AN EXAMINATION OF THE IMPACT OF NIGERIAN CORPORATE TAX LAW ON INVESTMENT PROMOTION

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Ph.D/LAW/05264/2008-2009

DEPARTMENT OF COMMERCIAL LAW,
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AHMADU BELLO UNIVERSITY,
ZARIA, NIGERIA

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A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY ZARIA, IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF A DOCTOR OF PHILOSOPHY (Ph.D) IN LAW.

DEPARTMENT OF COMMERCIAL LAW.
FACULTY OF LAW,
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ZARIA, NIGERIA

JANUARY 2017

DECLARATION

I , declare that this Thesis titled **An Examination of the Impacts of Nigerian Corporate Tax Law on Investment Promotion** has been carried out by me in the Department of Commercial Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree at this or any other institution.

ShaikhUthmanYUSHA'U	………………………	……………………..
	Signature	Date

CERTIFICATION

This Thesistitled **"AN EXAMINATION OF THE IMPACT OF NIGERIAN CORPORATE TAX LAW ON INVESTMENT PROMOTION"** by ShaikhUthman YUSHA'U meets the regulations governing the award of the degree of Doctor of Philosophy- Ph.D in Law of Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

Dr. A.R. Agom Chairman, Supervisory Committee	……………… Signature	……………… Date
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DEDICATION

This Thesis is dedicated to my late parents A. S. Uthman and Hajiya Maryam. May Almighty Allah forgive them, shower His infinite mercy on them in their various graves and reward them in abundance as they brought me up and guided me to the way of learning while I was young.

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ABBREVIATIONS

AP	Assessable Profit
API	Aid to Pioneer Industries
ATM	Automated Transaction Machines
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CITA	Companies Income Tax Act
CITAA	Companies Income Tax Amend Act
CITO	Company Income Tax Ordinance
CGTA	Capital Gain Tax Act
CDG	Corporate Development Group
CTR	Commonwealth Tax Rate
DTA	Double Taxation Agreements
DTO	Direct Taxation Ordinance
ETA	Education Trust Act
FDI	Foreign Direct Investment

FDIs	Foreign Direct Investments
FIRS	Federal Inland Revenue Service
F.G	Federal Government
GACs	Government Approved Channels
GDP	Gross Domestic Product
IDITRA	Industrial Development (Income Tax Relief) Act
IDITRO	Industrial Development (Income Tax Relief) Ordinance
ISPs	Internet Service Providers
ITOs	Integrated Tax Offices
ITO	Income Tax Ordinance
IDCs	International Drilling Companies
LFN	Laws of the Federation of Nigeria
LRPL	Land Revenue Proclamation Law
LTO	Large Taxpayers Offices
MNCs	Multi- National Companies
NDTA	Nigerian Double Taxation Agreements
NITEL	Nigerian External Telecommunications Limited

NOO	Notice of Objection
NORA	Notice of Refusal to Amend
NRO	Native Revenue Ordinance
NSE	Nigerian Stock Exchange
NTP	National Tax Policy
NTR	Nigerian corporate Tax Rate
OECD	Organization of Economic Cooperation and Development
PAYE	Pay As You Earn
PITA	Personal Income Tax Act
PPTA	Petroleum Profit Tax Act
PYB	Preceding Year Bases
SMTO	Small and Medium Taxpayers Offices
SSG	Support Service Group
TAT	Tax Appeal Tribunal
TCC	Tax Clearance Certificate
TOG	Tax Operations Group
TNCs	Transnational Corporations

UK	United Kingdom
UNCITR	United Nations Commission on International Trade Law
USA	United States of America
WTO	World Trade Organization
WHT	Withholding Tax
VSAT	Very Small Aperture Terminal
VATA	Value Added Tax Act
YOA	Year Of Assessment

ABSTRACT

Companies Income Tax Act (CITA) is the main legislation that governs the taxation of corporations in Nigeria. About one trillion Naira was generated from the tax imposed by the Act in 2013. The amount was equivalent to one fifth of Nigerian federal government budget for that year. The amount could be used by government to perform its duties of providing public services and infrastructures of which investment promotion is included. Investment is very vital to the economic growth of a nation. This is because it creates jobs, alleviates poverty, reduces unemployment and brings foreign capitals. Consequently, government needs to promote investment and advertise for the available investment opportunities in the country. However, there are many factors that are considered by prospective investors before deciding on where to invest their capitals. Corporate tax and the laws governing it are part of them. The main question that comes up here is whether the Nigerian corporate tax law has impact on investment promotion. In other words, what impact does the law have on investment promotion? Is the law effective in promoting investment in Nigeria? Is there any loophole in the present corporate tax law that discourages investment in Nigeria? Is Nigerian corporate tax incentive regime adequate in curtailing anti-investment attitude in Nigeria? Is there any measure capable in curbing anti-investment in Nigeria? This research entitled "An Examination of the Impact of Nigerian Corporate Tax Law on Investment Promotion" is an answer to these questions. The main aim of this work is therefore to ascertain the impact of the Nigerian corporate tax law on investment promotion. Thus, it focuses on ascertaining the efficacy of as well as the imperfection in the present corporate tax law in the promotion of investment in Nigeria. Doctrinal method of data collection is adopted. Statutes, books, journal articles and many other documents are used. To ascertain the result of this work, structured interviews with some investors and other stakeholders are conducted. It has been found that the present corporate tax legislation is effective in promoting investment in Nigeria. Constant increase in the number of companies and the amount of investment in the country shows a positive impact of the law on investment promotion in Nigeria. However, the law is not absolutely perfect. It is plagued by several problems that have negative impact on the promotion of investment in country. These inter alia include the rate of corporate tax, multiple taxation and non-compliance with the corporate tax law. Others are penalties for violation of the law perpetrated by some dubious companies and mismanagement of fund generated from taxation. To enhance the effectiveness of the law in stimulating more investments domestically and attract more FDIs it is recommended that the rate should be reduced. Multiple taxation should be eliminated and tax avoiders and evaders should be severely punished. Finally provisions of corporate tax penal regime that encourage evasion or avoidance of tax which reduces the government revenue usable for investment promotion should be amended.

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CHAPTER ONE:

GENERAL INTRODUCTION

1.1 Background:

Taxation in general, occupies a significant position in the economy of the country. As one of the primary sources generating revenues for government, the significance of it cannot be overemphasized. For instance, the Federal Government (F.G.) generated 2.2 and 2.8 trillion Naira as tax revenue for year 2009 and 2010 respectively. In 2012 and 2013, the F.G. budget was about 4.7 and 4.92 trillion Naira respectively. In 2012 alone, the Federal Inland Revenue Service (FIRS) collected the sum of 5 trillion naira as tax. In 2013, the Federal Government generated the sum of 4.8 trillion Naira from taxation. About one trillion Naira came from corporate tax. This was equivalent to one fifth (1/5) of Nigerian Federal Government budget for that year.

Investment is equally vital to the economic growth of a nation. This is because investing in various sectors of economy provides employment opportunities, lead to a high returns and more income to the investor which subsequently increase the government revenue. Furthermore, Foreign Direct Investments (FDIs) particularly from multinational corporations bring foreign capital in the form of technical skills, entrepreneurship, technology and investment fund to boost economic activities in the country. This can raise the standard of living in Nigeria. In order to achieve this, government has to attract companies and individual investors to invest in the country. It has to ensure the availability of necessary factors that can make them to decide to invest in the country. It

has to promote investment in the country. Thus, investment promotion is necessary for the economic development of a nation

Investment promotion is a set of activities used by governments to attract investors. The activities may inter alia include advertising, providing market information, organising investment seminars and participating in trade exhibition. It also includes identifying potential investors, matching them with local partners and providing them with pre-investment implementation and post investment services. It may also include grantingincentives andscreening and negotiating with foreign investors. Simply put, investment promotion is government effort to communicate to investors about investment climate so as to convince them to invest or reinvest in the country. Consequently, investment promotion may attract companies and make them to decide to invest in the country.

However, before a company will take a decision to invest in a particular area, it makes a feasibility study of the investment project. In other words, it has to determine on how, when, where and how much capital will be spent on the available opportunities for the investment. This is what is called investment decision. It is one of the engines of long-term economic growth. In making an investment decision, there are various factors that companies take into consideration. Corporate taxation is one of them. This is the motivation for "An Examination of the Impacts of Nigerian Corporate Tax Laws on Investment Promotion."

1.2 Problems of the Research

Nigerian corporate tax is governed by the Companies Income Tax Amendment Act (CITAA). However the Act is plagued by several problems that impact on investment promotion in country. For instance, the Act also provides that there shall be levied and paid for each year of assessment in respect of the profit of every company, tax at the rate of thirty Kobo for every Naira. This rate is among the highest in the world. It may negatively affect the status of investment in Nigeria.More so, the Act provides-

Where in any year of assessment, the ascertainment of total assessable profits from all sources of a company result in a loss, or where a company's ascertained total profits results in no tax payable, or to payable which is less than the minimum tax, there shall be levied and paid by the company the minimum tax prescribed.

It is clear from the above that the CITA provides for the payment of corporate tax even if the company fails to secure any gain or profit. In other words, companies are obliged to pay tax even in the event of incurring loss in their business. This is a serious problem that may negatively impact on companies in general and their investment in particular. Furthermore, corporate multiple taxation is another problem that can also leave an unpleasant impact on investment promotion in Nigeria. For example, Section 62(1) of the CITAA provides that the company paying dividend or making distribution shall deduct there from tax at the rate prescribed under subsection (2) of this section. Thus, the Act further provides thatthe rate at which tax is to be deducted under this section shall be 10 per cent. However, section 15 of the Act imposes the payment of tax at the rate of 30 % prescribed in section 29 (1) on a dividend received and distributed by a company. The effect of this is that the company is paying tax at this instance at the rate of 40%. This is a double taxation which also impacts on investment promotion.

Additionally, Education Tax Act provides that education tax which is taxed at a rate of 2% shall be charged on the assessable profit of a company registered in Nigeria. Also National Information Technology Development Agency Act, imposed one percent of the total profits of a company in the name of information technology tax. This is a multiple taxation that may have negative impact on investment promotion

Avoiding and evasive attitude of many companies also have negative impact on investment promotion in Nigeria. From the estimated one million registered companies at the Corporate Affairs Commission (CAC), Nigeria, it is believed that an estimated 50% of these companies do not pay company tax. This is a serious problem. It makes the Government to lose billions of Naira annually from the taxation of corporate bodies. This can subsequently reduce the government revenue which is used for public services. Beside the non compliance by indigenous companies with the CITA, foreign companies are even smarter in corporate tax avoidance. To evade or avoid corporate tax is to deprive government sufficient amount of money to be used for public services. This can subsequently render it to be incapacitated to provide adequate security, good roads and other social amenities utilised by the investors. This can seriously discourage investment in the country.

Another problem which is also connected with the impact of corporate tax laws on investment promotion in Nigeria is the complexity of the Nigerian tax system. Before an incentive is granted a company has to pass through various agencies for screening and scrutiny. Lack of proper co-ordination between the various government agencies responsible for administering, approving and granting of various incentives constitutes a great problem and impediment to the investment in Nigeria. This is because the problem

makes the incentives very difficult and too expensive to be obtained. This is a problem that can serve as a hindrance for the promotion of investment in Nigeria.It is these problems that this dissertation addresses.

1.3 Research Questions

Looking at the above problems, the following questions may serve as a guide in the course of this research.

i. What impact-if any- does Nigerian corporate tax law have on investment promotion?

ii. Is Nigerian corporate tax law effective in promoting investment in Nigeria?

iii. Is there any loophole in the present corporate tax law that discourages investment in Nigeria?

iv. Is Nigerian corporate incentive tax regime adequate in curtailing anti investment in Nigeria?

v. Is there any measure to be taken which is capable of curbing anti investment promotion in Nigeria?

