AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE TAXATION OF COMPANIES INCOME IN NIGERIA

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BEING A THESIS SUBMITTED TO THE POSTGRADUATE SCHOOL, FACULTY OF LAW, AHMADU BELLO UNIVERSITY, ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF MASTERS OF LAW-LLM

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DECLARATION

I hereby declare that the work in the thesis titled: 'AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE TAXATION OF COMPANIES INCOME IN NIGERIA' has been performed by me under the supervision of Dr A. K. Usman.

The information derived from the literature has been duly acknowledged in the text and the list of references provided. No part of this thesis was previously presented for another degree or a diploma at any university**.**

…… **……**

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CERTIFICATION

This thesis titled: "AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE TAXATION OF COMPANIES INCOME IN NIGERIA" by Hosea, RichardsJOHN meets the Regulations Governing the Award of Master of Laws degree -LLM of the Ahmadu Bello University, Zaria and it is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to my dear wife Jemimah, my loving children, Basil, Brendan, Reinhardand Raymond, for their patience and understanding throughout the time of carrying out this research.

LIST OF ABBREVIATIONS

A.P.C……...African, Pacific and Caribbean Union

A.U……..African Union

B.O.J ……...Best of Judgment

C.A.M.A……..Companies and Allied Matters Act

C.G.T.A……...Capital Gains Tax Act

C.J……Chief Justice

C.O.P……...Commissioner of Police

C.I.R……Commissioner for Inland Revenue

C.I.T.A…….Companies Income Tax Act

C.T.A……Capital Transfer Act

E.C.O.W.A.S……....Economic Community of West African States

E.F.C.C…….Economic and Financial Crimes Commission

E.T.A……....Education Tax Act

E.U……...European Union

F.B.I.R…….Federal Board of Inland Revenue

F.C.T……...Federal Capital Territory

F.H.C……Federal High Court

F.I.R.S……..Federal Inland Revenue Service

F.R.C……Federal Revenue Court

G.A.T.T……General Agreement on Tariff and Trade

I.C.P.C……..Independent Corrupt Practices Commission

I.M.F. ……..International Monetary Fund

I.R.C……Inland Revenue Commissioner

I.T.M.A……Income Tax Management Act

J.T.B…….Joint Tax Board

L.F.N……Laws of the Federation of Nigeria

M.A.N……..Manufacturing Association of Nigeria

N.C.S.T…….National Commission on State Taxation

N.E.C…….National Economic Council

F.I.R.S…….... Federal Inland Revenue Service

N.S.W…….New South Wales

O.P.E.C……..Organization of Petroleum Exporting Countries

P.A.Y.E……..Pay As You Earn

P.A.Y.S……..Pay As You Spend

P.I.T.A……...Personal Income Tax Act

P.P.T.A ……..Petroleum Profits Tax Act

S.D.A……..Stamps Duties Act

T.C.C…….. Tax Clearance Certificate

U.K……..United Kingdom

U.N.C.T.A.D……United Nations Cooperation on Trade and Development

U.N……...United Nations

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ABSTRACT

The current wave of globalization and technological revolution has had a tremendous effect on companies' income tax in Nigeria. For instance, the e-commerce which is a relatively new technology epitomizes boundary, whereas the companies income tax law upholds the concepts of residence, fixed base and permanent establishment. Nigerian tax administration is ill-equipped to cope with these emerging tax problems. The old standard of corporation tax, the manual assessment and enforcement procedures cannot meet up with the fast- changing commercial activities of the companies. This consequently creates administrative ineptitude which to a large extent adversely affects revenue generation in Nigeria. There is therefore the need to probe into how the developments have affected our domestic *Companies Income Tax Act.* This thesisalso attempts to highlight grey areas in corporation tax system in Nigeria which affects revenue generation. Some of these areas of potential problems are: the problems of assessment and enforcement of corporate taxes, the negative effect of globalization on corporation taxes; the legality or otherwise of operating unincorporated treaties and Double Taxation Arrangement and finally the complication of enforcement and administration of corporation tax laws.This thesis entitled "An Appraisal of the Legal Framework For the Taxation of Companies Income in Nigeria" aims at critically examining the various laws and principles relating to the taxation of companies in Nigeria. Accordingly, the objectives of the study is with a view to measuring the adequacies or inadequacies of the said laws and principles, which if frontally addressed, their menace to corporate tax laws and consequently to revenue generation will be drastically reduced to the barest minimum. This research has adopted the doctrinal method which includes tax laws, various textbooks, treaties, case laws and articles drawn from relevant sources of this research topic. In the course of this research, it has been found amongst others that there are complexities in respect of the tax statutes, poor implementation and application of international corporate double taxation treaties in Nigeria, misinterpretation of corporate tax terms like "accruing in" " brought in" or "derived from" and lack of enforcement skills in the assessment, collection of corporate taxes by tax administrators.The research concludes that unless there is a wholistic overhaul and/or introduction of a co-ordinated platform for the administration of corporate tax laws in Nigeria corporate revenue generation will continue to pose serious challenges in Nigeria.

CHAPTER ONE: GENERAL INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Taxation is a vital element in any country's economy. It is the source for funding important necessities such as education, health, care, securities and the million other things that are necessary to the running of the country[1]. Taxes are the major source of government revenue for funding its activities such as financing of budget and government development plan.Government being a nonprofit making organization needs to generate revenue from taxes and other tax related sources. Fiscal Consideration is paramount in shaping development policies of a given economy either at micro or Marco level. In his remark, Felix Frankfurter[2] states the significance of tax thus:

> Taxation has always been the sensitive nerve of government. The enormous increase in the cost of society and the extent to which wealth is represented by intangibles, are putting public finance to its severest tests. To balance budgets, to pay for the cost of progressively civilized social standards, to safeguard the future and to divide these burdens with substantial fairness to the different interests in the community, strains to the utmost ingenuity of statesmen.

Nigeria as a developing economy has many taxes through which sufficient revenue can be generated to meet government expenditure[3]. Some of these taxes include companies' income tax and petroleum profit tax among others[4]. These taxes are capable of generating sufficient revenue to finance government activities if they are effectively administered and enforced. However, there is no gainsaying that despite the fact that Nigeria has many companies and other taxable persons from whom revenue can be generated, government is repeatedly

[1]Other objectives of the taxation include re-distribution of wealth and management of economy.

[2]"Mr Justice Branders and Constitution" 45 Harvard Law Review 33 reproduced in Ervin H. Pollack(1965) TheBrandies Reader Oceana, Docket series, vol. 7, p.38 quoted in Akanle O. (ed.)(1991)*Tax Law & Tax Administration in Nigeria*, Nigeria Institute of Advanced Legal Studies (NIALS), , p.109.

[3]The major taxes in Nigeria are: Personal Income Tax governed by *Personal Income Tax Act* 1993, (Now Cap P8 Laws of Federation of Nigeria (LFN) 2004), Companies' Income Tax regulated by *Companies Income Tax Act* 1990 (Now Cap C21 LFN 2004), Petroleum Profit Tax regulated by *Petroleum Profit Tax Act* 1990 (Now Cap C1 LFN 2004), Value Added Tax regulated by *Value Added Tax Act* 1993,(Now Cap V 1 LFN, 2004), Education tax regulated by *Education Tax Act* 1993 (Now Cap E4 LFN 2004), Capital gains tax regulated by *Capital Gains Tax Act* 1990,(Now Cap C1 LFN 2004), Customs and excise regulated by *Custom & Excise Act* 1990 (Now Cap C49 LFN, 2004).

[4]While the former is the authority for the taxation of Incomes of corporations other than those of operators in theupstream of the Oil Industry, the latter is meant to regulate and control the companies engaging in oil and gas industry.

complaining of widespread incidence of tax avoidance and evasion[5]. Nigeria's tax system has not succeeded in achieving the goals of revenue adequacy and equity. Although, revenue authorities attempt to generate as much revenue as possible,they end up with little and thus unable to meet the projected target.

A lot of reasons are responsible for the inadequate revenue generation by taxation in Nigeria. In the 1970s during the oil boom, government depended much on oil revenue. Petroleum profit tax gained prominence at the expense of other taxes. Nigerian Tax authorities became relaxed that they could not harness other forms of taxes that would have boosted and complemented the nation's oil revenue. This consequently brought about loops and slacks in Companies' Income Tax Laws. It has equally weakened the administrative and enforcement institutions of other non-oil taxes.

Apart from the fact that Nigerian's corporate tax laws have not been overhauled and reviewed for a long period of time to make them more realistic and in tandem with international best practices, their provisions are clumsy, unnecessarily verbose and complicated. This tends to increase the cost of tax payers complying with their tax obligations.

The Companies Income Tax Act and Petroleum Profit Tax Act are far from fulfilling the above requirements. In fact, they are in the main inelegantly drafted. This makes compliance and implementation difficult and consequently affect revenue generation. Although Nigerian government usually embark on tax reforms, these reforms have failed to introduce any new significant principle in tax administration.

Allied to this, is the fact that a company is a distinct legal entity and by its very nature it poses taxation problems. A series of dimensions and developments have crept into the practice and procedure of corporation taxation which have not been adequately captured as a result of loop holes in our laws. Companies, like natural persons do engage in cross – border transactions and in that course, contrive series of ingenious schemes to avoid and evade taxes

[5] See *Daily Trust:* January 17, 2008; p. 34 wherein it was reported that Nigerian Government lost ₦60bn due to tax evasion and wrongful tax waivers and concession during president Obasanjo's regime.

in Nigeria. This poses a complicated taxation problem as techniques for corporation tax abuses have become too sophisticated for our own tax system to cope with. In other words, the business world is always a step ahead and there is a growing need to update knowledge through continuous review of the corporation tax laws and practice in Nigeria[6]. Otherwise these ingenious schemes will constitute conduits through which a lot of revenue will be eluding government. This in turn will have adverse effects on the citizenry because government will not be able to provide for their needs adequately.

It is equally worthy of note that in recent times[7], the Federal Inland Revenue Service (FIRS) has undergone organizational and institutional reforms to combat administrative ineptitude; to cope with emerging new trends in corporation tax administration; and to operate a transparent and efficient tax system that optimizes corporation tax collection and voluntary compliance[8]. Whether or not this alone can make qualitative changes happen in corporation tax system without adequate empowerment is another serious issue that needs scholarly scrutiny. Although the reform introduced the establishment of Integrated Tax Office, electronic filing system etc; the machineries to accomplish the objective are not adequate. This will surely hamper effective revenue generation.

Furthermore, the Federal Inland Revenue Service is the official body responsible for the administration of corporation tax laws in Nigeria[9]. To carry out its mandate effectively, the FIRS need to work harmoniously with the Corporate Affairs Commission (CAC) which is another official institution responsible for the registration of companies and other ancillary matters thereto[10]. The CAC must feed the FIRS with accurate and up-to-date data of companies registered. This will enable the FIRS prepare its own database in order to enforce companies income tax effectively on the tax payers. As straight forward as this arrangement seems, it is posing serious fiscal hitches in practice that call for researchers beaming their search lights into that direction

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[6] Arogundade, J.A. (2005)*Nigerian Income Tax and Its International Dimension*, Spectrum Books Ltd., Ibadan,
[7]Particularly from January, 2006.
[8]FIRS – Operational Manual for Integrated Tax Office, 2006.
[9]See generally *Federal Inland Revenue Service (Establishment) Act,* 2007
[10]Section 1, *Companies and Allied Matters Act (CAMA),* Cap C20, LFN, 2004.

On a daily basis, the FIRS and the public are awash with news of companies that do not exist in the books of the Corporate Affairs Commission (CAC) being awarded big contracts in the corridors of government, collecting various forms of taxes as agents of government without any remittance to the government treasury[11]. By this, government is consigned into the misfortune of huge revenue loss. It is therefore obvious that the trio of the corporation tax laws, the enforcement agency and the enforcement procedures need scholarly inquiry to forestall loss of revenue.

1.2 LITERATURE REVIEW

Some of the materials to be used in this dissertation are documentary data such as textbooks, statutes and articles. However, they are distinguishable from this thesis. One of the earliest authors on corporation tax Laws is Ola C.S.[12] in his book, *"Income Tax Law for Corporate and Unincorporated Bodies in Nigeria,"* the learned Professor treats the topic as "Assessment of Companies and Statutory Corporations, Pioneer Companies Including Excess Profits Tax" & Petroleum Profit Tax". He considered the topics under the provisions of Companies Income Tax Act 1961. His treatment of the topics does not represent the current position of the law on corporation taxes any longer. As a matter of fact, the 1961 Act had undergone several amendments and modifications before and after same was transformed into 1990 Act and now Cap p8 Laws of Federation of Nigeria 2004. Similarly, the Federal Inland Revenue Service which is the official body responsible for the administration of corporation tax laws in Nigeria has been restructured and reorganized to catch up with some modern trends in our tax system. All these are not considered in the treatment of the topic by the learned author; and this research work shall appraise these emerging trends in corporation tax system.

[11]*Daily Trust*, Monday, November 3, 2008 pp.1 & 5.
[12]Ola C.S. (1984) Income Tax Law for Corporate and Unincorporated Bodies in Nigeria, Heineman, Ibadan, pp.231-365.

Besides, no matter how progressive a tax system is, its objectives cannot be realized if it is not properly enforced. One conspicuous gap in Professor Ola's book is that it failed to treat enforcement procedures under corporation tax laws while considering the topics. This thesis is out to fill that lacuna. Allied to this, the author treated the topics on corporation taxes in his book on *the law as it was*. This treatise shall go a step further to analyse the law regarding the topic under consideration from the perspective of *law as it should be*.

Finally, the book substantially contains obsolete opinions which can hardly be free from faults today considering modern trends in commerce. The implication is that the book is now history which can only be seen and read for its historical utility. Therefore, there is the need for an intensely fresh research on the topic.

Another erudite scholar that had also written on the topic under research is Ayua I. A**.** [13] He treats the topic as "Taxation of Companies Profits. He considered the basic principles of corporation taxes such as charge to companies income tax, exempted income, basis of assessment, rules for calculating a company's profits, deductions allowed, taxation of dividends of companies and petroleum profits tax, company income tax offences and penalties[14]

However, the Learned Professor's work is deficient, considering the modern trends of globalization and electronic commerce as they affect some principles and operations of corporate tax laws in Nigeria. This will be considered in this dissertation. He also failed to

13 Ayua 1.A. – The Nigerian Tax Law, Spectrum Law Publishing, Ibadan, 1991, P.163

14 Ibid Pp 163 - 208

examine the contents and mechanics of bilateral tax treaties within the context of corporate tax laws, which this research work has also attempted to address.

Furthermore, the learned author quoted Stanley Survey in his work as saying that:

> No tax will work effectively, especially an income tax unless its administrators maintain an aggressive attitude with respect to the correctness of the taxpayer's action. Some tax payers will fail to file or will make mistakes through ignorance or neglect; others will deliberately cheat...

The only way by which the tax administrators can live up to expectation is by ensuring that the corporation tax laws are strictly enforced. It is a common knowledge that majority of officials of Revenue Authorities are ignorant of the purport and procedure for tax enforcement. They grope in darkness to the extent that instead of levying distress they seal-up companies premises, whereas the latter is an illegal means of tax enforcement. Like Professor Ola, Professor Ayua's work missed out this important topic in his work. Thus this research work is broader in content and scope than the referred previous works.

Abdulrazaq M. T.[15]is one of the foremost experts in Taxation law in Nigeria. His textbook titled: "*Nigerian Revenue Law',* is one of the recent literatures that treats the subject matter of this research work. The Learned Professor treats the topic as "Companies Income Tax". He honestly concedes to the fact that the work is not comprehensive enough. Rather, it is offered as a statement of the fundamental principles of revenue law and it aims to state those principles in as readable and intelligible a form as the subject matter[16]. According to the Learned Professor about his work:*"the principles it states are those which practitioners in the field... will need to have at their fingertips. The text will not reveal the solution to every problem....*[17]

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15 Abdulrazaq M.T. – Nigeria Revenue Law, Malthouse Press Ltd, Lagos, 2005

16 Ibid P. VI.

17 Ibid.

True to the eminent professor's confession, the researcher humbly observes that his

work is lacking in some important aspects which a recent work like his ought to have included. Some of the problems which his work did not proffer solutionsto are: on incentives, enforcement methods and procedures, tax implications of merger and acquisitions
etc. To the extent that the research work will critically analyse them distinguishes it from his work.

Again, as instructive as his work seems, he treats the *law as it is*. No appraisal as to the justification or otherwise of the current position of the law. More importantly, the learned Professor did not provoke the minds of future researchers and to this extent, a new research work is imperative to build on his efforts.

Kanyip B.B. [18]is another notable erudite scholar and author on taxation in Nigeria. In one of his articles titled "*Taxation Issues in Foreign Investment*"[19], he examined some crucial issues in Companies Income Taxation in Nigeria such as tax incentives regime, classical methods of taxing companies and its implications for business, and investor friendly judicial disposition. The considerations of these issues are insightful and thought-provoking; but not all embracing. The Learned law Lord admitted this when he stated that:***"Since taxation issues are generally infinite, we propose to dwell on only a few- - -"***

Perhaps for the reason of constraint in scope, the learned writer's work left out the issues of administration and enforcement, tax treaties and some other cogent concepts in and to that extent; it is wider in scope than his Lordship's work and consequently distinguishable from it.Furthermore, Arogundade J.A.[20] is a seasoned tax administrator who has written on theCompanies Income Tax in Nigeria. In his book "*Nigerian Income Tax and Its Internation-al Dimension*".

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[18] Honourable Justice B.B. Kanyip is of the National Industrial Court, Abuja.
[19] Kanyip B.B. (1998) Taxation Issues in Foreign Investment M.P.J.F.I.L. Vol. 2, No 1 P.107-126; see also Kanyip B.B. - Companies Income Tax, in Abdulrazaq M.T. (ed.) (2002) C.I.T.N. Nigerian Tax Guide & Statutes, p. 117.
[20]Pursuant to Industrial Development (Income Tax Relief) Decree (No. 22) of 1971 (which repealed ordinance No.8 of 1958.)

[21] he attempted an in-depth analysis of the taxation of incomes from the perspective of Local and Cross-border transactions in Nigeria. Like the title of the book

suggests, he considered all income taxes in Nigeria and their international dimensions but this dissertation will consider only the corporate taxes and their effects on revenue generation.The author's work is comprehensive. He equally laboured very hard to transfer abstract knowledge to practical equivalent that can benefit stakeholders in the Nigerian tax system. Notwithstanding this, the author openly conceded to the fact that there are loopholes in his work. He states that:

> The book discusses tax issues purely from the point of view of a tax administrator who sees the system as it is. He sees the law, its interpretation and the application as his main focus. His training as a tax administrator does not allow him to go outside the tax laws as legislated, the interpretation is decided by the judiciary or the procedures as regulated, to substitute his own judgment. Nevertheless, he is conscious of the changing world and best practices elsewhere to stress the need to re-focus the system as it should be[22].

This is what we intend to achieve by this dissertation, and to that extent his work is distinguishable from this research work both in scope and perspective.

Orojo O.[23] is another foremost author on Companies Income Tax Law in Nigeria. His work was predicated on the provision of the Companies Income Tax Act 1961 which has been substantially consolidated and amended. The opinions expressed and positions taken in his work can hardly be regarded as being current nowadays. More so that Companies Income Tax Law and administration had undergone series of reforms and restructuring. This research work will consider them in their recent contents and context and their effects on revenue

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[21] He was the Director, Petroleum and International Tax, Member of F.I.R.S. Management of Federal Board of Inland Revenue and of its Technical Committee before his retirement in 2004
Companies Income Tax Laws in Nigeria. This dissertation will cover some of these lacunas
[22]Op cit.
[23]Arogundade J. A. Op cit P.XXV.

generation in Nigeria. Here again lies another distinguishing feature in this dissertation from his work.

Some accountants of repute have written on Corporation Tax laws. One of them is Ani A. A.[24].In his book titled "*Companies Income Tax and Petroleum Profits Tax inNigeria"*[25], he examined and treated the Law as at December 1977. The CorporateTax Laws have since undergone many amendments which are not incorporated in his work; and which this dissertation shall accommodate. Apart from the fact that the author treated the topic from an accounting perspective, the author remarked in the preface to the book thus;

> This is the first time that any real attempt has been made to break down Companies Income Tax and Petroleum Profits Tax in all their ramifications. I have no doubt that further research into this subject must be conducted in order to contribute to its development and improvement.

This research work is one of the further research works which the author suggested. It is wider in scope than the author's book and legal in content.

On a final note, the Companies Income Tax Act, Petroleum Profit Tax Act, Federal Inland Revenue Service (Establishment) Act only gives the body of the various tax laws. They form the legal framework of corporation tax laws and their administration in Nigeria. However, this dissertation shall go beyond the provisions of these laws. It shall consider the views of judges on different concepts and principles of those Laws as well as the opinions of seasoned tax administrators and practitioners in the field of corporate tax.

In all, the researcher will harmoniously juxtapose these views to give holistic recommendations, which we believe will re-focus and re-position the law, the policy, the practice and administration of Companies Income Tax Laws in Nigeria.

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[24]. In Collaboration with Z.A. Abdullahi, M.A. Popoola and R. U. Uche.
25. University Press Ltd, Ibadan.

