/04 – 31/12/04	
	Assessable Income (Profit)	250,000,000
	Less: Capital Allowance	<u>150,000,000</u>
	Chargeable Income	<u>100,000,000</u>
2005	01/01/05 – 31/12/05	
	Assessable Income (Loss)	<u>(50,000,000)</u>
	Capital Allowance c/fwd	<u>250,000,000</u>
	Chargeable Income	<u>NIL</u>
2006	01/01/06 – 31/12/06	
	Assessable Income (Profit)	420,000,000
	Less: Loss b/fwd from 2005	<u>(50,000,000)</u>
		370,000,000
	Less: Capital Allowance b/f	(250,000,000)
	Capital Allowance – 2006	<u>(80,000,000)</u>
	Chargeable Income	<u>40,000,000</u>

CHAPTER NINE

TAXATION OF SPECIALISED COMPANIES

CHAPTER CONTENTS

- a) Introduction
- b) Tax Provisions for Real Estate and Agriculture
- c) Taxation of Foreign Air and Sea Transport Companies
- d) Taxation of Foreign Companies engaged in Cable Undertakings (Telecommunications)
- e) Chapter Summary

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.

9.0 INTRODUCTION

The taxation of the profits of specialised businesses are covered by the provisions of Sections 14 – 17, CITA.

The specialised businesses covered by these provisions are:

- (a) Foreign companies engaged in Air and Sea transport business - Section 14, CITA;
- (b) Foreign companies engaged in cable undertakings – Section 15, CITA;
- (c) Foreign companies engaged in insurance business (life and non-life) - Section 16, CITA;
- (d) Nigerian companies engaged in insurance business (life and non-life) - Section 16, CITA; and
- (e) Companies engaged in Authorised Unit Trust Schemes - Section 17, CITA.

9.1 TAX PROVISIONS FOR REAL ESTATE AND AGRICULTURE

9.1.1 Real Estate

In Nigeria, the taxes that relate to real property transactions include:

(a) 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.

(b) Stamp Duties

It is mandatory that all written documents relating to any property or interest in property which are transferred or leased to any person should be stamped. Stamp duties are paid at the rate of 75 kobo for every N200 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 N50.

(c) Personal Income Tax and Companies 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 in subject to tax.

When a taxpayer who is an individual receives rent from properties or sales proceeds from same, these are regarded as earnings and are subject to Personal Income Tax.

The percentage is dependent of the level of income of the taxpayer. For those who are resident in Lagos State, it starts from 5% to a flat rate of 20%, for those who earn as much as I million naira per month.

Individuals pay graduated tax rate which varies from 7% to 24% whilst corporate bodies pay Companies Income Tax of 30% on Total Profit and 2% of Assessable Profit as Tertiary Education Tax.

(d) Withholding Tax

Withholding tax is a tax deducted at source from payments made to a taxable person for the supply of goods and services. Depending on the transactions involved, there are specified rates for individuals and companies.

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.

The Withholding Tax deducted from dividends is regarded as the final tax in the hands of the recipients.

(e) Value Added Tax

All taxpayers are required to register with the relevant tax authority within six months of commencement of business.

All services rendered and goods sold in the real estate industry attract 5% of the amount realized as VAT.

(f) Tertiary Education Tax

Companies which are into real estate are expected to pay Tertiary Education Tax in addition to Companies Income Tax at a rate of 2% of Assessable Profit.

9.1.2 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.

9.1.3 Rent Received in Advance

If rent is received in advance, it will be spread over the period of the rent (provided the period is not more than 5 years). However, if rent received in advance covering a period that is more than 5 years, it will be spread for 5 years. Thus, for tax purposes, the gains or profit arising from rent of a property is ascertained by deducting only those expenses that were directly incurred for the purpose of earning the income.

9.1.4 Allowable Rental Expenses

In computing the gain or profit from rental income for tax purposes, the following expenses are allowable deductions:

- (j) Tenement rates or Land Use Charge;
- (k) Cost of collecting rent e.g. fees paid to a caretaker, estate agent, legal representative, etc.;
- (l) Cost of advertising for tenants;
- (m) Any expenses incurred for repairs and maintenance of the building;
- (n) Bad debts incurred;
- (o) Interest on money borrowed and employed in acquiring or renovating the property;
- (p) Commission paid to agent or caretaker;
- (q) Insurance premium paid on the property; and
- (r) Water rate.

9.1.5 Disallowable Expenses

The following expenses are disallowable deductions in computing the gain or profit from rental income for tax purposes:

- (a) Any expenses not incurred for the purpose of earning rental income;
- (b) Any expenditure of capital nature;
- (c) Depreciation of the building; and
- (d) Appropriation of profit including income tax, drawings, reserves, etc.

9.1.6 Agriculture

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 realized by the taxpayer, 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.

9.2 TAXATION OF FOREIGN AIR AND SEA TRANSPORT COMPANIES

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.

Exempted are incomes in respect of passengers, mails, livestock or goods:

- (i) Loaded on routes outside Nigeria, but terminating in Nigeria; and
- (ii) In transit in Nigeria, that is, brought to Nigeria for transshipment or connecting flight.

Computation and Assessment of Profits 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 done in either of the following methods:

Method 1 – Adjusted Profit/Depreciation Ratio Basis

This method is used 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,

$$(i) \text{ Adjusted Profit Ratio (\%)} = \frac{\text{Adjusted Profit}}{\text{Worldwide Income}} \times 100\%$$

$$(ii) \text{ Depreciation Ratio (\%)} = \frac{\text{Depreciation Allowance}}{\text{Worldwide Income}} \times 100\%$$

In order to determine the Assessable Profits, 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 Adjusted Profit Ratio (%)	xxx
Less:	
Capital allowance = Income receivable in Nigeria x Depreciation Ratio (%)	<u>x</u>
Total Profit	<u>xx</u>
Income tax payable (xx at 30 %)	<u>x</u>

(c) **Minimum Tax**

This 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.

Illustration 9.1

The Statement of Profit or Loss of a foreign Airline, AUZIL Airways Limited, for year ended 31 March 2003, is as follows:

	N'000	N'000
Income from passengers flight into Nigeria	300,000	
Income from goods loaded into aircraft in Nigeria	220,000	
Income from passengers flight from Nigeria	180,000	
Income from goods loaded into aircraft on other routes	<u>500,000</u>	
		1,200,000
Less: Salaries and other expenses	800,000	
Depreciation	120,000	
Other disallowable expenses	<u>40,000</u>	<u>960,000</u>
Net Profit for the year		<u>240,000</u>

You are given the following additional information:

- (i) The Federal Inland Revenue Service is satisfied that the tax authority in England 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; and
- (iii) Salaries and other expenses include:
 - Deposit for a new V.C 10 aircraft costing N80,000;
 - Payment of N24,000 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 N12,000 as rent for accommodation used as transit flight 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 Year 2004.

SUGGESTED SOLUTION 9.1

(a) **AUZIL AIRWAYS LIMITED**
COMPUTATION OF TOTAL PROFIT FOR NIGERIAN TAX PURPOSES
ASSESSMENT YEAR 2004

	N'000
Assessable Profit $-\text{N } 400,000,000 \times 40\%$ (w2)	160,000
Deduct:	
Capital Allowances $-\text{N } 400,000,000 \times 10\%$ (w3)	<u>(40,000)</u>
Total Profit liable to tax in Nigeria	<u>120,000</u>

(b) **COMPUTATION OF INCOME TAX PAYABLE FOR 2004 ASSESSMENT YEAR**

Total profit	(N 120,000,000) at 30%	=	N36,000,000
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Workings:

(i) **Computation of Adjusted Profit**

Year Ended 31 March 2003

	N'000
Net Profit per accounts	240,000
Add:	
Depreciation	120,000
Other disallowable expenses	40,000
Deposit for V.C.10 Aircraft-capital	<u>80,000</u>
Adjusted Profit	<u>480,000</u>

(ii) **Computation of Adjusted Profit Ratio**

$$\frac{\text{Adjusted Profit}}{\text{Worldwide Income}} \times 100\% = \frac{\text{N } 480,000,000}{\text{N } 1,200,000,000} \times 100 = \underline{40\%}$$

(iii) **Computation of Depreciation Allowance Ratio**

$$\frac{\text{Depreciation Allowance}}{\text{Worldwide Income}} \times 100\% = \frac{\text{N } 120,000,000}{\text{N } 1,200,000,000} \times 100 = \underline{10\%}$$

Note:

Income derived from Nigeria is the total of income from goods loaded into aircraft in Nigeria plus Income from passengers flight from Nigeria (N220,000,000 + N180,000,000) = N400,000,000).

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:

	N
Income receivable in Nigeria	<u>xxx</u>
Assessable Profits:	
Income receivable in Nigeria x fair % (as determined by FIRS)	<u>xx</u>

Other Points to Note

- (a) Where Method 2 above is used, the foreign company shall be entitled to require that its assessment be revised and re-computed on the basis of method 1.
- (b) This request 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.

9.3 TAXATION OF FOREIGN COMPANIES ENGAGED IN CABLE UNDERTAKINGS (TELECOMMUNICATIONS)

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 9.2

ABC Limited is a Canadian foreign company engaged in cable undertakings in Nigeria. Its worldwide management accounts for the year ended September 30, 2002, revealed the following:

	N'000	N
'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	<u>100,000</u>	
		450,000
Less:		
Salaries and wages	180,000	
Depreciation	90,000	
Overhead expenses	85,000	
Purchase of equipment	<u>39,000</u>	<u>394,000</u>
Net Profit		<u>56,000</u>

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 totaling N23million.

Required:

- (a) Compute the company's Adjusted Profit;
- (b) Determine the Adjusted Profit Ratio and Depreciation Ratio; and
- (c) Compute the Total Profits and Income tax payable in Nigeria.

Suggested Solution 9.2

(a) **ABC LIMITED**
COMPUTATION OF ADJUSTED PROFIT

	N'000	N'000
Net Profit per accounts		56,000
Add:		
Depreciation	90,000	
Purchase of equipment	39,000	
Other disallowable expenses	<u>23,000</u>	<u>152,000</u>
Adjusted Profit		<u>208,000</u>

(b) **COMPUTATION OF ADJUSTED PROFIT AND DEPRECIATION RATIOS**

(i) Computation of Adjusted Profit Ratio:

$$\frac{\text{N}208,000}{\text{N}450,000} \times 100\% = 46.22\%$$

(ii) Computation of Depreciation Ratio:

$$\frac{\text{N} 90,000}{\text{N}450,000} \times 100\% = 20\%$$

(c) **COMPUTATION OF COMPANIES INCOME TAX PAYABLE IN NIGERIA**

	N '000
Assessable Profit (N100m x 46.22%)	46,220
Deduct:	
Capital Allowances (N100m x 20%)	<u>20,000</u>
Total Profit	<u>26,220</u>
Companies Income Tax payable	
N26,220,000 at 30%	<u>7,866</u>

9.4 CHAPTER SUMMARY

This chapter deals comprehensively with the computation of taxes for a selected number of specialised companies, such as those engaged in Air and Sea Transport, cable (communications) undertakings.

In order to assist readers, worked examples are provided to clearly illustrate the differences inherent in the computation of tax liabilities for each of the specialised businesses.

MULTIPLE- CHOICE QUESTIONS

1. A claim for the revision of Assessable Profit of a foreign air or sea transport company from a "fair percentage" basis to "Adjusted Profit/Depreciation Ratio" basis is valid only if made within ____ after the end of the relevant assessment year.
 - (A) 2years
 - (B) 3years
 - (C) 4years
 - (D) 5years
 - (E) 6years
2. The minimum tax payable by a foreign company engaged in air or sea transport business shall not be less than ____ of the full sum receivable in respect of carriage of passengers, mails, livestock or goods shipped or loaded into aircraft in Nigeria.
 - (A) 2%
 - (B) 5%
 - (C) 6%

- (D) 7½ %
 (E) 10%
3. Rent received in advance covering a period that is more than 5years will be spread to cover a period of _____
- (A) 2years
 (B) 3years
 (C) 4years
 (D) 5years
 (E) 10years
4. In the real estate industry, _____ of the value of goods and services is to be invoiced as VAT.
- (A) 2%
 (B) 3%
 (C) 4%
 (D) 5%
 (E) 10%
5. All taxpayers involved in real estate transactions are required to register for VAT with the relevant tax authority within _____ of commencement of business.
- (A) 2months
 (B) 3months
 (C) 4months
 (D) 5months
 (E) 6months

SHORT ANSWER QUESTIONS

1. Gratifications to local chiefs and heads of families in agricultural business are _____ expenses for the purpose of arriving at the Total profit.
2. State the formula for the determination of Adjusted Profit Ratio for air and sea transport companies.
3. State the formula for the determination of the Depreciation Ratio for air and sea transport companies.
4. In agricultural business, “average standard of cultivation” plays an important role when the business result is below _____
5. Computation and assessment of profits of a foreign air and sea company in Nigeria is based on the Adjusted Profit/Depreciation Ratio basis or by applying a _____ on the full sum receivable in respect of carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria.

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

- 1 Disallowable
2.
$$\frac{\text{Adjusted Profit}}{\text{Worldwide Income}} \times 100\%$$
3.
$$\frac{\text{Depreciation Allowance}}{\text{Worldwide Income}} \times 100\%$$
4. Expectation
5. Fair percentage

WORKED EXAMPLES

QUESTIONS

1. XYZ Limited completed the construction of a two-wing duplex located at Gwagwalada, Abuja on 31 December 2011. The company rented out both flats with effect from 1 January 2012, through an estate agent and received rent for two years. The details of the income and expenses for the period are as follows:

	2012 N	2013 N
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:

- c) Capital allowances agreed with the relevant tax authority for 2012 and 2013 were N480,000 and N120,000.
- d) Repairs and maintenance comprised:
Depreciation N100,000 N 85,000

Repairs of tenant's bathroom		N180,000
Repairs of the MD's private residence	N120,000	N185,000

- e) Tenement rate includes tenement rate of N5,000 and N12,000 paid on the private residence of the MD for 2012 and 2013 respectively.

Required:

Compute the amount of rental income assessable to tax for the relevant tax years.

- (2) **ABC 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 31 December 2010 revealed the following:

	N'000	N'000
Income for passengers flown from Madrid to Nigeria		4,425,600
Income for passengers flown from Nigeria to Madrid		3,397,250
Income from cargo loaded into aircraft on other routes		2,260,000
Income from cargo freight from Nigeria to Madrid		<u>3,375,000</u>
		13,457,850
Deduct: Operating expenses:		
Depreciation	460,000	
Staff salaries	725,000	
Use of airport facilities	87,000	
Accommodation for airtime crew	28,500	
Hotel bills for passengers	120,000	
General provisions	<u>35,000</u>	<u>(1,455,500)</u>
Operating profits		<u>12,002,350</u>

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 2011.

(Ignore minimum tax computation)

- (3) **JAMES LIMITED** is an agricultural company which commenced business on 1 July 2001. It is engaged in plantations, cattle ranching and poultry business and prepares its financial statements to 30 June of every year. Its recent financial statements showed the following results:

	Year ended 30 June		
	2002	2003	2004
Sales:	₦	₦	₦
Plantation Crops	-	-	12,000
Cattle ranching proceeds	<u>95,000</u>	<u>319,000</u>	<u>318,000</u>
Total Sales	<u>95,000</u>	<u>319,000</u>	<u>330,000</u>
Expenses:			
Preliminary expenses	25,000	25,000	25,000
Purchase: Cockrels	14,000	2,000	-
Poultry feeds	85,500	67,450	75,810
Salaries and Wages	50,000	65,500	67,500
Depreciation:			
- Plant and Machinery	15,000	15,750	15,750
- Office furniture and Fittings	14,230	15,140	15,140
Drugs and Medicines for Animals	13,250	14,100	14,500
Interest on bank loan	-	17,100	18,000
General expenses	41,500	41,720	51,500
Increase in Closing stocks:			
(Animals and crops for resale)	-	(4,200)	(5,100)
Net Profit/(Loss)	<u>(163,480)</u>	<u>59,440</u>	<u>51,900</u>
	<u>95,000</u>	<u>319,000</u>	<u>330,000</u>

Other additional information

Preliminary expenses amounted to ₦200,000, and it is to be written off in equal annual amounts over a period of eight (8) years, commencing from the year ended 30 June 2002.

The breakdown of the preliminary expenses is as follows:

	₦
(i) Stamp duties and registration expenses	15,000
(ii) Cost of initial clearing and cultivation of land for Plantation	35,000
(iii) 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	<u>11,250</u>
	<u>200,000</u>

The following details were extracted from the company's Non-current Assets Register:

Assets:	Cost	Date of Purchase
	₦	
Motor vehicles	30,500	July 2001
Agric Tractor	27,000	June 2003
Equipment used in spraying plantations	60,000	January 2003
Office furniture	45,000	August 2001
Building (Administrative Block)	71,000	December 2003

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.