1.4 Aim and Objectives

The main aim of this work is thereforeto ascertain the impact of the Nigerian corporate tax law on investment promotion. It equally aims at realising the following objectives-

i. To ascertain the efficacy of the Nigerian corporate tax law in the promotion of investment in Nigeria;

ii. To ascertain the imperfections in the existing corporate tax law militating against the promotion of investment in Nigeria;

iii. To examine the adequacy of the extant corporate tax penal regime in curbing the anti-investment promotion in Nigeria; ;

iv. To update the knowledge contained in the written literatures existing in the field of this research; and

v. To make recommendations capable of addressing the challenges revealed in the study.

The above could only be achieved by making a critical analysis and appraisal of the relevant provisions, as well as an extensive discussion of the problems identified, before final suggestion could be given. The hope is that this research will be a vital means and effective tool for simplifying the understanding of the laws governing corporate taxation and its impacts on investment promotion in Nigeria.

1.4 Justification of the Research

This research will be useful and beneficial to various stakeholders. This is because taxation in general and corporate taxation in particular is part of the curricular of tertiary institutions. Different aspects of corporate taxation are taught to various categories of students. For instance, students of law learn Revenue or tax laws; Students of Economics and business also touch some aspects of corporate taxation; and Finance and Accounting

students are trained on tax accountancy; and students of public and business administration study management of corporate tax or tax administration. Consequently, this work can serve as a guide to the above categories of students at both the undergraduate and postgraduate levels.

The work also benefits the academic staff particularly the lecturers of law and taxation. This is because teachers need to constantly enhance their knowledge and update their data. This research work contains up to date information in the area of law and corporate taxation. It will therefore serve as a great assistance to them in order to impart a strong and viable knowledge on students in that area.

Since part of the duties of legal practitioners is to assess and evaluate individual cases so as to assist the court in clarifying the provision of law, the research can subsequently assist them. Sometimes tax administrators get confuse in comprehending and applying the principles and rules of taxation. They get lost when they come across some legal terms and phrases or provisos contained in corporate tax laws. This dissertation will equip them with some skills that they may need in their struggle with taxpayers that employ expert on taxation in order to avoid corporate tax that may have negative implications on revenue generation and investment promotion in the country.

The principal obligation of the courts is to interpret laws and apply them to the relevant case presented to them. Any decision made by superior courts of records is considered to have the force of law and sanction similar to the law made by the legislature. Sometimes judges are confronted with critical issues in determining conflicts assessment, collection or accounting of corporate tax. This dissertation may also render assistance to them.

It is also proper to state that Nigerian Constitution confers power on the National Assembly as well as the State House of Assembly to make laws for the peace, order and good governance of the Federation and states respectively. They can equally make laws on taxation of which corporate taxation is included. Consequently the Legislators may utilise this work to enhance their knowledge for correct understanding and proper law making on corporate taxation.

1.5 Significance of the Research

It must be observed that revenue generated from taxation in general and corporate taxation in particular, sustains the economic and social needs of the nation. In fact, revenue serves multifarious ends, some of which have political, economic or social bearings. In a nutshell, the essence of taxation is to raise revenue for government expenditure or finance government projects, control consumer demand, encourage investment and savings, fight economic depression, inflation and deflation, guarantee equitable distribution of income and wealth, control the general trend of the national economy, and ensure a proper allocation of national resources.

Like any other type of taxation, corporate taxation essentially aims at raising sufficient revenue for the Government. This is to enable the government to make the provision of services like defense and security of the nation; maintaining law and order; and providing health services and education to the people of the nation. Revenue from this tax could also be used on capital projects, creating social and economic infrastructures, which improves the life of people and enable the economy of the country to grow. In other words, corporate tax can also be used in shaping the economic growth and development

of the nation. In addition, corporate tax has become an instrument for wealth re-distribution between the wealthy and industrialized economies represented by the Multi-National Companies (MNCs), and the poor and emerging economies from where the resources are extracted. The MNCs own the technology, expertise and capital needed to develop the industries. They repatriate their earnings and often very huge profit to their wealthy countries. To tax the companies is a way of achieving the objective of wealth re-distribution, among these nations. Corporate tax can also be utilized to guide the behaviours of economic agents. The significance of this research lies in improving the regime of corporate tax system in Nigeria.

1.6 Scopeand Limitations of the Research

Geographically, the research covers only Nigeria. However, references are made to other countries where it becomes necessary in order to buttress some certain points in this research. Unlike some countries that advocate consumption as the basis of taxation, Nigeria based its tax on income. Consequently, this contains the historical background of income tax in the country. Evolution and development of the law governing the corporate taxation is also incorporated into this work.

Despite the fact that corporate tax may cover all registered and incorporated companies including the oil producing companies, nevertheless in Nigeria the taxation of any company engaged in petroleum operation is governed by a legislation different from the one governing the taxation of other companies. All registered and incorporated companies are presently taxed under the Companies Income Tax (Amendment) Act of 2007, while the companies operating in the oil downstream sub sector are taxed under the

Petroleum Profit Tax Act (PPTA), This is because of the peculiarities of the companies engaged in petroleum operations. The focus of this work is on the former.

It is pertinent to understand that apart from the 30% tax rate imposed by the CITA on the profit of a company, Capital Gain Tax Act (CGTA) and Value Added Tax (VAT) Act of 2004 also affect the corporate bodies. Under the CGTA 10% levy is imposed on disposal of company's assets and 5% is the tax rate levied by VAT Act for the goods produced by the company. Consequently, the above Acts might be touched where it is deemed necessary. Another tax law, which is equally connected to the corporate taxation in Nigeria and may be useful to the topic of this research work, is the Education Tax Act (ETA) . It imposed 2% on the assessable profit of any company registered in Nigeria. The rationale behind it is to fund research in the educational sector of the country. On this ground, the research can make contact with ETA. Personal Income Tax Act (PITA) also imposed a tax on the income of the individual employees of companies. The tax is charged based on Pay as You Earn (PAYE) on the rate specified under Schedule 6 of the PITA. Subsequently, some provisions from the PITA might be mentioned. In fact, some provisionsof the CITA could not be properly understood unless when it is read along side with some provisions of the Companies and Allied Matters Act [CAMA]. For this reason, recourse may be had to the Act . Federal Inland Revenue Service (FIRS) Establishment Act of 2007 must also be used for the purpose of this work.

It is important to note that one of the limitations in this work is the inability to cover all companies that are liable to tax in Nigeria for the purpose of obtaining information particularly empirical data. This is because of the financial constraint that does not allow to travel and investigate the reports of all companies in Nigeria or to interview any

resource person that can make a relevant contribution to the work. Further the work has also hampered by serious lack of readily available statistical data on companies and different aspect of their activities connected to the taxation and investment in Nigeria. Another limitation is the skeptical attitude of some individuals assumed to be in possession of certain facts relevant to the research. They withhold or distort the particulars on the ground that spread of such information can serve as a threat to their trade or business and office or their personality.

1.7 Methodology of the Research

As the result of the research limitations the work issolely based on doctrinaland priori research method. In other words, the research would be embedded on the visualized and conceptual method. Basically, the work relies on both the primary and secondary sources of data. For primary sources of data legal statutes such as Companies Income Tax Acts from the principal Act to the recently amended Act of 2007 would be used. Other tax laws like Capital Gain Tax Act (CGTA), Education Trust Act (ETA), Personal Income Tax Act (PITA) and Value Added Tax Act that have link with the research are utilized. Constitutions of the Federal Republic of Nigeria of 1960, 1963, 1979 and 1999 may also be cited. Companies and Allied Matters Act (CAMA) and Nigerian Investment Promotion Commission Act (NIPC) are also used in the course of this research. Nigerian and foreign cases are also cited in order to explain or support any point deemed necessary.

The secondary sources entail the usage of text books written by scholars and legal sages. This is because of their significant role in providing useful information on the topic of the

research. Articles in the journals related to the research topic are similarly utilised. Newspapers contains issues relevant to the work may also be considered. Reports and conference papers on the topic or any other topic related to it may also be of great benefit to this thesis. The work also contains information from dictionaries, encyclopedias and thesauri. Materials available in the Internet websites of the Federal Inland Revenue Service (FIRS), Corporate Affairs Commission (CAC), Nigerian Investment Promotion Commission (NIPC) and other corporate bodies relevant to this workare equally used. This is to update the relevant information contained in this work.

1.8 Literature Review

The legal framework for corporate taxation is very vital and crucial to the economy of the nation. However, materials related to this topic are scattered. Issues related to it are only discussed in some few books. Consequently data connected to the work could only be obtained from different books on taxation and other relevant sources of information.

For example Ola C.S. made a great contribution with some issues related to the topic of this research. This is because he discussed the issue of corporate taxation in Nigeria. In his book entitled 'Income Tax Law for Corporate and Unincorporated Bodies in Nigeria' , he dealt with the assessment of companies and statutory corporations as well as the issues of pioneer companies and the excess profit tax. He also treated the issues of administration of the CITA and the profits chargeable to tax in addition to those exempted from taxation. Treatment of undistributed income as distributed, treatment of trades or business sold or transferred and treatment of artificial disposition were all incorporated in the book. Furthermore, he also discussed the issues of relief, incentives

for agricultural production, capital allowance, reconstruction investment allowances, allowable deductions and disallowable expenses. Principles on which assessment could be made on turnover of a company were also considered. Additionally, the author dwelt on the issues of Shipping companies, Air Transport companies, Pioneer companies and insurance and life assurance companies. The issues of taxation of profit on Nigerian statutory corporations as well as the taxation of interest on loan advance granted by a foreign company to its subsidiary Nigerian company were all spelt out in the book. Despite the fact that the author has touched different issues on corporate tax law, nevertheless the efficacy of the law in promoting investment in Nigeria has not been considered. This is the gap that this work covers.

In the book titled 'Nigerian Income Tax and Practice,' the same author - in addition to some issues mentioned above - equally, discussed some important matters related to the topic. These include the issue of taxation of banks profit, and the process for ascertainment of assessable profits. He also dealt with the issues of objection, appeals and the revision of assessment in case of objection. Finally, he discussed the issues of offences and penalties under the Nigerian corporate tax regime. However, the book did not examine the adequacy of the corporate penal regime in curbing anti investment promotion in Nigeria. This is another blank space left by the author. This work seeks to fill the space.

Another book written by Ola which is also connected to the topic of this research is "A Guide to Accountancy and Taxation Law for Business and Government" . Therein he discussed the issue of limited liability companies and the terms used in their published accounts. Despite the fact that the author discussed some positive impacts as incentive

provided under the Nigerian corporate tax regime, nevertheless, critical look at his work, reveals that no consideration is given to the impact of corporate tax on investment promotion in Nigeria. This omission is sought to be addressed by this thesis.

Professor Ayua in his book entitled the "Nigerian Tax Laws" , devoted chapter ten to taxation of companies' profits. He therefore, discussed the categories of company for tax purpose. Under the CITA companies are divided into Nigerian and foreign ones. He equally treated the taxation of special companies. These include the shipping and Air Transport companies, cable and wireless companies and insurance companies. The author also examined taxable income under the CITA. In line with it, he further made a clarification in respect of the income liable to tax under the Act. Trading profit and investment income were all discussed. Pioneer companies relief, computation of total profits, basis of assessment, and change of accounting date, commencement, cessation and sale of a trade or business are also among the issues treated by the author. Other issues also discussed include the rule for calculating a company's profits, deduction allowed and deduction not allowed, deductible donations, waiver or refund of liability or expenses, treatment of losses, capital allowance and the issue of levy on dormant companies. In addition, he treated the taxation of dividend to provide a complete picture of Nigerian companies' income tax. Ayua made mention of different kinds of deductions and allowances provided under the CITA. Definitely some of the allowances have linkage to the promotion of investment in Nigeria. Consequently, this work seeks to fill this gap by discussing the impacts of those provisions on investment promotion.