1.3 STATEMENT OF RESEARCH PROBLEM

Taxation of companies is one of the most important sectors in Nigeria and its importance determines the corporate existence of Nigeria. The wealth created by taxation is used to sponsor the social responsibility and constitutional budgetary implementation and maintenance of life necessities of the Nigeria citizenry. The government in an effort to ensure the adequate taxation of companies incorporated in Nigeria established Commissions and parastatal to ensue the supervision and implementation of the Company Income Tax Act, and other ancillary company taxation Act. But despite the effort and brilliancy of the Government to cover the wealthy field of taxation, the following problems are observed by this researcher as stated as follows:

1. It is observed that there is a high number of unregistered business enterprises operating as corporate personality in Nigeria and the application of the Company Income Tax by the Federal Inland Revenue Service is faced with the Act of first looking at the incorporated status of the business enterprise before the applicability of the of Act, thereby limiting the accrued income for the Federal and State Government of Nigeria.
2. The mistaken classification of companies for business purposes is one of the observed bane of the Nigeria Taxing Statutes. This is at cross purposes with the growing numbers of incorporated legal bodies with the Corporate Affairs Commission, with the incorporated objectives for rendering social and humanitarian services but hides under the corporate veil as stated in their incorporated objectives, carries on business, making profit, but does not subject its annual receipts for tax purposes.

3. It is also noticed that corporate taxes "accruing in", "brought in "or "derived from" Nigeria[26]have been given a statutory misinterpretation. These provisions especially the words "accruing in" or "derived from" have been equated to the principle of liability on income with a Nigerian "Source", whereas, the expression "brought into" or "received in Nigeria" have been interpreted in a way similar to a "Remittance" or "deemed Remittance Rule.[27]" The attempt to tax Nigeria company on its global income and a foreign company on its Nigeria source income though understandable is fraught with difficulty.
4. The distinction of foreign company and local company subject to tax has brought great limitations to the implementation of the Taxing Statute, as is evidence on billion of internet and computerized business transactions.The business enterprise pays taxes in its foreign registered country but enjoys unlimited access to Nigeria market, wherein the company makes profits without subjecting this profits to tax and the payment of these business transaction are usually through E-Commerce and or money transfers.
5. It is also discovered that tax administrators lack basic enforcement skills in the assessment and collection of corporate taxes and this engenders misapplication of the laws guiding enforcement.

It is observed that the principal tax executors of Nigeria, apply and implement some International Tax Treaties in exempting some business profit to tax without these Treaties being domesticated by the Nigeria National Assembly. Further, Nigeria was never signatory

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[26]. Section 9 (1), *CITA* 2004.
[27]. Abdulahi A. - Nigeria Tax Treatment of Business Concerns with International Connections, in Akanle O. (ed.) *Tax Law and Tax Administration in Nigeria*, op.cit.

to such Treaties and never was Nigeria Been part of the Law making processes and subjecting or putting in consideration the local effect of the Treaties to existing businesses in Nigeria and the effect of implementing the budgetary provision in Nigeria. The Researcher is mindful to also state hereNigeria is a signatory to many tax treaties[28].

1.4 OBJECTIVES OF THE RESEARCH

The main purpose of the study is to appraise the legal frame work for the taxation of Companies in Nigeria.Specifically the study seeks to:

(i) Attempt an in-depth analysis of the corporation tax concepts, principles of the law and practice and their effects on revenue generation.

(ii) A review of the assessment, collection and enforcement procedures under companies income tax laws with a view to identify the problems inherent in them that affect revenue generation.

(iii) Proffer a dispassionate and insightful analysis of the contents of the Nigerian tax treaties as they affect the operations of companies income tax laws.

(iv) To conclude with some viable suggestions and recommendations that can improve and strengthen the administration of the corporation tax system in Nigeria so as to boost revenue generation in order to foster economic growth and meaningful development.

[28.] They are: Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of the Kingdom of Belgium; Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of the French Republic); Double Taxation Relief (Between the Federal Republic of Nigeria and Government of Canada); Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of Romania); Double Taxation Relief (Between the Federal Republic of Nigeria and the Government of the Kingdom of the Netherlands) all these treaties now form list of subsidiary legislation to the *Companies Income Tax Act* op.cit.

1.5 RESEARCH METHODOLOGY

The materials used in this research work are both documentary and experimental. On the former, the researcher will x-ray both primary and secondary documents; such as the 1999 Constitution of the Federal Republic of Nigeria, Companies Income Tax Act 2004, Companies Income Tax (Amendment) Act 2007, Petroleum Profit Tax 2004; Federal Inland Revenue Service (Establishment) Act, 2007 as well as various textbooks, cases and articles relevant to the subject matter of this research topic.

On the latter, the researcher will reach out to experts such as tax attorneys, tax practitioners, tax administrators and stakeholders in the realm of corporation tax law by way of interview, letters, visits and questionnaires. It is the belief of the researcher that with the accumulated experiences of these experts with the practice of corporation tax laws; formulation of tax policies and charting the course of tax administration in Nigeria, they possess added advantage as insiders and professionals with an informed view of the system. Therefore, the researcher will tap from their experiences on the other angle to the construction of many provisions of the corporation tax statutes and tax treaties.

1.6 SCOPE OF RESEARCH

The scope of this research is determined by the statement of the problem and the objectives of research. Thus, only issues that help solve the problems of this research and advance its objectives will be considered by the researcher. Issues such as historical perspectives of corporate tax in Nigeria, basic concepts under Corporation Tax Laws, modalities for the taxation of corporate bodies in Nigeria, source of accrual and basis of liability to Nigerian taxation, etc. that help the resolution of the problems of the research and advance its objectives will be dealt with. Any issue that does not fall within these enumerated issues will not be considered.

1.7 JUSTIFICATION OF THE RESEARCH

This researcher believes that the research work when completed with the provision of specific suggestions, solutions to the problems identified above, the research workwill be of tremendous benefit to among other the following.

First, in a democratic set up like ours, the heavy task of legislators cannot be underestimated. The National Assembly, being the institution vested with legislative powers in Nigeria is empowered to make laws for the peace, order and good governance of the federation or any part thereof with respect to any matter listed in Exclusive Legislative list. This heavy obligation with which the National Assembly is saddled cannot be accomplished with an empty head. The individual law maker has to be imbued with a wide range of knowledge to meet the challenges of law making. Furthermore, the National Assembly retains the power to impose, increase, reduce, vary or cancel any rate of tax (Corporation taxes inclusive). The topic of this research forms one of the items on which the National Assembly is competent to legislate.

To that extent therefore, this treatise will inform better both the legislators and the legislative counsel (*whose main function is to assist legislators in fulfilling their legislative tasks*) in making valuable contributions to the development of Nigeria through law making. Allied to this, is the fact that tax is not a voluntary payment or donation. It is an enforced contribution exacted pursuant to legislation. This evinces the fact that the legislators will also be adequately informed by the contents of this thesis on the sociological effects of any tax legislation they make. It will afford them the knowledge of consulting a wide range of stakeholders who will derive benefits from or be affected by any law enacted by them before such a law is made so that it will not excite strict resistance. For instance, in the year 2007, the National Assembly passed into law the Federal Inland Revenue Service (Establishment) Act without wide consultations with stakeholders in the Nigeria Tax system. Thereafter stakeholders berated the passage of the Act as it is fraught with inconsistencies and usurpation of power of state in revenue collection and administration. The contents of this research work will benefit legislature and save it from this kind of public embarrassment.

Second, the executive arm of government plays a crucial role in the development of a good tax culture in Nigeria. The Ministry of Finance has the responsibility of proposing to the legislature any amendment or addition to existing new tax legislation[29]. Not only this, the executive arm of government is equally saddled with the function of encouraging voluntary tax compliance by the tax payers. An effective mechanism for achieving this high compliance by government is by making the most efficient use of the tax revenue collected by them[30]. The executive may not be able to discharge these important roles if it does not have adequate knowledge of the provisions and mechanics of the taxes it is to administer. This research work will benefit the executive immensely by increasing its knowledge on the loops and the operations of the corporation tax laws in Nigeria.

Also, **judges** will find the contents of the dissertation very helpful in discharging their judicial functions. The classical responsibility of the courts is to interpret laws and apply them to the facts of the case before them. Decisions reached as a result of the interpretation by superior courts of records have the force of law and sanction like any other law made by the legislature.[31]

However, it is a common knowledge that our courts are faced with challenges of determining conflicts on liability to corporation taxes, assessment, collection and enforcement procedures *etc* on which they are invited to interpret certain provisions of the corporation Tax Acts and other taxing statutes related to them[32]. In discharging this onerous obligation, this thesis will assist Nigerian judges and guide them against avoidable errors. A careful digest of this research work will undoubtedly imbue our courts with a teleological stance in construing this aspect of our taxing legislation or constitutional provisions that border on corporation taxes so that the underling objectives of our tax system can be achieved.

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[29]See the Draft Document on the National Tax Policy op.cit. p. 11.
[30] Ibid.
[31] Aboki Y. op. cit. P. 7.
[32.] See, Marina Nominees V. FBIR (Supra), Shell Petroleum Development Co. Nig. Ltd V. FBIR (Supra), Gulf Oil Co (Nig) Ltd V. FBIR (Supra) and host of others.

Fourth, our citadels of learning are reputed for breeding legal minds. There is the need for law teachers to constantly enhance their knowledge and widen their horizon in their professional field. This research work will be useful to the legal academics by enriching their knowledge especially those in the tax law circle so as to impart current and sound knowledge on law students.

Another class of professionals that will benefit from the contents of this dissertation are the legal practitioners. They receive briefs on multifarious causes of activities such as tax, contract, tort *etc* on which they need to conduct thorough legal research to be able to advise their clients appropriately. One of such causes of action which the services of a lawyer may be required is the subject matter of this dissertation. Tax laws are drafted to reflect the policy of government. The laws are interpreted and clarified by the courts; but it is the function of lawyers to evaluate individual tax cases and assist the court in elucidating the provisions of tax law with particular reference to specific tax cases as they occur. In discharging this task, the contents of this research work will be of immense assistance to lawyers.

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Furthermore, the contributions of stakeholders, particularly tax practitioners, to the growth and development of tax law and the Nigerian economy are not out of place. On several occasions, the Chartered Institute of Taxation of Nigeria had issued communiqué to express its position on issues that border on tax laws in Nigeria. The institute also organizes workshops, ectures, symposia*etc* for its members in order to enhance their knowledge and practice of tax in Nigeria. It is instructive to state that the membership of the institute consists of tax experts who engage in the practice of tax profession. The individual members cannot discharge their professional prowess efficiently well, if they do not constantly improve on their knowledge of tax laws. This treatise will, in no small measure, assist them in their professional obligations. At least the contents of this research work will be instructive to them in advising clients appropriately.

Again, tax administrators will find the contents of this research work very helpful. They raise assessment on tax payers, collect and enforce corporation taxes amongst others. Some rules and basic principles of corporation taxes must be internalized as prerequisite to proper administration of these taxes. Experience has shown that tax administrators often get confused in the comprehension and application of these rules and principles. They get lost particularly when confronted with legal coinage of phrases, provisos and terms like "without prejudice to", "subject to the provision of", "notwithstanding anything to the contrary" or "in so far as", etc[33]. Once they get lost they may not find it easy to reconnect. Within the complications, there is a continuous struggle between the tax payer who employs experts to ensure he pays the least tax and the administrator who is equipped to ensure he pays what is appropriate[34]. This research work will be a useful outlet to tax administrators from these administrative predicaments.

Finally, students of law shall find this dissertation useful. It will serve as a reference point of knowledge for law undergraduates, while law graduates will find it a valuable outline for future research work.

1.8 ORGANIZATIONAL LAYOUT

This thesis is divided into six chapters:

The first chapter gives the general overview of the research work such as the background information, statement of research problem, scope of research, the methods of the research, research justification, literature review and brief summary of the chapterization.

It is instructive to state that the researcher appreciates the importance of the legal history of company taxes in Nigeria. In that regard, chapter two traces the detailed historical background of corporation tax beginning from the colonial era till date, various tax reforms

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[33.] Arogundade J.A. op.cit p. 5.
[34.] Ibid.

and their impact on corporation taxes, the Nigeria tax policy (or non-availability of same) regarding corporation tax system in Nigeria.

Chapter three discusses the basic concepts under corporation tax laws in Nigeria. It examines the statutory and judicial connotations of company for tax purpose, categories of companies under corporation tax laws, the general scope of corporation tax in Nigeria; examination of concepts of corporate residence, dual residence of corporations, fixed base concept of corporation and the tiebreaker rule of corporation taxes in Nigeria.

Furthermore, one of the objectives of this research work is to appraise assessment and collection procedures under corporation taxes in Nigeria. To achieve this, chapter four is designed to consider critically the principles of law and practice of chargeable incomes of corporations in Nigeria; the downstream operation of the oil sector, assessment and computation of companies income tax, profit from petroleum operations in Nigeria and assessment and computation in Nigeria.

Administrative ineptitude is affecting sufficient revenue generation from corporate taxes. To identify and tackle the problems, chapter five treats the modalities for the taxation of corporate bodies in Nigeria and the administration and liability to corporate tax as well as the assessment of trade and business profits of companies. Finally, while chapter six summarizes the entire research work findingsand gives recommendations on how to improve on corporation taxes in Nigeria.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF CORPORATE TAX LAW IN NIGERIA

2.1 INTRODUCTION

2.2HISTORY OF CORPORATE TAX LAW IN NIGERIA

2.2.1 INTRODUCTION

A country's tax system is essentially a by-product of history, economic structure and political economy of that country[1]. In the case of Nigeria, the corpus of the modern concepts and principles outlining companies' taxation in Nigeria is of distinctly British origin. It dates back to 1939, when with the war looming in Europe, governments including Nigeria became tax-conscious. The idea of bringing companies into the tax net was conceived as a way out of the problem posed by the exigencies of the time. From that period till date, corporation tax has been used by the government at a stage of economic development or the other to achieve the purposes of, revenue generation, social reform or instrument of fiscal measure. Consequently, it is desirable to examine in some detail the annals of changes, motives and policy rationale which dictated tax impositions of each era.

Although, Companies Income Tax Act[2] and Petroleum Profit Tax Act[3] contain the bulk of the Companies Taxation Laws and their general principles, there are nevertheless, a large number of other enactments which are directly relevant to their administration in Nigeria[4]. Over the years, these enactments have cross-bred one another in such a way that engendered series of reforms and modifications in Nigeria's tax structure, laws and systems useful to implement changes in policies. The historical knowledge of the prospects and problems of the reforms of these periods is therefore of a considerable importance. This will promote a better understanding of the existing principles relating to companies income tax and generally of the development of the tax on incomes.

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[1]Dotun Philips (1987)*Nigeria Tax System at Cross-Road*; In: P.A. Omorogiuwa (ed.) Nigerian Institute of Taxation Selected Papers NIT Lagos, p.39.
[2]CAP C21, LFN 2004.
[3]CAP P13, LFN 2004.
[4]Such as Federal Inland Revenue (Establishment) Act 2007, Tax Treaties and Conventions, Official Circulars and Regulations.

2.2.2 THE PERIOD OF TAX CONSCIOUSNESS

This is the colonial period in Nigeria. It spanned, for the purpose of this discourse, between 1939-1960. The colonial history of Nigeria is particularly relevant in her income tax system. Indeed, the broad outline of Nigeria's tax system took shape during the colonial era and remains, in some materials, unchanged up to the present period[5].

As late as 1929, there was no tax on companies anywhere in Nigeria. Although, there was income tax on individuals within the then colony of Lagos, that did not apply to those resident in the protectorate. The people in the protectorate were taxed by the native administrators by mainly poll tax, *Jangali* and special taxes levied on particular trades such as cocoa farmers, butchers and abattoir operators[6].

However, towards the end of 1938 or the beginning of 1939, when with the war looming in Europe, governments including Nigeria became tax-conscious; considerable interest was stimulated in bringing companies into the tax net due to the economic and political upheavals throughout Europe and changes in policy resulting from the development in England[7]. It is noteworthy that the conception of imposition of tax on companies' income was then mooted as a war measure for the specific purpose of generating sufficient revenue to enable Nigeria make her own contributions to the imperial government of the United Kingdom.

The first real effort at income tax legislation was enacted in 1939 entitled Companies Income Tax Ordinance (CITO). It was to be administered by one Mr. Frank G. who was seconded from the Treasury to the tax office[8]. One noticeable pitfall of the 1939 ordinance was that it left out individuals from the tax net. When this error was detected, the Nigeria

[5]The main features of CITA 1961 are still maintained in the current Principal Act such as: administration, the charging sections, the determination of profits, assessable and total profits, the assessment procedure, appeals procedure, collection procedure, offences and penalties etc.
[6]Ani A. (et al) (1989)*Companies Income Tax & Petroleum Profit Tax in Nigeria*, UPL, Ibadan, p.vii. See also Ayua I.A. (1991) *The Nigerian Tax Law*, Spectrum Law Publishing, Ibadan, 1991, p.22.
[7]Toby R.A. (1978) The Theory and Practice of Income Tax, Sweet & Maxwell, London, p.17 where he discusses Income Tax in a developing country.
[8]Ani (et al) op. cit.

Income Tax Ordinance was enacted in 1940 as a substitute[9]. This legislation brought into the tax net both companies and individuals under a single codification, and for the first time the first commissioner for income tax was appointed to cover Gambia, Sierra Leone, Ghana and Nigeria[10].

Three years after, the 1940 ordinance was again replaced by Income Tax Ordinance (No 29) of 1943. Under this law, 50% standard rate of tax was payable subject to the discretion of the tax commissioner upon satisfactory proof to him of any dividend payment out of such chargeable income[11]. The Income Tax Ordinance (Revised Edition) of 1948 Cap 92 consolidated the 1943 ordinance and subsequent amendments. Companies and individuals were taxed under the ordinance which was repealed along with Amendment ordinances by Companies Income Tax Act 1961[12].

2.2.3 THE PERIOD OF FISCAL MEASURE

The period between 1961 to 1978 is termed, in this dissertation, as the era of fiscal measure and inquisition in Nigeria. This is the period when Nigeria was grappling with challenges of fiscal stability in nation building. One of the challenges faced by Nigeria on her path to independence in 1960 was the issue of income tax. History had it that it generated a contentious argument in 1957 constitutional conference in London. As a result of this and in order not to allow it distract the task of nation building on attainment of independence and thereafter, a two-man fiscal commission was established in 1958 under the chairmanship of Sir JeremyRaisman. When the commission was on with its assignment, the Nigerian government observed and reasoned that companies that engaged in petroleum trade operations have their peculiarities arising from the specialized nature of the petroleum industry and from their multinational nature and activities and as such, taxation of their profits need be governed by separate enactment distinct from the one governing other non-oil

[9]No 4, Cap 54, 1940.
[10]By name, Mr. Walter Bliss Daye. See detail in Ani A. op. cit.
[11]Ibid.
[12]Arogunadade J.A. (2005) *Nigerian Income Tax & Its International Dimension*, Spectrum Books Ltd, Ibadan 2005
p.11.

companies[13]. To actualize this, the Petroleum Tax Ordinance[14] was enacted in 1959 but with a retrospective effect, since it was deemed to have come into operation on 1 January, 1958[15].

The result of the Raisman's commission was a prelude to the 1961 tax reform which eventually gave birth to the promulgation of Companies Income Tax Act 1961[16].

The dichotomy into Companies Income Tax (CIT) and Personal Income Tax (PIT) was introduced in 1961 with the creation of separate statutes for the taxation of companies and individuals - namely *Companies Income Tax Act 1961 and Income Tax ManagementAct 1961* respectively. Thus, the companies' income tax and petroleum profit tax became Federal taxes under the administration of Federal Board of Inland Revenue[17]; while regions and Lagos territory assume responsibility for personal income tax. The Income Tax Management Act was promulgated to ensure uniformity in the administration of the personal income tax.

Companies Income Tax Act 1961 imposed the duties of assessment, collection and remittance of taxes collected to the companies on the Revenue Board. The 1961 Act was broader in scope and outline than the earlier enactments. It introduced for the first time some salient fiscal measures governing principles, practice and administration of companies' income tax in Nigeria. The highlights of the tax measures are:

a. Power of Federal Board of Inland Revenue (FBIR) to levy distress on the property of tax defaulter where tax remained unpaid[18].
b. Special levy introduced on excess profit of banks (i.e. 10% levy in addition to the flat rate of 50% on Companies Income)[19]
c. Grant of fiscal incentives to pioneer companies [20]

[13]Ola C.S. (1984) *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria*, Heinemann Educational Books (Nigeria) Ltd., Ibadan p.. 437.
[14]No. 15 of 1959.
[15]Ola C.S. op. cit. p. 437.
[16]No. 22 of 1961.
[17]FBIR was established under section 3 of the Income Tax Administration Ordinance (No 39) of 1958 and constituted by Legal Notice 209 of 1958 as the legal instrument. It came into operation on 1st January, 1959.
[18] Pursuant to Decree 65 of 1966 .
[19] Introduced vide 1978/79 Fiscal year .
[20]Pursuant to Industrial Development (Income Tax Relief) Decree (No 22) of 1971 (which repealed ordinance No 8 of 1958.)

d. Establishment of Revenue Court [21]

e. Conditions for allowable expenses and deductions wholly, exclusively necessarily and reasonably incurred[22]

f. Introduction of the application of turnover to corporate taxation in Nigeria as anti-avoidance scheme[23].