SUGGESTED SOLUTIONS**1. XYZ LIMITED****COMPUTATION OF RENTAL INCOME ASSESSABLE TO TAX IN 2013 AND 2014 TAX YEARS**

	2013		2014	
	N	N	N	N
Rent received		3,500,000		3,500,000
Allowable expenses:				
Repairs and maintenance –				
Repairs of tenant's bathroom		-	180,000	
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	<u>20,000</u>	<u>(622,000)</u>	<u>20,000</u>	<u>(879,000)</u>
Assessable rent		2,878,000		2,621,000
Capital allowances		<u>(480,000)</u>		
	<u>(120,000)</u>			
Chargeable rent		<u>2,398,000</u>		<u>2,501,000</u>

(2)**ABC LIMITED****INCOME TAX COMPUTATION FOR 2011 ASSESSMENT YEAR**

	N'000	N'000	N'000
Income from passengers' freight from Nigeria to Madrid			3,397,250
Income from cargo freight from Nigeria to Madrid			<u>3,375,000</u>
			6,772,250
Allowable deductions:			
Staff salaries	725,000		
Use of airport facilities	87,000		
Accommodation for airline crew	28,500		
Hotel bills for passengers	<u>120,000</u>		
	<u>960,500</u>		
Proportion applicable to operations in Nigeria			
= $\frac{\text{N}960,500,000}{\text{N}6,772,250,000} =$		483,342	
13,457,850,000			
Depreciation allowance as agreed		<u>805,000</u>	<u>(1,288,342)</u>
Total Profit			<u>5,483,908</u>
Companies Income Tax payable at (30% of N5,483,908)			<u>1,645,172,400</u>

(3)**JAMES LIMITED**

COMPUTATION OF TAX LIABILITIES

	N	N
Assessment Year 2001 (Based on 1/7/01-31/12/01)		
Loss for the period (w iii)		(54,625)
Add:		
Capital allowances (w iv)		<u>(114,312)</u>
Unrelieved loss and capital allowances c/f		<u>(168,937)</u>
 Assessment Year 2002 (Based on 1/7/01-30/6/02)		
Loss for the period (w iii)		(109,250)
Add:		
Unrelieved loss b/f		<u>(54,625)</u>
		(163,875)
Add:		
Capital allowances-For the year (w iv)	71,374	
-Brought forward	<u>114,312</u>	<u>(185,686)</u>
Unrelieved loss and capital allowances c/f		<u>349,561</u>
 Assessment Year-2003 (Based on 1/7/01-30/6/02)		
Loss for the period		(109,250)
Add:		
Unrelieved loss b/f		<u>(163,875)</u>
		<u>273,125</u>
However, unrelieved losses carried forward are restricted to: actual loss incurred		(109,250)
Add:		
Capital allowances – for the year (w iv)	40,959	
- brought forward	<u>185,686</u>	<u>(226,645)</u>
Unrelieved loss and capital allowance c/f		<u>335,895</u>
 Assessment Year 2004 (Based on 1/7/02-30/6/03)		
Assessable Profit (w iii)	-	115,330
Deduct:		
Unrelieved loss b/f	(109,250)	
Relieved in the year	<u>109,250</u>	<u>(109,250)</u>
	-	6,080
Deduct:		
Capital allowances – for the year (w iv)	101,912	
- brought forward	<u>226,645</u>	<u>(328,557)</u>
Unrelieved capital allowances c/f		<u>(322,477)</u>
 Assessment Year 2005 (Based on 1/7/03-30/6/04)		

Assessment Profit (w iii)		107,790
Deduct:		
Capital allowances –for the year (w iv)	28,698	
- brought forward	<u>328,557</u>	<u>357,255</u>
Unrelieved capital allowances c/f (Note (e))		<u>49,465</u>

Workings:

(i) COMPUTATION OF ADJUSTED PROFITS/(LOSS)

	YEAR ENDED JUNE 30,		
	2002	2003	2004
	₦	₦	₦
Net Profit/(Loss) per accounts	(163,480)	59,440	51,900
Add:			
Disallowable expenses			
- Preliminary expenses	25,000	25,000	25,000
- Depreciation:			
Plant and Machinery	15,000	15,750	15,750
Office furniture and fittings	<u>14,230</u>	<u>15,140</u>	<u>15,140</u>
Adjusted Profit/(Loss)	<u>(109,250)</u>	<u>115,330</u>	<u>107,790</u>

(ii) DETERMINATION OF BASIS PERIOD

Assessment Year	Basis Period for Assessment	Basis Period for Capital Allowances
2001	1/7/01 - 31/12/01	1/7/01 – 31/12/01
2002	1/7/01 – 30/6/02	1/1/02 – 30/6/02
2003	1/7/01 – 30/6/02	-
2004	1/7/02 – 30/6/03	1/7/02 – 30/6/03
2005	1/7/03 – 30/6/04	1/7/03 – 30/6/04

(iii) COMPUTATION OF ASSESSABLE PROFIT/(LOSS)

Assessment Year	Basis Period for Assessment	Workings	Assessable Profit/(Loss) ₦
2001	1/7/01 –31/12/01	(₦109,250) X 6/12	<u>(54,625)</u>
2002	1/7/01 –30/6/02		109,250)
2003	1/7/01 – 30/6/02		<u>(109,250)</u>
			<u>(218,500)</u>
2004	1/7/02 – 30/6/03		<u>115,330</u>
2005	1/7/03 –30/6/04		<u>107,790</u>

(iv) COMPUTATION OF CAPITAL ALLOWANCES

	Building	Motor vehicle	Plantation Expenditure	Plantation Equipment	Office Furniture	Total Allowance
Rate-Initial (%)	15	50	30	95	25	
- Annual (%)	10	25	50	-	20	
	₦	₦	₦	₦	₦	₦
Assessment Year 2001						
Acquisitions						
- July 2001 – Motor Vehicles		30,500				
- July 2001 – Platation			173,750			
August 2001 – Office furniture				-	45,000	
-						
	<u>0</u>	<u>30,500</u>	<u>173,750</u>	<u>0</u>	<u>45,000</u>	
Allowances:						
Initial allowance		(15,250)	(52,125)		(11,250)	78,625
Annual allowance (6 months)	0	<u>(1,906)</u>	<u>(30,406)</u>		(3,375)	35,687
Written down value c/o		<u>3,344</u>	<u>91,219</u>	<u>0</u>	<u>30,375</u>	<u>114,312</u>
Assessment Year 2002						
Annual allowance	<u>0</u>	<u>(3,812)</u>	<u>(60,812)</u>	<u>0</u>	<u>(6,750)</u>	<u>71,374</u>
Written down value c/f	0	5,720	30,407	0	23,625	
Assessment Year 2003						
Annual allowance	<u>0</u>	<u>(3,812)</u>	<u>(30,397)</u>	0	<u>(6,750)</u>	<u>40,959</u>
Written down value of	0	5,720	10	0	16,875	
Assessment Year 2004						
Additions						
- Jan 2003 – Spraying, Esq	0	0	0	60,000	0	0
- June 2003-Agric Trac'	<u>0</u>	<u>0</u>	<u>0</u>	<u>27,000</u>	<u>0</u>	<u>0</u>
	<u>0</u>	<u>5,720</u>	<u>10</u>	<u>87,000</u>	<u>0</u>	
Allowances						
Investment allowance	0	0	0		0	8,700
Initial allowance	0	0	0	(82,650)	0	82,650
Annual allowance	<u>0</u>	<u>3812</u>	<u>0</u>	<u>0</u>	<u>(6,750)</u>	<u>10,562</u>
Written down value –c/f	<u>0</u>	<u>1,908</u>	<u>10</u>	<u>4,350</u>	<u>10,125</u>	<u>101,912</u>
Assessment Year – 2005						
Addition	<u>71,000</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	
- Dec 2003 – Building	71,000	1,908	10	4,350	10,125	

Allowances					
Initial allowance	(10,650)	0	0		10,650
Annual allowance	<u>(6,035)</u>	(1,898)	<u>0</u>		<u>18,048</u>
Written down Value of	<u>54,315</u>	10	<u>10</u>	<u>(10,115)</u>	<u>28,698</u>
				4,350	

(v) **COMPUTATION OF ANNUAL ALLOWANCE**

	Building ₦	Motor Vehicles ₦	Plantation Expenditure ₦	Plantation Equipment ₦	Office Furniture ₦
Cost of acquisition	71,000	30,500	173,750	87,000	45,000
Initial allowance	<u>(10,650)</u>	<u>(15,250)</u>	<u>(52,125)</u>	<u>(82,250)</u>	<u>(11,250)</u>
	<u>60,350</u>	<u>15,250</u>	<u>121,625</u>	<u>4,750</u>	<u>33,750</u>
Asset life	10 years	4 years	2 years	1 year	5 years
Annual allowance	<u>60,350</u>	<u>15,250</u>	<u>121,625</u>	0	<u>33,750</u>
	10	4	2		5
Is equal to	<u>6,035</u>	<u>3,812</u>	<u>60,812</u>		<u>6,750</u>
Annual allowance – 2001					
Pro-rated for 6 months		N 3,812	N60,812 x $\frac{6}{12}$		6,750
	=	<u>1,906</u>	<u>30,406</u>		<u>3,375</u>

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 capitalised 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	<u>28,030</u>
	<u>173,750</u>

- (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.

CHAPTER TEN

WITHHOLDING TAX

CHAPTER CONTENTS

- a) Introduction
- b) Relevant Tax Authority
- c) Withholding Tax Rates in Ghana
- d) Withholding Tax Rates in Nigeria
- e) Filing and Remittance of Withholding Tax Returns
- f) Withholding Tax in Liberia
- g) Treatment of Withholding Tax Receipts in Ghana
- h) Advantages of Withholding Tax
- i) Disadvantages of Withholding Tax
- j) Withholding of Tax on Payments to Residents
- k) Advance Payment of Income or Turnover Tax
- l) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the reader should become competent to deal with various issues connected with Withholding Tax, particularly with reference to:

- a) The various types of income that are subject to Withholding tax;
- b) The rates of Withholding Tax applicable to the incomes identified above;
- c) The rules regarding the deduction of Withholding Tax;
- d) Filing and remittance procedures and requirements; and
- e) The treatment of Withholding Tax receipts.

10.0 INTRODUCTION

Withholding Tax is an advance payment of tax, which was introduced in 1985 in Nigeria to bring into the tax net all the taxpayers including those not registered or too difficult to track down.

10.1 RELEVANT TAX AUTHORITY

10.1.1 The Case in Nigeria

In Nigeria, the Withholding Tax is deducted at source by the authorized withholding tax agent and the tax is later paid to the State Internal Revenue if the recipient of the income from which the tax is deducted is an individual. The amount withheld is paid to the Federal Inland Revenue Service if the recipient of the income is a corporate body.

Suffice it to say, that in determining the relevant tax authority on Withholding Tax, the residence of the recipient is very important. For example, the residence of the landlord is important in determining the relevant tax authority on Withholding Tax on rent. In case of the interest, the location of the branch of the bank paying the interest is relevant. The residence of the taxpayer is important when considering the issue of royalty. However, the residence of the taxpayer is important and not the location of the company paying the

dividend. In the case of director's fees, the residence of the recipient director is an important consideration.

10.1.2 The Case in Ghana

In Ghana, the administering authority for withholding taxes is the Internal Revenue Service. Withholding tax is a tax deducted at source by an authorized withholding tax agent and accounted later to the Commissioner of Internal Revenue Service. "Withholding Agent" refers to a person obliged to withhold tax on behalf of the Commissioner.

10.2 WITHHOLDING TAX RATES IN GHANA

10.2.1 Withholding Taxes Which are Final Rate

- | | |
|--|-----|
| a) Dividends paid to a resident person | 10% |
| b) Fees paid to a part-time teacher, lecturer, examiner, examination invigilator or supervisor | 15% |
| c) Fees, emoluments, benefits paid in cash or in kind to a resident director, manager or board member of a company or body of persons who is not a full time employee of such company or body of persons | 15% |
| d) Dividends and interest paid to a non-resident person | 10% |
| e) Royalties, natural resource payment and rent to a non-resident person | 15% |
| f) Management and technical service fees to a non-resident person | 20% |

10.2.2 Withholding Taxes Which are not Final Rate

- | | |
|--|-----|
| a) Interest to a resident person other than an individual | 10% |
| b) Commission to a resident insurance, sales or canvassing agent | 15% |
| c) Endorsement fees paid to a resident person for recommending a product in an advertisement launched to promote the sales of a new Product or to promote sales at the expense of a competing product, in electronic, print media or otherwise | 15% |
| d. Commission to a resident lotto receiver or agent | 7½% |
| e. Payment for goods and services to a resident person | 5% |
| f. Payment for goods and services to a non-resident person | 20% |

In the case of an employee, the withholding agent is the employer and he/she is to deduct and withhold tax from the total amount from the employment in accordance with the Pay-As-You-Earn (PAYE) tax table which is at a graduated rate and currently is as follows:

2006 PERSONAL INCOME TAX RATES

ANNUAL	Chargeable Income ₦	Rate %	Tax ₦	Cumulative Income ₦	Cumulative Tax ₦
First	2,400,000	Free	-	2,400,000	-
Next	2,400,000	5	120,000	4,800,000	120,000
Next	12,000,000	10	1,200,000	16,800,000	1,320,000
Next	79,200,000	17.5	13,860,000	96,000,000	15,180,000
Exceeding	96,000,000	25			

MONTHLY	Chargeable Income ₦	Rate %	Tax Income ₦	Cumulative Tax ₦	Cumulative ₦
First	200,000	Free	-	200,000	
Next	200,000	5	10,000	4,00,000	10,000
Next	1000,000	10	100,000	1,400,000	110,000
Next	6,600,000	17.5	1,155,000	8,000,000	1,265,000
Exceeding	8,000,000	25			

10.2 WITHHOLDING TAX RATES IN NIGERIA

S/N	Nature of Transactions or Payments	Companies	Individuals
1.	Contract of construction	2 ¹ / ₂ %	2 ¹ / ₂ %
2.	Contract of supplies, agency etc.	5%	5%
3.	Dividend, Rent & Interest	10%	10%
4.	Technical fees	10%	5%
5.	Royalties	10%	5%
6.	Professional Services	10%	5%
7.	Management Services	10%	5%
8.	Directors' fees	-	10%
9.	Hire of Equipment, Plant & Machinery and Motor Vehicles	10%	10%

10.	Rents	10%	10%
11.	Interests	10%	10%

10.4 FILING AND REMITTANCE OF WITHHOLDING TAX RETURNS

10.4.1 Position in Ghana

The employer is required by law to submit to the Commissioner of Internal Revenue Service a return on every employee by the 31st March of the following year. The Return is required to contain the following information:

- a) The amount of assessable income received by the employee from the employment.
- b) The amount of tax withheld from the income taking into account all necessary deductions.

The employer is to give every employee a copy of the return which is treated as an assessment served on the employee by the Commissioner of Internal Revenue Service, provided this consists exclusively of income from employment, that is, if the employee has no other sources of income apart from that from employment.

For monthly deductions of Pay-as-you-earn (PAYE) tax, the employer is to file the taxes withheld to the Commissioner of Internal Revenue on or before the 15th day of the month following the month in which the deduction was made. For example, PAYE deduction for January is to be filed on or before 15th February, and so on. All other withholding taxes are also subject to the same deadline for submission of returns.

For withholding taxes on goods and services the information to be provided include

- i) The name and address of the recipient
- ii) The nature of the contract
- iii) The total amount estimated to be payable
- iv) The tax withheld
- v) The net amount paid

In the following circumstances exemption is granted from the application of the 5% withholding tax on contract awards:

- ❖ A contract for the sale of goods which constitute trading stock to both the vendor and the purchaser.
- ❖ Where permission has been granted to an institution by the Commissioner of Internal Revenue Service to receive payments without the deduction of the tax.
- ❖ Exemption of a person by the Commissioner of Internal Revenue Service where that person has a satisfactory tax record.
- ❖ Where the amount involved is N500,000 or less, for a year of assessment.

A withholding tax agent who fails to withhold tax is personally liable to pay to the Commissioner of Internal Revenue Service the amount of tax which has not been withheld.

10.4.2 Filing and Remittance of Withholding Tax Returns in Nigeria

In Nigeria, a taxpayer is required to file the Withholding Tax returns latest by the end of the following month. The returns must be backed up by a cheque drawn in favour of the relevant tax authority. Note that the cheque must be paid into the government account in a designated bank.

10.4.3 Information Items in Withholding Tax Returns

- a) Name and address of the agent of the government (taxpayer)
- b) Name and address of the relevant tax authority to which remittance is being made
- c) Names and addresses of the beneficiaries from whom withholding tax has been deducted
- d) Nature of the transaction of each beneficiary
- e) Gross amount of the transaction
- f) The applicable rate of Withholding Tax
- g) The amount of Withholding Tax deducted

10.4.4 Time for Remittance of Deduction of Withholding Tax

The amount of the withholding tax must be remitted to the relevant tax authority through a designated bank account within 21 days after the date when the duty to deduct arose for companies and 30 days for individuals and unincorporated bodies.

10.4.5 Penalty for Late or Non-Remittance or Non-Deduction

An agent who fails to remit or fails to deduct Withholding Tax is liable to the following penalties:

- a) In case of individuals and unincorporated entities; either ₦5,000 or 10 per cent of amount not deducted or remitted, whichever is higher
- b) In case of companies, 10% of tax either not deducted or remitted.

Note that interest shall be charged in addition to the above stated penalty at the ruling commercial rate (presently 21 per cent).

Illustration 10.1

In September 2011, ABWA Consult engaged in the following transactions:

- i. The firm was supplied with stationery worth ₦25,000,000 from Abhulimen Enterprise of P.O. Box KD 66, Accra.
- ii. Bowale Limited of P.O. Box 1623, Sunyani, carried out a consultancy assignment for ABWA Consult at a cost of ₦68,750,000.

You are required to prepare a 5% withholding tax schedule for submission to the Internal Revenue Service.

What is the period within which the amount is to be paid over to the Commissioner and the procedures involved?

Suggested Solution

**ABWA CONSULT
P.O. BOX 235, ACCRA
WITHHOLDING TAX
- SEPTEMBER 2011**

Name & Address of Supplier	Name & Address of Withholding Agent	Gross Income C	5% Tax C	Net Income C
Abhulimen Enterprise P.O. Box KD 66 Accra	ABWA Consult P.O. Box 235 Accra	25,000,000	1,250,000	23,750,000
Bowale Limited P.O. Box 1623 Sunyani	ABWA Consult P.O. Box 235 Accra	68,750,000	3,437,500	65,312,500
		-----	-----	-----
		-	-	-
TOTAL		93,750,000	4,687,500	89,062,500
		=====	=====	=====

A cheque for the sum of C4,687,500 will have to be issued to the Internal Revenue Service (IRS) and attached to the schedule so the IRS will be able to issue Tax Credit Certificates to the suppliers. The payment should be made on or before 15 October, 2011.

10.5 Withholding tax in Liberia

10.5.1 Withholding on Payment to Residents

Wages or Salary to Employees: Employers who make payments to its employees are required to withhold income tax on such payment in accordance with the schedule under “Resident Natural Persons” above.

Interest, Dividends, Royalties, License Fees, and Similar Payments: Payers of interest, dividends, royalties, license fees, and similar payments that are not exempted from tax, are required to withhold tax at the rate of 10% and such deduction are paid to the government within 10 days of the last day of each month.

No withholding of tax is required on payment of dividends made to resident corporation but the payor is required to file a withholding form setting out the amount of the dividend payments and reporting that the amount of tax withheld is was zero.

Rent: Resident legal persons and resident natural persons who pay rents of \$500,000 or more are required to withhold tax at the rate of ten percent (10%) on every payment of rent to a resident person.

Gambling Winnings: Resident persons who in the course of business make a payment of gambling winnings to a resident person are required to withhold tax at the rate of 30% and such deduction are paid to the government within 10 days of the last day of each month.

Other Payments: a resident person who is an income tax filer; a government agency, or a non governmental organization operating in Liberia makes payment to a resident person for services rendered and the amount of the payment is \$100,000 or more, the payor is to withhold tax at the rate of ten percent (10%) and the payment is included in the recipient's gross income for the year. The deduction should be paid to the government within 10 days of the last day of each month.

10.5.2 Advance Payment of Income or Turnover Tax

- (a) All persons who are required to file an income tax return or to pay turnover tax in lieu of the income tax are to make advance payments of the turnover tax due for the current year:
- (b) if a person's gross income for the current tax year is less than the threshold for paying income tax, the advance payments are creditable against liability at four percent (4%) turnover tax due in lieu of the income tax
- (c) if a person's gross income for the current tax year meets or exceeds the threshold for paying income tax , the advance payments are creditable against income tax due
- (d) Tax withheld on the payee's behalf on a payment made by a person who has a tax withholding obligation is creditable against the payee's advance payments, provided that the payee supplies the payor with a Tax Identification Number, at the time of or before the payment subject to withholding.
- (e) The amount of advance payments that exceeds a person's tax liability for the tax year is creditable or refundable to the person.
- (f) The following rules apply in determining the amount of advance payments required for a tax year:
 - i. If a person was subject to the income tax for the preceding tax year, that person's advance payments of the current year's tax must be at least
 - a) 100% of the person's income tax for the preceding tax year, or
 - b) 90% of the person's income tax or 100% of the person's turnover tax for the current tax year, whichever is applicable
 - ii. If a person was not subject to the income tax for the preceding tax year, but was subject to the four percent (4%) turnover tax in lieu of the income tax, that person's advance payments of the current year's tax must be at least:
 - a) 100% of the person's turnover tax for the preceding tax year, or
 - b) 90% of the person's income tax or 100% of the person's turnover tax for the

current tax year, whichever is applicable

- iii. If a person was not subject to either income tax or turnover tax in the preceding tax year, but that person's advance payments must be at least 90% of the person's income tax liability for the current tax or 100% of the person's turnover tax liability for the current year, whichever is applicable.

10.5.3 Quarterly Payments: Advance payments are to be made quarterly, and each payment is to be in an amount equal to at least 25% of the total advance payment due for the year.

10.5.4 Timely Payment: An advance payment is timely made if payment is made at the designated hour and place for payment by the 10th day following the end of each quarter of the taxpayer's tax year.

10.5.5 Advance Payment Obligation

Any person who has an advance payment obligation but fails to pay is subject to payment of two percent (2%) of the unpaid tax, and the penalty increases by two percent (2%) per month or part of a month that the return is late, but not in excess of fifty percent (50%) of the unpaid tax. Interest on a late payment is at the market rate published by the Central Bank of Liberia.