Oni, I.O. is also among the authors that have written a book on taxation of companies. In his book titled "Nigerian Companies Income Tax: Law and Practice," he dwelt on several

matters on corporate taxation. These inter alia include-administration of companies income tax, tax incentives and relief, tax assessment, appeal procedure, offences and penalties and related taxes and levies to companies income tax. However, the book did not discuss the issue of the impact of corporate tax administration and incentives on investment promotion. This is the gap that this thesis tries to cover.

ICAN, also prepared –on line- a significant material that treated several issues on taxation. These inter alia included- the nature of companies income tax, ascrtainment of assessable and total profit capital allowances, coputation of companies incometaxation of special companies and returns, assessment and collection procedures. The material did not pay any attention to the issue of the impact of the tax law provided for the above issues on investment promotion. This is basis of this work.

Another material which is also relevant to the topic of this research is the text book on Revenue Law written by Andrian Shipwright and Elizabeth Keeling. In the book, the authors lucidly explained the issue of companies and United Kingdom (UK) tax. It is apparent that the authors discussed the issue of corporate taxation in the United Kingdom alone. They didn't touch anything on Nigerian corporate taxation let alone its impacts on investment promotion.

Professor Bucke contribution is very useful. In his book entitled "Federal Income Taxation of Corporations and Stockholders" he discussed the issue of corporate double tax. He therein stated some negative implications of it. He further treats the issue of corporation as taxable entity and the issue of incorporation. Other issues treated by him are non-liquidating distributions, redemptions, stock dividends,complete liquidations,

collapsible corporations, taxable acquisitions, reorganizations, corporate divisions, carryover of corporate attributes and integration. Despite the significant contribution to the taxation of corporations, nevertheless he did not extensively discuss the impacts and implications of those tax laws on investment promotion. Furthermore, the book was written based on the provision of the United States Internal Revenue Code. It is therefore devoid of making any reference to the impacts of Nigerian corporate tax laws on investment promotion.

Dicker is another author that dealt with some issues of corporate taxation. In his book entitled "Taxation of UK Corporate investment in the United States of America (USA)", he discussed the issues of US taxation of profit, UK general principles and form of operation. Other issues explained by the author include the structuring and financing, acquisitions, intra group transactions, reorganisations and disposals. Although the book is a significant step in understanding some issues on corporate taxation, however it contains nothing in relation to the Nigerian corporate tax law let alone its impacts on investment promotion in Nigeria. This is because the book is foreign and was not written for the purpose of exploring the impacts of Nigerian corporate tax laws on investment promotion.

Aremu, discussed some conceptual issues in Foreign Direct Investment (FDI) and Transnational Corporations (TNC). He equally explicated the issue of policy objectives and performance of FDI in Nigeria. Finally the basis for negotiating FDI with TNCs and the issues and processes in negotiation were also expounded. It is obvious that the work is not on the impacts of Nigerian corporate tax law even though that it contains the issues

of FDI in Nigeria. More so, it is not general on investment in Nigeria. It is only limited to the FDI. These issues are addressed in this work.

Adesola's book entitled "Income Tax Law and Administration in Nigeria" discussed various issues related to the administration of tax in Nigeria of which corporate tax management is included. Thus the book contains the issue of returns as well as tax assessment and recovery. Other issues included in the book are: Ascertainment of income or profit from trade; Ascertainment of assessable income and profits; Ascertainment of total and chargeable income; Capital allowances and treatment of losses. This research attempts to address the problems affecting the promotion of investment as the result of the laws governing the administration of corporate taxation in Nigeria.

Jugu is another scholar that made a significant contribution in this field. In his book entitled "Principle of Taxation" he made mention of many issues related to the topic of this research. Taxation of Banks and insurance companies are inter alia, discussed by the author. Issues of construction companies, shipping companies and airline companies were specifically treated. The issue of double taxation relief was equally considered. However the impacts of the above corporate tax provisions on investment promotion has not been addressed. This is what this work tries to do.

Auru, O.H. , wrote a book entitled "Principles and Practice of Taxation". The book discussed some issues related to corporate taxation. For instance, the issue of company income tax, the position of a company, registration of a company, income chargeable to tax, profit exempted from company income tax and determination of profit are all

discussed in the book. However, neither the impact of provisions of corporate tax on investment promotion nor imperfection of the law militating against the promotion of investment in Nigeria is discussed in the book. This is part of what this work examines.

Professor Abdurrazaq, also authored a book useful to topic of this research. The book entitled Nigerian Revenue Law is one of the recent literatures that discussed the issue of taxation of companies and corporate bodies in Nigeria. In the book, the author concedes to the fact that the work is not comprehensive enough. It only discussed the fundamental principles of revenue law needed by the tax law practitioners. The book did not identify the impact of those principles on investment promotion in Nigeria. This is what this research proposes to do.

The same author made another contribution useful to this work. In his journal article entitled 'Legal Mechanism for Corporate Tax Relief" he brushed on different issues connected to this work. This inter alia, include- taxation of companies and its administration, categories of companies and the rate of tax, taxation of dividends received by companies and profits exempted from income tax. Others are capital allowance, pioneer status, double taxation relief, compliance issues and tax planning, avoidance and evasion. Despite the fact that the author has discussed some corporate tax incentives, nevertheless, their impact on investment promotion has not been treated. This work intends to fill this gap.

Ojo, S. also made a contribution in relation to the topic of this research. In his book entitled "Fundamental Principles of Nigerian Taxation" he discussed the issuespioneer

legislation. The book did not touch the issue of the impact of the provisions of those tax legislations on investment promotion.

Soyode, and Kajola also made a contribution to the topic of this work. In their book entitled "Taxation Principles and Practice in Nigeria" they discussed the issue of tax administration under which they made a vivid explanation on relevant tax authorities. Therefore they discussed about the Federal Board of Inland Revenue(FBIR), Federal Inlad Revenue Service (FIRS), State Board of Internal Revenue (SBIR), Local Government Revenue Committee (LGRC) and Joint Tax Board (JTB). They also elucidate on different types of assessment and collection of taxes. They also discussed on companies income tax and pioneer companies status. The issue of double taxation relief was also discussed in the book. However critical look at the book reveals that the authors did not point out the impact of the above issues on investment promotion

Ariwodola, J.A. discussed several issues related to taxation. Nigerian tax system is among the main issues treated in his book entitled "Personal Taxation in Nigeria". Furthermore, issues of withholding tax, capital allowances, assessment, appeal and backduty, clearance certificate and double taxation relief are all discussed. However, the book is on personal income taxation. Therefore, it is devoid of discussing issuesof corporate taxation let alone their impact on investment promotion in Nigeria.

Orojo,O. wrote a book connected to the topic of this research. In his book entitled "Company Income Tax in Nigeria" he discussed various issues on corporate taxation. However, the issue of the impact of corporate tax law has not been given proper attention. Additionally, his work was based on the Companies Income Tax Act, 1961.

The Act was amended and consolidated in 1990. The outcome of the work is no longer current. Furthermore, corporate tax laws in Nigeria have undergone several amendment and reforms. The recent one is that of 2007. This work is based on current provisions of corporate tax laws in Nigeria.

Kanyip, B.B. is another scholar that made a contribution to the of knowledge on the issue of taxation. In his article entitled "Taxation Issues in Foreign Investment", he discussed some important issues related to the topic of this research. These inter alia include- tax incentive regime, classical method of taxing companies and its implications for business, and investor friendly judicial disposition. However taxation is a very vast field. Issues related to it are infinite and inexhaustible. The author did not dwell on issue of the impact of Nigerian corporate tax law on investment promotion. This is the gap that this work fills in.

Abata M.A. wrote an article which may be useful to this research work. In his journal article entitled the "Impact of Tax Revenue on Nigerian Economy" he discussed the issues of tax avoidance, tax evasion and tax administration. He also made mention of the contribution made by corporate tax revenue from 2002 - 2007 to national Gross Domestic Product (GDP). In 2002 the contribution was 5.1%, 4.5% in 2003, 3.3% in 2004,2.9% in 2005, 3.4% in 2006 and 4.8% in 2007. He attributed the decline in percentage of revenue contribution to the problems of tax evasion / avoidance in which corporate bodies are part of the perpetrators. Corruption and poor tax administration are also part of the cause. In spite of the importance of the article however there is nostatement on the impacts of the revenue generated from corporate tax and the law governing it on investment promotion.

Bakre, M.O. also discussed important issues connected to the topic of this research. In his article entitled "Tax Avoidance, Capital Flight and Poverty in Nigeria", he analyzed various means employed by multinational corporations in avoiding or evading the payment of tax. However he did not dwell on the impact of the law governing the taxation of those companies on investment promotion.

The main report of the study group on Nigerian tax system dwelt on several issues connected to the topic of the field of this work. The report was published by the FIRS and entitled "Nigerian Tax Reform in 2003 and beyond". It contained reports and recommendation of the Study Group on various issues of taxation. Tax incentives and disincentive as well as companies income tax issues are among the issues discussed. Specifically, the Report did not ascertain whether the present Nigerian corporate tax incentive regime has negative or positive impact on investment promotion.

The Education Committee of the Chartered Institute of Taxation of Nigeria (CITN), has also compiled and published a series of seminar papers presented at different occasions and programs organised by the CITN. In its 2009 series, the committee published papers of different topics connected to this work. This inter alia includes- The Implication of Multiple Taxation on the Viability of business; Tax Incentives as a Tool for Tax Compliance; tax Reform in Nigeria and Effective Tax Planning Strategies. A perusal at the papers shows that there is no any topic on the impact of Nigerian corporate tax law on investment promotion.

Babatunde and Shakirat also made a contribution with what is related to the topic of this research. In their journal article, the wrote on impact of tax incentives on Foreign Direct

Investment (FDI) in oil and gas in Nigeria. They consequently discussed the determinant factors of FDIs and analyses whether or not some selected factors such tax incentives, availability of natural resources, macro-economic stability, market size, openness trade, infrastructural development and political risk have impact on FDI in oil and gas sector. Their finding was that only tax incentives and availability of natural resources that have significant impacts on FDI. Therefore they recommended that a particular attention should be given to institute new regulations to encourage the types of FDI needed to support the economic objectives of vision 20-20 such as provision of infrastructure especially electricity. This is to improve economic growth and the inflow of FDI in Nigeria. However this article left a vacuum in bringing out whether the current corporate incentive regime has positive or negative bearing on investment promotion in Nigeria. Furthermore, no criteria was set up for determining the impact of the tax provision on investment. This is what the research seeks to discourse. .

Ali, H.L .also has an article which is also related to this work. The article entitled " A Case For The Reform And Harmonization of Companies Income Tax Legislation in Nigeria" discussed the issue of legislative authority on tax in Nigeria and pointed out that the power to impose or legislate on tax matters in Nigeria is vested in the National Assembly. He further looked at salient rules of good tax system and legislation, the exempt income from company taxation, companies tax rate, deductible expenses and the taxation of foreign companies. He equally treated the issue of tax administration under the CITA, the treatment of dividend paid by a Nigerian company and the basis of computation of profits of a company on cessation of trade or business. But the article did

not address the whether those legislations have positive or negative impact on promotion of investment in Nigeria. The work will therefore look at this point.