A keen perception of the tax measures highlighted above reveals the motives and policy rationale for the tax reform of the era as dictated by the prevailing exigencies. The company's income tax of the period was designed and characterized by a harsh inquisitorial system which was anxious to strengthen its powers by assuming the right to interrogate taxpayers, examine bank accounts and insist on returns of total incomes of companies, and prosecute tax defaulters.

It is instructive to state that the available literatures put it that as at 1978, the corporation tax enactments in existence were; the Petroleum Tax Act, 1959, Companies' Income Tax Act 1961, Income Tax Amendment Decree 1966[24], Income Tax (Amendment) Decree 1967[25], Industrial Development (Income Tax Relief) Decree 1971[26], Petroleum Profit Tax (Amendment) Decree 1973 and Finance (Miscellaneous Taxation Provisions) Decree 1976[27].

2.2.4 THE PERIOD OF FISCAL CENSURE

The period between 1979 to 1992 marked the era of fiscal reprimand and condemnation either of the Companies Income Tax law, provisions, principles or administrations by the stakeholders in the system. This prompted the government into commissioning Task Forces on tax administration to have a thorough and dispassionate overhaul of the corporate tax enactments of the period, in order to slough off any noticeable fiscal impairment. Emphasis was basically on how to widen corporate tax base to cover a

[22]Introduced in 1973/74 assessment year. See detail in Arogundade J.A. op. citpp 12-14.
[23] Pursuant to Decree No 45 of 1967 See detail in Arogundade J.A. op. citpp 12-14.
[24]No 65 of 1966, published in the supplement to Federal Republic of Nigeria Gazette, No 110, Vol. 53, 6 December, 1966.
[25]No 45 of 1967 .
[26]No 22 of 1971.
[27]See Arogundade J.A. op. cit. pp 12-14, Ola C.S. op. cit. p.63.

wide range of services and activities to boost revenue generation rather than introducing any comprehensive reform to the system.

Prior to 1980, government fiscal year ran from 1st April to 31st of March. This motivated the setting up of Task Force on tax administration of 1978 by the government. The Task Force recommended a change to coincide with the current calendar year i.e. 1st January to 31st December. Although, before the commissioning of the Task Force, the Petroleum Profit Tax of 1959 had been amended by Petroleum Profits Tax (Amendment) Decree 1973[28].

The acceptance of the recommendations of Task-force by the Government posed tax implications on the accounting year end of the companies. The change affected the determination of their basis period and the due dates of payment of income tax and provision tax[29].

The report of 1978 Task Force was an overture to the 1979 reform which produced Companies Income Tax Decree (No. 28 of 1979). The major aspects of the reform were: the introduction of withholding tax (WHT) - (which is the deductions from salaries and wages for income taxes to be remitted by the employer, in the employee's name to the taxing authority)[30]; Tax Clearance Certificate (TCC) and change in accounting year[31].

Thus, the Petroleum Tax Act of 1959 with sundry amendment thereto, the Companies Income Tax Act 1961 including various amendments thereto formed the two enactments that governed corporate taxation which were embodied in the Laws of Federation of Nigeria, 1990[32]

[28].Published in the Federal Republic of Nigeria Gazette, No 12, Vol. 60 of 1 March 1973 otherwise known as Decree No 15.
[29].Arogundade J.A. op. cit. P.16.
[30].See Black's Law Dictionary, 6th edition p 1602.
[31].Arogundade J.A. op. cit. P15.
[32].While PPTA was cap 354 in the edition, CITA was Cap 60 thereof.

2.2.5 THE PERIOD OF TAX AS INSTRUMENT OF SOCIAL REFORM

The period between 1992 till date marks the era when agitations were rife on the need for Nigerian income tax system to assume a progressive outlook which is designed to serve the public welfare and emphasize the fiscal objectives of taxation viz: ***raising revenue and effecting a general distribution of wealth*** - so as to achieve some improvements in the social conditions of the people within the society.

Thus, in 1992 the Federal Government commissioned a study group on the Nigerian Tax System and Administration. The terms of reference of the study group were limited to a review of direct taxes under the jurisdiction of the Federal and State Revenue Services[33]. It is noteworthy that the period between 1992-1998 characterized the throes of military governance in Nigeria. The military rulers during this era adopted the annual practice of using a single omnibus decree to amend several tax laws simultaneously as part of their annual government budgetary process. The omnibus decrees were given the standardized title **'Finance (Miscellaneous Taxation Provisions) Decree'** every time they were enacted[34]. This standardized title erroneously implied that issues of taxation are the same thing as issue of finance. Also, that omnibus nature made it unnecessarily laborious and complex to ascertain the complete legal position of a tax law at any given time. Eventual codification of tax laws also becomes an unduly difficult and lengthy process[35].

On return to democratic rule in 1999, Nigeria was poised towards genuine democratic governance, highly decentralized polity, private sector dominated pro-growth market economy; rule of law and due process and freedom of citizenry. The federal governments desired to put in place and execute a tax system that will remove all the fiscal freaks of military era in order to enable citizens derive immediate benefits attached to taxation. To achieve this, another Study Group on the Review of Nigerian Tax System was inaugurated by

[33]See the Report of the Study Group on the Nigerian Tax System and Administration 1992 p.1.
[34]Such as; Finance, (Miscellaneous Taxation Provisions) Decrees No. s 21&63 of 1991; 3 of 1993; 30, 31 & 32 of 1996; 18, 19, 21 & 40 of 1998; 30 of 1999. See *The Nigerian Tax Reform in 2003 & Beyond; the Main Report of the Study Group on Nigerian Tax System*, July, 2003 pp 8-9.
[35]See the Nigerian Tax Reform in 2003 & Beyond op. cit. p. 9.

the then Federal Minister of Finance, MallamAdamuCiroma, on August 6, 2002 under the chairmanship of ***Professor Dotun Philips,*** with the following terms of reference to:

i. Review of all aspects of the Nigerian Tax System and recommend improvements therein;

ii. Review of all tax legislations in Nigeria and recommend amendments where necessary;

iii. Review all assessments and collection procedures, including payment procedures, objection and appeal procedure and court proceedings and recommend appropriate improvements.

iv. Review the entire tax administration and recommend improvements in the structure for the whole country as well as the administrative structures at the Federal, State and Local Government levels, with a view to enhancing performance and efficiency.

v. Consider and recommend the possibility of the grant of operational and financial autonomy to the Revenue Authorities;

vi. Review and recommend the jurisdiction and scope of tax authorities and the federal, state and local government levels;

vii. Examine and recommend the mode of financing revenue authorities to reflect constitutional provisions (for example section 165 of the 1999 constitution) in the light of the April 2002 Supreme Court decision on revenue and fiscal issues.

viii. Assess the extent of implementation and the impact of the recommendations of the 1991 study group

ix. Consider international developments in taxation and recommend suitable adaptation to Nigerian circumstances;

x. Evaluate and confirm the desirability or otherwise of the retention of the portfolio of fiscal incentives in the tax laws; and

xi. Consider and recommend new taxes where necessary, with a view to significantly improve the overall tax system[36].

The study group identified some knotty areas which had hitherto constituted obstacles to the Nigerian tax system as:

i. Lack of articulate tax policy in Nigeria

ii. Taxation and Nigerian Federation

iii. Tax Incentives and Disincentives regimes

iv. Administrative ineptitude and lopsidedness

v. Issues on oil and Gas taxation etc[37]

The Report of the study Group is a prelude to the current tax reform which had engendered the preparation of nine draft bills on Tax Reforms to the National Assembly in 2005[38]. The outcome of it produced, among others, the following tax enactments:

a. Federal Inland Revenue Service (Establishment) Act 2007 [39]

b. Companies Income Tax (Amendment) Act 2007[40] (which enacted all the 49 proposed amendments to CITA)

c. Value Added Tax (Amendment) Act 2007[41]

Some of the noticeable significant developments introduced by the current tax reform are:

i. Administrative and institutional restructuring of Federal Inland Revenue Service

ii. Consistent public enlightenment for motivating compliance with tax laws, rules and regulations

[36]Ibid pp. 1-2.
[37]Ibid pp. 1-288.
[38]Nine Draft Bills on Tax Reforms Approved by the Federal Executive Council for the consideration of the National Assembly were: A Bill for an Act to establish FIRS as an autonomous service; A Bill for an Act to amend Companies Income Tax Act; A Bill for an Act to amend Petroleum Profits Tax Act; A Bill to amend Personal Income Tax Act; A Bill for an Act to amend Value Added Tax Act; A Bill for an Act to amend Education Tax Act; A Bill for an Act to amend the Customs, Excise, Tariff etc (Consolidation) Act A Bill for an Act to amend the National Sugar Development Council Act; A Bill for an Act to amend the National Automotive Act .
[39]No. 11 of 2007.
[40]No.11 of 2007.
[41]No.12 of 2007.

iii. Introduction of Taxpayers Identification Number, to mention but a few.

2.3 THE CURRENT APPLICABLE LAWS TO CORPORATE TAXATION IN NIGERIA

From the digest of the foregoing historical analysis, the following enactments are the laws governing taxation of profits and services of companies in Nigeria as at 28th day of February, 2009:

a. Companies Income Tax Act Cap C21, LFN, 2004
b. Petroleum Profits Tax Act Cap P.13, LFN, 2004
c. Companies Income Tax (Amendment) Act, 2007[42]
d. Value Added Tax Act Cap VI LFN 2004
e. Value Added Tax (Amendment) Act, 2007[43]
f. Capital Gains Tax Act, Cap CI, LFN 2004

2.4 NATIONAL TAX POLICY AND CORPORATE TAXATION IN NIGERIA

Corporation tax in Nigeria is as old as the Nigerian independence. Since the year of Nigeria independence in 1960, a period of almost five decades, Nigerian income tax system generally had been operating without any formal fiscal guidance. The Main Report of the Study Group on the Nigerian Tax System 2003 confirmed that:

> The study Group searched several sources, including the constitution, annual budget speeches and records of the Federal Ministry of Finance, and discovered that Nigeria lacks a formal, well-articulated and documented National Tax Policy which provides a set of fundamental principles which all taxes in Nigeria should comply with at all times[44].

It therefore means that hitherto, Nigerian income tax system has been operating on the whims and caprices of few political cabals and not necessarily in the overall interest of the

[42]No 11 of 2007.
[43]No 12 of 2007.
[44]See the Nigerian Tax Reform in 2003 and Beyond op. cit. p. 23.

citizenry. There was no stable point of reference for all stakeholders in the country on which they will be held accountable to facilitate economic growth and development.

The preamble to the 1999 constitution reiterates the firm resolution of the people of Nigeria to provide for a constitution for the purpose of promoting good government and welfare of all persons in the country. This is a basis for a collective safeguard to the constitution. One of the radical innovations of the 1979 constitution (which is retained in the 1999 constitution) is the inclusion of a chapter on fundamental objectives and Directive Principles of State Policy. The Fundamental objective means identification of the ultimate objectives of the nation, whilst directive principles of state policy indicate the paths which lead to those objectives[45]. They will guide the political class as to how society can be organised and ruled to the best advantage of all[46].

However, chapter II of the 1999 constitution specifies a plethora of these guiding principles, such as political objectives, economic objectives, social objectives, educational objectives, foreign policy objectives and environmental objectives[47]. Despite the fact that income tax constitutes the sensitive nerve of government, chapter II of the constitution was and is silent on taxation in Nigeria. It therefore means there is no national philosophy and fundamental objectives of taxation in a dynamic and developing country like Nigeria[48]. The Study Group on the Nigerian Tax System 2003 identified this lacuna and recommended that Nigeria should urgently adopt a National Tax policy[49].

The first effort in Nigeria towards having an articulate National Tax Policy was the blue print of the Presidential Committee on National Tax Policy compiled on 7th June, 2008. The Committee came out with a draft on National Tax Policy[50].

[45]See Report of Constitution Drafting Committee Vol. P.V. See also Osita N.O. (1999) *Human Rights Law & Practice in Nigeria* CIDJAP Publishers, Enugu, p.68 .
[46]Ibid.
[47]See Constitution of the Federal Republic of Nigeria 1999, sections 15-20 thereof.
[48]See Nigerian Tax Reform in 2003 and Beyond op cit p.23.
[49]Ibid P. 23.
[50]See the Draft Document on the National Tax Policy, 7th June 2008.

2.4.1 MEANING OF NATIONAL TAX POLICY

The National Tax Policy is a public document that provides direction for the future of the Nigerian tax system in order to help stimulate the economy in a way that will be of benefit to all Nigerians. Apart from providing a set of guiding principles for all taxation matters in Nigeria, it equally provides a stable point of reference for all stakeholders in the system and a standard on which they will be held accountable[51]. The need for a well-documented National Tax Policy in Nigeria is a ***sine qua non*** to an efficient income tax system. The policy document will among other things:

i. Spell out the overriding tax objectives of the Nigerian nation.

ii. Spell out the types and focus on the Nigerian income tax system.

iii. Prescribe incentive regimes and their uses.

iv. Define relevant authorities that will be responsible for the coordination of all inputs into national tax policies.

v. Define the tax jurisdiction of each tier of government and powers of each organ of government in the business of taxation in Nigeria.

vi. Determine the duration of periodic review of tax laws, tax policies and administration.

vii. Spell out the measures to monitor Nigerian international law obligations *etc.*

It is instructive to state that the existence of a tax policy alone cannot meet up with the fiscal expectations. It has to be accompanied by a strategy for implementation of the tax policy. Whilst the National Tax Policy highlights crucial rules, principles and specifies the destination to which the tax system should be moving towards, the tax strategy maps out the way in which the country will get there[52].

Although there is a draft document on the National Tax Policy which highlights some of the key elements enumerated above, it has not scaled through the prescribed legislative processes. Even if it does, it has to be eventually included in the constitution as a vital

[51] Ibid .
[52] Ibid p.31.

component of our ground norm. Until this is achieved, Nigeria may continue to be consigned into a misfortune of colossal revenue loss.

One of the cardinal objectives of this chapter is to trace the origin and stages of development of corporate tax in Nigeria. The origin of Companies Income Tax in Nigeria is rooted in her colonial past. Indeed, the broad outline of Nigeria's tax system took shape during the colonial era and remains substantially unchanged till date. From that era up to the present period, corporation tax in Nigeria had undergone several amendments and reforms as demanded by the exigencies of the time, such as revenue generation, fiscal measures, social engineering etc. This chapter highlights the historical knowledge of the prospects and problems of these reforms.

Basically, one of the objectives of the companies' income tax is to generate sufficient revenue to enable government discharge its responsibility of providing for the basic needs of the citizenry. It presupposes that the yardstick to measure whether this objective (and a host of others) is accomplished is for the government to provide for a coherent National Tax Policy to be included in the constitution. It will provide a set of fundamental principles which corporation tax and other income tax should comply at all times. This will guide the thinking and action of the government towards judicious management of public funds. The effect of this is that an avenue will be created for taxpayers to hold any policy executor liable for the mismanagement of public fund. Unfortunately there is no national philosophy and fundamental objectives of taxation in a dynamic and developing country like Nigeria until the 2008 attempt which has becomeunrealizable at least till date. The past five decades of the existence of corporation tax in Nigeria has been without any formal fiscal guidance. This chapter equally highlights the meaning and key components of National Tax Policy and advocates for its urgent inclusion in the constitution.

CHAPTER THREE

THE BASIC CONCEPTS OF CORPORATE TAX LAWS AND TAXING JURISDICTIONS IN NIGERIA

3.1 INTRODUCTION

3.2 THE BASIC CONCEPTSAND RATIONAL FOR CORPORATION TAX.

3.2.1 INTRODUCTION

The field of law of taxation is complex and highly technical. It requires clear perception of fiscal terms and concepts as well as strict application of myriad of rules allowing various deductions and exemptions. Some of these concepts connote something more than what is commonly understood by the terms under non-tax statutes by the payers. Surprisingly, some of these terms are either not defined at all by the corporation tax laws or they are incomprehensively defined posing more confusion than clarification.

In the same vein, there are certain concepts and issues which, though, are provided for by the corporation tax laws, their bases are however questionable thereby rendering some of them legally incorrect. The first concept in relations to Corporate Tax Law in Nigeria is as enunciated in thelocus classicus case of Salomon vs. Salomon & co. Ltd[1], which illustrates the concept of "corporate personality". The crux of the concept is that corporation is a legal person distinct from its members. The concept has tax implications. While companies are liable to pay tax on their retained profits[2], their distributed profits are charged to tax in the hands of the shareholders[3]. Be this as it may, companies are veritable vehicle for investments and profit making but liable to tax with different incidents unlike individuals.[4] However, some scholars, over the years, have queried the rationale behind taxing companies differently from the shareholders. They posit that the idea poses a situation of using companies as

[1](1897) A.C. 22.
[2]Section 9, *Companies Income Tax Act,(CITA)* Cap C 21,, Laws of Federation of Nigeria (LFN), 2004.
[3]Ibid, Section 19.
[4]Sweeny C.A et al (1975) *Revenue Law in Australia*, Butterworths, Durban, p. 187.

instrument of double taxation [5]. Again, the issue of whethertax should be levied on the profits of the company rather than on its turnover is another issue of controversy.[6]

A second concept is the conceptual classifications of companies as either foreign or local for tax purposes. Nigeria cannot afford to operate contradictory legislations whereby one will create a right and the other one will negate it. The *Companies and Allied Matters Act*[7] is the principal legislation regulating incorporation and management of companies in Nigeria. The Act prohibits the existence of a foreign company in Nigeria for any purpose unless assimilated as a Nigerian entity. [8] This position has a serious tax consequence. As a matter of fact, some companies, especially those in shipping and air transportation operate globally and render their returns on global basis. Nigerian tax system cannot afford to overlook profits accruing from their on-shore operations. Besides, *Companies Income Tax Act* treats Nigerian companies and foreign companies differently for tax purposes. This attempt is fraught with difficulties, a conceptual clarification issue which this work may solve.

The third concept is the corporate taxation of companies in Nigeria, which only the company's profits are subject to taxation. The Principal Tax State Statutes in Nigeria thereby envisages that companies incorporated for business transaction or other purposes are the only companies that are subject to corporation tax. The *Companies Income Tax Act* and *Petroleum Profits Tax Act* make companies assessable and chargeable to corporation taxes. One may tend to think that the companies envisaged by these Acts are profit making companies only. There is the need to ascertain whether the Acts contemplate companies in liquidation *(which will occasion the ascertainment of capital receipt or revenue receipt)* or re-constituted companies *(which will affect enforcement of cessation and commencement provision and exemption from any initial allowance)*andetc.

[5]See Wington F. Lecture Series No 1 for Review of Economic Literature; See also Reamon*n (1971) The Philosophy of Corporate Taxation* quoted in John Tiley-*Revenue Law*,Butterworths, London 2000 pp. 622-623.
[6]See Report of Richardson Committee on Turnover Taxation, 1964 also quoted in John Tiley op. cit. p. 623.
[7]Cap C. 20 LFN 2004.
[8]*Companies and Allied Matters Act*, *(CAMA*), Cap C20, LFN 2004, Section 54.

In conclusion, the critical test of liability to corporation tax is residence[9]. The determination of a company's residence is an indispensable requisite in assessment to corporation tax in Nigeria. This makes the concept crucial in both domestic and bilateral tax treaties. As important as this concept is, it is not defined by the corporation tax statutes.

From an assessment of the foregoing explanations, a conceptual clarification of the key terms like: company, foreign company, residence, fixed base, permanent establishment, etc, under the corporation tax laws becomes imperative.

3.3 RATIONALE FOR CORPORATION TAX

A company is liable to pay corporation tax on its profits while a shareholder is liable to pay income tax in respect of any income distribution by the company. The charge to tax of both company and shareholder is a clear case of imposition of two taxes on one corporate profit. In other words, it occasions a situation whereby corporate profits are taxed twice; once to the corporation when earned; and once to the shareholder when the earnings are distributed as dividends.

This approach may exact double burden on the company thereby making it detestable. This is because the idea of levying tax on companies as juristic persons may lead to either juridical or economic double taxation[10]. The former is imposition of comparable taxes in two or more states on the same tax payer for the same subject matter or identical goods. It may occur in a situation whereby a company is regarded as resident in two different tax jurisdictions (*place of incorporation and place of central management and control*). The latter is imposition of two taxes on one corporate profit.[11]

Therefore, the tax system should be contented with the emergence of income in the form of dividends in the hands of the shareholders who could then be subject to income tax under the *Personal Income Tax Act*[12]. In other words, the doctrine of 'alter ego' can be

[9]*CITA,* Cap C21, LFN, 2004, Section 13 (1).
[10]Tiley J. (2000) *Revenue Law*, Butterworths, London, p. 622.
[11]Bryan A. G. (2004) *Black's Law Dictionary*, 8th edition, West Publishing Co., USA, p. 1500.
[12]Cap P 8, LFN, 2004, Section 12, See also Tiley J. op.cit (fn. 10).

invoked to impute the profits of the company to that of the individual share-holders and for it to be taxed as such in the hands of the shareholders.