10.6 Treatment of Withholding Tax Receipts In Ghana

For withholding taxes that are final, it means the net amount received after the withholding tax is not subject to tax again. However, for those that are not final, the net income received will be grossed up and tax calculated thereon, after which a tax credit will be allowed for any withholding taxes suffered. Thus withholding tax receipts are a payment on account and are utilized in offsetting a person's tax liability.

Illustration 10.2

Nakyea Consult received a net sum of ₦142,500,000 from a consultancy job performed after suffering a withholding tax of an amount of ₦7,500,000 on a gross receipt of ₦150,000,000 (i.e. 5% x ₦150,000,000). If this was all the income Nakyea Consult Limited received in the year 2006, then given a tax rate of 25%, the company's total tax liability is ₦37,500,000 (i.e. 25% x ₦150,000,000). The treatment of the withholding tax receipt will be as follows:

Suggested Solution 10.2

	₦	₦
Gross Income	150,000,000	
Tax @ 25% (Tax Liability)	<u>37,500,000</u>	37,500,000
Net Income	<u>112,500,000</u>	
Less: Tax Credit		<u>7,500,000</u>
Tax Payable		<u>30,000,000</u>

10.7 ADVANTAGES OF WITHHOLDING TAX

The following advantages attach to the implementation of Withholding Tax rules:

- a) It ensures faster mobilisation of revenue. Government is able to receive revenues from taxpayers upfront.,
- b) It helps in expanding the tax net by roping in persons who were previously unknown to the tax authorities.,
- c) It helps in determining a person's turnover and thus ascertaining the correct income for tax purposes.
- d) It involves little or no cost of collection as it is self accounting in nature. and
- e) It saves time for the Revenue Officers to attend to other duties.

10.8 DISADVANTAGES OF WITHHOLDING TAX

The disadvantages of the application of withholding tax include the following:

- a) A high rate of withholding tax is likely to affect the operational performance of most businesses.
- b) 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.
- c) It is likely to discourage hard work by Revenue Officers since it is self accounting in nature.
- d) It leads to the locking up of the capital of some businesses with the Revenue agencies.

10.9 WITHHOLDING OF TAX ON PAYMENT TO RESIDENTS

Wages or Salary to Employees: Employers who make payments to its employees are required to withhold income tax on such payment in accordance with the schedule under "Resident Natural Persons" above.

Interest, Dividends, Royalties, License Fees, and Similar Payments: Payers of interest, dividends, royalties, license fees, and similar payments that are not exempted from tax, are required to withhold tax at the rate of 10% and such deduction are paid to the government within 10 days of the last day of each month.

No withholding of tax is required on payment of dividends made to resident corporation but the payor is required to file a withholding form setting out the amount of the dividend payments and reporting that the amount of tax withheld is was zero.

Rent: Resident legal persons and resident natural persons who pay rents of \$500,000 or more are required to withhold tax at the rate of ten percent (10%) on every payment of rent to a resident person.

Gambling Winnings: Resident persons who in the course of business make a payment of gambling winnings to a resident person are required to withhold tax at the rate of 30% and such deduction are paid to the government within 10 days of the last day of each month.

Other Payments: a resident person who is an income tax filer; a government agency, or a non-governmental organization operating in Liberia makes payment to a resident person for services rendered and the amount of the payment is \$100,000 or more, the payor is to withhold tax at the rate of ten percent (10%) and the payment is included in the recipient's gross income for the year. The deduction should be paid to the government within 10 days of the last day of each month.

10.10 ADVANCE PAYMENT OF INCOME OR TURNOVER TAX

- a) All persons who are required to file an income tax return or to pay turnover tax in lieu of the income tax are to make advance payments of the turnover tax due for the current year:
 - i. if a person's gross income for the current tax year is less than the threshold for paying income tax, the advance payments are creditable against liability at four percent (4%) turnover tax due in lieu of the income tax
 - ii. if a person's gross income for the current tax year meets or exceeds the threshold for paying income tax, the advance payments are creditable against income tax due
 - iii. Tax withheld on the payee's behalf on a payment made by a person who has a tax withholding obligation is creditable against the payee's advance payments, provided that the payee supplies the payor with a Tax Identification Number, at the time of or before the payment subject to withholding.
 - iv. The amount of advance payments that exceeds a person's tax liability for the tax year is creditable or refundable to the person.
 - v. The following rules apply in determining the amount of advance payments required for a tax year:

If a person was subject to the income tax for the preceding tax year, that person's advance payments of the current year's tax must be at least

- ❖ 100% of the person's income tax for the preceding tax year, or
- ❖ 90% of the person's income tax or 100% of the person's turnover tax for the current tax year, whichever is applicable

If a person was not subject to the income tax for the preceding tax year, but was subject to the four percent (4%) turnover tax in lieu of the income tax, that person's advance payments of the current year's tax must be at least:

- ❖ 100% of the person's turnover tax for the preceding tax year, or
- ❖ 90% of the person's income tax or 100% of the person's turnover tax for the current tax year, whichever is applicable

If a person was not subject to either income tax or turnover tax in the preceding tax year, but that person's advance payments must be at least 90% of the person's income tax liability for the current tax or 100% of the person's turnover tax liability for the current year, whichever is applicable.

- (b) **Quarterly Payments:** Advance payments are to be made quarterly, and each payment is to be in an amount equal to at least 25% of the total advance payment due for the year.
- (c) **Timely Payment:** An advance payment is timely made if payment is made at the designated hour and place for payment by the 10th day following the end of each quarter of the taxpayer's tax year.
- (d) Any person who has an advance payment obligation but fails to pay is subject to payment of two percent (2%) of the unpaid tax, and the penalty increases by two percent (2%) per month or part of a month that the return is late, but not in excess of fifty percent (50%) of the unpaid tax. Interest on a late payment is at the market rate published by the Central Bank of Liberia.

10.12 CHAPTER SUMMARY

In this chapter, Withholding Taxes, the rates applicable and cases in which they are final or merely a payment on account were discussed. It is always to be remembered that where a Withholding Tax is not a final tax, credit should be given for it after the total tax liability of a person has been determined.

The filing and reporting requirements are also important as failure to comply with the provision will lead to sanctions by the revenue authorities. Readers are also to take note of the exemptions provided under the Withholding Tax rules.

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 a taxpayer to make more money
 - E. It reduces the incidence of tax evasion

2. The Withholding Tax for companies on all aspects of construction contract is
 - A. 2^{1/2}%
 - B. 5%
 - C. 10%
 - D. 20%
 - E. 25%

3. The Withholding Tax for individual on Directors' fees is
 - A. 5%
 - B. 10%
 - C. 15%
 - D. 20%
 - E. 30%

4. The time limit for the remittance of Withholding Tax should be within
 - A. 25 days of the deduction
 - B. 30 days of the deduction
 - C. 35 days of the deduction
 - D. 40 days of the deduction
 - E. 60 days of the deduction

5. Failure to deduct Withholding tax attracts a fine of
 - A. 50% of the withheld tax
 - B. 150% of the withheld tax
 - C. 190% of the withheld tax
 - D. 200% of the withheld tax
 - E. 300% of the withheld tax

SHORT ANSWER QUESTIONS

1. For individuals, the time limit for remittance of Withholding Tax to the relevant tax authority is days.
2. Withholding Tax rate in respect of firms on technical services is
3. Withholding Tax enhances tax compliance.
4. In Ghana, the administering authority for Withholding Tax is
5. Commission to a company is subject to Withholding Tax rate of

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

1. D
2. A
3. B
4. B
5. D

SUGGESTED SOLUTIONS SHORT ANSWER QUESTIONS

1. 30
2. 5%
3. Voluntary
4. The Internal Revenue Service
5. 10%

WORKED EXAMPLES

QUESTIONS

1. What are the exemptions, if any, to the application of Withholding Tax?
2. Why is there a call for the abolition of Withholding Taxes? In view of this call, are there any advantages to be derived from the application of Withholding Taxes?
3. Ali Seidu, of P. O. Box 74, Sunyani, has entered into a contract for the supply of food items to the Nakyea Superstores Limited, of P. O. Box 66, Accra-North, to the tune of ₵250,000,000, which was delivered on November 10th, 2010. Anao Kayode, of P.O. Box 244, Tamale, was also awarded another contract by the company for the supply of stationery to the tune of ₵45,000,000 and this was also delivered on November 20th, 2010. Bowale Abhulimen, of P. O. Box 8505, Kumasi, supplied truck tires valued at ₵120,000,000 on 25th November, 2010 to the company.

You have been contacted by Nakyea Superstores Limited to show them how to treat the contracts for tax purposes. Kindly provide for them a withholding tax schedule.
4. (a) Explain the nature of Withholding Tax in our country.
(b) Explain any THREE merits and demerits of Withholding Tax in your country
5. (a) Explain the right and obligation of taxpayer on Withholding tax scheme
(b) Explain briefly the procedure for filing withholding tax returns in your country, and state the information items in the returns
6. (a) What do you understand by '**Withholding Tax Credit Notes**'?
(b) A tax audit was carried out in Abeln Ltd, a medium – sized company located in Lagos on October 2015. During the audit, it was discovered that the company failed to remit the

Withholding Tax on a building constructed of the sum of N15,750,000, which was paid in July 2014. The demand notice was issued on 30th November, 2015. Assume Ammonise interest rate of 21% . .

Required:

Compute the Withholding Tax and penalty due.

SUGGESTED SOLUTIONS

1. Exemptions are provided under Withholding Tax in the case of contracts for the supply of goods and services. The circumstances are:
 - a) Where a contract for the sale of goods constitutes trading stock to both the vendor and the purchaser.
 - b) Where permission has been granted to an institution by the Commissioner to receive payments without the deduction of the tax.
 - c) Where the Commissioner of Internal Revenue Service exempts a person who has a satisfactory tax record.
 - d) Where the contract sum is ₦500,000 or less.

2. There is a call for the abolition of the Withholding Tax scheme because of the disadvantages associated with it. These are
 - a) A high rate of Withholding Tax is likely to affect the operational performance of most businesses.
 - b) 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;
 - c) It is likely to discourage hard work by Revenue Officers since it is self accounting in nature; and
 - d) It leads to the locking up of the capital of some businesses with the Revenue agencies.

The calls are going unheeded because the following advantages still stand to be gained from the application of withholding taxes:

 - i) It ensures faster mobilisation of revenue. Government is able to receive revenues from taxpayers upfront.
 - ii) It helps in expanding the tax net by roping in persons who were previously unknown to the tax authorities.
 - iii) It helps in determining a person's turnover and thus ascertaining the correct income for tax purposes.
 - iv) It involves little or no cost of collection as it is self accounting in nature.

- v) It saves time for the Revenue Officers to attend to other duties.

3. **NAKYEA SUPERSTORES LIMITED**

**P. O. BOX 66
ACCRA-
NORTH**

**WITHHOLDING TAX SCHEDULE FOR THE MONTH OF
NOVEMBER 2010**

Date	Name and Address of Supplier	Nature of Contract	Gross Amount C	5% Tax Withheld C	Net Amount Paid C
10/11/2010	Ali Seidu P. O. Box 74 Sunyani	Food Supplies	250,000,000	12,500,000	237,500,000
20/11/2010	Anao Kayode P. O. Box 244 Tamale	Stationery Supplies	45,000,000	2,250,000	42,750,000
25/11/2010	Bowale Abhulimen P.O. Box 8505 Kumasi	Supply of Truck Tires	120,000,000	6,000,000	114,000,000
			415,000,000	20,750,000	394,250,000

4 (a) **Nature of Withholding Tax**

These include:

- (i) Withholding tax is an advance payment of tax deducted at source from payments made to a taxable persons for carrying out service and offering service
- (ii) It can be used to offset against any future tax liability of another income or against income liability of the income of the year; and
- (iii) Failure to deduct withholding tax by an agent usually attract penalty.

(b) **Merits of Withholding Tax**

These include:

- (i) It broadens tax base,
- (ii) It is a good source of revenue to government
- (iii) It can be used to ascertain the tax payer turnover and to calculate the accurate tax to pay
- (iv) It reduces the difficulties of going to the tax office to make payment; and
- (v) It saves time

Demerit of Withholding Tax

These include:

- (i) It can bring disincentive to work due to self accounting nature; and
- (ii) It can affect the cash outflow of agents if they have to pay for their failure to deduct at source the withholding tax from their customers

5 (a) **Right and Obligation of Taxpayers of Withholding Tax Scheme**

The body that supplies withholding tax on this payment should request for evidence that the payer has accounted for the tax to the relevant tax authority. This is to enable him to claim credit against his total tax liability.

(b) **Filing and Remittance of Withholding Tax Returns In Nigeria**

In Nigeria, a taxpayer is required to file the Withholding Tax returns latest by the end of the following month. The returns must be backed up by a cheque drawn in favour of the relevant tax authority. Note that the cheque must be paid into the government account in a designated bank.

Information Items in Withholding Tax Returns Include:

- (j) Name and address of the agent of the government (tax payer),
- (ii) Name and address of the relevant tax authority to which remittance is being made,
- (iii) Names and addresses of the beneficiaries from whom withholding tax has been deducted;
- (iv) Nature of the transaction of each beneficiary
- (v) Gross amount of the transaction
- (vi) The applicable rate of withholding tax, and
- (vii) The amount of withholding tax deducted.

6(a) Withholding Tax Credit Notes are issued by the Federal Inland Revenue Service in favour of the taxpayers contained in the withholding tax schedule. These credit notes are usually sent by the collecting agents to the tax person who suffers the deduction. The credit notes can be used to claim tax credits against the person's tax liabilities. It is important to note that only the Federal Inland Revenue Service is permitted to issue credit notes, no other

government department is allowed to do this. State governments usually design their forms that would enable those tax payers from their areas to be granted credit notes.

6 (b) **Abeln Ltd**

Computation of Total Tax Liability

	N
Contract Sum	15,750,000
Withholding Tax thereon at 5% =	787,500
Penalty at 10% =	<u>78,750</u>
Withholding Tax plus penalty	<u>866,250</u>
Interest at 21% p. a	
= $\frac{21}{100} \times \frac{N866,250}{1} \times \frac{16}{12}$ =	<u>242,500</u>
Therefore total liability =	<u><u>N 1,108,800</u></u>

CHAPTER ELEVEN

CAPITAL GAINS TAX

CHAPTER CONTENTS

- a) Introduction
- b) Relevant Tax Authority
- c) Administration of Capital Gains Tax Act
- d) Allowable and Disallowable Expenses
- e) Computation of Chargeable Gains
- f) Exemption from Capital Gains Tax
- g) Disposal and Acquisition of Assets
- h) Planning for Tax Savings in Capital Gains Tax
- i) Reliefs
- J) Other Matters
- k) Administration – The Case in Ghana
- l) Artificial and Fictitious Transactions
- m) Exemptions and Reliefs
- n) Computation of Chargeable Gains
- o) Returns and Payment of Tax
- p) Chapter summary

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.

11.0 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

11.1 RELEVANT TAX AUTHORITY- THE CASE IN NIGERIA

Nature and Objectives of Capital Gains Tax

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.

11.2 **ADMINISTRATION OF CAPITAL GAINS TAX ACT**

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.

11.3 **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.

11.4 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 :

- i) options, debts and incorporeal property generally;
- ii) any currency other than Nigerian currency; and
- iii) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired;
- iv) stock and shares of every description(excluded from chargeable assets with effect from 1/1/98).

In respect of assets outside Nigeria and

- i. disposed by non-resident individual, or
- ii. trustee of any trust or settlement, or
- iii. 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).

11.5 EXEMPTIONS FROM CAPITAL GAINS TAX

The following are exempt chargeable gains:

- a) Gains accruing to –
 - i. an ecclesiastical, charitable or educational institution of a public character;
 - ii. any statutory or registered friendly society;
 - iii. any cooperative society registered under the cooperative societies Law of any State;
 - 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
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);
- d) Gains accruing on disposal of investments held as part of any superannuation fund or other statutory retirement benefits scheme to the same extent as income derived from the assets would be exempt under Section 20 of PITA (Section 29.1).
Disposal of a right to, or any part of any sum payable out of any superannuation fund shall also not be chargeable (Section 29.2)
“superannuation Fund” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under Section 21(1)(g) of PITA;
- e) Gains accruing on disposal by any person of a decoration awarded for valour or gallant conduct which he acquires otherwise than for consideration in money’s worth(Section 30);
- f) 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;
- g) Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers (Section 9); and
- h) 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:

- i. 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;
- ii. 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;
- iii. 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;
- iv. 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);
- v. Section 39 exempts assets acquired by way of gift and disposed of in a similar manner,;
- vi. Section 40 exempts capital gains accruing to a diplomatic body;
- vii. 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;
- viii. 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
- ix. Stocks and shares of every description are exempted with effect from 1 January,1998.

1.6 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 incurred 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 Of CITA in arriving at the Assessable Profits.

Thus for Capital Gains Tax purposes, if all the instalments have been paid before the date of disposal, it is the full cash price that is taken as the cost for Capital Gains Tax purposes. If the

instalments have not been fully paid, the cost of the asset at the time of disposal will be the cash price portion of the instalments paid to the date of disposal.

Illustration 11.1

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 11.1

(a) <u>Disposal after payment of 24 instalments</u>	₦'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)	<u>240</u>	<u>360</u>	
			<u>610</u>
Capital Gains			<u>640</u>
Capital Gains Tax at 10% thereof			<u>64</u>
(b) <u>Disposal after full payment of all instalments</u>	₦'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)	<u>360</u>	<u>540</u>	<u>790</u>
Capital Gains			<u>510</u>
Capital Gains Tax at 10% thereof			<u>51</u>
Calculation of interest element of each instalment			
Deposit			250
Total payable by instalments (36 x ₦ 25,000)			<u>900</u>

Total hire-purchase price	1,150
Less the cash price	<u>790</u>
Total interest element	<u>360</u>
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 deemed to be the market value.

Connected Persons (Section 24)

- a) An individual is connected with his/ her spouse and with his /her relatives and their spouses.
- b) A trustee of a settlement is connected with the settlor of that settlement, and with any person connected with the settlor.
- c) A partner is connected with the person with whom he is in partnership and with the spouse or relative of that person.

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 or diminution of emolument, or otherwise in consideration for or recognition of services or past services;
- c) as trustee for creditors of the person making the disposal (Section 7(1)).

Where a person donates an asset acquired by him by way of a gift (not being an acquisition on a devolution on death) or otherwise the person receiving the donation shall, for all purposes of the Act, so far as it relates to the interest taken by him, be deemed to have acquired the asset-

- a) in a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable, for a consideration equal to that amount; and
- b) in any other case, for a consideration equal to the market value of the asset on the date of that disposal; and in this subsection "gift" does not include a donation mortis causa (Section 7(2)).

The conveyance or transfer by way of security of an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of the Act as involving any acquisition or disposal of the asset (Section 7(4)).

Where a person entitled to an asset by 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 form part of the consideration for the acquisition and disposal in addition to any other consideration(Section 7(6)).

Where an asset is acquired by a creditor in satisfaction of his debt or Part thereof, the asset shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it, and 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 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.