Adeoye, O.J. wrote on significance of taxation in a nation. In the article , he discussed the meaning of the term tax , difference between tax and charge or fee and brief history of taxation in Nigeria. He also touched the issue of principles of good tax system. In spite of the significance of the article, the issue of the impact of corporate tax law has not been discussed.

Atilola, B. also wrote on the Reflection on the constitutionality of the Newly Constituted Tax Appeal Tribunal (TAT). In the work, he dealt with the composition , powers, jurisdiction and constitutionality of the TAT. He explained the issue of TAT and their jurisdiction over the Taxes and Levies (Approved List for Collection)Act. TAT is very important for dispute resolution particularly those related to corporate tax. However the author did not show the relationship between the TAT and investment promotion in the country.

Somorin, O.A. wrote something connected to the topic of this dissertation. In her article entitled the Origin and status of Revenue Boards in Nigeria, she extensively discussed the revenue authorities as well as the introduction of income tax in Nigeria. The article did not address the issue of the impact of corporate tax administration on investment promotion in Nigeria. Thus, this thesis is meant to inter alia address such issues.

Ochei, B,B, also wrote on Tax Administration in Retrospect. In his work he examined the landmark changes in Nigerian taxation since the colonial times. He prescribed the enthronement and observance of the provision of fiscal statutes in tax collection. The

author did not look at the impact of the provisions ofNigerian corporate tax administration on promotion of investment. Additionally, no any criteria was set to determine the impact of corporate tax administration in Nigeria. This is also considered in this thesis.

Kwaghkehe, I. and Samuel, S.T. wrote another article which is also connected to the topic of this research. The title of their article is "Global Perspectives in Tax Evasion and Avoidance: The Legal Quagmire in Nigeria". The article contained a brief discuss on the concept of corporate tax avoidance / evasion, mechanism for corporate tax avoidance/evasion, the place of tax havens in promoting tax avoidance / evasion in Nigeria and the means for curbing tax voidance/evasion in Nigeria. But the article did not dwell on the adequacy of the corporate tax penal regime in curbing anti investment promotion in Nigeria. This aspect is equally discussed in this work.

Generally, the above examination can lead to a conclusion that the issue of the impacts of Nigerian corporate tax laws on investment promotion have not been given adequate attention. Legal luminaries that have written on corporate tax law did not specifically or extensively discuss the issue. In other words, even if it happened that those legal experts highlighted an effect or impact of a specific tax legislation connected to investment promotion, they only discuss it at a peripheral level. Furthermore, the books did not pinpoint some loopholes existing in the provisions governing the corporate taxation. In addition to this, some of the books such as "Income Tax Law for Corporate and Unincorporated Bodies in Nigeria, A Guide to Accountancy and Taxation Law for Business and Government and Income Tax Law and Administration in Nigeria", were written in 80s and 90s. They are consequently devoid of discussing many contemporary

issues related to corporate taxation particularly the impact of the law governing the taxation of companies and corporations on investment promotion in Nigeria. Consequently, there is a need for a research specifically on this topic particularly when importance and significance of the impacts of' corporate tax laws in relation to the revenue generation is considered.

1.9 Organizational Layout

This work entitled "An Examination of the Impacts of Nigerian Corporate Tax Laws on Investment Promotion" is an attempt to explore the legal effects of corporate taxation on investment promotion in Nigeria. For the purpose of attaining the aims of the research, the work is segmented into six chapters under some headlines related to the research topic. To simplify the work, each chapter is divided into sub-headings.

Chapter one of this works begins with general introduction to the research work. It begins by a brief introduction of the laws governing the corporate tax in Nigeria. Importance of taxation in general and corporate taxation in particular is succinctly highlighted. It equally scans some problems connected to the impacts of Nigerian corporate tax laws on investment promotion. In addition, aims and objectives of the research as well as doctrinal or priori research method employed in the work are clearly spelled out. Moreover, geographical, historical and legal scopes of the research are all enclosed in the chapter. In order to justify the cause for this undertaking, significance of the research and those whom the research is going to benefit are also included. Besides, the chapter also states the significance of the research specifically the corporate tax laws

and its impacts on investment promotion in Nigeria. The chapter ends with the organisational layout that briefly states the content of the work in general.

The second chapter is on conceptual clarification and background context for corporate tax law on investment promotion. It is tagged as "Analysis of the Concept, Development and Legal Foundation for Corporate Taxation in Nigeria". It thereforeanalyses some basic concept, legal foundation and development for corporate taxation in Nigeria. It also discusses the issue of corporate bodies liable to pay the tax. These include the Nigerian and foreign companies, special companies and representatives of the companies liable to pay the tax. Furthermore corporate income chargeable to tax is also explored. Subsequently trading profits and investment receipt are thoroughly discussed. Other issues treated under the chapter include the rate of corporate tax and corporate multiple taxation.

Chapter three handles the issue of the impact of corporate tax administration. It explicates the historical background of the administration of corporate tax in Nigeria. The structure and powers of the Federal Inland Revenue Service in relation to corporate tax is explored. Functions of the FIRS in relation to corporate taxation are equally discussed. These inter alia include the assessment and collection of corporate tax.

Chapter four analyses the impact of corporate tax incentives. This is with the aim of exploring their impacts on investment promotion. It therefore elucidates the concept of corporate tax incentives and its effects in attracting both the local and foreign direct investment.

Chapter five critically discussed the provisions of the CITA on offences and penalties in relation to investment promotion in Nigeria. It therefore gives a clear explanation of various offences and penalties under the CITA as it affects the investment promotion in Nigeria.

Finally, chapter six concludes the thesis. It therefore recapitulates the findings of the work and proposes some workable solutions to the problems discovered in the course of the research.

CHAPTER TWO

ANALYSIS OF THE CONCEPT, DEVELOPMENT AND LEGAL FOUDATION OF CORPORATE TAXATION IN NIGERIA

2.1 Introduction

The Companies Income Tax (Amendment) Act [CITAA] provides that "subject to the provision of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection 40 of this Act, upon the profit of any company accruing in, derived from, brought into, or received in Nigeria."

In accordance with the above provision, profits of any incorporated company are subject to tax under the CITAA. It is the main statute that regulates the taxation of companies in Nigeria. This is irrespective of where they are incorporated. Be it in Nigeria or any other place outside the country. However, the CITAA is plagued by several problems that impact on investment promotion. For instance, the company's profits chargeable to tax, the corporate tax rates as well as the incentives provided by the Act can determine the amount of money that can be earned, spent or even saved by the companies. An investor can have more money if some of the profits earned are legally exempted from tax. Similarly the rate of corporate tax can easily reduce the amount of money that could be left to the companies or investors if it is too high. This can affect investment decision of a company. Therefore, an understanding of the companies' income tax laws is necessary to identify the tax issues related to promotion of investment. This chapter is set up to-

i. Examine the legal framework on which corporate tax system is based; and

ii Identify its impact on investment promotion in Nigeria.

It therefore examines the meaning and historical background of tax in general and corporate taxation in particular. It further x-rays the corporate bodies liable to pay the tax under the legislation governing the corporate taxation in Nigeria. Incomes chargeable to tax as well as the amount chargeable under the corporate tax laws are also explored.

2.2 Meaning and Historical Background of Corporate Taxation

Neither the CITAA nor any Nigerian tax law provides for the definition of the term 'tax' or the phrase 'corporate tax'. For this, different scholars and legal sages made various attempt to define the terms.The famous definition of the term tax is the one enunciated in

an Australian case of Mathews v. Chicory Marketing Board where it was held that "a tax is a compulsory exaction of money by a public authority for public purposes, enforceable by law, and is not a payment for services rendered." In the same Australian case the word has also been identified as "raising money for the purpose of government by means of contributions from individual persons." Furthermore, Justice Roberts, in an American case of United State v. Butler described it as an exaction for the support of government." Again in R v. Berger the Court held that "the primary meaning of taxation is raising money for the purposes of government by means of contributions from individual persons." From the economic dimension the word could be defined as "any leakage from the circular flow of income; into the public sector, excepting loan transactions and direct payments for publicly produced goods and services up to the cost of producing those goods and services". In the Oxford Advance Learner's Dictionary , the term is defined to mean "the money you have to pay to the government so that it can pay for public services." The Encarta Encyclopedia defines tax as an amount of money levied by a government on its citizens and used to run the government, the country, a state, a county (district, region or province), or a municipality. Additionally, the Chambers Encyclopedia, highlighted that it is also used to show "a compulsory levy to finance goods and services, provided by a governing body, for the collective satisfaction of wants." Asada equally provides another definition as 'the legal demand, made by any level of government, of the taxable citizens of that country, to pay a compulsory levy or money on income, goods or services into the coffers (i.e. treasury or bank account) of the government, for the benefits of the citizens of that country.' Adeboyega is another scholar that made a contribution in relation to the definition of tax. According to him, tax

is referred to as “a compulsory levy, imposed by the government through its agents, on the income, capital and consumption of its subjects, so as to increase the resources available to the government and enhance effective provision of social amenities to the subjects.”

The above definitions are quite helpful. However, they only point out that no universal definition of the word ‘tax’ is possible. It could only be understood that the basic attribute of a tax is that it is a financial imposition. It is not an optional payment or voluntary donation to the government. It is rather, a kind of an enforced contribution exacted in accordance with the legislative authority for the purposes of achieving some social end. More so, governments are saddled with responsibilities of providing social amenities. Governance and its machineries are equally cost intensive. Thus, as a general rule, tax is the source that is best exploited by government. It is imposed on individuals and companies to finance services that the State is obligated to provide and to meet its goals. In the same vein, corporate tax is defined as a tax levied on corporation profits. This is because; corporations are legal entities separate from their owners. They may be taxed as if they are persons. A corporate tax is therefore the equivalent of the income tax for natural persons. Other scholars also opined that corporate tax refers to a tax levied by various jurisdictions, on the profits made by companies or associations. It is a tax on the value of the corporation’s profits. It is therefore a tax that must be paid by a corporation based on the amount of profit generated where the company is located. To sum up the above, corporate tax could be simply defined as a tax imposed upon the profits of corporations to enable government to obtain the required revenue to finance its activities.

It is appropriate to state that corporate tax is one of the taxes that exist in Nigerian tax system. For a tax system to be successful there is a need to have a good tax policy. It is on this premise that four principles were set by Adam Smith. According to him, to maintain a good tax policy, there is a need to put the principles of equality, certainty, convenience of payment, and economy in collection into consideration.

The National Tax Policy (NTP) provides for the fundamental features on which the Nigerian tax system must be based. Accordingly, any tax that substantially violates these fundamental features should not be part of the tax system of Nigeria. Simplicity is at the forefront of the characteristics. This means that for a tax system to be functional and effective it must be simple, clear and understandable by both the tax payers and the tax administrators. The taxpayers must also trust it. On this ground, one of the factors that may attract investors is to simplify the understanding of CITAA and its administration. All stakeholders must understand the legal basis of the imposition of corporate tax. This can only be achieved if the investors are properly educated on the application of the tax laws. Low compliance cost is another characteristic for effective tax system. The economic costs of time required, and the expense which a company may incur during the procedures for compliance should therefore be kept at all times to the absolute minimum. Furthermore, companies should be regarded as clients with the right to be treated respectfully.Low cost of administration is another important principle laid down by the NTP for identifying a good tax system. This means that the cost of administration must be relatively low when compared to the benefits derived from its imposition.