Another school of thought argues that if the above view is accepted, it means companies will simply become repository for accumulation of income free of tax. [13] This will occasion huge revenue loss to the government. Otherwise, what happens should a company decide not to distribute its profit to its shareholders or device a ploy of a sale of the shares in order to realize a capital gain? This also will definitely occasion a revenue loss to the nation as companies will just be used as conduits for tax free income. Thus, a tax on companies is needed to protect the individual income tax. Corporate status conveys certain privileges and the companies should pay for these privileges. In particular, companies have limited liability status. This protects their shareholders in the event of bankruptcy[14].

Allied to this, is the fact that taxing companies is more acceptable than taxing individuals as it is less personal[15].It is our view that the latter position that supports taxing companies seems more plausible and we concur with it on the ground that it will generate sufficient revenue for the government to cater for the societal needs.

3.4 DEFINING A COMPANY FOR TAX PURPOSE

A company formed and registered under the *Companies and Allied Matters Act*(CAMA) or any enactment replaced by it is what the Act recognizes as a company in Nigeria[16]. Although *CAMA* defines a foreign company to mean a company incorporated elsewhere than in Nigeria, it does not recognize its existence in Nigeria for business activities. It only defines it for the purpose of identifying it to comply with the mandatory incorporation processes before carrying on business in Nigeria[17] and to benefit from exemption from registration[18].

Section 54(1) *CAMA* provides that:

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[13]Ibid.
[14]Abdulrazaq M. T. (2005) *Nigerian Revenue Law*,Malthouse Press Ltd, Lagos, 2005, p. 28.
[15]Tiley, J. op.cit (fn. 10).
[16]*CAMA*, Cap 20, LFN, 2004, Section 54.
[17]Ibid.
[18]Ibid, Sections 56 and 59.

> Subject to Sections 56 – 59 of this Act, every foreign company which, before or after the commencement of this Act, was incorporated outside Nigeria, and having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria for that purpose, but until so incorporated the foreign company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or an address for service *of documents or processes in Nigeria for any purpose other* than the receipt of notices and other documents as matters preliminary to incorporation under this Act.

Carrying on business in Nigeria may be at profit or loss. Corporation tax is charged by reference to profits. Besides, Nigerian system of taxation does not operate in isolation from the rest of the world. Some foreign companies operate globally and render returns on global basis. The profits made by these foreign companies cannot be ignored. In this regard, the definition of 'company' by *CAMA* cannot be accurate for tax purposes.

The *Companies Income Tax Act*[19] (CITA) defines 'company' in a broader sense. Section 105 of the Act defines a company as: "any company or corporation (other than corporation sole) established by or under any law in force in Nigeria or elsewhere". [20]

By this definition, the Act recognizes both Nigerian companies and foreign companies though on different basis. Be that as it may, a thorough digest of *CITA* in its entirety reveals that companies yet to commence business; a profit-making company; a company on liquidation; a reconstituted company, a holding company are all contemplated by the *Companies Income Tax Act*.[21]

It is worthy of note that the mandatory statutory provision of *CAMA* is clearly unambiguous in prohibiting the existence of a foreign company in Nigeria for any purpose (including carrying on business to make profit. In fact, any violation of the provision is slammed with a penalty.[22] The *CITA* on the other hand permits the existence of foreign

[19]Cap C21, LFN, 2004.
[20]See also *Petroleum Profits Tax Act*, Cap P 13, LFN, 2004, Section 2.
[21]*Companies Income Tax Act*, 2004, Sections 40 (4), 47, 29 (10).
[22]*CAMA*, Section 55.

companies and charge their profits derived from Nigeria to tax. [23] These enactments are both Acts of the National Assembly made to serve economic and fiscal purposes. While *CAMA* regulates incorporation, control and management of companies, *CITA* charges to tax the profits of these companies. Before *CITA* can be effective, there must be existence of companies brought into being by *CAMA*. When *CAMA* prohibits the existence of a class of company can *CITA* permit or legalize it? This, no doubt, brings about two conflicting public interests. One is the prevention of proliferation of foreign companies, unless registered as Nigerian companies. The second is the revenue generation from the profits of companies including foreign companies. The two constitute key components of Nigerian economic policy and needs to be reconciled and harmonized.

It is instructive to state that the definition of company above is the same under the *Petroleum Profit Tax Act*[24]. However, one is disturbed about the rationale behind the treatment of oil companies under a separate statute from other companies. After all, oil companies are companies even though, they are operating in the petroleum sector, just as there are companies in the manufacturing sector and in other sectors. A company is a company, and its income should ideally be taxed under the regular *Companies Income Tax Act*[25] otherwise it is antithesis of a simple tax system which Nigeria aims at.

Furthermore, the definition of 'company' under *CITA* encapsulates other statutory or registered friendly corporations apart from the ones registered under *CAMA*; such as cooperative societies. The *CITA* exempts the profits of cooperative societies from tax. However, if the profit is from trade or business outside cooperative activities solely carried out with its members, it is taxable. [26]In other words, if the profit of the cooperative society is derived from any activities that constitute established badges of trade, it is taxable.

The question that comes to mind is whether the Federal Government or any of its revenue agencies can charge to tax the taxable profits of any cooperative society. Nigeria is a

[23]*CITA*, Section 13 (2).
[24]*CITA*, Section 105 and *Petroleum Profit Tax Act (PPTA,)*, Cap LFN, 2004, Section 2.
[25]Nigerian Tax Reform in 2003 and Beyond- The Main Report of the Study Group on the Nigerian Tax System 2003, p. 266.
[26]*CITA*, Section 23(b), op. cit.(fn 2).

federal state that recognizes the doctrine of separation of powers and upholds the principle of autonomy of states within the federation. To this end, the 1999 Constitution of Nigeria provides for separate legislative lists namely: exclusive, concurrent and residual lists.[27] Under the exclusive legislative list of the 1999 Constitution of Nigeria, item 32 empowers the federal government to legislate on incorporation, regulation and winding-up of bodies corporate (other than cooperative societies, local government council and bodies corporate) established directly by any law enacted by a House of Assembly of a state. This makes any matter regarding cooperative societies an exclusive preserve of state government including the taxation of their profits. Surprisingly, item, 59 of the same exclusive legislative list empowers the federal government to charge incomes and profits generally to tax whether or not they are from the cooperative societies. This inconsistency poses a serious legal issue in Nigerian fiscal federalism. Also it may constitute legal fallacy while defining a company for tax purpose.

3.5 CATEGORIES OF COMPANIES

The c*ompanies Income Tax Act* divides companies into two categories for tax purposes: Nigerian Companies and Foreign Companies. The division is essential to enable Inland Revenue ascertain the profits of the companies derived from and liable to Nigerian tax. A Nigerian company is the one incorporated under the *CAMA* or any enactment replaced by the Act.[28]Its profits are deemed to accrue in and taxable in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria[29]. Thus, a Nigerian company is charged to tax on its global income. In other words, its chargeable income is limited to the Nigerian source income and what has been brought to Nigeria from outside sources. A foreign company on the other hand is one incorporated under any law in force in any territory or country outside Nigeria.[30]However, in case of a re-constituted company, a foreign company is a company incorporated outside Nigeria before

[27]Second Schedule, Parts I & II of the 1999 Constitution.
[28]*CITA*, Section 106 .
[29] Ibid, Section 13 (1).
[30]Ibid, Sections 11, 29 (10) and 106.

18th November, 1968 and having on that date an established place of business in Nigeria.[31] In other words, a foreign company is the one trading and making profits in Nigeria but incorporated outside Nigeria. The profit of a foreign company from any trade or business is deemed to be derived from Nigeria if the company has a fixed base of business in Nigeria and the profit is attributable to the fixed base; [32] or without any fixed base, it has an agent through whom it habitually operates business and the profit is attributable to the business,[33] or the foreign company involves in a single contract of service deliveries, installations or construction and the profit is from that contract[34] or the company engages in inter-company transaction not at arms' length, the profit adjusted by the Revenue Board.[35]

Apart from the above division, *CITA* sub-categorizes foreign companies in terms of their trading activities and patterns of business as follows:

a. **Companies engaged in shipping or air transport:** The profits or loss deemed to be derived from Nigeria and chargeable to tax in Nigeria of shipping and Transport Company is the full profits or loss arising from the carriage of passengers, mails, livestock or goods shipped or loaded into aircraft in Nigeria.[36]

b. **Companies engaged in cable and wireless undertakings:** A foreign company that carries on the business of transmission of messages by cable or by any form of apparatus is assessable to tax in Nigeria as if it operates ships or aircraft. In other words, the profit or loss of this category of companies chargeable to tax is the same with and on principles similar to shipping and air transport companies.[37] One thing is noticeable in companies (a) & (b) above. The profit or loss is chargeable to tax. It is remarked that to tax a company making a loss is grossly inequitable of the company and destructive to business enterprise.

[31] *CITA*, Section 29 (10).
[32] Ibid, section 13 (2) (a) .
[33] Ibid, Section 13 (2) (b).
[34] Ibid, Section 13 (2) (c).
[35] Ibid, Section 13 (2) (d).
[36] Ibid, Section 14 (1).
[37] Ibid, Section 15.

c. Companies engaged in insurance business: The *Companies Income Tax Act* though recognizes two basic types of Insurance companies viz: Life Insurance companies and Non-Life Insurance companies; it classifies insurance operations into four categories [38]as follows:

i. Life Assurance by Non-Resident: Whether Life Assurance Company is mutual or proprietary, provided it has a permanent establishment in Nigeria; the profit for tax purpose is the investment income less the management expenses and commissions.[39]Where the profit accrues partly in Nigeria and partly outside Nigeria, the taxable profit shall be the proportion that the total premium bears to the total premiums receivable less the agency expenses.[40]If the head-office of the company is outside Nigeria, the Revenue Board has the discretion to substitute a different basis from the above.[41]

It is instructive to note that section 16 (1) (b) of the *Companies Income Tax Act* [42] is fraught with difficulties, which may hamper revenue generation in Nigeria. First, it contains multiple provisos which may create problem of comprehension. This is antithesis to the basic rule of taxation that advocates precision of language and abhors verbosity or superfluity.[43] Second, the discretionary power given to the Board under the sub-section is susceptible to abuse. It can be arbitrarily exercised or deliberately rendered inoperative for personal reasons.

ii. Non-Life Insurance company by Non-Resident: The non-resident insurance companies, be they mutual or proprietary, that carry on non-life assurance business through a permanent establishment in Nigeria and the profit is partly

[38]Ibid, Section 16 (1).
[39] Ibid, Section 16 (1) (b).
[40]See the proviso to Section 16 (1) (b) *CITA*, 2004.
[41]Ibid. See also Arogundade J. A. (2005)*Nigerian Income Tax & Its International Dimension,* Spectrum Books Ltd, Ibadan, pp.303-304 and Ola C.S. (supra) *Incorporated Tax Law for corporate and Unincorporated Bodies in Nigeria,* Heinemann Educational Books (Nig) Ltd, Ibadan p. 237.
[42]Cap C21, LFN, 2004.
[43]Colten Iron Company vs. Black (1881) 6 AC 315.

derived from Nigeria and partly from outside Nigeria, the taxable profit consists of the gross premiums received in Nigeria, the interest received in Nigeria and other incomes received in Nigeria; less any premiums returned, premiums paid on re-insurance, unexpired risks, actual losses in Nigeria, Nigeria agency expenses and a fair proportion of head office expenses[44].

Section 16 (1) (a) of the *Companies Income Tax Act* provides for chargeable profits of non-life assurance company by non-resident. One noticeable defect of the section is that it is inelegantly drafted. It is unnecessarily verbose and complicated with clumsy legal coinage. Finding proper sequence of the provision is like going through the maze; whereas it is a pre-requisite of a good tax system to impose the tax clearly and with unambiguous and easily understandable language. The drafting style used in that section may make implementation and compliance not likely to be easy under such conditions and consequently occasion huge revenue loss.

iii. **Nigerian Life and Non-Life Insurance Companies:** The profits of Nigerian insurance companies chargeable to tax are similar to those of non-residents mentioned above but the whole investments and premiums income are treated as if received in Nigeria and all expenses and other outgoings incurred in Nigeria.[45] It is trite that the current Laws of Federation of Nigeria is the 2004 edition. It encompasses all the amendments made to *Companies Income Tax Act* after Cap 60 of the 1990 Laws of Federation came into operation. The legal implication of this is that as from 2004 when the current Laws of Federation of Nigeria came into existence, it has expropriated the Laws of Federation of Nigeria 1990.

[44]*CITA*, Section 16 (1)(a).
[45]Ibid, Section 16 (1) (c).

Surprisingly, the National Assembly enacted the *Companies Income Tax (Amendment) Act*, 2007 [46] to amend the *Companies Income Tax Act*, Cap 60 Laws of Federation of Nigeria 1990 – a non-existent law. The 2007 Act purports to amend Section 14 of 1990 Act which provides for insurance companies instead of amending section 16 of Cap C21 Laws of Federation of Nigeria 2004 – the current law. In law, it presupposes that section 16 *CITA* 2004 remains un-amended. All the shortcomings identified from it above are not and cannot be said to have been amended by the 2007 Act.

3.6 DISTINGUISHING FEATURES OF CORPORATE TAXATION IN NIGERIA

Corporation tax possesses some features which distinguishes it from other taxation. Some of those distinctive features are highlighted under the following sub-headings:

a. **Scope of chargeable income:** By virtue of Section 3 (1) of the *Personal Income Tax Act,*[47]the scope of chargeable income is the aggregate amounts each of which is the income of everytaxable person, for each year, from a source inside and outside Nigeria. However, Section 13 (1) *CITA* defines the chargeable income as the total profits of a Nigerian company taxable in Nigeria whether they have arisen in Nigeria or have been brought into or received in Nigeria. It can be deduced from both provisions that while a Nigerian resident individual is chargeable on the global income which is made up of income from inside and outside Nigeria; the chargeable income of a Nigerian company is limited to the Nigerian source income and what has been brought into Nigeria from outside sources.[48] In essence incomes not brought into Nigeriaare chargeable in the hands of a Nigeria resident individual but not chargeable in the hands of a Nigerian company until they have been brought into Nigeria.

b. Taxpayer's Identification Number – A distinctive feature of companies' taxation is that the company tax payer has tax identification number. The incorporation number

[46]No 11 of 2007.
[47]Cap P8, LFN, 2004.
[48]Arogundade J. A. op.cit (fn 41) p. 31.

of a company, on registration, serves as tax identification number of the company. The company is mandated to display the number in all the transactions with any individuals, other companies' revenue authorities, ministries and all government agencies.[49]

c. Company's Tax Affairs – A company is a 'legal persona' separate and distinct from its proprietors. The tax affairs of a company therefore, are treated separately from tax affairs of its shareholders. While the former is governed by *CITA*, the latter is governed by *PITA*.

d. Rates of Tax – The *CITA* is the only tax enactment that empowers the executive to usurp the power of the legislature. Section 100 *CITA* gives the president discretionary power to revoke, vary or alter the rate of tax for any year of assessment. This contrast with the principles of separation of powers enshrined in the Constitution. Section 4 of the 1999 Constitution empowers the National Assembly to make laws for Nigeria. The power of the National Assembly to make laws covers and extends to amendment of the law made. The words 'revoke', 'alter' and 'vary' used in section 100 of *CITA* are synonymous with the amendment. The power to impose, increase, reduce, vary or cancel any rate of tax is and should be vested in the National Assembly with respect to all tax laws under the federal government.

e. Double enabling Enactment – Another distinguishing feature of corporation tax in Nigeria is that it is governed by two enactments. They are *Companies Income Tax Act*[50] and *Petroleum Profits Tax Act*.[51] While the former governs the taxation of profits of companies or corporations other than those operating in the upstream sector of the oil industry, the latter governs the profits of companies engaged in petroleum operations in the upstream sector of the oil industry in Nigeria. As earlier observed, this is uncalled for. It complicates corporation tax system in Nigeria.

[49] *CITA*, 2004, Section 10.
[50] Cap C21, LFN, 2004.
[51] Cap P13, LFN, 2004.

3.7 TAX ON PROFITS OR TURNOVER OF COMPANIES

The words ‘’profit’ and ‘turnover’ are not statutorily defined in the corporation tax statutes. However, the Black’s Law Dictionary[52]defines profit as the gross proceeds of a business transaction less the cost of the transaction. It is the financial gain which a firm or company realizes from its transactions and business dealings over and above expenditures.[53]

Turnover, on the other hand, is the total money received by a business from sales for a particular transaction. It is the total net sales of the business of a firm or company.[54] In other words, it is the total sales for the period under review less the value of goods returned by customers.

The general tenor of the *Companies Income Tax Act* and *Petroleum Profit Tax Act* is to tax the profit and not the turnover of the company. The combined effect of Sections 9 and 40 of the *CITA* is that tax is charged on the profits of any company accruing in, derived from, brought into, or received in Nigeria. Notwithstanding this, the Act equally empowers Inland Revenue to assess and charge to tax turnover of trade or business of a company if it appears to it that the trade or business of the company produces no assessable profits or the assessable profit is less than expectation, or same cannot be ascertained.[55]It is observed that taxing the turnover of a company that makes no profit in a year of assessment is inequitable and destructive to business enterprise.[56] It is the view of this researcher that corporate bodies should ensure that their transactions are transparent and the company chargeable receipts for each accounting year are accessible by the taxing authorities (FIRC etc) in Nigeria.

3.8 EXERCISE OF TAXING JURISDICTION

Taxing jurisdiction connotes the general power of the Inland Revenue to exercise taxing authority over all companies domicilewithin the territory of Nigeria. It is the threshold

[52]8th Edition, 2004, p. 1246.
[53]Ibid, p.1246.
[54]*The New Webster’s Dictionary of the English Language,* International Edition, 1993, p. 1064.
[55]*CITA*, 2004, Section 30.
[56]Nigerian Tax Reform in 2003 & Beyond op.cit p. 174(fn 25).

issue/factor that fixes liabilities of companies to income tax in Nigeria; and it is the basis upon which corporation tax is founded. According to Richard Toby; [57]

> In any discussion regarding the taxation of incomes, it is tremendously important to bear in mind from the very outset that there are three distinct internationally recognized bases for exercising taxing jurisdiction. Taxation may result from the status of the recipient; taxation may result from the carrying on of business activity or trading within the borders of the country; and taxation may result by reason of the fact that a particular payment is derived from the country.

These three bases are referred to as 'status jurisdiction' 'business jurisdiction' and 'source jurisdiction respectively.[58]

3.8.1 Status Jurisdiction

Under the Nigerian corporate tax system, status jurisdiction is typically based on place of incorporation test' otherwise known as 'residence test'. By virtue of section 105 *CITA*, a Nigerian company is any company incorporated under *Companies and Allied Matters Act (CAMA)* or any Act or any enactment replaced by it. This shows that residence is a matter of considerable importance since it is the main factor which fixes the liability of a company to tax in Nigeria.

In other words, a company is regarded as resident in Nigeria if it is incorporated in Nigeria under the *CAMA.* This further explains the fact that for income to be liable to Nigerian tax, it is necessary that it should either be that of a company resident in Nigeria or derived from a source situated there. Under the *CITA*, every company is expected to incorporate as a separate Nigerian entity in order to operate in Nigeria. [59]The term residence is not statutorily defined by *CITA*. It is a question of fact and not of law. [60]It is often said that

[57]Toby R.A.(1978) *The Theory and Practice of Income Tax,* Sweet & Maxwell, London, p. 36 .
[58]Ibid. See also Mayson S.W. (1980) *Revenue Law,* Blackstone Press Ltd, London, pp. 34-35.
[59]*CAMA*, Cap 20, LFN, 2004, Sections 56-59.
[60]IRC v. Lysaght (1927) 13 TC 511.

it has no technical or special meaning.[61] However, there are various factors that establish/determine residence, viz:

i. The period of physical presence in a country in the year under question.

ii. Past history as to residence.

iii. Frequency, regularity and duration of visits.

iv. Purpose of such visits, and conversely purpose of the absence abroad.

v. Whether there is a place available for the taxpayer's domestic use during the year in question.[62]

Be that as it may, subjecting a corporation to status jurisdiction applied on the basis of place of incorporation only is not adequate. This is because corporation can be dissolved and its assets transferred to individuals or corporations resident in Nigeria or incorporated in another jurisdiction without any tax consequences. It is therefore advocated that the place of management and control of a corporation should equally be taken into consideration with place of incorporation in determining residence of a company.[63]

3.8.2. Business Jurisdiction

The business jurisdiction is applied with respect to income attributable to either a 'fixed base' or 'permanent establishment concepts. It is helpful to note that these two concepts are what fixes the liability of a non-resident company to companies' income tax in Nigeria. While the term 'fixed base' features under the domestic law,[64] 'permanent establishment is used under bilateral tax treaties.[65]

Although the *Companies Income Tax Act* does not define what constitutes a fixed base, the Nigerian Double Taxation Agreement defines the term 'permanent establishment' as a fixed base of business through which the business of an enterprise is usually or partly

[61]Per Lord Warrington in Levene v .IRC (1929) AC, 217, p.232.
[62]AbdulrazaqM.T. op.cit. (fn 14) p.169, See also Anthony S. (1973) *Taxation of Overseas Incomes and Gains*,Butterworths, London, pp.2-18.
[63]Toby R. A. op.cit (fn 56) p.36.
[64]*CITA*, op.cit (fn 19), Section 13(2).
[65]Article 5, Double Taxation Relief (Between the Federal Republic of Nigeria and Government of the Kingdom of Belgium) Order 15 of 1997 (hereinafter referred to as Nigerian Double Taxation Agreement, DTA forshort.)

carried on.[66] It therefore means that a fixed base is a permanent establishment. It is important to note that there is an entry limit beyond which a state of source can tax the income of a non-resident company from the sources located within that state. That threshold is the permanent establishment. What the country of source is entitled to tax is the income attributable to that permanent establishment.[67] In the case of F. l. Smith Co. Ltd vs. Federal Board of Internal Revenue,[68]the contention in the case was the scope of Article 3 (1) of the Nigeria/UK Colonial Double Taxation Agreement as it applied to the company. It provided:

> The industrial or commercial profits of a UK enterprise shall not be subject to a colonial tax unless the enterprise is engaged in trade or business in the country through a permanent establishment therein. If it so engages, tax may be imposed on those profits by the Colony but only so much of them as is attributed to that permanent establishment.