11.7 PLANNING FOR TAX SAVINGS IN CAPITAL GAINS TAX

The main taxes in Nigeria can be classified into direct and indirect taxes as follows:

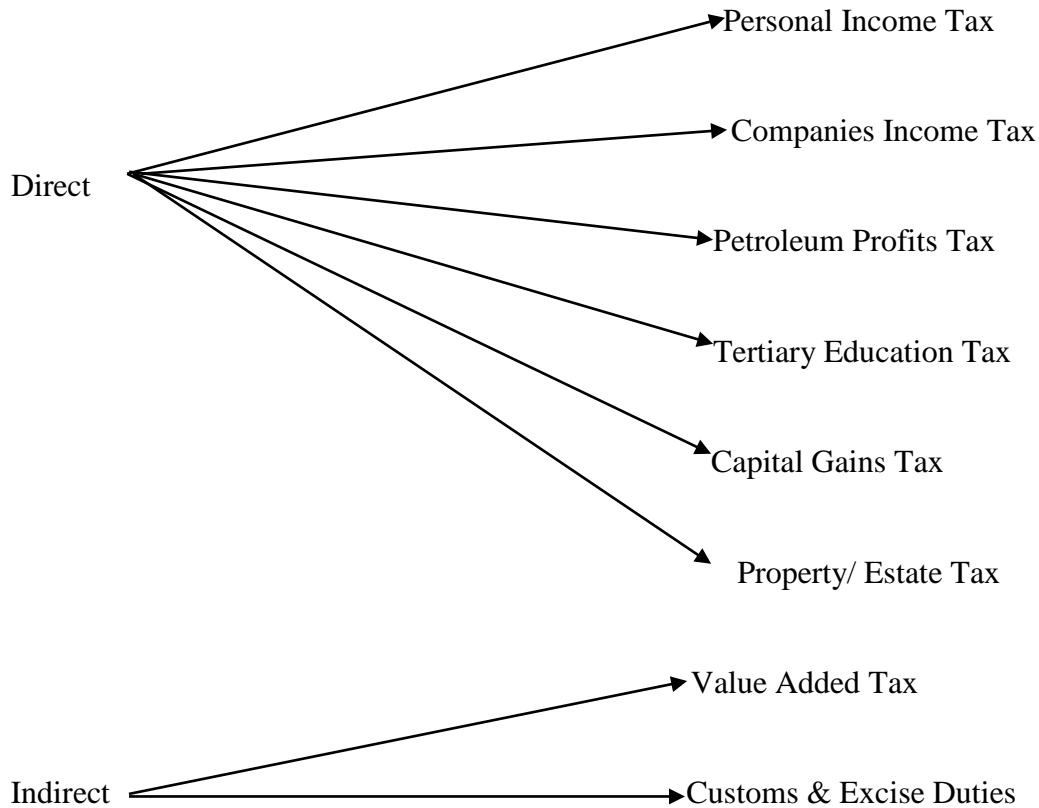
11.7.1 Direct Taxes

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.

11.7.2 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.

11.7.3. 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.

11.8 RELIEFS

11.8.1 Delayed Remittances Relief

Section 42(1) A person charged or chargeable for any year of assessment in respect of chargeable gains accruing to him from the disposal of assets situated outside Nigeria may claim that the following provisions of this Section shall apply on showing that:

- a) he was unable to transfer those gains to Nigeria; and
- b) that inability was due to the laws of the country where the income arose, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory; and
- c) the inability was not due to any want of reasonable endeavours on his part.

Section 42(2) if he so claims, then for the purposes of Capital Gains Tax-

- a) there shall be deducted from the 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.

11.8.2 Roll-over Relief (Section 32 CGT Act)

If the consideration received on disposal of an old asset used only for the purposes of a trade, is applied in acquiring a new asset in replacement to be used for the purposes of the trade and the old asset and the new asset are within one, and the same one, of the classes of assets listed in the Act, the person carrying on the trade shall, on making a claim in respect of the consideration which has been so applied, be treated for CGT purposes-

- a) as if the 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) as if the 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 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 . An illustration will explain this better:

Illustration 11.2

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.

Suggestion Solution 11.2

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 N100,000 and therefore no Capital Gains Tax is payable; and
- b) as if the cost of acquisition of the new asset (₦ 750,000) was 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 received under para (a) (₦ 100,000) that is ₦ 400,000 which would otherwise be the capital gain on the disposal of the old asset, will be deducted from the cost of the new asset.

Thus, the cost of the new asset for asset CGT purposes will be ₦ 350,000 (₦ 750,000 – ₦ 400,000). This is what is referred to as roll-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 the gain is reduced under para(a) above.

In other words, if the proceeds are not fully reinvested, the amount of relief available will be the proportion which the gain reinvested bears to the total gain accruing on the disposal.

For the foregoing to be applicable, the acquisition of the new asset should be completed within the period of twelve months before and twelve months after the date of the disposal of the old asset or at such earlier time as the Board may by notice in writing allow.

Where an unconditional contract for the acquisition has been entered into, this Section may be applied on a provision 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 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 is to be regarded as discontinued, or as set up and commenced (Section 32.10)

11.9 OTHER MATTERS

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)).

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)

Other Provisions

- i. 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.
- ii. 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.
- iii. 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.

11.10 ADMINISTRATION – THE CASE IN GHANA

In Ghana, the relevant tax authority for the administration of capital gains tax is the Internal Revenue Service, specifically the Valuation Unit. Capital Gains Tax is governed by Chapter II of the Internal Revenue Act, 2000 (Act 592).

11.10.1 Imposition of Capital Gains Tax

Capital Gains Tax is payable at the rate of 10% of capital gains accruing to or derived by that person from the realization of a chargeable asset owned by that person. Capital Gains Tax is not payable on capital gains derived from the realization of chargeable assets unless and until the gains are brought into or received in Ghana, in the case of a resident person. Such chargeable assets are

- a) Building of a permanent or temporary nature wherever situated.
- b) Business and business assets, including goodwill, wherever situated.
- c) Land wherever situated.
- d) Shares of a company.
- e) Part of or any right or interest in to or over any of the assets referred to in (a) to (e) above.

The key words here are “chargeable assets” and “realization” so we are going to describe what chargeable assets are and what constitutes realization so as to make the understanding of the application of the taxation rules regarding capital gains easy to understand and simple to apply.

11.10.2 Chargeable Assets

Chargeable assets mean

- a) any of the following assets
 - i. buildings of a permanent or temporary nature situated in Ghana;
 - ii. business and business assets, including goodwill of a permanent establishment situated in Ghana;
 - iii. land situated in Ghana;
 - iv. shares of a resident company;
 - v. part of, or any right or interest in, to or over any of the assets referred to in (i) to (iv) above.

- b) to the extent that they are not chargeable assets as a result of (a) above, any of the following assets of a resident person:
 - i. buildings of a permanent or temporary nature wherever situated;
 - ii. business and business assets, including goodwill, wherever situated;
 - iii. land wherever situated;
 - iv. shares of a company;
 - v. part of, or any right or interest in, to or over any of the assets referred to in (i) to (iv) above.

The Minister of Finance may by Regulations add to the categories of chargeable assets. It is worthy of note that chargeable asset does not include the following

- ❖ securities of a company listed on the Ghana Stock Exchange during the twenty years after the establishment of the Ghana Stock Exchange. The Ghana Stock Exchange was established in November, 1990 so this means the exemption is up to 2010;
- ❖ agricultural land situated in Ghana; and
- ❖ trading stock or a Class 1, 2, 3, or 4 depreciable asset. (See 4.3.1 of Module).

11.10.3 Realization

A person who owns a chargeable asset is treated as realizing the asset where

- (a) that person parts with ownership of the asset including where the asset is sold, exchanged, surrendered or distributed by the owner of the assets; or
- (b) redeemed, destroyed or lost; or
- (c) that person starts using the asset in such a way that it ceases to be a chargeable asset; or
- (d) that person is resident who becomes a non-resident but only with respect to chargeable assets mentioned in 10.3.2 (b) above.

It is worthy of note that realization of a chargeable asset does not include

- i) a realization by way of gift; or
- ii) a realization involving the disposal of shares in the course of the liquidation of a company.

“Owner” with respect to a chargeable asset means,

- in the case of an asset held by a partnership, the partners; and
- in the case of an asset held by a company or body of persons, that company or that body only.

11.11 ARTIFICIAL AND FICTITIOUS TRANSACTIONS

A person who acquires ownership of a chargeable asset in a non-arm’s length transaction is treated as having acquired the asset at a cost equal to the market value of the asset at the date of acquisition.

11.12 EXEMPTIONS AND RELIEFS

The following capital gains from the realization of a chargeable asset are exempt from capital gains tax:

- (a) Capital gains up to a total of 50 currency points per year of assessment. A currency point is N10,000, hence the exempt amount is $50 \times N10,000 = N500,000$.
- (b) Capital gains derived by a company from a merger, amalgamation, or re-organization of the company where there is continuity of the underlying ownership in the asset of at least 25%.
- (c) Capital gains resulting from a transfer of ownership of asset by a person to that person’s spouse, child, parent, brother, sister, aunt, uncle, nephew and niece.
- (d) Capital gains resulting from a transfer of ownership of the asset between former spouses as a divorce settlement or a genuine separation agreement.
- (e) Capital gains where the amount received is within one year of realization used to acquire a similar chargeable asset, i.e. “replacement asset”.
- (f) Where part of the amount received on realization is used within one year to acquire a replacement asset any part of the capital gain represented by the amount used to acquire the replacement asset less the cost base.

It is worthy of note that the Commissioner of Internal Revenue Service may extend the period of one year for the purposes of situations (e) and (f) above.

11.13 COMPUTATION OF CHARGEABLE GAINS

The amount of a capital gain accruing to or derived by a person from the realization of a chargeable asset owned by that person is the excess of the consideration received by that person from the realization over the cost base at the time of realization. Following from the above, the terms “cost base” and “consideration received” need to be explained and understood.

11.13.1 Cost Base of a Chargeable Asset

- (a) The cost base of a chargeable asset owned by a person at a particular time equals the sum of
 - i) The costs, including incidental costs and, where relevant, the cost of construction or production, incurred by the person in acquiring ownership of the asset. This includes costs such as insurance, freight and handling charges,
 - ii) The costs incurred by that person on alteration and improvement of the asset between the date of its acquisition and the date of its realization, and
 - iii) The costs incurred by that person in realizing the asset. Examples of such costs are commission paid to canvassing agent, fees paid to valuers, lawyers, etc.
- (b) A person who acquires ownership of a chargeable asset in a non-arm’s length transaction is treated as having incurred in acquiring that ownership a cost equal to the market value of the asset at the date of acquisition
- (c) Where a person who owns an asset, which is not a chargeable asset, begins to use the asset in such a way that it becomes a chargeable asset, that person is treated as having incurred in acquiring ownership of the asset a cost equal to the market value of the asset at the date that person begins to so use the asset
- (d) Where a non-resident person who owns one or more assets, which are not chargeable assets, becomes a resident and, as a result, the assets become chargeable assets, that person is treated as having incurred in acquiring ownership of each asset a cost equal to the market value of the asset at the time of becoming resident
- (e) Where a part of a chargeable asset owned by a person is realized, the cost base of the asset is apportioned between the part of the asset retained and the part realized in accordance with their respective market values at the time of realization but the costs incurred in realization shall not be so apportioned.
“Costs incurred” in acquiring ownership of a chargeable asset means money paid and the market value of a given property.

11.13.2 Consideration Received

The consideration received or receivable by a person from the realization of a chargeable asset owned by that person is equal to the sum of all amounts received or receivable by that person or an associate in respect of the realization. The following should also be noted in respect of what constitutes consideration received:

- (a) Where a person who owns a chargeable asset realizes it by way of transfer to an associate or in a non-arm's-length transaction, that person is treated as having received consideration from the realization of an amount equal to the market value of the asset at the time of realization.
- (b) Where a resident person becomes a non-resident and, as a result, is treated as realizing a chargeable asset, that person shall be treated as receiving as consideration from the realization the market value of the asset at that time.
- (c) Where a chargeable asset and one or more other assets are realized in a single transaction and the consideration received for each asset is not specified, the total consideration received from the realization is apportioned among the assets in proportion to their market values at the time of the transaction.

“Amounts received or receivable” from the realization of a chargeable asset means money and the market value of a property received or to be received in respect of the realization.

Format for Computation of Capital Gains Tax

	¢	¢	¢
Realisation/Consideration Received		xxx	
Less: Cost Base:			
Cost of Acquisition/Construction	xxx		
Incidental Costs	xxx		
Cost of alteration/improvement	xxx		
Costs incurred in realising the asset	<u>xxx</u>	<u>xxx</u>	
Capital Gains Assessable to Tax		xxx	
Less: Exempt Amount		<u>xxx</u>	
Capital gains Chargeable to Tax		<u>xxx</u>	
Tax thereon @ 10%		<u>xxx</u>	

Illustration 11.3

1. Miss Aida Naa Ashadey returned from London, U.K. to Ghana and bought a building costing ¢300,000,000 on 1 March 2006. She carried out repairs on the building and this cost her ¢80,000,000. Miss Ashadey insured the house for ¢30,000,000. On 1 April 2011 she sold the house to Yaw Kwakye for ¢580,000,000 through an agent who charged her a commission of ¢2,500,000.

You are required to:

- (a) Calculate the Capital Gains Tax payable by Miss Ashadey.

- (b) Miss Ashadey used €480,000,000 out of the money realized to purchase a new building on 15 June 2006. Calculate the Capital Gains Tax payable by Miss Ashadey.

Suggested Solution 11.3

(a)	€	€
Consideration Received		580,000,000
Less: Cost Base:		
Cost of Acquisition	300,000,000	
Incidental Costs: Repairs	80,000,000	
Insurance	30,000,000	
Commission to agent	<u>2,500,000</u>	<u>412,500,000</u>
Capital Gains Assessable to Tax		167,500,000
Less: Exempt Amount		<u>500,000</u>
Capital Gains Chargeable to Tax		<u>167,000,000</u>

Tax thereon @ 10% 16,700,000

(b)	€	€
Consideration Received		580,000,000
Less: Cost Base: (from (a) above)		<u>412,500,000</u>
Capital Gains Assessable to Tax		167,500,000
Less: Roll-Over Relief:		
Cost of Replacement	480,000,000	
Less: Cost Base	<u>412,500,000</u>	<u>67,500,000</u>
		100,000,000
Less: Exempt Amount		<u>500,000</u>
Capital Gains Chargeable to Tax		<u>99,500,000</u>

Tax thereon @ 10% 9,950,000

Illustration 11.4

Mr. Kwesi Asante purchased 10 plots of land at Adenta, each plot measuring 120' x 100' at a total cost of ₵125,000,000 in 2006. He sold a portion of the land measuring 130' x 130' for ₵50,000,000. He incurred incidental expenses to the tune of ₵5,000,000 at the time of realization, at which time the market value of the 10 plots of land he held was ₵500,000,000.

Calculate the Capital Gains Tax payable by Mr. Kwesi Asante.

Suggested Solution 11.4

	₵	₵
Consideration Received		50,000,000
Less: Cost Base:		
[% of cost base = $\frac{50,000,000}{500,000,000} \times 100 = 10\%$]		
500,000,000		
Therefore 10% x N125,000,000	12,500,000	
Costs incurred in realising the asset	<u>5,000,000</u>	<u>17,500,000</u>
Capital Gains Assessable to Tax		32,500,000
Less: Exempt Amount		<u>500,000</u>
Capital Gains Chargeable to Tax		<u>32,000,000</u>
Tax thereon @ 10%		<u>3,200,000</u>

Illustration 11.5

Flora Naa Afaley Sackey bought a piece of land in 2007 for ₵35,000,000 to construct a structure for her business which was completed in January 2008 costing ₵12,000,000. Her business grew bigger than the available space and so she advertised the sale of the land with the structure which cost her ₵9,500,000. She received ₵86,000,000 from the sale. She also sold a vehicle she was using for her business for ₵65,000,000. The vehicle cost her ₵25,000,000 in 2007.

Required: Determine the Capital Gains Tax payable, if any.

Suggested Solution 11.5

	₪	₪
Consideration Received		86,000,000
Less: Cost Base:		
Cost of Acquisition	35,000,000	
Improvement	12,000,000	
Cost of advertisement	<u>9,500,000</u>	<u>56,500,000</u>
Capital Gains Assessable to Tax		29,500,000
Less: Exempt Amount		<u>500,000</u>
Capital Gains Chargeable to Tax		<u>29,000,000</u>
Tax thereon @ 10%		<u>2,900,000</u>

Note: There will be no capital gains computation in respect of the vehicle because it is not a chargeable asset by reason of being a class 2 asset.

Illustration 11.6

Nakyea Consult bought a plot of land measuring 200' x 240' in 2003 for ₪10,000,000. The firm needed money to expand its operations and thus sold part of the land measuring 100' x 120'. The sale was effected through an estate agent who charged a commission of 10% on the sale price. The agent sold the plot for ₪100,000,000 to Kayode & Associates. The market value of the whole plot of land was ₪400,000,000 at the time of sale. You are required to calculate capital gains tax payable, if any.

Suggested Solution 11.6

	₪	₪
Consideration Received		100,000,000
Less: Cost Base:		
[% of cost base = $\frac{100,000,000}{400,000,000} \times 100 = 25\%$]		
		400,000,000
Therefore 25% x N10,000,000	2,500,000	
Agent's Commission (10% x N100,000,000)	<u>10,000,000</u>	

	<u>12,500,000</u>
Capital Gains Assessable to Tax	87,500,000
Less: Exempt Amount	<u>500,000</u>
Capital Gains Chargeable to Tax	<u>87,000,000</u>
Tax thereon @ 10%	<u>8,700,000</u>

11.14 RETURNS AND PAYMENT OF TAX

A person who derives a capital gain or to whom capital gain accrues from the realisation of a chargeable asset shall, thirty days after the realisation, furnish the Commissioner of Internal Revenue Service with a return in writing containing the following information:

- (a) The description and location of the chargeable asset;
- (b) The cost base of the asset immediately prior to the realisation and how the cost base is calculated;
- (c) The consideration received by that person from the realisation;
- (d) The amount of any capital gain and tax payable with respect to that capital gain and tax;
- (e) The full name and address of the new owner of the asset; and
- (f) Other information that the Regulations to be made by the Minister responsible for Finance shall prescribe.

A person who brings into or receives in Ghana a capital gain shall within thirty days, furnish the Commissioner of Internal Revenue Service with a return in writing containing the following information:

- (i) The amount of the capital gain brought into or received in Ghana and tax payable with respect to that amount; and
- (ii) Other information prescribed by Regulations to be made by the Minister responsible for Finance.

11.15 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 composition of cost base is also important to remember. 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.

MULTIPLE- CHOICE QUESTIONS

1. The following expenses are admissible under the Capital Gains Tax Act 1990 EXCEPT
 - A. Any selling expenses such as advertisement cost
 - B. The cost of acquiring the asset disposed
 - C. Any cost of refurbishing the chargeable asset prior to disposal
 - D. Any professional cost such as solicitors' fees
 - E. Any donation to political party

2. The following capital gains are exempted from tax EXCEPT
 - A. Any capital gain arising from the disposal of any government security
 - B. Any capital gain arising from the disposal of shares and securities
 - C. Any capital gain from the disposal of a medal won for honour
 - D. Any capital gain on disposal of motor vehicle for commercial use
 - E. Any capital gain on a chattel disposed of for not more than ₦1,000 any year of assessment

3. The market value may be used in the computation of Capital Gains Tax under the following EXCEPT
 - A. Where the asset was acquired by way of gift
 - B. Where the asset is acquired as trustee for creditors of the person making the disposal
 - C. Where the asset is acquired partly for a consideration that cannot be valued
 - D. Where the asset is acquired wholly for a consideration that cannot be valued
 - E. Where the asset is acquired wholly for a consideration that can easily be valued

4. The Capital Gains Tax is chargeable at the rate of
 - A. 25%
 - B. 20%
 - C. 15%
 - D. 10%
 - E. 5%

5. Capital Gains Tax on individuals is payable to
 - A. State Internal Revenue Service Board
 - B. Federal Inland Revenue Service
 - C. Joint Tax Board
 - D. Body of Appeal Commission
 - E. Committee of Ministers

SHORT ANSWER QUESTIONS

1. Capital Gains Tax will apply only when the asset is
2. Capital gains for individuals is administered by
3. Capital gains is taxed at of the gains made on the disposal of an asset.
4. Capital gains on the disposal of government is exempted from Capital Gains Tax.
5. Capital gains on the disposal of a landed property through acquisition by government is exempted from Capital Gains Tax.