In Nigeria, the history of taxation of which corporate tax is an integral part, date back to the era of the Sahara trade and the introduction of Islamic religion in Nigeria between

800 A.D and 1400 AD. The rulers in the Northern Nigeria were known as "Safawa" Kings, who grew rich due to gifts and levies paid to them by their subordinates as taxes on cattle and agricultural crops. The Islamic religion later introduced various forms of religious taxes namely: Zakat, Khumusi, Kharaji, KudinKasa, ShukkaShukka, Jangalia and etc. Zakat was religiously imposed for educational and charitable purposes. In the southern part of the country, there were kingdoms established and headed by Obas who had legislative, executive and judiciary powers and all the paraphernalia and belongings of modern government even though at a rudimentary stage. Taxes such as capitation, sale excise and customs were well established and imposed on the subjects. It was the family heads that used to receive the capitation from the members of the family and take it to Baale (ward head) that would convey it to the paramount ruler after retaining his share. This was paid for maintenance of royalty and government. On market days, every trader had to pay a tax in as much as he traded within the jurisdiction calledOwo-onibode (i.e. Border fees reminiscent of custom duty). In Egba and Ijebu lands payment of death duties was rampant. In addition, every person was expected to earmark and reserve some days for community work such as clearing of roads, building, of community houses, markets or halls and construction of bridges. Moreover there were some special levies for special or unexpected occasions. In the stateless of society of Ibo, Tiv, and Igbira areas, there existed little or no form of organized taxation It is clear from this that during the pre colonial era, taxation was based either on religion or tradition and ethnicity.

At the beginning of 20th century British occupied the whole territory of what is now known as Nigeria. Consequently they established themselves as the new rulers of the

country. Nevertheless they were faced with the problem of financing their colonial government. Some people particularly in the south, resisted the introduction of any form of taxation and super imposition of English system over them. This is because they felt that the tax was meant for the support of an alien authority. Subsequently the tax system of the region was mainly indirect.

In 1904 Lord Luggard introduced income tax in the northern protectorate of Nigeria. It was statutorily imposed through the Land Revenue Proclamation Law (LRPL) of 1904. This was regarded as the first attempt made by the colonial government to provide comprehensive law of taxation in the northern part of the country. Luggard effected some changes in the then community tax which was in operation in northern part of the nation. In 1914 the two protectorates, north and south were amalgamated. The changes brought about by Luggard culminated in Native Revenue Ordinance of 1917. The aim of this legislation was to cover the western region of the country. In 1918, an amending tax ordinance was passed. The ordinance extended the provisions of the 1917 ordinance to the entire areas of southern Nigeria. Another tax ordinance was enacted in 1927. It was known as the Tax (Colony) Ordinance . It was the first revenue law that imposed personal income tax in the eastern region. This sparked off disturbances that culminated in the Aba Riot of 1929 that resulted in the loss of lives and destruction of properties. It was discovered that the riot was ignited as the result of lack of adequate information.

In Nigeria, taxation of incorporated companies started in 1939. The Company Income Tax Ordinance was regarded the first legislation enacted for in respect of corporate taxation in Nigeria. It introduced the word “person” to the tax legislation for the first time. In 1940, the earlier Native Ordinances of 1917, 1918, 1927 and 1939 were

incorporated into the Direct Taxation Ordinance. From this, it could be seen that the earlier tax laws did not separate individuals from companies. Therefore taxable persons were taxed as persons and references were made to companies or individuals where the statutes so provided.

In 1943, a draft of Income Tax Bill was then approved and enacted into law as Income Tax Ordinance. The Ordinance was enacted to repeal the Direct Taxation Ordinance of 1940. It concerned more with obtaining an additional revenue. Consequently the rate of corporate tax was doubled to 25% in 1949 further changes were also introduced in the Nigerian corporate tax. This culminated in raising the corporate tax rate to 45% and granting tax relief to small companies.In 1952, further tax incentives were granted to companies in the form of Aid Pioneer Industries (API). In the same year capital allowance was introduced as a new system. In 1958, the aid to pioneer industries was replaced by more generous tax incentive under the Industrial Development (Income Tax Relief) Ordinance of 1958. The Ordinance clearly aims at stimulating industries in Nigeria. The Companies Income Tax Act was for the first time enacted after the Nigerian independence in 1961. Subsequent legislations effected some amendments to the CITA of 1961. In spite of this, the Act remained the sole law on corporate taxation until the CITA of 1979 was enacted. In 1990 all the various amendments on companies' income tax were consolidated and redesignated as Companies Income Tax Act. Finance (Miscellaneous Taxation Provisions) Decrees (FMTPD) spontaneously amended this. In 2004, all the CITA Cap.C21, Laws of Federation of Nigeria came to exist. This is followed by an amendment Act known as Companies Income Tax Amendment Act (CITAA). Consequently is the present applicable law for the taxation of companies'

income in Nigeria. It should be observed however, that the Act amended the provisions of the CITA Cap.60, LFN, 1990 instead of the CITA Cap. C21, LFN, 2004 that was in operation during the amendment. Thus, the Act amended a non-existing law.

2.3 Companies Liable to Pay Tax

It is provided under the CITA that the tax shall be payable upon the profit of any company, accruing in, derived from, brought into or received in Nigeria. Accordingly, the persons liable to pay corporate tax are those corporate bodies or companies as defined by the CITA. Thus, the Act defines the term "company" for the purpose of tax as "any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere.

In Nigeria, companies are statutorily created and incorporated under the Companies and Allied Matters Act (CAMA). Consequently, any company formed under the Act is taxable since it is established in Nigeria. In the same vein, any company established under any law in force anywhere (elsewhere) outside Nigeria is equally taxable under the CITA. This follows thatunder the CITA companies are mainly categorized into two, viz. Nigerian and foreign companies.

Nigerian company is any company registered and incorporated under the CAMA or any enactment replaced by the Act. In other words, any company incorporated in Nigeria is a Nigerian company even if it's all shareholders and management staff resides outside the country. A company or corporation established by or under any law in force in Nigeria is resident in Nigeria, but it is not necessarily a Nigerian company for tax purpose. What qualifies a company to be a Nigerian company is its incorporation under the CAMA. A

Nigerian company is not necessarily a company whose equity share capital is held entirely by Nigerian nationals. The company may have non-Nigerians as its major shareholders. In the same vein, the Act also provides for the definition of foreign company for tax purpose as "any company or corporation (other than corporation sole) established by or under any law in force in any territory or country outside Nigeria." Accordingly, a foreign company is a non-resident company. So long as its incorporation is outside the country, it is categorized under the foreign companies. The issue of where it carries on its business activities does not arise. Subsequently, any company established in Ghana, Sudan, South Africa, Egypt, Saudi Arabia, Iran, Russia, China, Canada, United Kingdom, United States of America or any country within the United Nations (UN) falls within the definition of foreign company under the CITAA. However, the definition and categorization of companies for tax purpose under the CITA should be read together in conjunction with the provision of the CAMA in respect of the company. Thus the CAMA defines the term 'company' to mean "a company formed and registered under this Act (CAMA) or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act."

What could be deduced from the above is that all companies established and registered under the CAMA are Nigerian companies. This means that they are taxable under the CITA. In other words, only Nigerian companies are recognized under the CAMA. The existence of companies established under any law in force elsewhere in any territory or country outside Nigeria for the sole purpose of carrying out business in Nigeria is not recognized under the CAMA. The existence and proliferation of foreign companies for the sole purpose of carrying out business in Nigeria is prohibited by the CAMA. Foreign

companies must be assimilated as Nigerian corporation before they will be recognized under the Act. In other words, CAMA does not recognize the existence of any foreign company carrying out a business in Nigeria even though that it shares with the CITAA the same definition given to the words 'foreign company'. The only differences between the two Acts is that while the CITA defines the words for tax purpose the CAMA defines it only for the sole purpose of making the companies to comply with the mandatory process for incorporation. Carrying out a business in Nigeria by a foreign company is not allowed under the CAMA unless if it is within the following categories statutorily exempted-

a. Foreign companies (other than those specified in paragraph d) invited to Nigeria by or with the approval of the Federal Military Government to execute any specified individual project;

b. Foreign companies which are in Nigeria for the execution of specific individual loan project on behalf of a donor country or international organization;

c. Foreign government-owned companies engaged solely in export promotion activities; and

d. Engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Military Government.

It should be noted that holding some or all shares in a Nigerian company by a foreign company does not make it a Nigerian company. But the majority shareholders of a non-

resident company may be Nigerian citizens who, individually may be or may not be resident in Nigeria. What determines the status of a company is the law of the country under which it is incorporated or registered. A foreign company can only carry on business activities in Nigeria through a permanent establishment. But if a Nigerian subsidiary of a non-resident company stands as an independent agent it cannot necessarily serve as a permanent establishment of the foreign company. It can only be a permanent establishment if the foreign company carries on its business activities in Nigeria through it. It will subsequently be held accountable in respect of the tax liability of its parent company for the business activities carried on through it. In other words, a subsidiary company is liable to pay tax in respect of its own business activities as well as the commercial activities carried on by a foreign company through it.A foreign company which undertakes a project in Nigeria under an agreement with a Nigerian company or government agency will only be liable to tax in respect to that project. This is irrespective of the method employed in the executing of the project, since it can be done through foreign personnel or direct labour within the country. In the case of Offshore International S.A. v. FBIR the company is a foreign company incorporated in Panama and has the principal office at Houston in Texas, U.S.A. It was wholly owned subsidiary company of the offshore company of Houston, Texas, U.S.A. The plaintiffs entered into entered into various contractual agreements with some Nigerian oil producing companies to carry out certain oil- well drilling and completion in Nigeria for different oil companies namely Shell B.P., Mobil Oil, and Japan Petroleum Company. Under the said agreement, substantial payments were made to plaintiffs from time to time between 1972 and 1975. The performance of the contracts was sub contracted by Offshore to its

Nigerian subsidiary, International Drilling Company (Nigeria) Limited (IDC). The equipment used by IDC for the performance of the contract were hired from offshore. The FBIR was in charge for the management and administration of companies' income tax. It was of the belief that the plaintiff was liable to tax in respect to the payments received by the company in connection with the contract. It was held that offshore has entered into contracts to drill oil wells in Nigeria and was liable to pay tax in Nigeria. The fact that offshore chose to perform part of its own side of thecontract by sub-contracting it to its own subsidiary could not remove its liability to tax in Nigeria.

Due to the nature and peculiarity of some companies at national and international level, the CITAA made special provisions for their taxation. For instance it has been provided under the Act-

Where a company other than a Nigerian company carries on the business of transport by sea or air, and any ship or aircraft owned or chartered by it calls at any port or airport in Nigeria, it's profit or loss to be deemed to be derived from Nigeria shall be the full profits or loss arising from the carriage of passengers, mail, livestock or shipped or loaded into an aircraft in Nigeria.

It is clear from the above that shipping and air Transport companies are liable to pay corporate tax from the profits derived as the result of trading or business activities carried on by them in Nigeria. They are only liable to tax in respect of the profits raised as the result of their carriage of passengers or goods in Nigeria. However, any profit arises from transshipment or transfer of passengers, mails, livestock or goods brought to Nigeria to another ship or aircraft passing via Nigeria to another destination are all

excluded from the taxable income of such foreign companies. This means that any profit gained as the result of the carriage of goods or passengers on transfer is not subject to tax. The revenue accruing to foreign shipping or airline companies as the result of transporting passengers or cargoes picked up in a country is relatively easy to identify. But identification of expenses such as fuelling and maintenance, remuneration of crew members and other administrative or financial expenses is very difficult. Consequently the CITAA provides a formula in order to ensure that this category of companies is fairly assessed to tax.