The company signed an agreement with the Nigerian Cement Company, Nkalagu, to act as consultant for the rehabilitation of the factory after the Civil War. The Nigerian company was to provide office and residential accommodation for the engineers of the UK Company. The prayer of the Appellant was to be exempted from tax on the profits from its consultancy fees on the ground that it did not operate in Nigeria through a branch or a permanent establishment. The agreement was silent on the duration of the stay of the engineers but the Commissioners discovered that the engineers who came to Nigeria in 1970 were still at the site on the 19th. It was also discovered that the signatory to the Agreement was one of the engineers.

The Commissioners cited the cases of (a), Henriksen vs. Grafton Hotels Ltd[69]to point out that the word 'permanent' is not synonymous with 'everlasting' and (b) Fed. Commissioner of Tax vs. Austin[70]to show that the term 'permanent establishment' implies 'indefinitely continuous' and held:

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[66]Ibid.
[67]Arogundade J. A. op.cit (fn 41) p. 32.
[68](1976) APP/COMM/228 quoted in and culled from Arogundade J. A op.cit pp. 52-54.
[69](1942) TC 453 .
[70](1932) 24 C.L.R (Australia) pp. 601-602.

i. that 'the Appellant sent its employees to Nigeria to do some work for an indefinite period and to do such work under its own name and within premises clearly designated as its own';

ii. that since the definition of a permanent establishment given in the UK/Nigeria arrangement was not exhaustive it was their duty to:

> determine whether … the facts of this case could lead us to infer that the Appellant operated in Nigeria through what in our view amounted to a permanent establishment. The facts as adduced before us showed that there is a continuity of operation over a period which the evidence established as indefinite.

It dismissed the appeal accordingly.

Also in the recent case of Shell International Petroleum B.V. vs. Federal Board of Inland Revenue,[71] the Appellant contended at the court of Appeal that it is a foreign company which does not have a fixed base in Nigeria but only come into the country to render services to Shell Petroleum Development Company of Nigeria, and during which period it uses the offices of that company and has been doing so since 1958. It was also contended that the arrangement between the appellant and Shell Petroleum Development of Nigeria was on cost sharing billing system which meant that its income from Shell Petroleum Development Company of Nigeria was not subject to taxation in Nigeria. The court of appeal held that:

> On the issue of whether the appellant has a fixed base of business in Nigeria being a non-Nigeria company, the appellant contends it has no fixed base in Nigeria even though it uses SPDC facilities for short time its staff are in Nigeria to collect some data. However, Mr. Krover of the appellant's company in his testimony had said that they are using any available empty offices. If they have to use any office in Lagos they would use available empty offices in the building of SPDC.

Without a clear statutory definition of 'fixed base' it would be mistaken to equate 'fixed base' to 'residence' or 'ordinary Residence', as the case may be. And it is important to appreciate that following current judicial opinion,

[71] (2004) 3 NWLR (pt. 859) 46 at 63 paragraphs F-H.

'volition' is no longer a necessary factor used to sort out ordinary resident and residence.

> The situation depicted by the facts and circumstances given above by Mr. Kroven conforms to my notion of what having a fixed base connotes within the context of the CITA and whereas, here the appellant has used the said facilities since 1958 when the relationship with SPDC started. It would be hard to suggest that the appellant does not have a fixed baseat SDPC. It is a finding of facts and this court will not interfere.

The underlying principle is that a non-resident company must have a sufficient presence, technically called fixed base/permanent establishment in Nigeria to be liable to tax in respect of its profits attributable to that permanent establishment. This attribution principle with respect to its effect upon all areas of income arising within the taxing jurisdiction is of some significance to Nigeria, being a developing country. Recognition of this concept is important in order to determine the manner of treatment of the income for purposes of taxation and for preventing the escape from tax on income directly or indirectly resulting from the existence of the permanent establishment.[72]

3.8.3 Source Jurisdiction

It is typically applied with respect to income from real or immovable property, located within the taxing country with respect to income from sources and capital.[73]It should be noted that source jurisdiction has characteristics similar to that of business jurisdiction.A situation may arise where a non-resident corporation may decide to split its profits through the creation of several permanent establishments within a jurisdiction. In such a situation, the income from these other permanent establishments would be attracted to those of the main permanent establishment and the profits would be aggregated for tax purposes in as much as the products or activities are similar to those affected through the main permanent establishment. This is what is technically termed as concept of force of attraction.[74]

[72]Toby R.A. op.cit (fn 57) p. 37.
[73]Ibid.
[74]Arogundade J. A. op.cit (fn 41) p. 426.

3.8.4 Dual Residence of a Companyand Tie-Breaker Rule

A company could have more than one residence for tax purposes.[75]This may occur when a company incorporated and resident in Nigeria operates in a country which treats management and control (or some other criterion other than incorporation) as its test of residence.[76] It means both countries would lay claim to its residence. In Swedish Central Railway co. Ltd vs. Thompson,[77] a company was incorporated in the United Kingdom to build a railway in Sweden. At a time when the company was managed and controlled in Sweden, the directors formed a committee to transact administrative business in the United Kingdom (share transfers, and the drawing of cheques on the company's English bank account). The special commissioners held that the company was resident in the United Kingdom, notwithstanding that it was controlled and managed abroad (which would of course be sufficient to make the company resident in Sweden). The House of Lords held that there was evidence to support the conclusion of the commissioner. [78]

It is noteworthy that over the years, the Inland Revenue has been concerned about the loss of tax attributable to the exploitation of dual – resident companies. Nevertheless, in a case involving dual residence of a corporation, the question may be resolved by the application of a 'tie-breaker' rule in a Double Taxation Arrangement. Article 4 (2)of Nigerian Double Taxation Agreement with United Kingdom[79] provides for four bases upon which 'tie breaker' rules can be sustained namely:

i. Centre of vital interests
ii. Habitual abode
iii. Nationality
iv. Mutual agreement

[75]Swedish Central Railway Co. Ltd. V. Thompson (1925) A.C 495.
[76] Unit Construction Co. Ltd V. Bullock (1960) A.C 351, *Per Lord Radclif.*
[77]Supra (fn 75).
[78]Quoted in and culled from Mayson S.W op.cit (fn 58) p539.
[79]Agreement Between the Government of the Federal Republic of Nigeria and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains; 9th June, 1987.

Any of the above can be used as a tie breaker to determine the actual residence of a person having dual residence.

CHAPTER FOUR

CHARGEABLE INCOMES OF COMPANIES

4.1 INTRODUCTION

The term 'income' is not defined in both the *Companies' Income Tax Act*[1]. The omission is not inadvertent but deliberate as the term is not amenable to an infallible definition. The question as to its determination and distinction from capital receipts is essentially one of fact, and the exact boundary line is very often quite imprecise[2]. Therefore, to attempt an open and close definition of 'income' will create a single touchstone for determining its meaning. This may be counter- productive as it will assume that all expenditure can be put correctly into one category or the other; but this is simply impossible[3]. Some cases lie on the border between income and capital and the border is not accurately for-seeable to be clearly marked out[4]. In Jeffs vs. Ringston Ltd[5], Scott J. described the borderline as: a blurred and undefined area in which anyone can get lost. It is like the border between day and night, or between red and orange. Everyone can tell the difference except in the marginal cases and everyone is in doubt when these marginal cases arise".

Nevertheless, it is quite clear that the companies' income tax is chargeable only on the profits of a company accrued in, derived from, brought into or received in Nigeria[6], to the exclusion of capital receipts. In other words, anything in the nature of capital accretion is outside the words "profits or gains" as used in the Acts. This makes the ascertainment of what constitutes income of a company imperative to tax payers and tax administrators alike. The reason for this is not far-fetched. Tax is a creature of statute and there is no equity about a tax[7]. It is a settled law that if the tax is to become payable at all,the imposition of it must be found in the statute itself[8].Unless a company can be brought within the ambit of the taxing statute, no liability exists. This being so, it is essential that where the right exists, the

[1]CAP C21, Laws of Federation of Nigeria (LFN), 2004.
[2]Toby, R.A. (1978) The Theory and Practice of Income Tax, Sweet 7 Maxell, London, p42.
[3]Jeffs V.Ringtons Ltd. (1986) 1 All ER. 144.
[4]Mayson S.W. (1988) Revenue Law, Blackstone Press Limited, London, p. 3.
[6]Section 9 Companies' Income tax Act (CITA), CAP C21, LFN, 2004.
[7]Cape Brandy Syndicate V. IRC (1921) 12 TC358 at 366.
[8]Oriental Bank v Wright (1880) 5APP.cas 842 at 856; Simmers Registrar of Probates (1900) AC. 323 at 337.

distinction between the terms 'income' and 'capital' be clearly understood[9]. This chapter will attempt an analysis of the distinction.Apart from ascertainment of characterization of companies' receipts to either income or capital, determination of chargeable incomes of corporation in form of assessment, collection and enforcement is another salient crux in corporate taxation. The charge to tax has procedures prescribed by the *Companies' Income Tax Act.* The mechanics of the law is complemented by Revenue Practice which is neither a substantive law nor a subsidiary legislation. The combination of the two makes the corporation tax system a bit complex particularly as there are some rules of practice which may evolve out of misconceptions or wrong interpretations of the law. The complexity in this regard may breed uncertainty. This no doubt is antithesis to a fundamental canon of taxation which is certainty. The net effect of this is resentment among tax payers and increased cost of the system[10]. In view of the foregoing, this chapter examines the meaning of income and its distinction from capital receipts, makes issue of revenue practice in contradistinction to substantive revenue law on corporate taxation, discuss analytically the rules and bases for liability of companies' income to tax under Nigerian Law.

4.1.0 LAW AND REVENUE PRACTICE

Practice and concessions are normal incidences of tax laws. In this context, practice includes the rules developed during the course of administration of a particular system of tax[11]. In other words, it encompasses recognized innovative efforts cum official statements by the Federal Inland Revenue Service or Joint Tax Board regarding the administration and procedures of tax laws. Although revenue practice are of greatimportance in the practical administration of the tax system[12], but their validity is questionable in some instances. In the first instance, they cannot be equated with the law which is the aggregate of legislation, and judicial precedents which prescribe the accepted legal principles laid down by a law making

[9]Toby, R.A op.cit.
[10]Abdulrazaq, M.T. (2005) Nigerian Revenue Law, Malthouse Press Limited. Lagos, p.4.
[11]Toby, R.A-op.cit.p. 41.
[12]Abdulrazaq, M.T op.cit. p.13, see Federal Inland Revenue Service (FIRS) Tax Guide,2002.

organ for corporate taxation in Nigeria. In other words, while laws are made, revenue practices are merely recognized and can be withdrawn at will by the Revenue authority.

Secondly, some of the revenue practices grow out of misconceptions or wrong interpretations of the law[13] which have remained unchallenged, or from statutory rules by which the system has operated for a number of years[14]. For instance, despite the fact that it is the law that tax payable in the country of assessment must be expressed in the currency of that country[15], the Supreme Court in Shell Petroleum Development Company Limited vs. FBIR[16], gave administrative directives overriding effect in the interpretation of a tax statute. This, according to Kanyip[17], represents one of the flaws of the Supreme Court decision in the case. He opined that:

> If government felt strongly about levying tax in foreign currency, nothing stops it from legislating on the issue thus coming to terms with acceptable norms of taxation. But to give preference to an agreement (even if it is with government) over taxation norms, is to belittle our tax statutes, create uncertainties and open the door for ambiguities[18].

To the extent that it was the Supreme Court that had spoken in the Shell's case, the misconceptions or wrong interpretations of the law has become recognized as a rule of revenue practice.

Furthermore, revenue practices are evolved or developed mainly for two reasons viz: administrative convenience and benignant concession[19]. These two bases of revenue practice are technically referred to as rule of convenience and rule of concession respectively.

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[13]In Shell Petroleum Development Company Limited V. Federal Board of Inland Revenue(1996)8 NWLR(Pt. 466)256 -the Supreme Court not only applied equity considerations but also gave administrative directivesoverriding effect in the interpretation of a tax statute. For more details see Abdulrazaq, M.T. op.cit p.12, Kanyip, B.B-Taxation Issues in Foreign Investment: AkintolaJimoh(ed.) Modern Practice Journal of Finance & Investment Law vol.2 No.11998, p107 at 12.

[14]Toby, R.A. op. cit p.41

[15]Section 54, CITA, 2004,see also Payne v. The Deputy Federal Commissioner of Taxation(1936) ALL ER 793, RhokanaCorp.Ltd v IRS(1936) 2 ALL 679 and Greig V. Ashton (1956) ALL ER 123,

[17]Kanyip, B.B. op.cit (fn 15) p. 123.

[18]Ibid

[19]Law Shipping Company V. C.I.R (1923) 12 TC 621at 629; Per Lord Sands; See also Toby, R.A op.cit. p.42

4.1.1 RULE OF CONVENIENCE

There are rules regulated by the Board of Inland Revenue to achieve administrative convenience though rooted in law. While some of the rules strengthen administration of income tax in Nigeria, some truncate the traditional best practices of the Federal Inland Revenue Service[20]. One of the rules of practice created for convenience purpose is withholding tax system. This is a practice whereby a portion of income tax is subtracted or deducted from salary or wages for services rendered or from dividends payable or other income before the earner receives the payment. Following the promulgation of the *Companies' Income Tax Act (CITA)*[21], the Federal Inland Revenue Service came up with comprehensive internal rules, technically termed special instrument[22] to guide the application and implementation of section 63 thereof[23] as it relates to source deduction of tax from services. Allied to this, is the designation of banks to ease tax payment.

Withholding tax system is not without shortcomings. The effect of its introduction was a rapid growth in revenue without institutional support and capacity building[24]. Updating the records of the tax payer is a key area of assessment efficiency and service delivery. However, in the observation of Arogundade[25] who was a seasoned tax administrator, withholding tax makes the records of taxpayers more difficult to update as manual operations brought about inadequate data bank and focuses more on revenue generation only[26]. In other words, details of tax payers' withholding tax are not available in his tax files. Be that as it may, withholding tax system was designed for administrative convenience and to boost revenue generation.

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[20]Arogundade, J.A. (2005) Nigerian Income Tax and its International Dimension, Spectrum books Ltd. Ibadan. p. 152.
[21]CAP 60, LFN, 1990.
[22]Such as Special Instruments Nos. S.I.9 & S.I.10 both of 7th August 1997 known as the Companies' Income Tax (rates, etc of tax deducted at source (Withholding Tax) Regulation 1997. See also S.I.44 of 2000 known as the Companies' Income Tax (rates, etc. of Tax deducted at source (Withholding Tax) Regulations 2000.
[23]Section 81, CAP C21, LFN, 2004.
[24]Arogundade, J.A. op.cit; p.16 (fn22).
[25]Ibid.
[26]Ibid.

4.1.2 RULE OF CONCESSION

Federal Inland Revenue Service evolves some extra-statutory concessions which are few tightly written and almost legislative or judicial in form[27]. In Nigeria, prosecution for tax offences is very rare. Besides, most of the civil tax cases which go to court become dead affairs, as tax administrators do everything to nudge the taxpayers into complying with the law thereby avoiding recourse to the courts[28]. In some cases, courts do oblige taxpayer concessions. This may be brought about as a result of misconception or misinterpretation of revenue statute thereby compromising the strict stance of the law[29]. For instance, Federal Inland Revenue Service is empowered to compound offences.[30] This may take the form of plea bargaining or concession bargaining.

In all, revenue practice is an essential component of tax law that needs to be carefully designed and regulated in order not to erode or weaken the accepted principles of tax law.

4.2 MEANING OF INCOME

Income tax is a tax on income[31]. The intention of Section 9 of *CITA* which is the charging section is to restrict the charge of tax to income receipts. The implication of this is that capital receipts are excluded from the charging section.

The reason for this is that it has been considered anti-social to live on one's capital. This will mean killing the goose that lays the golden eggs[32]. However, as crucial as the term 'income' is to tax laws, it is not positively defined anywhere in the taxing legislation. Even if it is, hardly would such definition be precise and infallible because the word income is a multifarious concept that does not lend itself easily to precise

[27]Abdulrazaq, M. T. op cit. p. 13 (fn 10).
[28]The Report of study Group on Nigeria Tax System, 2003, p. 108.
[29]Sell Petroleum Development Company Ltd. v. FBIR (Supra) fn 13.
[30] Section 48 (1), FIRS (Establishment) Act, 2007.
[31] London Country Council vs. Attorney General (1901) AC26, per Lord Macnaghten.
[32]Ayua I.A. (1991) The Nigerian Tax Law, Spectrum Law Publishing, Ibadan.

definition[33]. Thus, one of the controversies that usually lead to contentious litigation is the distinguishing of capital from income. As a result of often entertaining cases where courts are invited to determine whether a receipt is income or capital, one is able to obtain some guidance from the courts. This explains the observation of Abbot J. in Oxford Motors Ltd vs. Minister of National Revenue[34]that:

> No one has ever been able to define income in terms sufficiently concrete to be of value for taxation purposes. In deciding upon the meaning of income, the courts are faced with practical considerations which do not concern the pure theorist seeking to arrive at some definition of that term, and where it has to be ascertained for taxation purposes, whether a gain is to be classified as an income gain or capital gain, the determination of that question must depend in large measure upon the particular facts of the particular case'[35].

Nevertheless, the following theories can be gleaned from the various judicial interpretations and pronouncements made by the courts as a guide in determining what is income for tax purposes for ease of comprehension. They are categorized into the following sub-headings:

a) recurrent quality test
b) ordinary course of business test
c) designated source test
d) practical approach test
e) boarder line test

4.2.1 RECURRENT QUALITY TEST

The crux of this theory is that recurrent quality is the distinguishing mark differentiating an income payment from capital payment. In other words recurrent nature of a receipt is a touchstone for identifying it as an income receipt. In Asher vs.

London Film Production Ltd,[36] the appeal arose out of a friendly controversy

[33]Ibid, p. 16.
[34] (1959) C.T.C 195
[35] Quoted in Ayua, I. A. op. cit p. 16 (fn32).
[36](1944) 1 all E.R 77 at 80, C.A

between the respondents, London Film Productions Ltd., and the appellant, Asher, with whom they have certain contractual relation. On July 14, 1938, the appellant entered into a contact in writing with the respondents whereby they agreed to employ him as a Production Executive. By the contract, the appellant was entitled, inter-alia, to remuneration consisting of percentages in respect of motion pictures produced by the respondents. The contract was for two years' duration but on June 7, 1939, by a new contract, the service contract of July 14, 1938 was cancelled and in consideration therefore the respondents agreed to pay the appellant certain lump sums and 60 percent of the moneys received in respect of the motion pictures in excess of E110,00. In making these percentage payments the respondents deducted income tax. The appellant claimed to be carrying on a profession or a vocation and contended that he was entitled to direct assessment[37].

The agreement that is particularly relevant to this discourse is that when the case was heard before the trial court, the main argument presented to the court was that the sum receivable under the cancelled contract was in the hands of 'Asher' not income but capital[38]. Lord Greene M.R on appeal held that:

> "The payments are annual payments in the sense that they have that necessary recurrent quality which is the distinguishing mark differentiating an income payment and a capital payment for these purposes from any other payment".

In any event, there can be an annual payment that has the nature of an income, even though it happens by some accident or other to fall in one year only. The pertinent question is, has it the necessary periodical or recurrent quality?[39] If it does, then it is an income and not a capital.

4.2.2 ORDINARY COURSE OF BUSINESS TEST

[37]Ibid, p. 77.
[38]Ibid, p. 78.
[39]Ibid, p. 81.

Another criterion postulated over the years by the courts is that if a receipt is of the nature that occurs in the ordinary course of business, it is an income payment distinguished from a capital receipt. The authority of Short Brothers Ltd. v. Commissioners of Inland Revenue[40]illustrates this principle appropriately. There, the company had a valuable contract to build ships. The persons who had given them the contract were desirous of cancelling it. There upon the company agreed to a cancellation, but very naturally, the contract being a valuable one which they would get money, insisted upon a payment being made in respect of their letting off their contract to the persons who had contracted it. There, of course, the argument was advanced that this sum was not a profit of the trade at all, that it was a sum paid by reason of the fact that the trade was, as far as those ships were concerned, not to be carried on. It was held that;

> "Where you get a contract made in the course of carrying on the trade… a contract for the building of a ship, if it is a shipbuilding company, and so forth … the sums paid in respect of that contract, are just trade receipts".[41]

A forcible illustration is in Green vs. Gliksten[42]where the company which had large stores of timber had a very serious fire, and the question was whether the money received in respect of that from the insurance company had to be brought in. The contention was that it is not part of the timber business affected by fire, therefore, it cannot be said that, it is what it is carried on for. But it was held that:

> It being an incidental part of a business of this sort to insure, if you got your circulating capital, timber, destroyed and if you got a sum of money from the insurance company, you must bring that in, just as much as if you had in the ordinary course of events sold timber and got a sum of money from the purchaser.[43]
> These cases sufficiently indicate the ordinary course of business is a typical
>
> distinctive feature of income receipts from capital receipts.