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT-ANSWER QUESTIONS

6. Disposed of
7. State Board of Internal Revenue
8. 10%
9. Security
10. Forced

WORKED EXAMPLES

QUESTIONS

- 1 (a) State any FOUR allowable deductions under Capital Gains Tax Act in your country.
(b) Explain the objective of Capital Gains Tax in your country.
- 2 (a) Enumerate any FIVE exemptions from Capital Gains Tax.
(b) Explain the nature of Capital Gains Tax in your country.

- 3 Iloka Nig. Ltd purchased a chargeable asset on hire purchase with a deposit of N300,000. It was agreed that the balance would be paid over thirty six months of N35,000 per month. The actual cash price of the asset is N800,000.

Required:

Compute Capital Gains Tax assuming the asset was sold for N 1,500,000 after payment of twenty four installments.

- 4 (a) What do you understand by the term “disposal” under Capital Gains Tax Act?
(b) Bolu Nigeria Limited disposed of its building located in Ifo for N7,750,000 on 7th September, 2015. The building was constructed at a cost of N 4,500,000 in 2009. Advertisement cost paid for disposal was N280,000. The company acquired a new building at a cost of N6,410,000 on 16th September 2015. The lawyer’s commission for the acquisition of the new building amounted to N480,000.

Required:

Compute the Capital Gains Tax due.

- 5 Mr. Samuel Addo acquired a house in Dansoman in Accra for €150,000,000 in June, 2002. He carried out renovation works on the building which cost him €70,000,000. He sold the building in September, 2005 through an estate agent for €500,000,000. The agent is entitled to a commission of 10% on the sales value.
In December 2005, he purchased another house at Taifa in Accra, using €350,000,000 of the proceeds from the sale of the earlier house.

You are required to

- (a) Calculate the Capital Gains Tax payable by him.
(b) State the obligations of a person who realizes a chargeable asset under the Capital Gains Tax.
- 6 Under the Internal Revenue Act, 2000 (Act 592), Capital Gains Tax is charged on gains arising on the realisation of a chargeable asset accruing to or derived by a person who owned the asset.

You are required to state briefly

- (a) The meaning of a Chargeable Asset.
(b) Assets that are excluded from the above definition.
(c) Gains from realisation of a chargeable asset that are exempted from Capital Gains Tax.
(d) The meaning of “owner” with respect to a chargeable asset.

SUGGESTED SOLUTIONS

1a. ALLOWABLE EXPENSES UNDER CAPITAL GAINS TAX IN NIGERIA

These include:

- i) Cost of acquisition or purchase price, including all costs incidental to the purchase;
- ii) Improvement costs wholly, exclusively and necessarily incurred;
- iii) Cost wholly, exclusively and necessarily incurred in establishing, preserving or defending the owner's title to a right over the asset; and
- iv) Incidental costs of disposal. include:
 - o Fees, commissions or remuneration paid for professional services of surveyor or valuer; auctioneer, accountant; agent and or legal adviser.
 - o Cost of transfer or conveyance (including Stamp Duties).
 - o Advertisement cost to find a seller/buyer; and
 - o 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.

1 b OBJECTIVE OF CAPITAL GAINS IN NIGERIA

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 was introduced then to produce an additional source of revenue to Government to finance Nigeria's civil war which started then..

2 a EXEMPTIONS FROM CAPITAL GAINS TAX IN NIGERIA

The following are exempt chargeable gains:

- i) Gains accruing to –
 - ◆ an ecclesiastical, charitable or educational institution of a public character;
 - ◆ any statutory or registered friendly society;
 - ◆ any cooperative society registered under the cooperative societies Law of any State;
 - ◆ 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);
- ii) Gains accruing to any Local Government Council (Section 28(1));
- iii) Gains accruing to any company, being a purchasing authority established by or under any law in Nigeria ,empowered to acquire any commodity in Nigeria for export from Nigeria; or Gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part 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);
- iv) Gains accruing on disposal of investments held as part of any superannuation fund or other statutory retirement benefits scheme to the same extent as income derived from the assets would be exempt under Section 20 of PITA (Section 29.1);
Disposal of a right to, or any part of any sum payable out of any superannuation fund shall also not be chargeable (Section 29.2)
“superannuation Fund” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under Section 21(1)(g) of PIT;
 - v) 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);
 - vi) 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.
 - vii) Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers (Section 9);
 - viii) 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:

- ix. 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.
- x. 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.
- xi. 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.

- xii. 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).
- xiii. Section 39 exempts assets acquired by way of gift and disposed of in a similar manner.
- xiv. Section 40- exempts capital gains accruing to a diplomatic body
- xv. Double taxation relief is applicable to CGT as it is applicable to income tax under PITA and company's income tax under CITA with the substitution of the words capital gains for income and profits and CGT for income tax.
- xvi. 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)
- xvii. Stocks and shares of every description are exempted with effect from 1 January,1998.

2 (b) Nature of Capital Gains Tax in Nigeria

It arises out of any surplus arising from the sale proceeds of non-current assets and the cost, which is usually excluded from profits for income tax purposes because it is capital in nature

It is therefore a gain resulting from increase in the value of capital assets which are not always traded in the course of business but kept in use. Note that capital loss on disposal of asset is not deductible from capital gain on disposal of any other assets.

The Capital Gain Tax Act came into effect on 1967/68 Year of Assessment. This has now been re – enacted as Capital Gains Tax Act Cap C1 of the Laws of the Federation of Nigeria (LFN) 2004 (as amended).

3. Iloka Nig. Ltd

Computation of Capital Gains Tax

	N	N
Sales price		1,500,000
Less cost of the asset		
Deposit	300,000	
Plus (Installments paid – Interest element)		
(24x N35,000) – (24 x N21,111)		
(N840,000 – N506,664)	<u>333,336</u>	
		<u>33,336</u>
Capital Gains		<u>866,664</u>
Capital Gains Tax at 10%		<u>86,666</u>

Workings

Calculation of interest

Deposit	300,000	
Plus total of installments		
36xN35,000	=	<u>1,260,000</u>
		1,560,000
Less: cash price		<u>800,000</u>
Interest element		<u>760,000</u>
Interest per month N	<u>760,000</u>	<u>21,111</u>

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4(a) Meaning of Disposal

There is a disposal of an asset where there is a lease, sale, transfer, assignment or any compulsory acquisition of the asset which result in capital sum.

It can arise on the following:

- Where any capital sum is received under an insurance policy
- Where there is compensation for loss of office
- Where there is forfeiture or surrender of rights

Note that the effective date of disposal is usually taken as the date of the contract.

4 (b) **Bolu Ltd**

Computation of Capital Gains Tax for 2015 Tax Year

	N	N
Sales proceeds		7,750,000
Less: Advertisement		<u>(280,000)</u>
Sales Proceeds (Net)		7,470,000
Cost of construction		<u>(4,500,000)</u>
Capital Gains		<u>2,970,000</u>
Capital Gains Tax @ 10%		297,000
Capital Gains (as above)		2,970,000
Less: lower of		
(a) Net sale proceeds	7,470,000	
Or		
(b) New building		
Cost	6,410,000	
Commission	<u>480,000</u>	
	6,890,000	
Less: cost of construction		
Old building	<u>4,500,000</u>	
Roll – Over Relief		<u>2,390,000</u>
Net Capital Gains		<u>580,000</u>
Capital Gains Tax at 10%		<u>58,000</u>

Note: If a partial roll – over relief is claimed, N 58,000 will be due for payment.

5(a). **Bolu Ltd**

	€	€
Consideration Received		500,000,000
Less: Cost Base:		
Cost of Acquisition	150,000,000	
Cost of Renovation	70,000,000	
Costs incurred in realising the asset		
(10% x €500,000,000)	<u>50,000,000</u>	<u>270,000,000</u>
		230,000,000
Less: Roll-Over Relief:		
Cost of Replacement Asset	350,000,000	
Less: Cost Base	<u>270,000,000</u>	<u>80,000,000</u>
Capital Gains Assessable to Tax		150,000,000
Less: Exempt Amount		<u>500,000</u>
Capital gains Chargeable to Tax		<u>149,500,000</u>
Tax thereon @ 10%		<u>14,950,000</u>

- (b) A person who accrues or derives a capital gain from the realization of a chargeable asset shall, 30 days after the realization, furnish the Commissioner with a Return in writing, containing the following information:
- (a) The description and location of the chargeable asset;
 - (b) The cost base of the asset immediately prior to the realisation and how that cost base is calculated;
 - (c) The consideration received by that person from the realisation;
 - (d) The amount of any capital gain and tax payable with respect to that capital gain and tax;
 - (e) The full name and address of the new owner of the asset; and
 - (f) Other information prescribed by Regulations made by the Minister responsible for Finance.

Based on the information provided as well as other information available, the Commissioner shall then make an assessment of the amount of any capital gain of that person and the tax payable on that amount within one (1) year from the date the return is furnished.

- 6(a) A chargeable asset means any of the following
- i. Building of a permanent or temporary nature situated in Ghana;
 - ii. Business and business assets, including goodwill of a permanent establishment situated in Ghana;
 - iii. Land situated in Ghana;
 - iv. Shares of a resident company;
 - v. Part of, or any right or interest in to or over any of the assets referred to in (i) to (iv) above.

In the case of a resident person, the following will be considered chargeable assets where the gains are remitted to Ghana:

1. buildings of a permanent or temporary nature wherever situated;
 - ii. business and business assets, including goodwill, wherever situated;
 - iii. land wherever situated;
 - iv. shares of a company ;and
 - v. part of, or any right or interest in, to or over any of the assets referred to above.
- It is worthy of note that Regulations made by the Minister responsible for Finance may add to the categories of chargeable assets.

(b) Chargeable asset does not include:

- i. Securities of a company listed on the Ghana Stock Exchange up to the year 2010;
- ii. Agricultural land situated in Ghana;and
- iii. Trading stock or a class 1, 2, 3, or 4 depreciable assets.

(c) Gains resulting from the realization of chargeable assets in situations below are exempt from capital gains tax:

- i. Capital gains of a person up to a total of N500,000 per year of assessment;
- ii. Gains accruing to or derived by a company arising out of a merger, amalgamation or reorganization of the company where there is continuity of underlying ownership in the asset of at least 25%;
- iii. Capital gains resulting from a transfer of ownership by a person to that person's spouse, child, parent, brother, sister, aunt, uncle, nephew or niece;
- iv. Capital gains from a transfer or ownership of the asset between former spouses as part of a divorce settlement or a genuine separation agreement; and
- v. Capital gains where the amount received on realization is, within one year of realization used to acquire a chargeable asset of the same nature.

(d) "Owner" with respect to a chargeable asset means,

- i. In the case of an asset held by a partnership, the partners; and
- ii. In the case of an asset held by a company or body of persons, that company or that body only.

CHAPTER TWELVE

VALUE ADDED TAX

CHAPTER CONTENTS

- (a) Introduction**
- b) Administration of Value Added Tax
- c) Registration of Vatable Persons
- d) Goods and Services Tax in Liberia
- e) Offences and Penalties
- f) Goods and Services Exempted
- g) Preparing and Filing of VAT Returns
- h) Taxable Persons, Activities and Services
- i) Input and VAT
- j) Exempted Goods and Services
- k) VAT Records and Returns
- l) Output VAT Records
- m) Recovery
- n) Zero Rated Supplies
- o) Offences and Penalties
- p) VAT Tribunal
- q) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the reader should know:

- a) the meaning and application of Value Added Tax;
- b) the administration of Value Added Tax;
- c) the need for registration of Vatable persons;
- d) the records and accounts to be kept by Vatable persons;
- e) returns to be filed by Vatable persons.
- f) goods and services exempted from VAT; and
- g) offences and penalties relating to VAT

12.0 INTRODUCTION.

Value Added Tax (VAT) was introduced in Nigeria through the Value Added Tax Act No. 102, 1993. VAT came as a replacement of the then existing sales tax that had been in operation since 1986.

12.1 MEANING AND APPLICATION OF VALUED ADDED TAX

Value Added Tax (VAT) is an indirect tax on goods and services. It is a consumption based tax, which is a tax on general consumption expenditure designed with the sole aim of raising revenue for the government. It is levied on local and imported goods and services and is borne by the final consumer of the goods or services.

12.2 ADMINISTRATION OF VALUE ADDED TAX

12.2.1 The Position in Nigeria

The Federal Inland Revenue Service administers VAT system in Nigeria. While the VAT Directorate is based in the Federal Territory – Abuja, there are zonal and local VAT offices all over the country.

Even though VAT is administered by the Federal Government, the proceeds are shared by the Local, State and Federal Governments. The Federal Inland Revenue Service Board is empowered to provide direction, impose conditions and specify records to be kept by taxpayers.

In Nigeria, there is a **Value Added Tax Technical Committee** which comprises:

- a) a Chairman, who shall be the Chairman of the Federal Inland Revenue Service Board;
- b) all Directors in the Federal Inland Revenue Service;
- c) a Director in the Nigeria Customs Service, and
- d) three representatives of the State Governments shall be members of the Joint Tax Board.

The functions of the Technical Committee include:

- i) to consider all the tax matters that require professional and technical expertise and make recommendation as appropriate;
- ii) to advise the Board on the administration and management of VAT; and
- iii) to attend to such other matters as the Board, may from time to time refer to it.

A taxable person shall within six months of commencement of business or commencement of this VAT Act, whichever is earlier, register with the Board for the purpose of the tax.

12.2.2 The Position in Ghana

Value Added Tax (VAT) is administered by the Value Added Tax Service which functions in accordance the Value Added Tax Act, 1998 (Act 546). The Service is responsible for the administration and management of the value added tax imposed by the VAT Act. It is also responsible for the collection of and accounting for all taxes, penalties and interest payable under the VAT Act. The Head of the VAT Service is the Commissioner of Value Added Tax. Just as in the case of Nigeria, VAT came to replace the Sales Tax and Service Tax.

a) Registration of Vatable Persons

A person is registrable as a taxable person for VAT if he is a person who makes taxable supply of goods or services and in the case of a retailer he is a person whose business turnover exceeds:-

- i) ₵100 million over a twelve month period; or
- ii) ₵75 million over a nine month period; or
- iii) ₵50 million over a six month period; or
- iv) ₵25 million over a three month period

Whichever is achieved earliest.

It is worthy of note that the above threshold applies to only retailers.

A “taxable person” is defined to include an individual, partnership, group of persons, company or corporations registered by the Commissioner. Once a person registers, it covers any subsidiaries, divisions or branches of any business carried on by him.

The taxable person registers by completing VAT Form 1 and sending the completed form together with the business registration documents as well as a sketch map showing directions to the location of the business to the Local VAT Office nearest to the taxable person’s place of business.

Voluntary Registration is allowed in situations where any business has a turnover below the registrable threshold.

Compulsory Registration. The Commissioner may also register a person compulsorily in cases where such a person is eligible to register but is attempting to avoid or evade registration.

b) Deregistration/Cancellation of Registration

Where the Commissioner is satisfied that the registered person no longer exists, that person’s registration shall be cancelled. A taxable person who ceases business shall apply in writing to the Commissioner for his registration to be cancelled. In such an event the taxable person will be required to furnish a return showing details of all materials and other goods in stock and their value. The taxes due on such goods must then be paid before that person’s registration can be cancelled.

12.3. GOODS AND SERVICES TAX IN LIBERIA

12.3.1. Goods Tax

A goods tax is imposed on the following taxable supplies and import:

(a) (i) Taxable Supply of Goods Means:

- ◆ any sale, exchange, or other transfer of the right to dispose of the goods as owner, or
- ◆ an application of goods to own use where the goods were acquired pursuant to an exempt supply, or
- ◆ the grant of the use or right to use any goods under lease, a hire purchase agreement, or finance lease

(ii) Supply of services incidental to a supply of goods is part of the supply of the goods

(b) Taxable Import

(i) *Taxable import means:*

- ◆ the bringing of goods into Liberia

- ◆ a supply of services incidental to an import of the goods. This includes the services giving rise to commission, packaging, transportation, insurance, and warranty costs payable on, or by reason of the import.

(c) Amount of Tax

Tax payable on supplies and imports is seven percent (7%) of the amount of the taxable supplies and import respectively.

(d) Person Liable for Tax

For taxable supplies, tax payable on a taxable supply is to be accounted for by the registered manufacturer making the supply to the Minister, while the importer, (where the importer is not a registered manufacturer) accounts to the Minister.

(e) Goods Tax Recoverable From Recipient

The goods tax payable by a registered manufacturer is recoverable by the manufacturer from the recipient of the supply.

Payment of Goods Tax: The goods tax payable in respect of taxable supplies made during a tax period is due on the date the goods tax return for that period is due; and that of a taxable import is due on the date of arrival of the import at the port of entry.

(f) Exempt Supply

The following supplies are exempted from goods tax:

- (i) foodstuffs for human consumption for the general use of educational, and philanthropic institutions certified as such by the Minister excluding goods for the personal use of the members and employees of such institutions and organizations;
(but not when served as a meal or as cooked or prepared food)
- (ii) supply of goods for the relief of distressed persons in the case of natural disasters or other humanitarian emergencies;
- (iii) a supply of pharmaceutical or medicinal preparation;
- (iv) a supply of medical aids or appliances specifically designed for persons with an illness or disability;
- (v) a supply of textbooks or other instructional materials designed for use in schools or adult educational programs;
- (vi) a supply to a registered manufacturer, or to a person in the business of mining or forestry, of raw materials or other inputs for use directly in manufacturing, or capital goods; and
- (vii) a supply of goods as part of transfer of a manufacturing business as a going concern by a registered manufacturer to another manufacturer.

12.3.2 Service Tax

Supply of service is the performance of services for another person.

Service tax is imposed at seven percent (7%) on every supply of taxable services in Liberia by a registered services provider.

Taxable Services include the following:

- a) electricity services,
- b) telecommunications services
- c) the provision of water for a fee
- d) board, lodging, and incidental services by hotel or similar facility
- e) gambling services in a casino, lottery ticket sales or betting
- f) sales of tickets by international transport services (air, sea and land)
- g) services of travel agency or travel arranger including the issuing of tickets
- h) sporting services or game arranger including the issuing of tickets

Taxable Amount

The taxable amount of a supply of taxable services is the consideration payable for that supply. The taxable amount of a supply of taxable services between related persons for no consideration or for a consideration that is less than the fair market value of the supply is the fair value of the supply.

Registration of Manufacturers / Service Providers

- a) Every person who carries on any business of manufacturing / providing services has obligation to register
 - i) at the end of any period of twelve months where, during the period, the person made taxable supplies / provide services of \$5,000,000 or more; or
 - ii) at the beginning of any period of twelve months where there are reasonable grounds to expect that the total taxable amount of taxable supplies/ services to be made by the person during that period will equal or exceed \$5,000,000
- b) The Minister may include in the person's taxable supplies/ services, the taxable supplies /services made by another person who is a related person.
- c) every person who has an obligation to register shall apply shall apply to the Minister for registration within 21 days of becoming so required.

Cancellation of Registration

A registered manufacturer / service provider shall apply in writing to the minister for cancellation of registration if the person has ceased to make taxable supplies/services: or where the value of the taxable supplies / services provided during the most recent twelve (12) month period does not exceed the amount specified in

12.3.3 Records and Accounts

For the purpose of accounting for VAT, every registered person shall keep the following records and accounts:-

- (a) a VAT account to show total output tax, total input tax and the amount due or refundable for each month;
- (b) relevant business and accounting records, including sales and purchase journals, cash books, ledgers and other subsidiary books of account;
- (c) copies of all tax invoices issued;
- (d) tax invoices received;
- (e) documentation relating to the importation and exportation of goods and services;
- (f) all debit and credit notes or other documents providing evidence of an increase or decrease in the value of goods and services purchased or sold by him; and
- (g) such other records as the Commissioner may specify.