It appears to be that the aim of this provision is to generate more revenue from the department of customs and excise duties of the Nigerian seaports and airports. The government cannot properly perform its duties in providing infrastructure and public amenities like good roads and electric power supply that can attract investors unless there are enough funds which mainly come from taxation.

Foreign companies engaged in cable undertaking are also liable to corporation tax under the CITA. Thus the Act provides-

Where a company other than a Nigerian company carries on the business of transmission of messages by cable or by any form of wireless apparatus, it shall be assessable to tax as though it operated Ship or Aircraft…

The assessment of the above companies should be in the same manner on which the shipping and airline companies are assessed. The same procedure shall also be followed and the same provisions on the shipping and air transport companies shall be applied mutatis mutandis to the computation of its profits deemed to be derived from Nigeria as

though the transmission of messages to places outside passengers, mails, livestock or goods in Nigeria.

It should be noted that Nigerian External Telecommunications Limited (NITEL) which is a government company, had previously monopolized the external telecommunication sub sector. Currently there are 38 companies registered for telecommunication service in Nigeria. Prominent among them are those provide Global System for Mobile communication (GSM) services e,g. MTN, Airtel, Etisalat, Multilinks, GLO, MTEL etc.

Foreign and Nigerian insurance companies are also liable to pay tax under the CITAA. Normally, these types of companies deal with either life or non-life insurances, and hence the two types are recognized under the CITAA. Generally, life assurance companies deals with human beings and group pension. This is because human life is subject to various risks such as death or disability as the result of natural or accidental causes. Humans are also prone to diseases, the treatment of which may involve huge expenditure. Once human life is lost or a person is permanently or temporarily disabled, there is a loss of income to the household. The family is put to hardship. Sometimes survival itself is at stake for the dependants. Insurance offers security and peace of mind to the individual. The concept of insurance is that the losses of a few are made good by contribution from many. It stemmed from the need of man to find a solution for mitigation of losses. It also reflects the nature of man to find a solution collectively. In the case of a foreign life insurance company, whether proprietary or mutual, the Act provides that-

The profits on which tax may be imposed in an insurance company which is a life insurance company other than a Nigerian company which carries on business through a

permanent establishment in Nigeria, shall be the investment income less the management expenses, including commission.

It should be noted from the above provision that premiums received are not part of the income to be credited to profit and loss account. This is because, by law, the premiums belong to the policy holders and should be invested on their behalf. Besides, there is no unexpired risk. Consequently the only income of a life insurance business is therefore the investment income derived from investment of premiums paid policy holders. These are usually interests and dividends. Only the management expenses and commission paid that are deductible under the Act.

On the other hand, the non-life insurance companies deal with accident cases connected to property owned by a person. This is because it is exposed to various hazards, natural and man-made. Loss or damage to property results in either whole or partial loss in income to the person or entity and may occur at anytime. It is through insurance that losses could be mitigated. Insurance in general and non-life insurance in particular is therefore a commodity which offers protection against various contingencies or eventualities.Since this category of companies earn income and gain profits as the result of their business, they are therefore liable pay tax under the CITAA. The Act therefore provides that an insurance company other than a life insurance company or a Nigeria company, whose profit accrued in part outside Nigeria, the profits on which tax may be imposed shall be ascertained.

The income of non-life business consist of gross premium, interest and other receivable incomes such as provision of unexpired risk of the previous year brought forward,

dividends and interest. Before arriving at the net profit, expenses such as claims paid to the insured, re-insurance premiums, management expenses and provision for unexpired risk for the current year should be deducted. The net profit should be added together with depreciation that forms management expenses before deducting capital allowances to arrive at taxable income. The corporate tax rate should then be levied on the income.

It is also pertinent to state that the incorporation number of a company serves as its identification number which must be displayed by the company on all business transactions with other companies or individuals. It must also be written on every document, statement, returns, audited account and correspondence with FIRS, Board of Customs and Excise, Ministries, Government agencies and all revenue authorities. More so, a company is chargeable to corporate tax in its own name or in the name of the principal officer, attorney, business factor, agent or representative in Nigeria in like manners and like amount as such company would be chargeable. It could also be chargeable in the name of a liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manners and or like amount as such company would have been chargeable if no receiver or liquidator had been appointed.

It should be noted that categorization of companies into Nigerian and foreign under the CITA is very vital and essential in order to determine the taxable profit of a company. Under the Act, 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. In other words, the profits of a Nigerian company are subject to tax in Nigeria notwithstanding that the profits were made outside Nigeria. For instance if Zaria Investment Nigeria limited derived profit in China and Turkey as the result of trade or

business carried on by its branches, such profit should be deemed to be accrued in Nigeria. It is subsequently, subject to tax under the CITAA irrespective of whether it is brought into Nigeria or not. This means that a Nigerian company is liable to pay tax in all its profit irrespective of where it arises. Thus, liability to tax for a Nigerian company arises by reason of the legal status of the company. However even though that the worldwide profits of a Nigerian company are primarily taxable in Nigeria, nevertheless there are some provisions of the CITAA that exempt some specific profit of such companies. For instance the Act provides that there shall be exempted from the tax dividend, interest, rent or royalty derived by a company from a country outside Nigeria and brought into Nigeria through a "Government Approved Channels (GACs)". In order to avoid any confusion in respect of the this provision, the Act defines GACs to mean the CBN or any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provision) Act or any enactment replacing it. On the other hand, the profits of foreign company that are taxable under the Nigerian corporate tax law from any trade or business are those deemed to be derived from Nigeria to the extent that the profit is not attributable to any part of the operations of the company carried on outside Nigeria. Thus the profits of a foreign company are taxed to the extent that they are derived from sources within Nigeria.

It should also be noted that the liability to tax a foreign company in Nigeria is determined by whether the home country of the company has a double tax agreement with Nigeria or not. Since the company is not a Nigerian company, its profits are not deemed to accrue in Nigeria. However, the profits of the foreign company would be subject to tax in Nigeria if the profits are deemed to be derived from Nigeria. These profits would be

deemed to derive from Nigeria if they meet certain criteria. In order to identify whether a foreign company is liable to tax in respect of its profits some test have been suggested. In other words, the CITAA precisely set out a number of tests through which the profits of foreign companies would be deemed to be derived from Nigeria and so subject to tax. Thus the Act provides-

The profits of a company, other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria-

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

The first criteria to be observed is to determine whether a company has a fixed base in Nigeria or not. This is because the profits of a foreign company with a fixed base in Nigeria are subject to tax under the CITA. Thus, there is a need to have a clear understanding of the phrase 'fix base'. However there is no statutory definition for it. Consequently recourse must be sought from the interpretation of courts contained in various Nigerian and foreign cases.In the case of Shell International Petroleum v. FBIR a fixed base is taken to be the place from where a foreign company carries on business in Nigeria. There is no time threshold or limit for a place to be classified a fixed base. So, a facility used by a foreign company to carry onbusiness in Nigeria would qualify as a fixed base even if the facility was in place only for a very short time.

The business of the foreign company must be carried on from the fixed base. A facility would not qualify as a fixed base if the business carried on from it is not that of the foreign company. For example, if a dispute arises as to whether the profits of a foreign

company invited to Nigeria to execute a specified project is subject to tax, it would not help the FIRS' case to show that the facility alleged to be the foreign company's fixed base is used by a major grain importer to store his grain. It is necessary to establish that the business of the foreign company or a related Nigerian company is carried on from the facility. Furthermore, where a foreign company is awarded a contract and incorporates a Nigerian subsidiary to execute it, the subsidiary could be deemed to be the foreign company's fixed base.A fixed base does not include a facility used solely for storage or display of goods or for the collection of information. In other words, if a foreign company has a showroom in Nigeria where it displays its goods, and subsequently supplies some goods to a customer in Nigeria from a source outside Nigeria, the profits from the transaction would not liable to tax in Nigeria. However, if it makes the supply from its showroom in Nigeria, the profits made from the transaction will be subject to tax.It seems that only something in the nature of a facility would constitute a fixed base. This inference can be gleaned from the nature of things which do not constitute a fixed base and from the fact that the Companies Income Tax Act gives the indication that a foreign company may maintain a stock of merchandise in Nigeria and would still not be deemed to have a fixed base. It can therefore be argued that an employee of a foreign company who is in Nigeria to repair the airplanes of a client would not constitute a fixed base of the company.

A foreign company may have a fixed base in Nigeria. It may generate profits from various places not only from its fixed base in Nigeria. Consequently the only portion of its profits that would be deemed to be derived from and therefore subject to tax in

Nigeria, are those profits which are attributable to the fixed base. Profits which were not generated from the fixed base would not be subject to tax in Nigeria.

Another test which is also used to determine whether a foreign company has to pay tax from its profits is its habitual operation in Nigeria by an authorized person. According to the Act, a foreign company is liable to corporate tax even if it does not have a fixed base in Nigeria but on condition that it habitually operates a trade or business through an authorised person. This shows that a foreign company may not have a fixed base in Nigeria, but may habitually carries on business or preserve a store of its product for distributions through an authorized agent. The profits generated from such business or deliveries by the foreign company would be deemed to be derived from Nigeria and therefore liable to tax. The authorised person can be a direct representative of the company or acting on behalf of some other companies that are under the care and management of the foreign company. He can also be on behalf of other companies that have interest in the foreign company. The requirement that the company 'habitually' operates a business creates the impression that profits from a one-off and unrepeatable transaction would not be covered by this provision. This is the view of the FIRS. However, a court has held that the FIRS is not bound by its views in such circulars and is therefore at liberty to subsequently canvass divergent views. The word 'habitually' implies frequency or customariness. An isolated transaction may therefore not be covered by the provision. But would profits from a transaction on behalf of a foreign company, which used to habitually carry on business through a person but for the past 5 years did not operate any business in Nigeria, be covered? It is not certain what number of transactions is to be carried out on behalf of a foreign company for it to be taken that the

company 'customarily' operates business through a person. The issue may be clear-cut in a number of cases; for others, it is not advisable to lay a general principle but to decide each case on its merits.

Secondly, the profits of a foreign company would be liable to tax if deliveries are regularly made on its behalf by a person from a store of goods which the company habitually maintains in Nigeria. This provision applies to a foreign company that hands its goods over to an intermediary for the purpose of delivering the goods to its customers in Nigeria. The intermediary is merely the means by which the foreign company transacts with its customers in Nigeria. Equally, any profit made by the company on the sale of the goods by the intermediary would be subject to tax in Nigeria.A foreign company may carry on business through a number of persons none of whom can be said to habitually conduct its business in Nigeria. This arrangement would not shield the company from tax in Nigeria. This is because words which are used in the singular sense in an enactment include the plural form of the words. Therefore, it would not matter if the foreign company uses one or more persons to operate its business. It doesn'tmatter if the authorised person does not act for the foreign company alone but does business with another company. It seems a foreign company would not have a defense if it claims the person does not have its express authority to conduct its business in Nigeria. The court would likely infer such authority from the fact that the person has conducted and continues to conduct business or make deliveries on behalf of the company.

Turnkey project is another method which is considered to verify the taxability of a foreign company. Turnkey project is a term used to refer to a single contract split into several components to be executed onshore and offshore respectively. Under the Act, a

foreign company is liable to tax in respect of its profits derived from Nigeria even if the trade or business or activities involves a single contract; for surveys, deliveries, installations or construction, the profit from that contract. Accordingly, the profits made by a foreign company from a single contract for surveys, deliveries, installations or construction are subject to tax in Nigeria. It has been suggested however, that the word 'or' between installations and construction be replaced with 'and'. This is because the use of 'or' conveys the impression that profits of a foreign company from a contract for survey or a contract for deliveries etc. would be deemed to be derived from Nigeria. The rationale behind the suggested substitution becomes obvious when one considers the objective of this provision. The goal is to cover any loophole that could be used by companies to avoid tax from the profit made by turnkey project.