[40]12 T. C. 955.
[41]See also Van Den Berghs, Limited VS.. Clark (H.M. Inspector of Taxes) (1935) TC390 at 412. 14T.C-364.
[42] 14 T.C -364
[43]See also Burmah Steam Ship Co., Ltd VS. Commissioners of Inland Revenue, 16 T.C. 67.

4.2.3 DESIGNATED SOURCE TEST

The general purport of this test is that income must be derived from a designated source to make it distinguishable from capital. In this regard, the fundamental relation of capital to income is clearly related if the former is likened to a tree or the land (source) and the latter to the fruit or the crop (the income). In this analogy, the capital as depicted is a reservoir supplied from springs while the income portrays the outlet stream to be measured by its flow during a period of time[44]. In other words, if a sum of value is thrown into circulation to extract a larger sum out of it, the process which produces this larger sum is the capital. The process that realizes it is the income[45]. For example, suppose that a person receives dividends from his shares in a company, his shares are the tree which produces the fruit of dividends. The shares are his capital, potentially liable to capital gains tax and his dividends are his income, liable to income tax[46].

A careful perusal of Section 9 (1) of the *Companies' Income Tax Act*[47], depicts that it aligns with this test to actually identify what is income. By that provision, tax is payable only upon the income or profit of any company accruing in, derived from, brought into or received in Nigeria of any of the sources enumerated in paragraphs 1(a) to 1(g) of the subsection. Once a profit of an income nature is shown to be derived from any of the designated sources, it becomes chargeable to tax according to the rules applicable to profits from that source[48]

Useful as the analogy of tree and fruit is, Mayson[49] warned that it must not be taken too literally. Thus, in Saunders v. Pilcher[50]the tax payer bought some land, including a Cherry Orchard, for E5,500. The sale expressly included the year's fruit

[44]Eisner vs. Maccomber (1919) 252 US 189. See also Pool vs. Guardian Investment Trust Co. Ltd. (1921) 8 T.C. 167.
[45]Karl Marx- Capital, vol.3, Lawrence & Wish Art.
[46]Mayson S. W. (1987) Revenue Law, Blackstone Press Ltd, London, p. 2.
[47]CAP C21, LFN, 2004.
[48]Simon V. (1952) Income Tax, vol. 1, Butterworths, London, pp. 5-6.
[49]Mayson S. W. op. cit p. 2.
[50] Ayua 1.A. op.cit p17 (fn 32)

crop, which the tax payer valued at E2,500. The tax payer subsequently sold the Cherry crop for some E2,900. On the basis that the cherries on the trees represent income, he sought to deduct E2,500 as an expense of an income nature against his receipt of E2,900 to leave him with a taxable profit of E400. The court of Appeal held that the purchase of the cherry crop was merely part of the entire transaction of buying a capital asset, the land and the cherry trees. The whole expense of E5,500 was accordingly of a capital nature and could not be dissected into capital and income parts[51].

4.2.4 PRACTICAL APPROACH

Ayua is one of the proponents of this test. He posits in his work that:

> To reduce income into a more precise statutory definition is therefore to unwittingly prevent the Nigerian tax law from meeting the demands and challenges of a modern society with its complexities, and worse still to deny those judges with initiative and a creative approach the opportunity to handle interesting tax law problems. Accordingly, the best thing to do, as indeed it is to be done by the British courts, is to adopt a much more practical approach than to get bogged down with the attempt to provide an all embracing conceptual definition of the term income[52].

We concede to the fact that to define income in terms sufficiently concrete to be of value for taxation purpose may be difficult. However, the practical approach test propounded by the learned Professor fails to demonstrate how income will be ascertained distinctively from capital. Besides, the learned professor seems to underestimate the importance of the distinction between capital and income for tax purposes. Furthermore, the proposition assumes that all expenditure can be put correctly into one category of the other, but this is simply not possible.

There were some useful observations in the case of Jeffs v. Ringtons[53]where the issue was whether payments made by a company towards a pension fund for employees were income (therefore deductible) or capital (and thus not

[51]Mayson S.W. op. cit. p. 2.
[52]Ayua I. A. op. cit p.17 (fn 32).

deductible).[54]Scott J. quoted the observations by Lord Denning on the importance and the difficulty of the distinction thus:

> The question- revenue expenditure or capital expenditure- is a question which is repeatedly asked by men of business, by accountants and by lawyers. In many cases the answer is easy; but in others it is difficult. The difficulty arises because of the nature of the question. It assumes that all expenditure can be put correctly into one category or the other; but this is simply impossible. Some cases lie on the border between the two; and this border is not a line clearly marked out; it is a blurred and undefined area in which anyone can get lost… It is like the border between day and night; or between red and orange. Everyone can tell the difference except in the marginal cases; and then everyone is in doubt … when these marginal cases arise, then the practitioners- be they accountants or lawyers – must of necessity put them into one category or the other; and then, by custom or by law, by practice or by precedent, the border is staked out with more certainty.

In view of the above, the practical approach test put forth by Ayua may not be completely infallible. However, one can say that except if the practical approach aligns with Section 9 (1) (a-g) of *CITA*, it may not be a feasible approach to ascertain the income that is taxable.

The importance of the distinction between capital and income in a tax system cannot be underestimated. Unless a receipt is identified as an income, it is not liable to income tax. This being the case ascertaining income as distinct from capital is a vital issue in a variety of cases; otherwise receipts will be subjected to various underserved and illegal tax. Finally, it is noteworthy to state that reference to income which is subject to tax in corporation tax laws means net income. i.e. gross receipts less expenses. The charge is imposed upon the income.

4.3 IMPOSITION OF TAX

The observation of Lord Dunedin in Whitney v. IRC[55]is a good starting point for this sub-head. The Law Lord remarked that:

55 (1926) A. C.37.

[54]See Mayson S.W. op. cit for more details.

> There are three stages in the imposition of a tax: there is the declaration of liability, that is, the part of the statute which is what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That ex hypothesis has already been fixed but assessment particularly the exact sum which a person liable has to pay. Lastly, is the method of recovery, if the person taxed does not voluntarilypay[56]?

In essence, a well understood tax legislation and effective administration are cruxes of a good tax system. It therefore connotes that if the charging provision of atax legislation is inelegantly drafted, compliance and administration will wobble.

Nevertheless, the scope of the charge to tax is outlined in Section 9(1) (a-g) of *CITA*. The provision enumerates some designated sources from which profits of any company accruing in, derives from, brought into or received in Nigeria can be assessed to tax. The sources are:

a) trade or business

b) rent or premium

c) dividends, interests, discounts, amenities, etc

d) omnibus profits

e) deemed profits

f) service fees, dues and allowances[57]

g) profits from dealings in securities

A number of points arise out of the terms of this charging provision. First, the phrases '*accruing in'* and '*derived from*' are equated to the principle of liability on income with a Nigerian source[58] This, in effect explains the fact that the profits envisaged herein are those, of any company, realized within the territorial jurisdiction of Nigeria and are assessed on territorial basis.

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[56]Ibid, p. 52.
[57]Section 9 (1) (a-g), 2004.

[58]Abdullahi A. (1991) Nigerian Tax Treatment of Business Concerns with International Connections; In Akande O. (ed.) Tax Law and Tax Administration in Nigeria, Nigerian Institute of Advanced legal Studies (NIALS), pp. 249-250.

In the same vein the words '*brought into'* or '*received in Nigeria*' are analogous to remittance or deemed remittance rule.[59] The words indicate that the charge arises on receivability. The purport of the 'source' and 'remittance' rules is to charge to tax the global income of a Nigerian company whether it is sourced from Nigeria or remitted to Nigeria. Considering the two rules critically, it can be discovered that the source rule is absolute while the remittance rule is conditional. It is premised on the condition that '*provided the profits are remitted to Nigeria*'. What happens should a company withhold its overseas income in its entirety or remits part and withholds part? The researcher is not unaware of Section 12, *CITA* which mandates any company to make a full disclosure of the terms of agreement from which fees, dues and allowance are paid for services rendered. Notwithstanding that the provision is too assumptive of the fact that all Nigerian companies are law abiding to honestly declare their global incomes. This cannot be true. Even at that, the mere declaration of overseas income by a company is not a conclusive proof that it has declared and remitted all.

Besides, a close look at Section 9 (I) (b) *CITA* reveals that it is inelegantly drafted. It is unnecessarily verbose with clumsy legal coinage. It is therefore susceptible to confusion and loss of comprehension. It can be cogently argued that lack of prior consultation with informed opinion from tax experts outside legislative houses rendered inevitable, imperfectly researched and poorly drafted legislation. Although there are instances where tax experts outside the government circle are consulted on tax matters, but government has made it a tradition to usually choose the most suited to it and ignore others, which on a critical examination are beneficial to the polity. The study group commissioned in 2002 by the Federal Government of Nigeria is a decisive testimony in this regard.

[59]Ibid.

Nevertheless, it is suggested that if Section 9 (I) (b) of *CITA* is simplified as indicated below, it will ease understanding, enhance compliance and effectuate administration.

Section 9(I) states that:

> Subject to the provisions of this Act, the tax shall be payable, for each year of assessment at the rate specified in Section 40 (1) of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of rent or any premium arising from a right granted to any other person for the use or occupation of any property.
> Provided;
>
> i. such a rent is paid before the expiration of the period to which the tenancy relates and,
>
> ii. it is included in the profits of a company for the purpose of charge to tax.
>
> Such payment/rent shall be apportioned proportionately, from day to day over the last mentioned period or over five years beginning with that date, whichever is shorter.

Even if the drafting of subsection is as suggested above, it still does not absolutely assist revenue generation. Rather, it is an in-road to tax evasion tendencies. The reason being that provisions (i) and (ii) as simplified above constitute conjunctive condition precedent for charging of rental income of any company to tax. The question that quickly comes to mind is what happens if a company deliberately or inadvertently omits to include the rent in its profits' profile? More so that Nigerians do not appreciate honest payment of tax as a civic obligation. Even if the tax administrators are alive to the powers and responsibilities prescribed by *FIRS (Establishment) Act*, lack of adequate data bank may frustrate the effort.

4.3.1 RENT AND PREMIUM

The word rent and premium are synonymous in effect. Rent is a consideration paid periodically for the use or occupation of a real property[60]. Premium on the other hand is a lump sum rent paid in excess of the current rental value of a property[61].In granting a lease, part of the rent is sometimes capitalized and paid in lump sum at the time the lease is granted. This is what is called a '*premium*'. Where company is the grantor or lessor, profits from its rent and premium are chargeable to tax vide Section 9 (1) (b), *CITA*. While rental profits are assessed to tax in the current year of receipt, premium from the long leases is spread over the duration of the lease or over the five years commencing from the date of receipt, whichever is shorter. This is technically referred to as *top-slicing*. This makes the company (landlord) to be taxed in each year of the duration of the lease on the yearly equivalent of the chargeable sum on the assumption that it forms the top slice of its income[62]. The top-slicing rule is restricted to the maximum of five years thereby deferring income tax to the point of extinction. Income tax may be avoided if the premium is paid in installments. A company may grant a lease at an undervalue. This will create a situation whereby the premium obtained on the grant is less than the premium obtainable at arm's length.

4.3.2 DIVIDEND AND ANNUITY

In ordinary parlance, dividends are funds set apart by a company out of its profits to be apportioned among the shareholders of the company. They are the increments accruing to the shareholders or members of a corporation out of the distributed profits of his investment[63]. For the purpose of tax, Section 9 (3), *CITA* defines it in respect of a going concern, as any profit distributed, whether such profits are of a capital nature or not, including equivalent amount of a nominal value of

[60]Garner B.A. (2004) Black's Law Dictionary (supra), p. 1322.
[61]Ibid 4th edition, p. 1322. See also Banning vs. Wright (1972) 48 TC.
[62]M.Z. Hepker (1973) A Modern Approach to Tax Law, Heinemann, London, p. 153.
[63]Toby R.A op. cit, p 81.

bonus shares, debentures or securities awarded to the share holders[64]. It is noteworthy that though tax is chargeable on profit and not on capital, but dividend whether income or capital dividend is taxable. The underlying rationale appears to be that bonus issue of shares involves the servicing, but not the repaying of share capital. Consequently, it qualifies as a qualifying distribution. The aim of Section 9 (3) (a), *CITA* is to prevent a company from designing an avoidance scheme by making a distribution out of reserves in the guise of a bonus issue.

However, if a company is in liquidation or wound up, the dividend of capital nature so distributed by it is regarded as repayment of share capital and not chargeable to income tax[65].

Be that as it may; the definition of dividend under Section 9 (3) (a) *CITA* is not restrictive. It encompasses other distribution such as bonus shares, debenture or securities awarded to the shareholders. It equally extends to deemed distribution as provided in Section 21 *CITA*. In all, the chargeability of dividend to tax depends on the recipient. If a company receives dividend as a shareholder, it forms part of its gross income and when it is net the allowance deductions, it is subject to income tax. Conversely, if a company declares and distributes dividend to its individual shareholders it attracts personal income tax at the rate of 10% in the hand of such individual recipient which is deductible at source[66].

Annuity is not statutorily defined. In an attempt to define know what annuity is, recourse may be had to case law and legal lexicon. It is a sum certain payable annually from a trust to trustee(s) for his/their respective lives or for a term of years and thereafter either transfers the remainder for such a use[67]. The recipient of annuity

[64]Section 9 (3) CITA, 2004.
[65]Section 9 (3), (b), CITA, 2004.
[66]Section 71 (2), PITA; see also Section 80 (2), CITA.
[67]Garner B.A op, Cit p 82.

is an annuitant[68]. In Foley vs. Fletcher[69]annuity is said to mean an income purchased with money the capital ceasing to exist, having been converted into an annuity[70]. However, the authority of Ceylon C.I.R vs. Rajar ATNAM[71]warned that annuity is unquestionably a species of annual payment, and if it is in the nature of income, it is chargeable to income tax[72]. Annuity is only taxable if it is income. In a situation whereby annuity partially represents a partial return of capital and a return on the capital investment; dissection must come to play. Finlay J. had once held that:

> the court will in each case look at the real nature of the transaction, whatever may be the form in which it is expressed, and will if circumstances warrant it dissect a payment, even though it be called an annuity, so as to prevent so much of it as represents capital from being charged with income tax.

One crucial point to note is that under Section 9 (1) (c), *CITA*, annuity is *ejusdem generis* with dividend, interest, royalties and discounts as designated sources of chargeable income.

4.3.3 SECURITIES

Although we need not conduct a lengthy examination of what securities are, knowledge of their connotations will assist in understanding their taxability. Suffice to say that securities are stock instruments issued by Federal Government to raise sufficient fund from the public to prosecute some of its capital intensive projects[73]. Some of these projects do require such capital outlays that could not be supplied from other internally generated funds of government. In such circumstances, government turns to the public to source for funds. This is done through the issue of securities for public subscription[74]. Such as treasury bills, treasury certificates, treasury bonds,

[68]Abdulrazaq M.T. (1989)Taxation of Trust Income; In Bankinga (ed.), Law of Trust, University of Ilorin Press p. 223.
[70]See particularly p. 961 Per Watson. J.
[71](1971) T.R. 45; see also M. Z Hepkerop.cit p. 140.
[72]Section 9 (1) (c) CITA, 2004.
[73]LayiAfolabi (1998) Monetary Economics, Perry Barr Ltd., Lagos, pp. 240 -246.
[74]Oba Ekiran (1999)Basic Understanding of Capital market Operations, CIBN Press Ltd Lagos, pp. 40-41.

debenture certificates, etc. Ayua[75] succinctly explains how profits made from securities attract income tax thus:

> Under a treasury bill the government borrows money by issuing the bill and when, it is due, a larger sum than the price paid for it on its issue is paid.Thus the extra is treated as profit which is taxable.

Treasury bill, like other securities is held to maturity and at fixed discounting rate. However, a more formidable complication may arise where the bill is not bought from the government or is not held to maturity but is either brought or sold in the market or both. Where a treasury bill or any other bill is bought or sold in the market, the price depends on the market rate for money. Thus, in National Provident Institution vs. Brown[76]the court observed that:

> A person who has held the bill for some months may in a period of pressure affecting himself and the market generally have to dispose of it at a price involving a loss of the whole or part of or of more than the interest for the time during which he held it. Conversely in terms of ease, he may sell it at a profit exceeding that interest. Consequently, by the time the bill matures, the bill may have passed through the hands of half a dozen persons who have made profits out of it aggregating a larger sum than the difference between the issue price and the face value. Such extra profits being of course, exactly equaled by losses made by other holders[77].

A situation like this is complicated and it is a potential route to escape tax liability. The revenue officer may be confused on whether it is the difference between the issue price and the face value to be treated as taxable income on the bill and assessed on the holder at maturity. The confusion may be whether the difference between the issue price and the face value is to be divided among the successive holders proportionately to their periods of holding.

Rowlat .J. answered that in neither of the possibilities above would the solution correspond with the truth in that the holders have not received such profits. Rather, the difference between the amount paid on purchase and that received on

[75]Ayua I. A. (1991) The Nigerian tax Law, (supra) p. 156.
[76]. (1919) 2KB 497.
[77]Ibid, Per Rowlat .J. at P 508.

realization must be treated as a profit on a discount. If any holder has made a loss, he drops out to the extent of the loss; and the aggregate of the differences received will bear tax to the Revenue, even though the aggregate exceeds the difference between the original purchase or issue price of the bill and its face value[78].

In conclusion, it is suggested that in order to capture the profits from the various sources highlighted above, the Federal Inland Revenue Service needs to be more astute in areas of tax audit and tax investigation to sniff out artificial transactions that may rob the government of sufficient revenue.

4.4 ASSESSMENT

Assessment particularizes the exact sum which a person liable has to pay. It is guided by the duo of accounting and legal principles. Computation of taxable profits precedes assessment. It encompasses four principal stages before assessment is made viz:

6. Identification of net profit or loss of the company
7. Ascertainment of adjusted profit
8. Deduction of losses brought forward and addition of balancing charges arising from the disposal of qualifying capital expenditure.
9. Deduction of capital allowance to obtain taxable profit[79].

It is to be noted from the outset that assessment is practically impossible without information. This being the case, information gathering from tax payers is the very first starting point for Federal Inland Revenue Service. To achieve this, *CITA* mandates every company to file a return to FIRS at least once in a year without notice or demand from it[80]. The return must be in the form prescribed by the FIRS. The prescription contains some information which must be supplied by the company together with the audited accounts, tax and capital allowances computation. The

[78]Ibid.
[79]Seyi Ojo (2003) Fundamental principles of Nigerian tax, Sagibra Tax Publications, Lagos, p. 558.
[80]Section 55 (1), CITA, 2004.

return will be accompanied by a declaration in writing by the person making the return that it is to the best of his knowledge that the profits from each and every source computed and contained therein are true and correct[81]. The law equally mandates a management officer of the company filling the return (director or secretary) to attest to the truthfulness and completeness of the declaration and return[82]. The FIRS is imbued with the power to call for further and fuller return if need arises[83].

Furthermore, it is noteworthy that the law does not leave the filing of returns at large. It must be filed within the time prescribed for it[84]. For instance, a newly incorporated company must file its return within eighteen months from the date of incorporation or six months after the end of its first accounting period[85]. A company that has been in business for more than eighteen months must file its return not more than six months after the end of its accounting year[86]. In case of a company filing self assessment, it must file its return not later than eight months after the end of its accounting period[87]. Failure to file the return within the prescribed time attracts penalty[88]. Though the FIRS has the power to extend time for a company upon an application made to it in that respect, one unusual aspect of the penalty is the provision of Section 55 (6) *CITA* which gives the company leverage to choose and designate any representative to be vicariously liable, so to say, for the penalty. This is unknown to any criminal or quasi- criminal system. Rather, failure to file return is a golden opportunity to lift and pierce the veil of incorporation of the company concerned for the purpose of prosecuting the defaulter.

[81]Ibid, Section 55 (1) (a).
[82]Ibid, Section 55 (2).
[83]Ibid, Section 58 and 60: see also section 26 (1), FIRS (Establishment Act, 2007).
[84]Ibid, section 55 (3) (b).
[85]Ibid, Section 55 (3) (a).
[86]Ibid, Section 55 (3) c).
[87]Ibid, Section 55 (4).
[88]Ibid, Section 59.

Once the audited accounts and returns are delivered to the Federal Inland Revenue Service, they may be accepted or disputed. Once they are disputed, the company will make amends to arrive at its adjusted profit or on willful default, the FIRS makes an assessment to the best of its judgment.[89]

4.4.1 ADDITIONAL ASSESSMENT

The Federal Inland Revenue Service has the power to raise additional assessments on a company in certain circumstances[90]. Section 66 (1), *CITA* provides that:

> If the Board discovers or is of the opinion that any company liable to tax has not been assessed or has been assessed at a lesser amount than that which ought to have been charged, the board may within the year of assessment or within six years after the expiration thereof and as often as may be necessary, assess such company at such amount or additional amount, as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to such assessment and to the tax charged thereunder.