A registered person may apply to the Commissioner for permission to keep and maintain the records on computer. In such a case the conditions are that the tax officers shall have unrestricted access to the records during business hours; print-outs of the records may be requested by the tax officer; competent staff will be provided at the registered person's expense to assist the Commissioner in any verification or audit he may wish to conduct; and the accounting programme used by the registered person is one that is approved by the Commissioner.

12.3.4 Submission of Tax Returns and Date of Payment of Tax

A taxable person shall account for the tax each calendar month on a tax return. The records for each month must be submitted not later than the last working day of the month immediately following the month to which it relates. The return must show details of the sales and purchases made during the month immediately preceding that in which the return is being filed and the related VAT on these values.

12.3.5 Recovery of Tax Due, Interest and Other Liabilities

The Value Added Tax Act has provisions designed to assist the authorities in recovering tax and in combating tax avoidance and evasion. These include:

- (a) Recovery of tax due. The Commissioner of VAT may recover any tax due, any penalty and interest as a debt;
- (b) Payment of interest on outstanding amount. A taxable person who fails to pay any tax payable by the due date shall be charged interest at the prevailing Bank of Ghana discount rate plus one-quarter of that rate for a month on the tax due if it remains unpaid for any part of the month after the date on which it is payable.
- (c) Garnishment. Where any tax, penalty or interest is due and payable from a taxable person the Commissioner of VAT may on an application to the court seek an order for:

- i. Any individual or business from whom any money is due or is accruing or may become due to the taxable person; or
 - ii. Any individual or business who holds or who may subsequently hold money for or on account of the taxable person, to pay to the Commissioner that money, or so much of it as is sufficient to discharge the tax, interest or penalty due and payable;
- (d) Distraint for liability. Where any tax, penalty or interest due under the VAT Act remains unpaid after the time by which it is required to be paid the Commissioner of VAT may in writing and with notice to the taxable person authorise the levying of distress
- i. Upon the goods, chattels and effects of the taxable person; and
 - ii. Upon
 - ◆ All assets, property, building, factory, machinery, plant, tools, means of transport and communication, accessories, animals, and all goods used in Ghana in the manufacture, production, sale or distribution of any taxable supplies;
 - ◆ Any commodity or items found in any premises or any lands owned by or in use or in possession of the taxable person or of any person on his behalf and or in trust for him; and
- (e) Recovery in respect of a person under liquidation. Where any tax, penalty or interest is due from a taxable or other person who is subject to liquidation or bankruptcy proceedings, the liquidator, receiver, or other person responsible for winding up the affairs of the debtor shall not distribute any assets until full payment has been made of the tax, penalty or interest due to the Commissioner of VAT, who shall be deemed to be a creditor.

12.4. OFFENCES AND PENALTIES

12.4.1 The Position in Ghana

It is of crucial importance for businesses to comply with the requirements of the VAT Law since non-compliance may lead to sanctions as outlined below. Moreover the business may not be able to claim the full input tax deduction available to it. The various offences and penalties are as follows:

a. Failure to Register

Offence: A person who fails –

- i) To apply for registration as required under the VAT Act; or
- ii) To notify the Commissioner of a change in his business as required under the VAT Act; or
- iii) To apply for cancellation of registration as required under the Act commits an offence.

Penalty:

- i) Where the failure is deliberate or reckless he shall be liable on summary conviction to a fine not exceeding N10 million or imprisonment for a term not exceeding five (5) years or to both; and
- ii) Where the failure is for any other reason, to a fine not exceeding N5 million or imprisonment for a term not exceeding one (1) year or to both.

b. Failure to Issue Tax Invoice

Offence: A person who fails to issue a tax invoice as required under the Act for goods supplied or services rendered commits an offence.

Penalty: Liable on summary conviction to a fine not exceeding N10 million or imprisonment for a term not exceeding five (5) years or to both.

c. False or Misleading Statement

Offence: A person who in any matter relating to the tax –

- i) Makes a statement to an officer of the Service which is false or misleading in any material particular; or
- ii) Omits from a statement made to the officer any matter or thing without which the statement is misleading in any material particular commits an offence.

Penalty:

- i) Where the statement or omission was made knowingly or recklessly he shall be liable on summary conviction to a fine not exceeding N10 million or imprisonment for a term not exceeding five (5) years or to both; and
- ii) In any other case, be liable on conviction to a fine not exceeding N5 million or imprisonment for a term not exceeding one (1) year.

d. Falsification and Alteration of Documents

Offence: Any person who –

- i) forges, falsifies or wilfully uses a forged or falsified certificate or other document required by or under the Act, or by or under the directions of the Commissioner or any instrument used in the transaction of any business or matter relating to the tax; or
- ii) alters any document or instrument relating to the tax after it has been officially issued, or forges the seal, signature, initials or other mark of or used by any officer for the verification of any document or instrument or for the security of the tax or relating to any tax payable under the Act; or

- iii) on any document or instrument required for the purposes of this Act forges or imitates the seal, signature, initials or other mark of or made use of by any other person whatsoever, whether with or without the consent of that person, commits an offence.

Penalty:

Liable on summary conviction to a minimum fine of N2 million and not exceeding N10 million or imprisonment for a term not exceeding five (5) years or to both and any goods involved in the commission of the offence shall be forfeited to the State.

e. Evasion of Tax Payment

- i) **Offence:** A person who is knowingly concerned in or takes steps with a view to fraudulent evasion of the tax payable by him or any person commits an offence.
- ii) **Penalty:** Liable on summary conviction to a fine not exceeding three (3) times the tax being evaded or to imprisonment for a term not exceeding five (5) years or to both.
- iii) **Offence :** A person who acquires possession of or deals with any goods, or accepts the supply of any goods or services having reason to believe that the tax on the supply of the goods or services has not been, or will not be paid or that tax has been, or will be, falsely reclaimed, commits and offence.
- iv) **Penalty:** Liable on summary conviction to a fine not exceeding three (3) times the amount of tax involved or to imprisonment for a term not exceeding five (5) years or to both.

f. Failure to Maintain Proper Records

Offence: A person who fails to maintain proper records as required under the Act and Regulations made under the Act commits an offence.

Penalty: Liable on summary conviction to -

- i) a fine not exceeding N10 million or imprisonment for a term not exceeding five (5) years or to both where the failure was deliberate or reckless; or
- ii) in any other case, to a fine not exceeding N5 million or imprisonment for a term not exceeding one (1) year or to both.

g. Obstruction of Officer of the Service

- i) **Offence:** A person who obstructs the Commissioner or an officer authorized by the Commissioner in the performance of his duties under the Act; assaults or refuses to grant access to his premises to the officer in the performance of his duties commits an offence.
- ii) **Penalty:** Liable on summary conviction to a fine of not less than N500,000 or more than N5 million or to imprisonment for a term not exceeding one (1) year or to both.

h. Offences Relating to Officers

- i) **Offence:** A person who directly or indirectly offers to any officer any payment or other reward whatsoever, whether pecuniary or otherwise, in order to induce the officer not to perform his proper duties commits an offence.
- ii) **Penalty:** Liable on summary conviction to a fine not exceeding three (3) times any tax involved or to imprisonment for a term not exceeding five (5) years, or to both.
- iii) **Offence :** Any person who for the purposes of the Act and regulations made under it impersonates an officer of the Service in any way commits and offence
- iv) **Penalty:** Liable on summary conviction to imprisonment for a term of not less than six (6) months and not exceeding three (3) years.

i. Unauthorised Collection of Tax

- i) **Offence:** Any person, whether a taxable person or not who unlawfully charges and collects the tax on supply of goods and services commits an offence.
- ii) **Penalty:** Liable on summary conviction to a fine not exceeding ten (10) times the amount of tax or revenue involved in the commission of the offence or to a term of imprisonment not exceeding five (5) years or to both.

j. Failure to Submit Returns on Due Date

- i) **Offence:** A taxable person who without justification fails to submit to the Commissioner his tax return on the due date.
- ii) **Penalty:** Liable to a pecuniary penalty of N1 million and a further penalty of N5,000 for each day that the return is not submitted.

k. General Penalty

Offence: Any person who –

- i) does any act or makes an omission which constitutes a contravention of any provision of the Act for which no penalty is provided; or
- ii) is concerned in the doing or making of any such act or omission; or
- iii) does any such act or makes any such omission with intent to facilitate evasion of the tax by himself or any person commits an offence.

Penalty: Liable on summary conviction to a fine not exceeding three (3) times the tax or revenue involved in the commission of the offence or to a term of imprisonment not exceeding five (5) years or to both.

12.4.2 The Position in Nigeria

Offences and Penalties in Nigeria

Offences	Penalties
a) Failure to register within the stipulated time	i. ₦10,000 for the first month in which the failure occurs and ₦5,000 for each subsequent month
b) Non-remittance of tax	ii. A sum equal to 5 percent per annum plus interest at a commercial rate of the tax remittable
c) Rendering false returns	iii. Conviction or a fine twice the amount under-declared.
d) Evasion of tax	iv. Fine of ₦30,000 or twice the amount of tax being evaded whichever is greater, or to imprisonment for a term not exceeding three years.
e) failure to make attribution	v. Penalty of ₦5,000
f) Failure to notify change of address	vi. Penalty of ₦5,000
g) Failure to issue tax invoice	vii. Fine of 50 percent of the cost of the goods and services for which an invoice was not issued.
h) Issue of tax invoice by unauthorized persons	viii. Fine of ₦10,000 or imprisonment for a term of 6 months
i) Failure to keep proper records	ix. Penalty of ₦2,000 for every month in which the failure continues
x. Failure to collect tax	x. Penalty of 150 percent of the amount not collected, plus 5 percent interest above the rediscount rate.
xi. Failure to submit returns	xi. Fine of ₦5,000 per month in which the failure continues
xii. Aiding and abetting	xii. Fine of ₦50,000 or imprisonment for a term of five years

12.5 GOODS AND SERVICES EXEMPTED

12.5.1 The Position in Ghana

A good or service that is exempt is not subject to tax. VAT is not charged on the sale of exempt supplies but at the same time no credit may be allowed to the business making exempt sales for the VAT paid on purchases or expenses. The business can however recover these input taxes by including it in the cost of production and distribution. This means that businesses which make only exempt supplies cannot register for VAT. A summary of the goods and services which are exempt from VAT include:

- a) Animals, livestock and poultry. This classification includes all live animals.
- b) Goods for the disabled. These are articles designed exclusively for use by the disabled.
- c) Educational Items/Services. The supply of educational services at any level by an educational establishment approved by the Ministry of Education. Laboratory equipment for educational purposes and library equipment.
- d) Medical supplies, services and pharmaceuticals. Medical supplies and Pharmaceuticals which entail
 - i) essential drugs as listed under Chapter 30 of the Harmonised Systems Commodities Classification Code, 1999, produced or supplied by retail in Ghana,
 - ii) active ingredients specified in Schedule 1A for essential drugs, and
 - iii) imported special drugs determined by the Minister for Health and approved by Parliament as specified in Schedule 1B.
- e) Transportation. This includes transportation by bus and similar vehicles, train, boat and air.
- f) Machinery. Machinery, apparatus, appliances and parts thereof, designed for use in
 - i) agriculture, veterinary, fishing and horticulture;
 - ii) industry;
 - iii) mining (as specified in the Mining List) and dredging; and
 - iv) railway and tramway.
- g) Crude Oil and hydrocarbon products. Petrol, diesel, liquefied petroleum gas, kerosene and residual fuel oil.
- h) Land, Buildings and Construction. Land and buildings; the assignment or surrender of an interest in land or buildings; the right to occupy land and buildings; civil engineering works; services supplied in the course of construction, demolition, alteration and maintenance of buildings or other works under the classification above, including the provision of labour.

Note that this exemption excludes professional services such as architecture or surveying (i.e. these are taxable supplies).

- i) Financial Services. Provision of insurance; issue, transfer, receipt of, or dealing with money (including foreign exchange) or any note or order of payment of money; provision of credit; operation of any bank (or similar institution) account.

Note that this exemption excludes professional advice such as accountancy, investment, and legal (i.e. these are taxable services).

- j) Animals, livestock and poultry imported for breeding purposes. Live asses, mules, and hinnies, live bovine animals, live swine, live sheep and goats, live poultry.
- k) Animal product in its raw state produced in Ghana. Edible meat and offal of the animal, livestock and poultry, provided any processing is restricted to salting, smoking or similar process.
- l) Agricultural and aquatic food product in its raw state produced in Ghana. Fish, crustaceans and mollusc. Vegetables, fruits, nuts, coffee, cocoa, shea butter, maize, sorghum, millet, tubers, guinea corn and rice.
It should be noted that, under xi and xii above, the items are considered to be in their raw state even if they have undergone simple processes of preparation or preservation such as freezing, chilling, drying, salting, smoking, stripping or polishing.
- m) Seeds, bulbs, rooting, and other forms of propagation. Edible fruits, nuts and vegetables.
- n) Agricultural input. Chemicals including all forms of fertilizers, acaricides, fungicides, nematicides, growth regulators, pesticides, veterinary drugs and vaccines, feed and feed ingredient.
- o) Fishing Equipment. Boats, nets, floats, twines, hooks and other fishing gear.
- p) Water. Supply of water. The exemption excludes bottled and distilled water.
- q) Electricity. Domestic use of electricity up to a specified consumption level prescribed in regulations by the Minister. (i.e. all commercial use of electricity and domestic consumption above the limit specified will be taxable).
- r) Printed matter (books and newspapers). These must be fully printed or produced by any duplicating process. It includes atlases, books, charts, maps and music.
- s) Transfer of a Going Concern. The supply of goods as part of the transfer of a business as a going concern by one taxable person to another taxable person.
- t) Postal Services. Supply of postage stamps (i.e. other commercial services rendered by postal agencies are taxable).
- u) Musical Instruments. Musical instruments as listed under Chapter 92 of the Harmonised Commodities Classification Code.

12.5.2 The Position in Nigeria

a) Services Exempt in Nigeria

These are:

- i. Medical services;
- ii. Services rendered by Community Banks and Mortgage Institutions;
- iii. Plays and Performances conducted by educational learning institutions and
- iv. All exported services.

b) Goods Exempt in Nigeria

These are:

- i) All medical and pharmaceutical products;
- ii) Basic food items;
- iii) Books and educational materials;
- iv) Baby products;
- v) Fertilizers locally produced, agricultural and veterinary medicine;
- vi) All exports;
- vii) Plant and machinery imported for use in the Export Processing Zone;
- viii) Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations; and
- ix) Tractors, ploughs, agricultural equipment purchased for agricultural purposes

12.6 COMPUTATION OF VALUE ADDED TAX

To enable students be able to compute VAT, we need to explain certain terms relevant to understanding how the computation should be carried out.

a) Taxable Supply

A taxable supply is a supply of goods or services made by a taxable person for consideration in the course of or as a part of his business activities and includes:

- i) the processing of data or supply of information or similar service;
- ii) the supply of staff;
- iii) the acceptance of a wager or stake in any form of betting or gaming including lotteries and gaming machines;
- iv) the making of gifts or loans of goods;
- v) the leasing or letting of goods on hire;
- vi) the appropriation of goods for personal use or consumption by the taxable person or by any other person;
- vii) the sale, transfer, assignment, or licensing of patents, copyrights, trademarks, computer software, and other proprietary information; and
- viii) exports of non-traditional products.

It is worthy of note that a supply of goods or services is made:

- (i) as part of a person's business activities if the supply is made by him as part of or incidental to any economic activity he conducts;
- (ii) where a person produces goods by processing or treating another person's goods;
- (iii) where there is the supply of any form of power, heat, refrigeration or ventilation; and
- (iv) where a supply is made for consideration, if the supplier directly or indirectly receives payment wholly or partly in money or in kind from the person supplied or any other person.

b) Zero-rated Supply

The supply of the following goods and services shall attract an output tax of zero:

- i. export of taxable goods and services; and
- ii. goods shipped as stores on vessels and aircrafts leaving the territories of Ghana.

c) Relief Supply

The following individuals, organisations and businesses enjoy relief from tax on taxable supplies made to them.

- i. President of the Republic of Ghana.
- ii. For the official use of any Commonwealth or Foreign Embassy, Mission or Consulate (relief applies only to VAT on imported goods).
- iii. For the use of a permanent member of the Diplomatic Service of any Commonwealth or Foreign Country, exempted by Parliament from the payment of Customs duties (relief applies only to VAT on imported goods).

It is worthy of note that in the case of (ii) and (iii) above, relief is granted provided that a similar privilege is accorded by such Commonwealth or Foreign Country to the Ghana representative in that country.

- iv. For the use of an international agency or technical assistance scheme where the terms of the agreement made with the Government include exemption from domestic taxes.
- v. Emergency relief items approved by Parliament.

d) Mixed Supply

A person who deals in the supply of both taxable and exempt supplies is regarded as engaged in a mixed supply. In such cases not all input tax can be claimed against output tax. The formula used to determine input tax deductible is

A x B

C

Where:

A. is the total amount of input tax for the period;

B is the total amount of taxable supplies made by the taxable person during the period; and

C is the total amount of all supplies made by the taxable person during the period.

Example:

¢

Total amount of Input Tax	180,000,000
Total amount of Taxable Supplies	<u>720,000,000</u>
Total amount of All Supplies (both Taxable and Exempt)	<u>900,000,000</u>

$$\begin{aligned} \text{Deductible Input Tax} &= \frac{\text{€}180,000,000 \times \text{€}720,000,000}{\text{€}900,000,000} \\ &= \text{€}144,000,000 \end{aligned}$$

e) Time of Supply

A supply of goods or services occurs in the following circumstances

- i) where the goods or services are applied to own use, on the date on which the goods or services are first applied to own use;
- ii) where the goods or services are supplied by way of gift, on the date on which ownership in the goods passes or the performance of the services is completed;
- iii) in any other case the earliest of the date on which
 - the goods are removed from the taxable person's premises, or from other premises where the goods are under the taxable person's control; or
 - the goods are made available to the person to whom they are supplied; or
 - the services are supplied or rendered; or
 - receipt of payment is made; or
 - a tax invoice is issued.
- iv) where supplies are made on a continuous basis or by metered supplies, the time of supply shall be the determination of the supply or the first

meter reading following the introduction of the tax and subsequently at the time of each determination or meter reading.

- v) the supply of goods under a hire purchase agreement or finance lease occurs on the date the goods are made available under the agreement or lease.
- vi) where
 - i. goods are supplied under a rental agreement; or
 - ii. goods or services are supplied under an agreement or law which provides for periodic payments,

the goods or services shall be treated as successively supplied for successive parts of the period of the agreement or as determined by that law, and each successive supply occurs on the earlier of the date on which payment is due or received.

“Rental agreement” means any agreement for the letting of goods other than a hire purchase agreement or finance lease.

12.6.1. The Position in Ghana

The Output Tax is the tax chargeable on taxable goods and services at the rate specified by law which is currently 12.5%. It is worthy of note that the Value Added Tax Service is the agency in charge of collecting the National Health Insurance Levy (NHIL) at the rate of 2.5%, hence it is also taken up in the computation, yet separately.

The Input tax on the other hand is the VAT charged by suppliers on a taxable person’s business purchases and expenses including:

- Goods and services supplied to the taxable person in Ghana.
- Importations or removal of goods from a warehouse.

The Input Tax, which is also at the rate of 12.5%, and NHIL of 2.5%, can be reclaimed by deducting it from the Output Tax where the taxable person is in possession of the prescribed tax invoice for purchases made in Ghana, and for importation or removal of goods from warehouse. The taxable person should be in possession of documentary evidence that the tax was paid.