Usually, the onshore component is executed by a Nigerian company while the offshore component is undertaken by a foreign company. For instance, a foreign company may split a contract to construct a football stadium in Nigeria into several components such as survey, design, fabrication, construction, delivery, and installation and award the first five components to a foreign company while a Nigerian company undertakes installation. This could be done with the aim of minimizing the profits liable to tax in Nigeria and increasing the foreign company's profits from the contract. Nevertheless, the fragmentation of the contract does not avail in excluding the profit from the tax under the CITAA. This is because the Act has taken such type of project to be a single contract. The profits arise from it is subsequently subject to tax.It must be mentioned that profits from turnkey project are not always deemed to be derived from Nigeria. For example, a contract may involve various components e.g. fabrication, construction and installation. If

fabrication aspect cannot be locally done, the profits attributable to it ought not to be subject to tax in Nigeria. On the other hand, the profits derived from the construction and installation components are subject to tax even if any of them is executed offshore.

Artificial transaction is another test which is used to identify the taxability of a profit made by a foreign company. According to the Act , a foreign company is liable to corporate tax in respect of any profit derived from Nigeria in as much as it is made from a transaction which is viewed as artificial by the Federal Inland Revenue Services. But the question here is how to determine whether a particular transaction is artificial or not.

It is relevant to know that a transaction is said to be artificial if it is between two related companies and the terms which govern the transaction are unlike terms which govern transactions between unrelated companies. Related companies often arrange intra-group transactions such that profits are shifted from one company to another which, for some reason, is liable to pay little or no tax. Where a foreign company makes more profits from an intra-group transaction, the FIRS is entitled to make an adjustment by applying open market terms in the intra-group transaction. The effect is that the portion of the profits of the foreign company which is artificial would be transferred to the Nigerian company and subject to tax in Nigeria. For example, if a Nigerian subsidiary over-invoiced for a service performed by its foreign parent company, the Nigerian company would end up with less taxable profits in its books. This is because it would claim the over-invoiced amount as a deductible expense in its tax computations. Here, the FIRS is entitled to apply a reduced rate, which approximates to an open market estimate, to the service. This will lead to lesser amount deducted as an expense for the service and therefore more taxable profits in the books of the subsidiary. Usually, the difference

between the pre-adjustment taxable profits and the post-adjustment taxable profits would be the artificial component of the profits made by the foreign parent company.

2.4 Corporate Income Chargeable To Tax

In Nigeria and many other countries, income has been taken as the base for the imposition of tax. It is therefore an obvious candidate of corporate taxation. A company can only pay tax out of the income it receives from its trade or business activities and investment. Consequently, ascertainment of income for tax purpose may appear very easy to some extent. However, the precise meaning of the term "income" is part of the most difficult area in taxation.

Literally, different words are used as synonymous to the term 'income'. These inter alia, include pay, earnings, wage, salary, profits, proceeds, interest, receipts, revenue and returns. Each of these indicates a sum of money that comes in and received by a person. The term is denotatively used to mean the amount of money received by a person as the result of his work or trade and investment. This confines the meaning of income to cash that only comes from particular sources namely trade and investment. However, an online dictionary extends the meaning to include the amount of "money or its equivalent received during a period of time in exchange for labour or services, from the sale of goods or property, or as profit from financial investments". In the same vein, income is defined in another dictionary as "the money or other form of payment that one receives usually periodically, from employment, business, investment, royalties, gifts and the like." These imply that the word has a wider meaning than its synonyms. This is because

it covers all sorts of returns irrespective of the time and kind of activity from which it is derived or received for.

Statutorily, Companies Income Tax Act did not provide for a specific definition of the word “income”, let alone the phrase “income tax” or “companies income” chargeable to tax. However, according to the Act, income is determined by reference to the sources it originated from. But in the case ofColtaness Iron Co. v. Black income is described as nothing more than whatsoever is assessed for tax purpose in as much as it is of the nature of income regardless of the sources it originated from. But this did not hint at the concept of income for tax purpose let alone its nature that will enable a person to distinguish between things that are of the same nature with it from those that are not. In the case ofWhitney v. IRC , income was evasively defined as “such income taxable under the Act.” But the question that remains is “what is that income which is taxable under the Act?” In the same vein, income tax is defined in the case of London Country Council v. Attorney General, as a tax on income. It is not meant to be a tax on anything else. This definition is not clear. The main question of what is income is still on. Thus, in the case of Secretary of State for India v. Scoble, it is declared that income tax is not and cannot be cast upon absolutely logical lines. Because of this in a Canadian case of Oxford Motors Ltd v. Minister of National Revenue Abbot J. stated that in deciding the meaning of income, the courts are faced with practical considerations. Thus, determination of the meaning of income and ascertainment of income for tax purpose must all be based on particular facts of each case.

It is generally clear that the word ‘income’ is far from being precise. This is because it is multifaceted that could be perceived from multifarious angles. Any attempt to give the

word a conceptual definition that is not all embracing may result in loss of huge amount of revenue that can be used to provide necessary amenities needed to attract investment in the country. However, a person can simply state that income is not capital. Subsequently it is essential to distinguish income from capital. This is because the distinction is on the fundamental basis upon which corporate taxation depends. Corporate tax is a tax imposed on the income of a company not upon its capital. It is therefore necessary to determine whether receipts have the character of capital or income.

The idea behind the companies income tax is that tax should be paid upon the company's annual income not upon its capital or the means by which income is produced. Thus, it is not a tax on wealth or upon individual transactions. It is a tax upon the regular, recurrent and periodic returns to companies. However, this is with exclusion of its capital receipts and after allowing losses and outgoings incurred in process of deriving the income. It is stated in the case of Strick v. Regend Oil Company Ltd, that no part of English law of taxation present the insoluble conundrums on determining whether a receipt or outgoing is capital or income for tax purpose. The parliament left the matter to the common sense of tribunals and judges before whom these matters are brought. Consequently, many courts adopted the primordial analogical expression in determining the concept of capital and income which says that the tree is the capital from which the annual income of the fruit crops is derived. This analogy shows that capital represents the stock of resources from which flows the income. However, this analogy is not appropriate in many cases of modern businesses. Companies and individuals devise many ways on how to turn income to capital in order to escape the payment of tax. Consequently, the physical

nature of the asset and its functions should be put into consideration in order to identify what is capital and what is income for tax purpose.

Generally, income is ordinarily used to indicate the amount of money or its equivalent received by a person within a particular period of time. It normally comes from trade or business and investment. However, the CITAA provides for the sources of the companies income chargeable to tax. Therefore, companies income chargeable to tax can be defined as the amount of money or its equivalent received by a company from trade / business or investment and taxable under the CITAA

From the dimension of corporate taxation, profits are the income chargeable to tax under the CITAA. It is on this ground that the Act provides that tax shall be payable upon the profits of any company, accruing in, derived from, brought into or received in Nigeria.

Like the term income, profit has no statutory definition. Consequently, it must be given its ordinary meaning. The Oxford Advance Learner's Dictionary defines profit as ' the money that you make in business or by selling things especially after paying the cost involved'. Black's Law Dictionary defines it as 'the excess of revenues over expenditures in a business transaction'. It is used to mean the excess of receipts over the expenditure necessary for the purpose of earning the receipts. Consequently, profit is an income although it is not any income can fall within the term profit.

The phrases 'accruing in, derived from, brought into, or received in Nigeria' encapsulated in the provision of the CITA are in need of thorough scrutiny In the case of Commissioner of Taxation v. Kirk the words 'derived from' was held to be synonymous with 'accruing in'. Both were meant to refer to 'acquired, obtained, or got'. But in the

case of Toufiq Karan v. Commissioner for Income Tax, Hooper J. looked at the phrases from different angle. According to him, the two phrases of 'accruing in" and 'received in' import a clear territorial limitation to Nigeria. By implication any profit acquired or obtained in Nigeria is taxable under the CITAA. He also opined that the words 'derived from' is designed to meet among other things cases where profits arises from transaction carried out in Nigeria by nonresident tax payer. Consequently, it is only the profits gained as the result of the business activities carried out in Nigeria by a foreign company will be subject to tax under the CITAA. On the other hand, the words 'brought into' bring profits from transactions carried on outside Nigeria by a Nigerian company into the tax net on condition that the profits is actually imported into Nigeria.

It is understood from the above that corporate income subject to tax under the CITAA can be either the profits made in Nigeria or the profits made by Nigerian company. Subsequently, all profits of Nigerian or foreign companies derived from trading activities in Nigeria are subject to tax unless otherwise provided under the Act. If a company does not earn any profit, or it earns the profit but is not subject to tax or is exempted from tax, then the company is not liable to corporate tax. However, the Act imposed minimum tax on companies which have no taxable profit or taxable profit resulting in lower than the minimum tax. This means that such companies must pay taxes out of their capital. This will undoubtedly discourage investment and increase the risk of failure for companies in periods of little or no profitability.

The profit of a Nigerian company is subject to tax irrespective of where and how it arises. It is equally subject to tax whether it arises inside or outside the country and whether it is remitted to Nigeria or not. It is also subject to tax in whatever form it is received.

Whether it is received in cash or in kind, in local or in foreign currency, it is subject to corporate tax under the CITAA. Thus, 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. Therefore, if a Nigerian company derived profit from a trade or business carried on in the United Arab Emirates (UAE), such profit is deemed to be accruing in Nigeria and subsequently subject to tax irrespective of whether it is brought into Nigeria or not. A Nigerian company can only escape from corporate tax if its profits fall within the scope exempted by the Act. Therefore, legislative approach on the issue of how to identify the companies income subject to tax (taxable profits) under the CITAA is based on determining income by reference to the respective source from which such income is derived. Accordingly, the Act enumerates the types of profit sources deemed to be chargeable to tax from the companies' income in Nigeria. These include-

1. Any trade or business for whatever period of time such trade or business may have been carried on;

2. Rent or any premium arising from a right granted to any person for the use or occupation of any property;

3. Dividend, interest, royalties, discount, charges or annuities;

4. Any source of annual profits or gains not falling within the preceding categories;

5. Any amount deemed to be income or profits under a provision of CITA, or with respect to any benefit arising from a pension or provident fund of the PITA.

6. Fees, dues and allowances (wherever paid) for services rendered;

7. Any amount of profits or gains arising from acquiring or disposing short-term money instruments like Federal Government Securities, Treasury Bill or Saving Certificate, Debenture Certificate and Treasury Bonds.

It should be noted that each source of profits enumerated above is independent of one another. A company can only avoid tax by proving that it has got no profits or gains accruing in or derived from Nigeria in any of the sources or categories of income above-mentioned. These sources of income can easily be sum up in two major headings, namely earned and unearned income.

2.4.1 Earned Income

'To earn' literally means 'to make money by working'. Earned income technically refers to any income derived from active participation in a trade or business. It is therefore tagged as trading or business profit. Advance Learner's Dictionary defines trade as the activity of buying and selling or of exchanging goods and services between people or countries. On the other side, the word business is defined as the activity of making, buying, selling or supplying goods or services for money. Consequently the two words could be semantically synonymous. Both refer to activity of buying and selling of goods and services.