This '*discovery test*' has elicited several judicial pronouncements. In Western Soudan Exporters Ltd vs. FBIR[91], the company appealed against additional assessments raised in respect of disallowed irrevocable advances to produce buying agents which were classified as bad debts but which the inspector of taxes added back to chargeable profit. They were allowed in the original assessment for the relevant assessment years based on returns submitted. The Body of Appeal Commissioners (BAC) held that the expenses failed to qualify as bad debt. Under Section 27 (d), *CITA*, 1961 and dismissed the appeal.

On further appeal to the High Court of Lagos State, the court held that the discovery of new facts is a necessary condition for re-opening an assessment that has become final and conclusive. An insightful examination of Section 60 (1), *CITA* shows that the discovery as envisaged therein has a wider meaning. The expression '*if the*

[89]Ibid, Section 63.
[90]Western Soudan Exporters LTD VS. FBIR . (1962) 1 ALL ER 854 at 863
[91] (1962) 1 ALL ER 854 at 863 or (1962) A.C 782

board discovers or is of the opinion' indicates that the words are apt to include the case where no new fact has come to light but the revenue authorities have formed the opinion that by a mistaken view of the law the taxpayer has been undercharged in his original assessment. In Cenlon Finance Co. Ltd vs. Ellwood[92] counsel for the appellant contended before the House of Lords that the Inspector of Taxes, with full knowledge of the facts, at first allowed the dividend in question to pass untaxed; and that his successor in office cannot be allowed to bring it into the assessment simply because he takes a different view of the legal position. He argued further that discovery does not mean a change of mind about the law, after all, everyone is presumed to know the law, even an Inspector of Taxes. LORD DENNING while disagreeing with the appellant held:[93]

> I am afraid that I cannot agree with the counsel for the appellant about this. It is a mistake to say that everyone is presumed to know the law. The true proposition is that no one is to be excused from doing his duty by pleading that he did not know the law. Every lawyer who, in his researches in the books, finds out that he was mistaken about the law makes a discovery, so also an inspector of taxes.

No wonder that Lord Denning Mr. in Parkin vs. Cattel[94]aptly stated the meaning of the word discover. In that case, the Inspector of Taxes disagreed with the opinion of his predecessor and raised assessment where his predecessor defaulted. The Learned Law Lord held:

> The word discover simply means find out… An Inspector of taxes discovers (that income tax has not been assessed when it ought to have been) not only when he finds out facts which were not known to him or his predecessor, but also when he finds out that he or his predecessor

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[92]. (1962) 1 ALL E.R 854 at 863 or (1962) A.C 782.

[93] (1971) 48 TC p. 474.

[94] (1977) 3 SC 53.

> drew a wrong inference from the facts which were then known to him, and further, when he finds out that he or his predecessor got the law wrong and did not assess the income when it ought to have been.

He held further that:

> In the present case, I accept that the previous inspector of taxes know all the facts about the acquisition and sale of houses. He clearly made a mistake. He drew the wrong inference from the facts. The new Inspector finds out that the previous Inspector was wrong. He thought that the true inference was that these acquisitions and sales had the characteristics of a venture in the nature of trade. He made the assessments accordingly. This was a 'discovery' within the statute[95].

The two English decisions above cited have gained judicial approval by the Supreme Court of Nigeria. In Mobil Oil (Nigeria) Limited vs**.** FBIR[96]the grounds of appeal before the apex court raised the question as to whether the Revenue Board had jurisdiction to invoke Sections 30 (A) & 50 (1) of *CITA*, 1961 and make additional assessmentsthere under after it had assessed the company on assessable profits. The undisputed facts of the case are that pursuant to audited returns delivered to the Board by the company's auditors, the Board acting under its powers under Section 49 (2) (a) of the act assessed the Company on the profits as shown by the returns for the trading periods relevant to the years of assessment in question. The Company accepted the assessments and paid the taxes. Thereafter by a letter dated 16th June 1970, the principal Inspector of Taxes informed the company that he had in his observation detected that the rates of profits as declared by the company's account for the two years ended 30th November 1967 and 1968 have been extremely less than expected from the business of the magnitude carried on in Nigeria by the Company. Consequently, he raised additional assessments on the Company. On Appeal to Appeal Commissioners, the Commissioners dismissed the appeal and confirmed the additional assessments though with little variation.

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[95] (1977) 3 SC 53.
[96] Per Mohammed Bello JSC (as he then was) at P 83.

The Company further appealed to the Federal Revenue Court which upheld the decisions of Appeal Commissioners but with reduction of 10% additional assessment to 8%. The Company was still dissatisfied and appealed to the Supreme Court. The court, after making reference to Ceylon Finance's case and Parkin's case earlier cited, held that:

> The word "discovers" being an English word; it may be presumptuous of us to attempt to improve the meaning given to it by eminent English judges. It is only pertinent to point out that there is nothing in the provisions of section 50 (now section 66(1) limiting the meaning of the word "discovers" to mean that a discovery that "a company has been assessed at less amount than that which ought to have been charge" can only arise where a new fact has been discovered. To import such meaning into the section, when there is no express provision to that effect, may defeat the purpose of the section which is to ensure that tax payers ought to pay correct taxes chargeable under the Act… the Board is not required to discover any new fact before making additional assessment under Section 50.

The Company has the right within thirty days of notice of assessment or additional assessment to dispute it by way of objection in writing[97]. When the assessment is final and conclusive the FIRS proceeds to make assessments accordingly at the rate specified in Section 40 (1) of the Act[98].

4.4.2 CURRENCY OF ASSESSMENT

Prior to 1996, *CITA & PPTA* were silent to expressly state the currency of assessment of tax. The reason being that, the general assumption is that tax is assessed in the currency of the country that has jurisdiction to levy the tax. This can be deduced from the general tenor and spirit of *CITA*, CAP 60, LFN, 1990 and *PPTA*, CAP 354, 1990 respectively. This explains the fact that though it is not expressly provided that tax payable in Nigeria should be paid in Naira, being Nigerian currency, but it can be implied from the overall spirit of the law. More so that Nigerian currency is the legal tender acceptable for any transaction in Nigeria.

[97] Section, 58 CITA, 2004.
[98] Ibid, section 58.

However, in Shell Petroleum Development Company of Nigeria Limited vs. FBIR[99], the agreement between the Appellant (Shell Petroleum Development Ltd) and Respondent (FBIR) on the liability of Shell to pay tax chargeable under *Petroleum Profit Tax Act* in pounds Sterling was given legal effect over the law. The Supreme Court quoting Lord Denning L. J (*as he then was*) with approval in Treseder-Griffin and Anor vs. Co-operative Insurance Society Ltd[100] held that:

> A man who stipulate for a pound must take a pound when payment is made, whatever the pound is worth at that time. Sterling is the constant unit of value by which in the eye of the law everything else is measured. Prices of commodities may go up or down, but sterling remains the same… The respondent had chosen sterling for the payment of petroleum profit tax and whatever losses appellant incurred during the process of such payments are deductible for the purpose of computing the petroleum profit tax liability.

Expectedly, the decision attracted several criticisms from experts in tax law to the effect that if the law had wanted the payment of tax to be made in currency other than Naira, it would have provided for it expressly[101]. However, shortly after thejudgment in 1996, the Federal Military Government vide Decree No 30 of 1996 expressly provided for payment of tax in the currency in which the transaction giving rise to the assessment was effected[102].

4.5 RATES OF TAX AND LEGISLATIVE EQUIVALENCY DOCTRINE

A rate of tax is the quantum of the tax payable to government from the chargeable profit of a company. The current rate of companies' income tax is thirty

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99 (1956) 2QB 127

100 Kayip B.B – Taxation Issues in Foreign Investment (1998) Modern Practice Journal of Finance an Investment law (MP JFIL) Vol. s, No I Pp 107-127

101. Now Section 54, CITA 2004

102Ibid, section 40 (1).

percent of the total assessable profits[103]. Notwithstanding, it is observed to be too high compared to other countries of the world[104]. Rather it is suggested that government will generate more revenue if it can be reduced and some of the incentives are cancelled.

Be that as it may, the researcher is baffled and challenges the rationale for Section 100 of *CITA*, 2004 which empowers the president by order, to revoke or vary the rate of tax for any year of assessment. In the first instance, it negates the principle of constitutionalism. Nigeria practices constitutional democracy characterized by doctrine of separation of powers. The power to make laws pursuant to items under exclusive legislative list is an exclusive preserve of the legislature. If there would be variation to or revocation of rates of tax it has to follow the normal legislative procedure; and not by the fiat of the president. In other words, varying or revoking the rate of tax must comply with *legislative- equivalency doctrine*. This is the rule that a law should be amended, varied or repealed only by the same procedures that were used to enact it[105]. The power donated to the president under Section 100, *CITA* is dangerous and susceptible to abuse especially in Nigeria, where fiscal mechanism and political aspects are not treated as independent variables. To the extent that Section 100, *CITA* is inconsistent with the doctrine of separation of powers recognized and provided for by the 1999 Constitution of Nigeria, it is void to the extent of that inconsistency.

Ascertainment of chargeable income is a condition precedent to assessment. Assessment is aided by revenue practice rules. However, the Federal Inland Revenue Service and the courts which represent some of the institutional mechanisms to

[102]Ibid, section 40 (1).
[103]Report of the Study Group on Nigerian tax System, 2002 op.cit p. 52.
[104]Garner B.A. Op Cit p. 919.
[105]Report of the Study Group on Nigerian tax System, 2002 op.cit p. 52.

enforce income tax must be wary in introduction or interpretation of revenue practices in a manner suggestive of writing it at par or above substantive tax law. The researcher finds that the charging provision under *CITA* is cumbersome and may either lead to confusion or abet tax evasion. Not only this, Nigeria is a full-fledged democracy. Therefore the provision of her laws (particularly tax law which engenders revenue generation) must conform to constitutional arrangement and provision. The attempt made in this chapter is to point out the areas pertaining to charge to companies' income tax which are perceived to hinder revenue generation in one way or the other. In this chapter, this writer makes an attempt to discuss the computational mechanism of taxable income of corporate personalities in Nigeria.

CHAPTER FIVE

MODALITIES FOR THE TAXATION OF CORPORATE BODIES IN NIGERIA

5.1 INTRODUCTION

One of the major frailties of correctly taxing corporate bodies in Nigeria is the high number of unincorporated business enterprise with the Corporate Affairs Commission. This deliberate action of business men carrying on businesses with making of profits as its aim has limited the enforceability of the taxing Acts whose modus operandi is the taxing of corporate personalities registered with the Corporate Affairs Commission.[1] Corporate tax or taxation of corporate bodies are taxes that must be paid by a corporation based on the taxable generated profits of the said company of each corporate year.[2] This chapter will reveal further the need for increased surveillance by the Federal Board of Internal Revenue and the Board of Internal Revenue of various states of the Federation to ensue the reorganizational procedure framework that no company is allowed to operate without registering the business with the Corporate Affairs Commission including the annual submission of its taxable receipts for assessment.

5.2 MODALITIES

The modalities for the taxation of corporate bodies in Nigeria is based on the tax computation of the statement of account of corporate bodies showing the tax adjustments to the accounting profit to arrive at the income that is chargeable to tax. The tax adjustment includes non – deductible expenses, non – taxable receipts, further deductions and capital allowances.[3]

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[1]Sodipo O. "Companies Income Tax Computation and Treatment in Financial Statements" "http//www.ppspeakprofessional.Com/Seminar4. Pdf. Accessed on 21st April, 2013.

[2]Ibid.

3http//www.placng.org/new/law/czi.pdf accessed on August 8, 2014 by 3:30pm. See also section 20, 21 CITA.Non – deductible expenses are any type of personal or business expenses that are recognized as being eligible to exemption from taxation.

5.3 SOURCEOFACCRUAL AND BASIS OF LIABILITY TO NIGERIAN TAXATION

Sections 8and 11 CITA[4] appears to be the basis of liability of company profits to taxation in Nigeria.

S.8 of the Act provides that:

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

S. 11 (1) of the Act provides that:

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

"The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria to the extent to which such profits are not attributable to any part of the operation of the company carried on outside Nigeria".

The proper logical and legal construction of S. 8 CITA is to the effect of the principles of liability for tax on income with a Nigerian "source" and "remittance" of "deemed remittance". Thus, a Nigerian company pays tax on its profits,activities of which are carried on in Nigeria or remitted to Nigeria wherever in the world the activities are carried out while a foreign company's profits is assessable to tax whether the trading and investment activities are carried out nationally or internationally ascontain-

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4.Ibid.

ed in S. 11(1) CITA, while only the profits from trading and investment activities of a foreign company and which said profits are generated nationally are assessable to tax under S. I 1(2).CITA.

It is worthy of note at this juncture that the assessment principles contained in the above SS. 11 applies only to ordinary companies while the profits of foreign shipping and Air transport companies, cable or wireless companies and insurance companies are assessable and taxed in a special manner under SS. 12, 13 and 14 CITA[5]respectively, and shall be treated later briefly in this study.

5.4 TYPES OF INCOME ASSESSABLE TO TAX

As already noted above, the assessment to income tax of companies doing business in Nigeria is governed by CITA 2004 specifically in S. 8 quoted above which provides the categories of taxable income of companies viz:

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

5.4.1 TRADE PROFITS

Trading for the purpose of this paper is assigned its ordinary meaning of buying and

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[5] Ibid.

selling or exchange of goods for money or other goods. Thus, the Nigerian courts in the case of AbbicoLTD vs. F.B.I.R. AndAderawo Timber Trading Co. vs. F.B.I.R.[6]departed from the English case of Leeming vs. Jones[7]and held that an isolated transaction for purchases and resale of property was an adventure in the nature of trade and assessable to income tax.

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

5.4.2 INVESTMENT INCOME

Investment income consists of the following

(a) Interest

(b) Rent and Premium

(c) Discount and

(d) Annuities.

5.4.3 INTEREST

Under S.(2) CITA 2004, two criteria for determining whether an interest is derivedfrom Nigeria for the purpose of its being taxed are spelt out clearly.

First an interest is deemed to be derived from Nigeria for the purpose of taxation wherein the

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[6]12(1969).
[7] (1930) L.K.B. 279,15 T.C. 333

relevant agreement evidencing a transaction in which interest is required to be paid, the liability to the payment of such interest is by a Nigerian Company based in Nigeria irrespective of whether the payment of such interest is outside Nigeria.

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

Aluminium Industries Aktien Gasellschaff vs. B.F.I.R.[8]where the Supreme Court under S.17 CITA 1961 (same as S. 8(2)CITA 2004) held that a foreign company could not be compelled to pay tax on interest simply because the relevant contractual agreement evidenced the investment in Nigeria, while the place of payment of the interest was stated to be outside Nigeria.

5.4.4 DEDUCTION OF TAX FROM INTEREST AND RENTS

S. 60 (1) CITA 2004 permits the company paying interest rents and royalty to another company or any person to whom Personal Income Tax Decree 1993[9] apply to withhold tax at the rate of 15% at the date when such payment was made which said withheld tax should be paid over to the F.B.I.Rwhere the recipient is a company or body corporate or a non resident individual member of the armed forces and to the tax authority of the state where the beneficiary is an individual resident in the state and pays tax to the state.

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

(b) The name and address of the recipient

(c) The amount of tax being accounted for

Of interest to note is that failure to withhold tax or pay-over same after deduction for 30 days attracts a fine of ₦5 of ₦5, 000.00 in addition to the amount of tax deducted.[10]

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[8](1971) N.M.L.R. 339.
[9]Now CAP 1 PITA LFN 2004.
[10]S. 64, CITA 2004.

5.4.5 ALLOWANCES, DUES AND FEES

There are other categories of company income taxed under CITA 2004. These types of income are usually paid for services in Nigeria. The scope of these forms of income are wide and affords the revenue authorities unbounded powers to subject to income tax, profits of any company accruing or derived from Nigeria. It isto be noted again that the place of such interest is not important, but what is rather important is that such payments are made in respect of services rendered in Nigeria.

5.5 INCOME EXEMPTED FROM TAXATION

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

(a) Profits of a statutory or registered society;

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

(c) Profits of any company engaged in ecclesiastical, charitable or educational activities of public character;

(d) Profits of any company formed to promote sporting activities;

(e) Profits of a trade union registered under any law relating thereto;

(f) Interest received by any company from Federal Savings Bank;

(g) Profits of any company engaged in petroleum operations in so far as such profits are taxed under the Petroleum Profits Tax Act.

(h) Profits of any company established as a purchase authority by a state to acquire commodity for export from Nigeria from the purchase and sale of that commodity.

(i) Profits of any company or corporation established by the law of a state for the purpose of fostering the economic development of that state.

(j) Profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria.

All these profits exempted must not be derived from trade or business carried on by the concerned tax beneficiaries stated above. However, there are other exemptions namely:

(1) S. 9 (1) CITA 2004 also exempts from tax as from 1st January 1971 interest on foreign loan of at least ₦150,000.00 granted by a foreign company to any person carrying on business or trade in Nigeria provided that such loans are repayable over a period of at least 10 years.

However, the interest on the loan will be taxed at half the normal company income tax rate if the loan is repayable between 5 and 10 years.

(2) S. 9(6) CITA 2004 also exempts from tax as from 1st April 1978 interest payable on any foreign loan as prescribed in table 1 in schedule 3 CITA 2004.

(3) Interest on agricultural trade or business as prescribed in Table 11 in schedule 3 CITA 2004.

It is to be noted thatS. 9(8) specifies agricultural trade or business to mean;

(a) Plantation cultivation such as rubber, oil palm, cocoa, etc.

(b) Cereal crops, tubers, fruits of all kinds, cotton, beans, etc.

(c) Animal husbandry such as poultry, piggery, etc.

(4) Interest payable on any loan granted by a bank on or after 1st April 1980 for the purpose of manufacturing goods for export is also exempted subject to presentation of a certificate issued by the Nigeria Export Promotion Council stating that the level of export specified has been achieved by the company.[11] The income of a pioneer company is also exempted from companies income tax. The relief was first granted under the pioneer industries ordinance of 1952 and currently

[11]S. 9(9) CITA 2004.

under the Industrial Development (Income Tax Relief) Act Cap. 179 L.F.N 1993.The Pioneer Companies Tax Relief Policy is to encourage people to venture into new areas for purposes of economic and industrial development with this tax incentive. A pioneer company is one engaged in manufacturing, processing, mining, servicing of agricultural activities and its products have been declared pioneer products.

5.6 CONDITIONS TO QUALIFY FOR PIONEER STATUS

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

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

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

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

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

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

5.6.1 PIONEER CERTIFICATE

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

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

5.6.2 OPERATIONS OF PIONEER COMPANIES

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

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

(b) Successive period of one year thereafter

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

The accounts are submitted to the Corporate Affairs Commission.

5.6.3 COMMENCEMENT OF BUSINESS OR TRADE BY PIONEERCOMPANIES

A new pioneer business or trade is deemed to have commenced on the day following the end of the tax relief period. During the relief period, the profits of the pioneer company isnot taxed. The profits are distributed to shareholders as tax free dividends.

5.6.4 POWERS OF F.B.I.R. IN RESPECT OF PIONEER COMPANIES

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

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

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

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

5.6.5 RESTRICTIONS OF PIONEER COMPANY

They are restricted prior to the expiration of the tax relief period from carrying on any other business other than its pioneer enterprises because if it does, profits from such other enterprises will be subject to tax.There is also a restriction on its powers to grant loans except with theconsent of the Minister of Industries.

The purpose of tax exemption is to encourage the establishment of public spirited companies like charitable organizations or mutual fund firms and **t**o grant tax incentives for stimulating the economic development of the country generally by attracting capital to Nigeria.

5.7 COMPUTATION OF TOTAL PROFITS OF A COMPANY

The basis of assessment is the income of the year preceding the year of assessment i.e. the previous year's income. Generally, income tax of companies is calculated and charged on companies income separately on each accounting year which commences from 1st January to 31st December of the same year.[12]

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

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[12]S.25(1) CITA, 2004.

5.7.1 COMMENCEMENT OF A TRADE OR BUSINESS

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

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

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

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

However, the company tax payer has the right to elect that assessments for the second and third years be adjusted to the actual profits of those years under S. 25(3)(d) CITA 2004.

5.7.2 CESSATION/TERMINATION OF TRADE OR BUSINESS

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

(a) the actual income of that year; or

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

Under the proviso to S. 25(4)CITA 2004, it is stated that where the profits of such year in which the business or trade terminates is for a period of nine months commencing from I" April to 31" December 1980, the profits shall be added up as if they were profits of 12 months.

5.7.3 PAYMENT RECEIVED AFTER THE TERMINATION OF BUSINESS OR TRADE

S. 25(4) (c) CITA provides that a company shall not be deemed to derive assessable profits from such trade or business for the year of assessment immediately following that in which cessation accrues. Thus, receipts and payments made to the company's receivers/liquidators after the date of cessation are treated as received or paid on the last day of its trade or business for the purpose of Income Tax Act.[13]

5.7.4 TRANSFER OR SALE OF BUSINESS OR TRADE

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

(a) Better organisation; and

(b) Transfer of the management to Nigeria;

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

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

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

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

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[13] S.25(7) CITA, 2004.