Where Input Tax regularly exceeds the Output Tax, the excess shall be credited or refunded by the Commissioner if satisfied, to the taxable person.

Illustration 12 .1

The information below relates to the business activities of a Manufacturer (who imports raw materials for his manufacturing business), Distributor and a Retailer. Calculate the Input and Output VAT at each stage for each of them and determine the VAT payable to the VAT Service at each stage.

a) Manufacturer	–€
Imports of raw materials (subject to import VAT)	100,000,000
Other Costs and Profit	<u>100,000,000</u>
Selling Price to Distributor	<u>200,000,000</u>
b) Distributor	
Cost from Manufacturer	200,000,000
Other Costs and Profit	<u>100,000,000</u>
Selling Price to Retailer	<u>300,000,000</u>
c) Retailer	
Cost from Distributor	300,000,000
Other Costs and Profit	<u>100,000,000</u>
Selling Price to the Consumer	<u>400,000,000</u>

Suggested Solution 12.1

a) VAT Payable by the Manufacturer	€
VAT charged on Sales (Output VAT): 12.5% of €200,000,000=	25,000,000
Less: VAT on Purchases (Input VAT): 12.5% of €100,000,000 =	<u>12,500,000</u>
<i>Payment to VAT Service</i>	<u>12,500,000</u>

NOTE: The Manufacturer imported raw materials (€100,000,000) on which Import VAT of N12,500,000 was paid at the border. This amount would have been paid to CEPS at the border, hence the credit given to the Manufacturer.

b) VAT Payable by the Distributor	–€
VAT charged on Sales (Output VAT): 12.5% of €300,000,000 =	37,500,000
Less: VAT on Purchases (Input VAT): 12.5% of €200,000,000 =	<u>25,000,000</u>
<i>Payment to VAT Service</i>	<u>12,500,000</u>

NOTE: The Distributor paid the VAT on the purchases (€25,000,000) to the Manufacturer. This amount would have been paid by the Manufacturer to the VAT Service, hence the credit given to the Distributor.

c) VAT Payable by the Retailer	-€
VAT charged on Sales (Output VAT): 12.5% of €400,000,000 = 50,000,000	
Less: VAT on Purchases (Input VAT): 12.5% of €300,000,000 = <u>37,500,000</u>	
<i>Payment to VAT Service</i>	<u>12,500,000</u>

NOTE: The Retailer paid the VAT on the purchases (€37,500,000) to the Distributor. This amount would have been paid by the Distributor to the VAT Service, hence the credit given to the Retailer.

12.6.2 The Position in Nigeria

Nature of VAT in Nigeria

There is refund and credit mechanism which make the tax self-policing. We have input – output tax mechanism in which case the output tax less input tax constitutes the VAT payable. Suffice it to say that the actual VAT collected by government is the tax paid by the final consumer of the product. It thus has a single effect even though it is a multiple-stage tax.

Illustration 12.2

Assuming a product moves from raw material producer (A Ltd) to Manufacturer B Ltd at ₦100,000 then later to Wholesaler (C Ltd) at ₦150,000 then to Retailer D Ltd at ₦200,000, and finally to the Consumer Mr. Ojo who pays ₦250,000 for the product. The computation of VAT payable of government would be as follows:

Vatable person	Sales Price	Output VAT	Input VAT	VAT to Government
	₦	₦	₦	₦
A Ltd	100,000	5,000	-	5,000
B Ltd	150,000	7,500	5,000	2,500
C Ltd	200,000	10,000	7,500	2,500
D Ltd	250,000	<u>12,500</u>	<u>10,000</u>	<u>2,500</u>
		<u>35,000</u>	<u>22,500</u>	<u>12,500</u>

Therefore, the VAT paid to government is ₦12,500 which is 5% of the final consumer's (Mr Ojo) price of ₦250,000.

12.7 VAT TRIBUNAL

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;
 - (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 on the appellant;
- (t) The Zonal Tribunal may, upon hearing the appeal, confirm, reduce, increase or amend the assessment or make such orders thereon as it deems fit;
- (u) The Minister may make rules regulating the practice and procedure of the VAT Tribunal and until such rules are made, the practice and procedure of the Federal High Court, shall apply with any such modifications as circumstances may require;

- (v) Any case on VAT issues which the VAT Tribunal has jurisdiction and pending before the Federal High Court, before the setting up of VAT Tribunal, shall be continued and completed by the Federal High Court;
- (w) After the decision of the VAT Tribunal, notice of tax payable or determined by the Tribunal, shall be served by the 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; and

- (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 the 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

The FIRS may, by notice in writing, appoint any person to be the agent of any manufacturer or importer and the person so appointed, shall be the agent of the manufacturer or importer. Such agent may be required to pay any tax, which is or may become payable by the manufacturer or importer from any money which may be held by him for, or become due by him, to the manufacturer or importer, as the case may be, and in default of such payment, the tax shall be recoverable from him. The FIRS may require a person to give information as to any money, fund or other assets, which may be held by him for, or of any money due from him to a manufacturer or an importer.

12.8 CHAPTER SUMMARY

VAT is a consumption tax applied on the value added resulting from the own-activity of a business enterprise. It is imposed on the expenditure incurred in buying goods and services. Value added is the difference between the value of sales and the value of purchased inputs used in producing the commodity sold. It is a consumption tax borne by the consumer and it ensures that the same commodity is never taxed twice by avoiding the taxation of inputs.

By its definition as a consumption tax, the consumer pays the tax, often as part of the price. However it is practically impossible to collect the tax from every single consumer who walks into a retail outlet to buy a commodity or have a service rendered to him.

Thus, the seller, i.e. trader, manufacturer, importer, etc. is often registered as agent for collecting the tax on behalf of the VAT Service.

A registered person or enterprise making taxable supplies accounts for VAT for an accounting period which is usually one calendar month. The amount paid to the tax authorities is the difference between the total VAT collected from customers on sales (Output VAT) and the total VAT paid on purchases and expenses (Input VAT). Registered taxpayers are allowed the input tax credit to prevent the tax from “cascading” or increasing the cost of production and/or distribution unnecessarily. However, a registered enterprise or business must be in possession of a tax invoice before it can claim the Input tax credit. In the case of imports, the business must be in possession of a Customs Entry or other approved evidence of tax payment approved by CEPS.

It should be noted that all registered persons must issue tax invoices for supplies of taxable goods or services to their customers and clients, and they should in turn obtain invoices for supplies of goods and services received in their business.

At the end of each calendar month, all taxable persons must total their Output Tax and Input Tax and use these to complete the VAT Return issued by the VAT Service. It should be noted that registered taxpayers cannot offset any input tax relating to exempt or non-deductible supplies from the output tax on taxable sales.

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. All exports
3. Payment of VAT should be effected not later than following the month of transaction.
- A. 21 days
 - B. 30 days
 - C. 5 days
 - D. 10 days
 - E. 20 days
4. Services exempted from VAT include the following EXCEPT
- A. Services of commercial banks
 - B. Services related to education
 - C. Medical services
 - D. All exported services
 - E. Plays conducted by educational institutions
5. The following information must feature in tax invoice EXCEPT
- A. Taxpayer's identification number
 - B. Customers' name and address
 - C. Type of goods
 - D. Rate of VAT
 - E. Bio data of taxpayer

SHORT-ANSWER QUESTIONS

1. In Ghana, voluntary registration is allowed in situations where any business has a turnover below the registrable.....
2. Failure to register for VAT attracts for the first month and for segment month in which the fault continues.
3. Failure to submit returns attract for every month in which the failure continues.
4. Value Added Tax is charged at
5. and Are two methods of claiming VAT refund.

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

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

SUGGESTED SOLUTIONS TO SHORT-ANSWER QUESTIONS

1. Threshold
2. ₦10,000 and ₦5,000
3. ₦5,000
4. 5%
5. Credit method and Direct cash refund method.

WORKED EXAMPLES

QUESTIONS

1. Mr. Kwame Baah-Nuakoh makes both exempt and taxable supplies - ₺100,000,000 exempt and ₺300,000,000 taxable. Most of the goods purchased are used for both types of supply which means that much of the input tax cannot be directly attributed to either type of supply. After directly attributing as much input tax as possible the position arises:

	₺
Input tax attributable to taxable supplies	1,200,000
Input tax attributable to exempt supplies	600,000
Unattributed input tax	820,000

REQUIRED:

How much of the unattributed input tax can Mr. Baah-Nuakoh recover?

- 2(a) Briefly explain what constitutes a taxable supply under the VAT Law.
- (b) From the information below of Fanny Enterprise for the month of 30 June 2006, you are required to calculate the deductible input tax allowable (to the nearest cedi) to Madam Fanny Quagraine for the quarter ended 30 June 2006:

	₺
Input tax on supplies that cannot be attributed	232,500,000
Sales of exempt supplies	650,000,000

Sales (net of VAT) of taxable supplies 2,520,000,000

- 3(a) State any FOUR services and any FOUR goods exempted from VAT in Nigeria
- (b) Era Ltd produced a raw material and sold it to Faz Ltd at N 200,000 Faz processed it and sold it to GOA Ltd for N300,000. The wholesaler later sold it to Hia Ltd (Retailer) at N400,000 and finally to Mr Ibrahim a final consumer who paid N500,000 for the product.

Required:

Compute the VAT payable to government showing output VAT and input VAT at every stage of the transaction.

- 4.. Mercy Padi, a VAT registered trader is engaged in mixed supplies and has presented to you the details of her purchases and supplies from which you found the following:

	₦
Input tax on taxable supplies	60,000,000
Input tax on exempt supplies	45,000,000
Unattributable input tax	30,000,000
Value of taxable supplies, net of VAT	900,000,000
Value of relief supplies	60,000,000
Value of exempt supplies	150,000,000

You are required

- (a) State the formula you would use to compute the Claimable Input Tax for her.
- (b) Compute the Claimable Input Tax (to the nearest cedi) based on the formula you stated.

SUGGESTED SOLUTIONS

1. The formula used to determine input tax deductible is

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

C

Where:

A is the total amount of input tax for the period;

B is the total amount of taxable supplies made by the taxable person during the period;

and

C is the total amount of all supplies made by the taxable person during the period.

Therefore;

$$\begin{aligned} \text{Deductible Input Tax} &= \frac{\text{₦}820,000 \times \text{₦}300,000,000}{\text{₦}400,000,000} \\ &= \text{₦}615,000 \end{aligned}$$

2. A taxable supply is a supply of goods or services made by a taxable person for consideration in the course or as part of his business activities. This includes:
- i. The processing of data or supply of information or similar service;
 - ii. The supply of staff;
 - iii. The acceptance of a wager or stake in any form of betting or gaming including lotteries and gaming machines;
 - iv. The making of gifts or loans of goods;
 - v. The leasing or letting of goods on hire;
 - vi. The appropriation of goods for personal use or consumption by the taxable person or by any other person;
 - vii. The sale, transfer, assignment or licensing of patents, copyright, trademarks, computer software and other proprietary information; and
 - viii. Export of non-traditional goods.

(b)
$$\begin{aligned} \text{Deductible Input Tax} &= \frac{\text{₦}232,500,000 \times \text{₦}2,520,000,000}{\text{₦}3,170,000,000} \\ &= \text{₦}184,826,498 \end{aligned}$$

3(ai). Services Exempt in Nigeria

These are:

Medical services;
Services rendered by Community Banks and Mortgage Institutions;
Plays and Performances conducted by educational learning institutions; and
All exported services

(bii). Goods Exempt in Nigeria

These are:

All medical and pharmaceutical products;
Basic food items;

Books and educational materials;
 Baby products;
 Fertilizers locally produced, agricultural and veterinary medicine
 All exports
 Plant and machinery imported for use in the Export Processing Zone
 Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations, and
 Tractors, ploughs, agricultural equipment purchased for agricultural purposes

b. **The computation of VAT payable of government**

Vatable person	Sales Price	Output VAT	Input VAT	VAT to Government
	₦	₦	₦	₦
Era	200,000	10,000	-	10,000
Faz	300,000	15,000	10,000	5,000
Goa	400,000	20,000	15,000	5,000
Hia	500,000	<u>25,000</u>	<u>20,000</u>	<u>5,000</u>
		<u>70,000</u>	<u>45,000</u>	<u>25,000</u>

Therefore, the VAT paid to government is ₦25,000 which is 5% of the final consumer's (Mr Ibrahim) price of ₦250,000.

4. (a) The formula used to determine input tax deductible is

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

C

Where:

A is the total amount of input tax for the period;

B is the total amount of taxable supplies made by the taxable person during the period; and

C is the total amount of all supplies made by the taxable person during the period.

$$\begin{aligned} \text{(b) Deductible Input Tax} &= \frac{\text{₦}30,000,000 \times \text{₦}900,000,000}{\text{₦}1,050,000,000} \\ &= \text{₦}25,714,286 \end{aligned}$$

CHAPTER THIRTEEN

TERTIARY EDUCATION TAX (For Nigerian Candidates Only)

CHAPTER CONTENTS

- a) Introduction
- b) Assessment and Collection
- c) Rate and Payment
- d) Offences and Penalties
- e) Management and Administration
 - (i) Purpose of the Fund
 - (ii) Disbursement of the Fund
- f) Composition of Board of Trustees
- g) Functions of the Board of Trustees
- h) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, readers should be thoroughly conversant with:

- a) The procedures for assessment and collection of Tertiary Education Tax; and
- b) Offences and penalties in respect of Tertiary Education Tax.

13.0 INTRODUCTION

The Tertiary 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 (TET Fund). 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 Tertiary Education Tax as a disincentive to foreign investment.

13.1 ASSESSMENT AND COLLECTION

The Federal Inland Revenue Service assesses and collects from each company, Tertiary Education Tax imposed for income or petroleum profit for an accounting period

The Act provides as follows:

- (a) when assessing a company, for Companies Income Tax or Petroleum Profits Tax for an accounting period of the company, the FIRS shall also proceed to assess the company for the Tertiary Education Tax due; and

- (b) the provision of the Act relating to the collection of Companies Income Tax or Petroleum Profit Tax shall subject to this Act, apply to the Tertiary Education Tax due under the Act.

The Federal Inland Revenue Service shall pay the Tertiary Education Tax collected into the TET Fund and shall when doing so, submit to the TET Fund, in such form as the Board of Trustees of the TET Fund 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 TET Fund for the proper administration of the Tertiary Education Tax.

The Board of Trustees shall before 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.

13.2 RATE AND PAYMENT

The rate of Tertiary Education Tax is 2 per cent of the Assessable Profit of a company registered in Nigeria. Note that Assessable Profit is adjusted profits or part thereof that is assessed to Companies Income Tax in an assessment year.

The Tertiary Education Tax imposed is due and payable within 60 days after the Federal Inland Revenue Service has served Notice of the assessment on a company.

13.3 OFFENCES AND PENALTIES

If Tertiary Education Tax is not paid within 60 days, the Federal Inland Revenue Service will serve, on the company, a demand note for the unpaid tax plus 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 TET Fund 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 his 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; 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.

13.4 MANAGEMENT AND ADMINISTRATION OF THE TET FUND

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 in the country.

13.4.1 Purpose of the Fund

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 the higher educational institutions.

13.4.2 Disbursement of the Fund

The total tax collected in a year is disbursed in the ratio 2:1:1 as between 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 disbursement of funds under this Act, as follows:

- (a) funding of all public tertiary educational institutions;
- (b) equality among the six geo-political zones of the Federation in the case of special intervention; and
- (c) equality among the States of the Federation in the case of regular intervention;

13.5 COMPOSITION OF BOARD OF TRUSTEES

The Board of Trustees shall consist of:

- (a) a Chairman;
- (b) six persons, each representing a geo-political zone in the country;
- (c) a representative of the Federal Ministry of Education who shall not be below the rank of a Director;
- (d) a representative of the Federal Ministry of Finance who shall not be below the rank of a Director;
- (e) a representative from the Universities;
- (f) a representative from the Polytechnics;
- (g) a representative from the Colleges of Education; and
- (h) 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 geo-political 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 Board may meet to conduct such other business as exigency demands.

13.6 FUNCTIONS OF THE BOARD OF TRUSTEES

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 fund;
- (c) liaise with the appropriate Ministries or Bodies responsible for collection or safekeeping of the tax;
- (d) receive requests and approve admissible 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 improvement;
- (j) make and issue guidelines from time to time to all beneficiaries on disbursement from the Fund and the use of monies received from the fund;
- (k) regulate the administration, application and disbursement of monies from the Fund; and
- (l) do such other things as are necessary or incidental to the objects of the TET Fund under the Act or as may be assigned by the Federal Government of Nigeria.

Illustration 13.1

The Assessable Profit of Adobe Limited for the Assessment Year 2011 was ₦ 65million. **You are required** to compute the Tertiary Education Tax due.

Suggested Solution 13.1

The Tertiary Education Tax is 2% of ₦ 65million i.e. ₦1,300,000,

13.7 CHAPTER SUMMARY

The extent to which Tertiary Education Tax has been able to solve the problem of funding in the education sector is a matter of opinion. However, there is no doubt that every segment of the educational institutions has benefited in one way or the other from the TET Fund, though some areas must have benefited more than the others.

MULTIPLE-CHOICE QUESTIONS

1. Tertiary Education Tax is imposed on one of the following
 - A. All Nigerian companies which supply educational books only
 - B. Foreign companies operating in Nigeria only
 - C. All Nigerian educational institutions
 - D. All companies registered in Nigeria
 - E. Petroleum exploration companies only

2. The relevant figure of Assessable Profit which is subject to Tertiary Education Tax is
 - A. Adjusted Profit after giving effect to loss relief, balancing charge and capital allowance
 - B. Adjusted Profit before giving effect to loss relief, balancing charge but after capital allowance
 - C. Adjusted Profit before giving effect to loss relief, balancing charge and capital allowance
 - D. Adjusted Profit after deducting capital allowance
 - E. Adjusted Profit after deducting balancing allowance Tertiary Education Tax in Nigeria

3. Tertiary Education Tax is charged on
 - A. Chargeable Income
 - B. Assessable Profit
 - C. Adjusted Income
 - D. Earned Income
 - E. Unearned Income

4. Which of the following is not a member of the TETFUND Board of Trustees?
 - A. A member of Proprietors Association
 - B. A representative from the Universities,
 - C. A representative from the Polytechnics
 - D. A representative from the Colleges of Education
 - E. The Executive Secretary of TET Fund who shall be the Secretary to the Board of Trustees.

5. The total tax collected in a year is disbursed in the ratio as between the Universities, Polytechnics and Colleges of Education,
 - A. 2: 2:1
 - B. 2:1:1
 - C. 3:3:1
 - D. 3:3:3
 - E. 2:2:2

SHORT ANSWER QUESTIONS

1. The rate of Tertiary Education Tax is of the Assessable Profit of a company.
2. The Tertiary Education Tax imposed is due and payable within after the Federal Inland Revenue Service has served Notice of the assessment on a company.
3. The Board of Trustees is vested with the of the TET FUND.
4. The total number of members of Board of the Trustees is persons.
5. The Board shall meet for the conduct of its ordinary meetings times in a calendar year

SUGGESTEDS SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

1. D
2. C
3. B
4. A
5. B

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. 2 per cent
2. 60 days
3. Administration and management
4. Thirteen
5. Four

WORKED EXAMPLES

QUESTIONS

- 1(a) State the contents of the Return which is usually submitted by the Federal Inland Revenue Service when paying the Tertiary Education Tax into the TET Fund.
 - (b) Enumerate the expenses on which the Board of Trustees could use the amount set aside from the total monies accruing to the Fund.
- 2 (a) State the Offences and Penalties of late payment of the Tertiary Education Tax.
 - (b) Explain briefly the administration of Tertiary Education Tax in Nigeria.
- 3 State any TEN functions of the Board of Trustees of TETFund.
- 4 State the composition of Board of Trustees of TETFund.