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

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

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

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

5.7.5 TAKEOVER, MERGER, TRANSFER OR RESTRUCTURING OF BUSINESS

Under S. 25(12)CITA, no merger, take over transfer or restructuring of the trade or business shall take place without having obtained the Board's discretion under subsection(9) of this section and clearance with respect to any tax that may be due and payable under the Capital Gain Tax Act(C.G.T, A)[14]

5.7.6 THE BASIC RULES FOR CALCULATING A COMPANY'S PROFITS

Going by the principles governing the computation of taxable income, the taxable profits of a company is usually arrived at by permitting certain expenses to se-off against the receipts of the company in an accounting year. Thus, the assessable profits of a company in an accounting year is all the receipts of the company from all sources less certain expenses set-off against company's receipts and less any set-off for losses.[15]

5.7.7 WHERE THERE IS NO ASSESSABLE PROFITS

The **F.B.I.R.** has the powers to impose tax on the turnover of the trade or business

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[14]CAP CI, LFN, 2004.

[15] SS. 20 and 27, CAP C21, LFN, 2004.

of a company on a fair and reasonable percentage where the business of the company produces either no assessable income or produces assessable income which in the Board's opinion is less than might be expected to arise from the business of the company.

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

5.7.8 DEDUCTIONS ALLOWED IN COMPUTING PROFITS OF A COMPANY

S.20 CITA allows expenses which are wholly, exclusively necessarily and reasonably incurred in the running of the affairs of companies assessable to income tax to be deducted and or set-off while computing assessment income to tax of such companies. In the words of Professor Ayua the purpose of the phrase is to "confirm deduction to direct and avoidable outlays".[16]S.20 CITA has tabulated a number of allowable expenses; namely:

1. Capital expended in the acquisition of land and buildings occupied for the purpose ofacquiring profits.
2. Rent and Premium in respect of land and buildings occupied for the purpose of acquisition .For residential accommodation in Lagos for each building and flat these are pegged at ₦28,000.00 and ₦14,000.00 per annum respectively while ₦20,000.00 and ₦5,000.00 are pegged per building and flat per annum respectively in any other part of Nigeria;
3. Expenditure incurred on the repair of premises, plants and machineries.
4. Bad and doubtful debts but were eventually recovered, will be treated as income.

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[16] The Nigerian Tax Law, p. 197.

5. Contributions to pension, provident or other retirement benefits fund, society or scheme approved by the Board under the power conferred on it by P.I.T. Decree 1993 as well as contribution under any act establishing the National Provident Fund or other retirement benefit scheme for employees throughout Nigeria;

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

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

5.7.9 DISALLOWABLE DEDUCTION FROM PROFIT

1. Capital repaid or withdrawn;

2. Any expenditure of capital nature;

3. Any sum recoverable under insurance or contracts of indemnity;

4. Taxes on income or profits chargeable to tax in Nigeria where there is no relief for double taxation in Nigeria.

5. Payment to a saving, widows and orphans, pensions, provident or other retirement benefits, funds society or scheme except as permitted by S.20(E);

6. The depreciation of any assets;

7. Any sum reserved out of profits except as permitted under S.20 or 21 CITA of 2004.

8. Any expenses for whatever nature incurred outside Nigeria for and on behalf of any company except if itwere of a nature which the Board may consider allowable.

It is to be noted however, that the lists of allowable and disallowable expenses arein exhaustive, hence the relevant statutory provisions have employed the word "include" in enumerating the list. What may therefore be added or deducted depends on the circumstances of the given item.

5.8 OTHER CATEGORIES OF DEDUCTIONS ALLOWED FROM PROFITS

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

(a) The public funds(b) the statutory bodies or institution(s), the ecclesiastical charitable, benevolent, educational and scientific institutions established in Nigeria. However, S.21 (2) CITA, specifies that donations that are only allowed out of the profits of the company are not expenditure of a capital nature. Again under S.21(3) CITA 2004, any amount so deducted must not exceed an amount which is 10 percent of the total profits of such a company in that accounting year.

5.9 LOSSES DEDUCTIBLE FROM INCOME FOR TAX PURPOSES

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

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

This relief is beneficial to the corporate tax payer where the profits of the company are on a downward trend but where the company appears to be doing well, it may exercise the option of carrying forward the relief but not exceeding the maximum period of

four years. In setting forward the losses, it is provided that is must be set off against the particular source which sustained the loss. The essence of this is to discourage the perpetuation of badly managed business concern.

S. 27(3)CITA has provided an exception to the general view that a company cannot carry forward its losses beyond four years. Thus, companies engaged in agricultural trade or business can carry forward their losses indefinitely until such losses are completely off-set. The advantages of carrying forward of loses are:

(1) To ensure that the trade or business is efficiently run or managed

(2) To ensure that the assessable income of a particular business is appreciably reduced.

5.10 CAPITAL ALLOWANCES AS DEDUCTIBLE FROM INCOME FOR TAX PURPOSES

CITA 2004 as amended provides for deduction from the companies income in the form of capital allowances in respect of capital expenditure incurred for the purpose of any company's business. Accordingly, the secondschedule to CITA 2004 governs the capital allowances to companies. The current rate of capital allowance for companies income tax purposes are:

TABLE 1

INITIAL ALLOWANCES SCHEDULE 2 PARAGRAPHS 6

1. Qualifying Building Expenditure 5%
2. Qualifying Industrial Building Expenditure 5%
3. Qualifying Mining Expenditure 20%
4. Qualifying Plant Expenditure (Excluding Furniture and Fittings)...20%
5. Qualifying Furniture and Fittings Expenditure 15%
6. Qualifying Motor Vehicle Expenditure 25%

7. Qualifying Plantation Equipment Expenditure …… 20%
8. Qualifying Ranching and Plantation Expenditure ……25%
9. Qualifying Research and Development Expenditure …… ……..25%
10. Qualifying Housing Estate Expenditure..... …….20%

TABLE 2

ANNUALALLOWANCES SCHEDULE 2 **PARAGRAPH 7**

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

The granting of capital allowances is restricted to 75% of total assessable profit in a year of assessment in respect of manufacturing companies and 66% in all other cases but this does not however apply to agro-allied industries as defined in S.9(8) CITA 2004 and S. 3 6of Finance (Miscellaneous Taxation Provisions)Decree, 1985.

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

1. Stimulate development in certain sectors of the economy such as industrial

building/structures, mining, and agriculture.

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

5.11 TAXATION OF DORMANT COMPANIES

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

Under the 1990 Budget there was introduced a pre-operation levy payable for the purpose of obtaining tax clearance certificate in the sum of ₦5,000.00 for the first year and ₦4,000.00 for every subsequent year.

The objective here is to discourage the formation of companies just for the sake of forming them without a tangible thing for them to do.

5.12 TAXATION OF DIVIDENDS

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

S.8(3)CITA defines "dividend" as meaning(a) In relation to a company not 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 shares, debentures, or securities awarded to the shareholders; and

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

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

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

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

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

S.62 CITA is to the effect that where a Nigerian Company pays dividends or is treated as having distributed any amount of profits to another Nigerian Company which includes it in its assessable profits for any years of assessment, the tax initially deducted from such dividends under this section shall be set-off against the tax payable to the recipient company for that year. By S.32(2) CITA however, where the amount to be set-off exceeds the tax payable, the excess shall be repaid by the company to the Board(F.B.I.R.).This is to prevent double taxation and undue advantage.Again, same applies

where such companies are taxed in countries in respect of such dividends.[17]

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

Where again such dividends are further redistributed by the recipient company to its shareholders, the redistributed income shall not attract tax on the dividends received from the paying company.

Again, the recipient company enjoys a relief for the tax already w[i]thheld on the dividend income if the recipient company uses it in paying its own dividends. S. 65(5) CITA enjoins the company paying over the withheld tax while paying it over to the Board to comply with the following within 14 days of declaring the dividends.

(1) State the gross amount of the dividends or other distribution

(2) State the name and address of the recipient

(3) State the accounting period in respect of the profits in respect of which the dividend or distribution is declared to be payable.

(4) State the date on which payment is done.

(5) State the amount of tax so deducted.

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

Under S.70 PITA 2004, dividends received by individual shareholders are taxed at the rate of 5% withholding tax and the deducted sum is regarded as an advanced payment of

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[17] S 34 CITA 2004.

tax or a provisional tax.

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

Now, we shall consider the other categories of companies which are taxed in a special way.

S.12 CITA provides for the taxation of the profits of companies other than Nigerian company which engages in the business of transport by sea or air and whose ship or aircraft calls at any port or airport in Nigeria.

According to the section, the profits or loss of such companies deemed to be derived from Nigeria shall be the full profits of losses arising from the carriage or passengers, mail, livestock or goods shipped or loaded into aircraft in Nigeria.

The reciprocal arrangement contained in S.26(9) of CITA 1961 whereby the taxation of these companies were exempted has been deleted from CITA 2004, thus the government can generate more revenue from this lucrative business in Nigeria.

S. 12(2) CITA 2004 provides that a company carrying on such business is in a country where the method for determining income for income tax purpose is the same as Nigeria, the F.B.I.R. may accept the certificate of that country showing the ratio of the income of the company obtained or derived from Nigeria and accordingly assess the income of that company.

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

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

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

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

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

In addition, s.12 CITA wherever applicable, the tax payable by any company for any year of assessment shall not be less than 2% of the full sum receivable in respect of passengers, mail, livestock or goods shipped or loaded into an aircraft in Nigeria.

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

The CITA 2004 recognizes two types of insurance companies.

(a) NON-LIFE INSURANCE COMPANIES

S.14(1) (a) provides for the method of determination of the taxable profits of foreign non-life insurance companies which is computed by determining the income of such companies. The income consists of revenue receipts which are as follows:

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

(a) Premiums returned to the insured.

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

S.14(1) (a) further provides that the profits of the company is computed by taking the gross premiums and interest and other income receivable in Nigeria less any premium returned to the insured and premium paid on re-insurance and deducting from the balance so arrived at a reserve for unexpired risks at the end of the company's accounting year. Actual losses in Nigeria and a fair proportion of head office expenses are also deducted. It is whatever sum outstanding that is assessable to tax.

(b) LIFE INSURANCE COMPANIES.

S.14 (1) (b) CITA regulates the taxation of Non-Nigerian Life Insurance Companies.The income of such companies assessable to tax in Nigeria is the amount of investment income of the company less management expenses including commission.Where this happens, the profits shall be the proportion of the total investment income of the company as the premiums receivable, less the agency expenses in Nigeria and a fair proportion of the head office expenses of the company.

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

S. 14(1)(c) CITA governs the taxation of Nigerian Insurance Company carrying on both life and non-life insurance business in Nigeria.The purpose of the section appears to be that the profits of a Nigerian Insurance Company respectively and the whole investment income and premiums of such company were received in Nigeria and all the expenses and other outgoings of the company were incurred in Nigeria.

Considering the main objectives of taxation generally, that is, to raise revenue for financing government expenditure as well as influencing economic activities in the

country as a whole and the fact that companies taxation forms a substantial part of source of revenue generated by the government, there is the need for the improvement inthe administration of tax of limited liability companies in Nigeria. This will achieve the main goal for imposing tax on companies that is to maximize revenue for development. The Federal Board of Inland Revenue established by section 1 CITA 2004, should ensure diligent administration of tax on Limited Liability Companies. One of such diligent measures is to ensure that each company prepares and delivers to the Board, a return of profits computed in accordance with the CITA 2004 within the period limited. Such returns must include a signed declaration that the returns contain a true and correct statement of the amount of its profits computed in respect of all sources in accordance with the CITA and that the particulars given in the return are true and correct statement of the amount of its profits computed in respect of all sources in accordance with the CITA and that the particulars given in the return are true and complete.[18] Such treatment should be aimed at fighting against tax avoidance.

In a bid to avoid tax, companies shift profits from one company to another, thereby distorting the tax liability of the relevant company. This is very common with companies

incorporated in Nigeria by expatriate companies which are not Nigerian companies under the definition of Nigeria companies in S.2 CITA 2004. Such so-called Nigerian Companies are not more than branch offices of their expatriate parent companies in so far as control and management of such companies are concerned.

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

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[18.] CITA s. 41(2).

derived from Nigeria liable to Company Income Tax.

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

There should be strict penalty for making incorrect returns as provided under S.72 CITA, 2004.

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

From the foregoing,it is clear that this chapter elucidates the administration of tax on limited liability companies in Nigeria by first of all giving a brief historical background on taxation of companies as well as giving the meaning of companies, both Nigerian and Foreign Companies for tax purpose. It further throws light on the mode of assessment of companies doing business in Nigeria with respect to income tax. The categories of income assessable have also been enumerated.

Furthermore, certain income exempted from tax has also been listed as provided in the law (CITA 2004). One of such is income from foreign loans. Also, the relief to which pioneer companies are entitled to has been explained. Such relief or tax holiday (Tax

free period for newly floated companies) goes a long way in boosting the growth of business activities of the company.

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

CHAPTER SIX

SUMMARY AND CONCLUSION

6.1 SUMMARY

This thesis has examined the legal framework for the taxation of companies income in Nigeria, dwelling on very critical and salient issues, that are integral towards ensuring sustainable revenue generation for the good governance of Nigeria. In chapter one of the research work, the importance of taxation in any given society has been highlighted. In view of the highlighted importance enumerated therein, lies the imperatives of the trio of the corporate tax laws, the enforcement agency and the enforcement procedures to have a common platform of operation to forestall loss of the much desired revenue to government. Chapter Two of this research work has taken a critical overview of the historical development of corporate tax law in Nigeria. The epochal stages of which are the period of tax consciousness, the period of fiscal measures, the period of fiscal censure, and the period of tax as instrument of social reform The current stage witnesses applicable laws like the companies Income Tax Act. C2, LFN, 2004. Petroleum Profits Tax Act (Amendment Act) 2007 the Value Added Tax Cap Vi LFN 2004 and such other related laws. Furthermore, the Chapter examines the National Tax Policy and Corporate Taxation in Nigeria and the meaning of National Tax Policy. The basic concepts of corporate tax laws and taxing jurisdictions in Nigeria is discussed in Chapter Three of this research work, wherein the rationale for corporation tax, defining a company for tax purpose, categories of companies and the distinguishing features of corporate taxation in Nigeria are looked at. In

addition, tax on profits or turnover of companies and exercise of taxing jurisdiction are adequately examined.

In Chapter Four of the work, chargeable incomes of companies with respect to law and revenue practice in the administration of the tax system in Nigeria is discussed. Chapter five of the research dwells on the modalities for the taxation of corporate bodies in Nigeria.

5.2 FINDINGS

From the foregoing summary extracted from the research work, the following findings have become inevitable and are hereby provided as follows;

a) It has been observed that there is a fundamental conflict with respect to conceptual definitions of a company for tax purpose in the relevant legal framework. For example, the definition of a company for tax purpose as provided by section 54 of CAMA, on the one hand and that provided by section 105 of the Companies Income Tax Act on the other, are in conflict with each other. While one is narrower, the other is broader.

b) Allied to the first finding above, is the existence of unregistered business enterprises operating as corporate personalities in Nigeria. The consequence of such operations has the negative effect of resulting in huge corporate revenue losses on the part of Government.

c) It has been observed that the Federal Inland Revenue Service is often times faced with the difficulty of easily identifying companies that are supposed to be liable to pay tax on the profits of their generated income. For example, situations where organizations are ab-initio registered by the Corporate Affairs Commission as non profit making companies who thereafter turn

around and venture into profit making activities will of necessity require certain measures to avoid such occurences.

d) It has further been observed that terms like “accruning in”, “brought in” or “derived from” are often misinterpreted to be based on “remittance” or “derived from” are often misinterpreted to be based on remittance” or “deemed remittance” which creates confusion in the assessment and management of foreign and local corporate taxes in Nigeria.

e) It has also been observed that the current wave of globalisation and technological revolution has had a tremendous effect on companies income tax in Nigeria. The current legal framework in Nigeria focuses on the concepts of residence, fixed base, and permanent establishment as parameters that are not in consonance with current realities and therefore require solutions that will accommodate such dynamic realities.

f) It is further observed that tax administrators lack basic administrative and enforcement skills in the assessment and collection of corporate taxes, there by engendering misapplication of the laws.

5.3 **RECOMMENDATIONS**

a) With respect to the first finding, it is recommended that an amendment be made with respect to the definition of “ Company” for tax purposes. This is aimed at resolving the conflict manifested in S.54 of the CAMA and that of S.105 of the CITA.

b) With respect to the second finding, it is recommended that the FIRS should be saddled with amongst others the responsibility of an improved and sustained surveillance of corporate bodies to ensure that no business outfit is allowed to

operate without prior payment of tax as may be required by the provisions of the Nigeria tax laws.

c) With respect to the third finding, it is recommended that there is the need for a synergy between the Corporate Affairs Commission and the Federal Inland Revenue Service towards ensuring a workable network of monitoring compliance with purposes for which such registrations are made.

d) With respect to the fourth finding, it is recommended that there should be proper interpretation of terms like "accruing from", "brought in", "derived from", "remittance" or "deemed remittance" with respect to chargeable corporate taxes in our tax laws through clear and unambiguous legislation and judicial pronouncements to avoid any confusion in the assessment and taxation of corporate bodies in Nigeria. Furthermore, the dynamics of the current realities require that our tax laws be reviewed to accommodate e-commerce beyond fixed base and permanent establishment. There is the need to meet up with the fast-changing commercial activities of companies.

e) It is recommended that an inter switch communication system should be developed between the relevant stakeholders like the Ministry of Finance, the Federal Inland Revenue Service, and the Central Bank of Nigeria to ensure prompt and timely monitoring of all international business transactions.

f) It is recommended that to efficient ensure tax administration, the FIRS must ensure proper training and regular re-training of its personnel on the management of corporate taxes.

h) Finally, with respect to enforcement of tax related issues, the judiciary occupies a very critical position and hence the need to dedicate a specialized court to handle such tax related matters in consonance with justice and fairness.

BIBLIOGRAPHY

A. TEXTBOOKS

Adesoa, S. M. (1986)*Income Tax Land and Administration in Nigeria,* University of Ife Press.

Ayua, I. A. (1996) *The Nigerian Tax Law*(Spectrum Law Publishing.

Hadari, Y. (1990) *The Role of Tax Incentives in Attracting Foreign Investments*(The International Lawyer.

Ladipo, A. (1984) *Public Administration*, LongmanPublishers, Lagos.

Ola, C. S. (1999) *Income Tax Law and Practice in Nigeria*, Heinemann Books, Ibadan.

Orewa, G.I.(1962)*Taxation in Eastern Nigeria*, Longman, Lagos.

Popoola, M. A. (1997) *Taxation as an Incentive for Foreign Investment in Nigeria,* Modus International.

Summerfield R. M. (1972) *An Introduction to Taxation* (2 Edition.)

B. JOURNALS

Kanyip, B.B. "Modern Practice Journal of Finance and Investment Law". Vol. 2 No.1998Phillips, A. 0.N. J. E. & S. S. Vol. 10 No. 11968.

IerkwaghKwaghkehe AJEDS Vol. 4 No. 22 .

Tung, S. and Cho. S. "Journal of International Accounting, Auditing and Taxation".

Yelpaala, K. (1985)"Northwestern Journal of International Law and Business."

"National Assembly Journal" (2008) Vol. 4 No. 22 National Assembly Press, Abuja.

OECD Observer, www.nassnig.org/nass...accessed on 29th April, 2012 by 9:00am.

C. MAGAZINES

"Nigerian Tax News", Vol. No. 1, 2001.

"Organisation for Economic Co-operation And Development" (OECD) No. 4, 2001.

"Organisation for Economic Co-operation And Development" (OECD) No. 5, 2002.

D. NEWSPAPERS

"Nigeria Tribune" Online 30-3-2004.

"The Vanguard" Online 15-10-1997.

"The Punch" Online 23-2-2009.

"The Daily Sun" Online 6-12-2007.

"Korea Herald" 15-11-2000.

E. SEMINAR/CONFERENCE PAPERS

A.B.Ayanwale (2007)"FDI and Economic Growth: Evidence from Nigeria" (AERCResearch Paper.

Alexander Klemm (2009) "Causes, Benefits, and Risks of Business Tax incentives"blog-imfdirect.imf.org/…/Alexander-klem… accessed on 12th April, 2012 by 9:pm.

Alvin Mosioma (2009) "The Role of Tax Incentives in Encouraging Harmful Tax Competition inthe East African Flower Industry."www.taxjustice.blocisport.comaccessed on 12th April, 2012 by 10:pm.

Dough Macdonald Green (1995) "Taxation and Environmental Policy." Being Paper presented at the Annual Meeting of the Environmental Studies Associate of Canada, 5th June.

Lent, G. E. "Tax Incentives for Investment in Developing Countries"www.jstor.org/stable/3866249 accessed on 12th April, 2012 by 11:pm.

Onosodo, G.O. (1984) "Tax Incentives as a Vehicle of Economic Self Reliance". PaperPresented at the Nigerian Institute of Advanced Legal Studies, Lagos.

Reuvens A.Y. (2001)"Globalization and Tax Competition:Implications for Developing Countries."