SUGGESTED SOLUTIONS

- 1a. The contents of the Return include:
 - (i) the name of the company making the payment;
 - (ii) the amount collected;
 - (iii) the Assessable Profit of the company for the accounting period; and
 - (iv) such other information as may be required by the TETFund for the proper administration of the Tertiary Education Tax.

- b. The expenses on which the Board of Trustees could use the amount set aside from total monies accruing to the fund include.
 - (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.

a **OFFENCES AND PENALTIES OF LATE PAYMENT**

If Tertiary Education Tax is not paid within 60 days, the Federal Inland Revenue Service will serve, on the company, a demand note for the unpaid tax plus 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 TET Fund remit in whole or in part a sum added to the unpaid tax.

The officers of the defaulting company are guilty of the offence shall, on conviction, be liable:

- (i) for the first offence, to a fine of up to ₦1,000,000 or imprisonment for a term of six months; and
- (ii) 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.

2b Administration of Tertiary Education Tax

The Tertiary Education Trust Fund (Establishment etc) Act, 2011 stipulates that the tertiary education tax at a rate of 2 per cent shall be charged on the Assessable Profit of any company registered in Nigeria. The Federal Inland Revenue Service Board is to be responsible for the assessment and collection of this tax. The payment of tax is due within 60 days of the service of notice. The Board shall pay tax collected to the Tertiary Education Trust Fund set up with relevant details to the Board of Trustees to the Fund

3 FUNCTIONS OF THE BOARD OF TRUSTEES

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 fund;
- (c) liaise with the appropriate Ministries or Bodies responsible for collection or safekeeping of the tax;

- (d) receive requests and approve admissible 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 improvement;
- (j) make an issue guidelines from time to time to all beneficiaries on disbursement from the Fund and the use of monies received from the fund;
- (k) regulate the administration, application and disbursement of monies from the Fund; and
- (l) do such other things as are necessary or incidental to the objects of the TET Fund under the Act or as may be assigned by the Federal Government of Nigeria.

4 COMPOSITION OF BOARD OF TRUSTEES OF TETFUND

The Board of Trustees shall consist of:

- (a) a Chairman;
- (b) six persons, each representing a geo-political zone in the country;
- (c) a representative of the Federal Ministry of Education who shall not be below the rank of a Director;
- (d) a representative of the Federal Ministry of Finance who shall not be below the rank of a Director
- (e) a representative from the Universities,
- (f) a representative from the Polytechnics
- (g) a representative from the Colleges of Education; and
- (h) the Executive Secretary of TETFund who shall be the Secretary to the Board of Trustees.

CHAPTER FOURTEEN
GIFT TAX - (For Ghana Candidates Only)

14.0 CHAPTER CONTENTS

- a) Meaning and Application of Gift Tax
- b) Taxable Gifts from Tax
- c) Gifts exempted
- d) Valuation of Taxable Gifts
- e) Procedure Relating to Gift Tax (Filing of Returns).
- f) Chapter Summary.

LEARNING OBJECTIVES

At the end of this chapter, the student should become familiar with:

- a) The meaning and application of Gift Tax;
- b) How to identify taxable gifts;
- c) Determination of gifts exempt from tax;
- d) Valuation of gifts for tax purposes; and
- e) Assessments and application of relevant tax procedures.

14.0 MEANING AND APPLICATION OF GIFT TAX

A gift is defined to mean a receipt without consideration or for inadequate consideration. A gift, which is taxable under the Act, shall be taxed at the rate of 10% on the total value of taxable gifts in excess of N500,000 received by a person within a year of assessment. It is a tax which is applicable to individuals, companies and bodies of persons.

Tax Rate Structure

Total Value of Taxable Gifts	Rates of Tax
Not Exceeding N500,000	Nil
Exceeding N500,000	10% of Excess over N500,000

14.1 TAXABLE GIFTS

In this Chapter, “taxable gifts” means any or all of the following assets situated in Ghana:

- a) buildings of a permanent or temporary nature,
- b) land,
- c) shares, bonds and other securities,
- d) money, including foreign currency,
- e) business and business assets,
- f) any means of transportation (that is, by land, air or sea),

- g) goods or chattels not included in the means of transportation,
- h) part of, or any right or interest in, to or over any of the assets referred to in (1) to (7) above.
- i) an asset or a benefit, whether situated in Ghana or outside Ghana, received by a resident person as a gift by or for the benefit of that person, or
- j) an asset whether, situated in Ghana or outside Ghana, received by or for the benefit of a resident person as a gift where the asset has been or is credited in an account or has been or is invested, accumulated, capitalised or otherwise dealt with in the name of or on behalf of or at the direction of that person, or
- k) a favour in money or money's worth or a consideration for an act or omission or the forbearance of an act or omission that inures for or to the benefit of a resident person.

For the purposes of this Chapter, it is immaterial whether or not that person being taxed physically received the asset so long as the act, omission or transaction inured or inures to the benefit of that person. An asset also refers to an asset referred to in (1) to (8) above.

14.2 GIFTS EXEMPTED FROM TAX

The total value of a taxable gift received does not include the value of a taxable gift received;

- a) by a person under a will or upon intestacy;
- b) by a person from that person's spouse, child, parent, brother, sister, aunt, uncle, nephew or niece;
- c) by a religious body which uses the gift for the benefit of the public or a section of the public; or
- d) for charitable purposes.

A gift that passes in any of the above circumstances or cases does not attract gift tax.

14.3 VALUATION OF TAXABLE GIFTS

The value of a taxable gift is the market value of the gift at the time of the receipt. This thus presupposes that the actual cost to the donor is irrelevant in the determination of the value of a gift for tax purposes as the market value is what would be resorted to.

14.4 PROCEDURE RELATING TO GIFT TAX (FILING OF RETURNS)

A person who receives a taxable gift shall, within thirty (30) days of receipt furnish the Commissioner with a return in writing containing the following information:

- a) The description and location of the taxable gift;
- b) The total value of the gift, how it is calculated and tax payable with respect to that gift;

- c) The full name and address of the donor of the gift; and
- d) Any other information required by the Commissioner.

It should be noted that gifts not exceeding N500,000 within a year of assessment are exempt from gift tax.

14.5 CHAPTER SUMMARY

It is important to remember that the true character of a gift needs to be ascertained to bring it under charge to tax. There is also the need to remember the threshold above which a gift becomes chargeable to tax as being ₵500,000 within a year of assessment. Note also has to be taken of the exemptions and the classes of gifts that fall into this category.

WORKED EXAMPLES

QUESTIONS

1. Abubakari transferred his shares in Elikem Company Limited worth ₵500,000 to his friend Anao. How much gift tax does his friend pay?
2. Agartha bequeathed a piece of land valued at ₵50million to her son. What is the tax liability of Agartha's son?
3. The Board of Directors of HENT Financial Training Centre transferred a slightly used Volvo S70 car worth ₵120million as a gift to the wife of Yaw Baah, one of the directors who lost his life through a motor accident. How much gift tax will the wife of the late Yaw Baah pay?
4. Sandra Fosu performed very well in her final university exams and received the following gifts from various people and organisations for her performance.
 - (a) A piece of land valued at ₵20 million from the Chief of Nkoranza where she hails from.
 - (b) Her mother gave her gold trinkets valued at N8 million.
 - (c) Her admirers gave her ₵5 million.
 - (d) The Church of Christ where she worships gave her ₵2 million.

Determine the gift tax payable by her, if any.

SUGGESTED SOLUTIONS

1. Anao will not pay any tax as the gift is ₵500,000. The amount is not above the taxable threshold.
2. Agartha's son has no tax liability as the land passed from a parent to a child, more so the land was passed under a will or intestacy.

3.

	₪ 120,000,000
Value of Gift	
Less: Threshold (Not taxable)	<u>500,000</u>
Taxable amount	<u>119,500,000</u>
Tax thereon @10%	11,950,000

4. **SANDRA FOSU**

	₪
Value of piece of land	18,000,000
Amount from admirers	5,000,000
Amount from Church of Christ	<u>2,000,000</u>
Total Amount of Taxable Gift	25,000,000
Less Non-Taxable Threshold	<u>500,000</u>
Amount of Taxable Gift	<u>24,500,000</u>
Tax thereon at 10%	<u>2,450,000</u>

CHAPTER FIFTEEN

STAMP DUTIES

CHAPTER CONTENTS

- a) Introduction
- b) Nature, Forms and Objectives
- c) Methods of Stamping and Adjudication
- d) Administration of Stamp Duties
- e) Lists of Instruments Subject of Stamp Duties
- f) Exemptions from Stamp Duties
- g) Chapter Summary

LEARNING OBJECTIVES

At the end of this chapter, the readers should understand:

- e) The meaning of Stamp Duties;
- f) The form, nature and objective of Stamp Duties; and
- g) Methods of stamping and adjudication.

15.0 INTRODUCTION

Stamp duties are taxes on written documents. These taxes are usually paid to the Federal or State Governments on documents in order to confer legal authority on such documents. This makes the documents admissible as evidence in law court. However, there is always opportunity to pay all unpaid duties and the penalties thereon on instruments to enable one tender them in law court.

15.1 NATURE, FORMS AND OBJECTIVES

There are quite a number of Stamp Duties under different charges heads. Stamp duties are generally governed by the provisions of the Stamp Duties Act of 1939 as amended to date. The tax is relatively easy to collect as it is a specific tax. It is also cost effective in collection.

There are two forms of stamp duties, viz: Fixed Duties and Ad-valorem Duties.

15.1.1 Fixed Duties

These duties do not vary in relation to the value of the instrument. Examples of the instruments on which such fixed duties apply include:

- a) Cheque leaves;
- b) Proxy forms;
- c) Guarantee forms;
- d) Admissions as Solicitor or Notary Public;
- e) Bank Notes or Bills payable at sight; and
- f) Payment Receipt.

15.1.2 Ad-valorem Duties

This type of Stamp Duty varies with the amount involved in the transaction. Examples of instruments for this assessment include:

- a) Property valuation;
- b) Policy of life insurance;
- c) Promissory Notes;
- d) Mortgage and Debenture loans;
- e) Share capital of company; and
- f) Bills of Exchange.

15.2 METHODS OF STAMPING AND ADJUDICATION

15.2.1 The Stamping of Duties can be by the following Methods:

- a) Affixing adhesive stamp;
- b) Affixing postage stamp in lieu of adhesive stamp;
- c) Embossing with dies; and
- d) Printing on the instruments.

15.2.2 Adjudication

Adjudication is the process of determining the correct amount of duty by the Commissioners of Stamp Duties. A document is duly stamped as the document would not be adjudicated if the duty has not been paid.

15.2.3 Benefits of Adjudication

The benefits include:

- a) It shows the genuineness of a document;
- b) It is the important step in disputing the Stamp Duties office's view of the correct amount of duty;
- c) It satisfies the statutory requirement; and
- d) It makes instruments once adjudicated, admissible for all purposes notwithstanding any objection as to the duty to be paid.

15.2.4 Limitations of Adjudication Process

The limitations are:

- a) Where a court has ruled that an instrument has not been duly stamped, subsequent adjudication cannot retrospectively make it duly stamped; and
- b) The process cannot prejudice rights that have been asserted before adjudication.

15.3 ADMINISTRATION OF STAMP DUTIES

In Nigeria, Stamp Duty is managed by the Commissioners of Stamp Duties. An instrument must be sent to the Commissioners of Stamp Duties for adjudication. An

appeal against such adjudication is treated as case in the High Court, with further rights of appeal as for ordinary tax cases.

15.4 FUNCTIONS OF COMMISSIONER OF STAMP DUTIES

A Commissioner of Stamp Duties performs both administrative as well as technical functions.

The following are the functions:

- a) He ensures proper functioning of the Stamp Duties office in areas of safe keeping of copies of stamped documents and proper keeping of records and balancing of books;
- b) He has duties of assessing the instruments and imposing penalties as appropriate;
- c) He is responsible for adjudication;
- d) He has duty of stamping or embossing the instrument with appropriate stamp denomination; and
- e) He takes custody of dies and stamps.

15.5 PENALTIES FOR LATE STAMPING

A person prosecuting an instrument for stamping after the date of execution must pay, not only the unpaid duty but in addition a penalty of ₦20. If the unpaid duty exceeds ₦20, a further penalty or interest at 10% per annum must be paid.

In case of Ad-valorem, the person must pay a penalty of ₦20, in addition to the unpaid duty, and a sum equal to the unpaid duty.

15.6 LIST OF INSTRUMENTS SUBJECT TO STAMP DUTIES

These include:

- (a) Appraisements;
- (b) Agreements;
- (c) Instruments of apprenticeship;
- (d) Bank notes, Bills of Exchange and Promissory Notes;
- (e) Bills of Lading;
- (f) Contract Notes;
- (g) Conveyances on Sale;
- (h) Other Conveyances;
- (i) Duplicates and Counterparts;
- (j) Exchange, Partition or Division;
- (k) Leases;
- (l) Letter or Power or Attorney and Voting Papers;
- (m) Marketable Securities;
- (n) Mortgages;
- (o) Notarial Acts;
- (p) Policies of Insurance;
- (q) Receipts;

- (r) Settlements;
- (s) Share Warrants;
- (t) Warrants of Goods; and
- (u) Capital of Companies.

15.7 EXEMPTIONS FROM STAMP DUTIES

The following are exempted from stamp duties:

- a) Liquidation transactions;
- b) Treaties and Agreements; and
- c) Company's reconstruction and amalgamation.

15.8 CHAPTER SUMMARY

Stamp Duties are taxes paid to the Federal and State Governments on written documents to confer legal authority on such documents. The forms of Stamp Duties are Fixed duties and Ad-valorem duties.

MULTIPLE – CHOICE QUESTIONS ON STAMP DUTIES

1. The examples of instruments assessed by Fixed Stamp Duties include the following **EXCEPT**
 - A. Proxy forms
 - B. Payment receipts
 - C. Bank notes or bills payable at sight
 - D. Property valuation
 - E. Guarantor form
2. One of the following is not an example of instruments for Ad-valorem assessment.
 - A. Bill of Exchange
 - B. Cheque leaves
 - C. Share capital of company
 - 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 the instrument and impose penalties
 - B. Responsible for stamping or embossing the instruments
 - C. Responsible for keeping custody of the stamping instruments
 - D. Arrest a tax offender
 - E. Responsible for adjudication
4. The stamping of instruments can be by any of the following ways **EXCEPT**
 - A. Embossing with dies
 - B. Cellotaping
 - C. Affixing adhesive stamp

- D. Affixing postage stamp in lieu of adhesive stamp
 - E. Printing on the instruments
5. The benefits of adjudication include the following **EXCEPT**
- A. It satisfies the statutory requirements
 - B. The instrument is admissible for all purposes notwithstanding 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

SHORT ANSWER QUESTIONS

1. Fixed Duties do not vary in relation to the value of.....
2. Stamp Duty istax
3. The type of Stamp Duty which varies with the amount involved in transactions is called.....
4. The process of determining the correct amount of duty by the Commissioner is called.....
5. Stamp duty is managed by the

SUGGESTED SOLUTIONS TO MULTIPLE-CHOICE QUESTIONS

1. D
2. B
3. D
4. B
5. D

SUGGESTED SOLUTIONS TO SHORT ANSWER QUESTIONS

1. Instrument
2. Specific
3. Ad-Valorem Duty
4. Adjudication
5. Commissioner of Stamp Duty

WORKED EXAMPLES

QUESTIONS

1. a. Explain the term "STAMP DUTY"
b. Explain the TWO forms of Stamp Duties and give THREE examples of each.
2. a. Enumerate any THREE methods of stamping documents
b. Explain any THREE benefits of Adjudication
3. a. Enumerate any TEN instruments that are subject to Stamp Duties.

- b. State any THREE instrument that are exempt from Stamp Duties
 - c Explain briefly the penalties for late stamping
- 4
- a Explain the functions of Commissioner of Stamp Duties
 - b Discuss briefly the limitations of Adjudication process

SUGGESTED SOLUTIONS

1(a) Stamp Duty is a tax paid to Federal or State government on document in order to confer legal authority on such document.

It is a specific tax and it is easy to collect.

(b) There are two forms of Stamp Duties, viz: Fixed Duties and Ad-valorem Duties.

i Fixed Duties

These duties do not vary in relation to the value of the instrument. Examples of the instruments on which such fixed duties apply include:

- ◆ Cheque leaves;
- ◆ Proxy forms;
- ◆ Guarantee forms;
- ◆ Admissions as Solicitor or Notary Public;
- ◆ Bank Notes or Bills payable at sight; and
- ◆ Payment Receipt.

ii Ad-valorem Duties

This type of Stamp Duty varies with the amount involved in the transaction. Examples of instruments for this assessment include:

- ◆ Property valuation;
- ◆ Policy of life insurance;
- ◆ Promissory Notes;
- ◆ Mortgage and Debenture loans;
- ◆ Share capital of a company; and
- ◆ Bills of Exchange.

2(a) The stamping of duties can be by the following methods:

- i. Affixing adhesive stamp
- ii. Affixing postage stamp in lieu of adhesive stamp
- iii. Embossing with dies
- iv. Printing on the instruments

Benefits of Adjudication

The benefits include:

- i. It shows the genuineness of a document;
- ii. It is the important step in disputing the Stamp Duties office's view of the correct amount of duty;
- iii. It satisfies the statutory requirement and
- iv. It makes instruments once adjudicated, admissible for all purposes notwithstanding any objection as to the duty to be paid.

5a. LIST OF INSTRUMENTS SUBJECT TO STAMP DUTIES

These include:

- i. Appraisements;
- ii. Agreements;
- iii. Instruments of apprenticeship;
- iv. Bank notes, Bills of Exchange and Promissory Notes;
- v. Bills of Lading;
- vi. Contract Notes;
- vii. Conveyances on Sale;
- viii. Other Conveyances;
- ix. Duplicates and Counterparts;
- x. Exchange, Partition or Division;
- xi. Leases;
- xii. Letter or Power of Attorney and Voting Papers;
- xiii. Marketable Securities;
- xiv. Mortgages;
- xv. Notarial Acts;
- xvi. Policies of Insurance;
- xvii. Receipts;
- xviii. Settlements;
- xix. Share Warrants
- xx. Warrants of Goods
- xxi. Capital of Companies

3b EXEMPTION FROM STAMP DUTIES

The following are exempted from stamp duties:

- i. Liquidation transactions;
- ii. Treaties and Agreements; and
- iii. Company's reconstruction and amalgamation.

3c PENALTIES FOR LATE STAMPING

A person prosecuting an instrument for stamping after the date of execution must pay, not only the unpaid duty but in addition a penalty of ₦20. If the unpaid duty exceeds ₦20, a further penalty or interest at 10% per annum must be paid.

In case of Ad-valorem, the person must pay a penalty of ₦20, in addition to the unpaid duty, and a sum equal to the unpaid duty.

4a FUNCTIONS OF COMMISSIONER OF STAMP DUTIES

A Commissioner of Stamp Duties performs both administrative as well as technical functions.

The following are the functions:

- i. He ensures proper functioning of the Stamp Duties office in areas of safe keeping of copies of stamp documents and proper keeping of records and balancing of books;
- ii. He has duties of assessing the instruments and imposing penalties as appropriate;
- iii. He is responsible for adjudication;
- iv. He has duty of stamping or embossing the instrument with appropriate stamp denomination; and
- v. He takes custody of dies and stamps.

4b Limitations of Adjudication Process

The limitations are:

- i. Where a court has ruled that an instrument has not been duly stamped, subsequent adjudication cannot retrospectively make it duly stamped
- ii. The process cannot prejudice rights that have been asserted before adjudication.

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