Unlike the CITA, the English tax laws from which the Nigerian tax laws originated did not insert the word "business" after the word "trade" on the process of enumerating the sources of profit assessable to tax. However, it is opined in the case of Commissioner of Income Tax v. Hanover Agencies Ltd, that the word 'business' is of wide import and

must be given its ordinary meaning unless the context otherwise requires. If a company's objects are business objects and are in fact carried out, it carries on business. Consequently, acquiring and leasing of company's property with the aim of gaining profit is a business activity. Also in the case of St. Aubyn's Estates Ltd v. Strick Finlay, J.made the following statement:

I think that the word business came into their finding (i.e. the General Commissioners) just as it has come apparently into the judgment of a good many judges, as a convenient way of expressing a trade, manufacture, or concern in the nature of trade.

It is seen here that despite the fact that the English tax laws did not define the word 'business' in considering the sources of profits assessable to tax, but the judicial decisions expanded the ordinary meaning of trade to include every trade, manufacture or adventure. Buying and selling are the essential activities in trading. But manufacturing, mining or agriculture involve the buying of raw materials. In order to earn profit, value must be added to those materials. Consequently, these activities could be considered as being in the nature of trade. Selling of services is also included under the meaning of business. It can be employment, profession or vocation. The term employment has not been mentioned in the CITAA. However, section 100 of the Personal Income Tax Act (PITA) as amended provides that employment includes any appointment or office whether public or otherwise for which remuneration is payable. This means that employment is a work for which one is hired and paid by an employer. Briefly, both profession and vocation are normally carried on for the benefit of others on demand. But profession depends on the personal skills of the person practicing the profession. It is higher in status than vocation. Accountants, lawyers, medical doctors and surveyors are all professionals. They can sell

their professional skills on demand to their clients. Consequently, they undertake business activities. Painters, motor mechanics and carpenters on the other side carry on vocation. They equally sell their personal skills for a reward. Their income is therefore subject to tax. In order to provide a definition of the word trade that can block dispute between taxpayers and the tax authorities in determining the trading profit chargeable to tax, several attempts have been made by the courts. For instance in the case of Fry v. Burma Corporation ltd, trade was defined by Lord Akin as-

The various activities of commerce – the winning and using of the product of the earth, or multiplying the products of the earth and selling them, or manufacturing them and selling them, the purchase and sale of commodities or the offering of services for a reward, such as conveyance and the like.

This is not all embracing, hence many activities fall outside the scope of the above definition. In the case of Rees Roturbo Development Syndicates v Ducker the term is defined as: "a gain made in an operation of business carrying out a scheme of profit making." This was also criticized as being depicting trade as a continuous activity which may not be necessarily the case. In Ranson v. Higgs the word 'trade' is described to denote any mercantile operation particularly one of commercial character by which the trader provides - for reward- some kind of goods or services to customers. Thus, the gains made in the operation of business carrying out a scheme of profit making can be considered as trading profits.

It should be noted that in spite of the above judicial attempts, no general decisive test could be extracted from the previous cases which can distinguish trade from non trading

activities. This is because the term trade has multifarious nature in English. Consequently it is very difficult to lend itself to a simple and precise definition. This point is stressed by the Master of the Roll in the case of Ericson v. Lass as follows-

"There are multitudes of things which together make up the carrying on of trade, but I know no one distinguishing incident, for it is a compound fact made for a variety of things."

This argument entails the necessity to have a statutory definition of trade for tax purpose. But when this issue was raised in the United Kingdom (U.K.), the Royal Commission on the Taxation of Profits and Income of 1955 rejected the idea. They said that there should be no fixed rule. This means that each case must be decided according to its circumstance. In order to avoid the above problem, the U.K. Royal Commission suggested six badges to serve as test in determining whether a certain activity is a trade so that its profit will be subject to tax or not. According to the Commission, trading activity can be determined by examining the followings-

i. Nature of the subject matter of the transaction. This means that if the article is naturally purchased for profit and not for personal use and prestige, it is then a trade.

ii. Motive of the transaction. So long as the transaction is for profit making it is therefore a trade.

iii. Length of the period of ownership. This is because the quicker something is purchased and sold the more it signifies that trade has taken place.

iv. Frequency of transaction. The more the number of similar transactions by the same person the more it indicates that it is a trade.

v. Modification. Effecting any modification on an article indicates that there is a profit making motive which constitutes trade.

vi. Method and circumstance of Acquisition. An article realized through gift or inheritance shows that the transaction is not for profit making. It is therefore not a trade.

To identify whether profit of a specific transaction is made from trade or business activities of a company, a person needs to only look at the transaction in question and screen it by examining how it measures up to the badges. It should be understood that the badges will not all be present in every case. The presence or absence of a particular badge isnot enough to justify whether trade has actually taken place or not.

In Nigeria, neither the CITA nor any Nigerian tax law provides for the definition of the term 'trade" whichis one of the major sources of company's profit or income chargeable to tax under the CITAA. Lack of statutory definition of the terms causes dispute between investor and the tax officials in determining whether or not certain activities carried out by the taxpayer are trade or business so as to subject their profits to corporate tax. The case of Arbico Ltd v. FBIR is a clear example. In the case, the plaintiff in the dispute, Arbico, had acquired a plot of land, erected a building, and sold the property at a profit. The company was subsequently assessed to tax on the proceeds of the sale of property.However, the company raised an objection to the assessment on the ground of being one-off transaction that was not severally repeated. Consequently, it did not constitute trade. It was the Supreme Court that finally settled the case and ruled that

isolated one-off transaction can constitute a trade. It also laid the principle of interpreting the term trade in its widest sense and in accordance with its everyday common meaning. Therefore, the word trade can be defined as the business of buying and selling or exchange in goods or services. However, the issue of mutual trading may come up. Thus where a group of people contribute money to a common fund not with the anticipation of a monetary gain, any refund of the excess of their contribution is exempted from tax. The rationale behind this principle is that a person can not make profit by selling to himself. The mutuality principle has developed along the lines of club members; cooperative organizations; and mutual insurance companies.

Another problem that may arise under the taxability of trading profit is of illegal trading. For instance, whether the profits made by a company from trading of illegal drugs are taxable or not. There are two judicial approaches to the problem. The first idea is to split the trading activities into two; legal and illegal transactions. This is what is maintained by the Irish courts. On this ground, only the profits that arise from legal transactions will be taxed. The splitting doctrine is based on the premise of a proportion that no tax profit from illegal trading activity is to make the state to partake in the fruits of illegality. On the other hand, the second judicial approach opines that any talk of severing illegal trade from the legal one is to get involved in useless and rhetorical question. The proper thing is to ascertain whether the profits have been derived from trade in which case it will be taxable, for the Income Tax Act speaks only to trade and of profit. The State is not therefore condoning illegal trade, nor has it taken part in it. It merely finds profits made from what appears to be a trade. This is the position of English courts and adopted in Nigeria. This is because the government needs revenue to ensure that a suitable

environment that can make companies and individual investors at local and foreign level is available.

Companies derive most of their profits from trading or business activities. Consequently, trade and business are very vital to the Nigerian economy. However, as the result of insecurity in the country, trade and business activities are paralyzed particularly in the North and Niger Delta areas. This automatically reduces the government potential revenue which if actually generated can be used in providing public services and executing capital projects that can facilitate business and make the nation conducive place for investment. According to an executive of the National Employers' Consultative Assembly (NECA), 73.3% of businesses have partially closed operations in northern Nigeria as a result of the growing insurgency. Some others have relocated to neighboring countries, including Ghana. This is a great disservice to the government's local and foreign direct investment drive. The ripple effect extends to loss of jobs and reduced staff morale and productivity. This is a problem that needs an urgent attention.

2.4.2 Unearned (Investment) Income

Simply put, unearned income refers to the net income obtained through investments made by a company with surplus cash. This is quite different from the incomes earned through the company's usual line of business. Technically, investment is an act of committing money or money's worth in order to gain profit or interest. Investment income can arise from various forms of investment. For instance, dividend is received from investment in shares, rent is received from investment in properties or leases, royalty is gained from investment in technology, discount is received from investing in promissory notes and

interest is received from investing in debenture stock, bank deposits, lending, bonds and treasury bills. Consequently, payment of interest, dividends, rent, premiums, discounts and annuities or any other profit made through an investment vehicle are all considered as investment income and therefore liable to tax under the CITAA if it comes from a company's investment.

According to the provision of the CITAA, dividend means, in relation to a company not being in the process of being wound up or liquidated, any profits distributed to shareholders, whether or not such profits are of a capital nature. It also includes an amount equal to the nominal value of bonus shares, debentures or securities awarded to shareholders. In relation to a company that is being wound up or liquidated, dividend means 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. The CITAA also stipulates that where any dividend becomes due from or payable by a Nigerian company to any other company or person, the company paying such dividend or making such distribution must deduct tax at the rate of 10% on such payment if it is paid to a company. This is to be considered as part payment of the company's tax. However, where the recipient company is foreign that is not registered in Nigeria, the tax withheld will represent the final tax payable by the foreign recipient company . Depending on whether there is an existing double taxation treaty between the home state of the foreign recipient, the latter may be entitled to a foreign tax credit or an exemption for taxes withheld on the dividend in Nigeria. Where a Nigerian company receives dividend from a foreign company such dividend will not be taxable in Nigeria provided that the dividend is brought into Nigeria through Government Approved Channels.

The Act also provides that dividend received after deduction of withholding tax is regarded as "franked investment income" to the recipient company. Thus, the income will not be subjected to further taxation under the Act. Consequently, the recipient company is required to offset the withholding tax that it has already suffered on those dividends whenever the dividends are distributed to the shareholders. Where a Nigerian company earns franked investment income, the tax that was withheld (at 10%) on that income will constitute the final tax payable on that income and it shall be excluded from the total profits of the company when computing its taxable profits. When such income is redistributed, the company is entitled to offset the withholding tax that could have been due from redistribution against the withholding tax that it has suffered on the income. This peculiarity is what makes franked investment income a form of incentive for investment. This is very good, since taxing the same income amounts to double taxation which silently kills businesses and investments. Furthermore, the company will have more profits if it is taxed on 10% withholding tax than if it is allowed to the end of the year to be taxed at the rate of 30%.However, if the company makes distribution to its shareholders from its other profits, the distribution will be subject to withholding tax and the company would not be entitled to off set the withholding tax that it suffered on the franked investment income that it earned in that year of assessment. This means that it is only when the distribution of dividends to the shareholders is made from the franked investment income that company can benefit from this incentive. A company can only take advantage of the franked investment income incentive if the distribution made to the shareholders is from the franked investment income and not from another source of profits.

However, the Act imposes the payment of tax at the rate of 30 % prescribed in section 29 (1) on a dividend received and distributed by a company where there is either no total profit taxable under the Act or the total profit is less than the amount of dividend distributed. Consequently, the distributed dividend is taken to be the total profit of the company and therefore taxable under the Act. This contradicts the provision of section 62 (3) on frank investment income which is taxed at source and not subjected to further tax. The payment of tax under section 15A of the Act is double taxation which discourages investment in the country.

Another issue which is also connected to the income chargeable to tax under the CITAA is the investment income of Unit Trust Schemes. A unit trust is an investment fund contributed by several investors for investment in a portfolio of securities managed by a fund manager. It is an investment vehicle that seeks to employ the perceived professional skill of a fund manager to invest on behalf of investors who pool their funds together for that purpose. According to the CITAA, Unit Trust Scheme means any arrangement made for the purpose of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property. For the purpose of corporate taxation, unit trust schemes are treated as limited liability companies. The trustees are considered to be a company that derives income from making investments; unit holders are considered to be shareholders, their rights are treated as shares and the income available for distribution to the unit holders is treated as dividends.

Dividends earned by a Unit Trust are regarded as franked investment income and where the dividends are redistributed, such dividends will be exempted from tax. Unlike an

ordinary investment company, the dividends distributed to the investors are expressly exempted from tax. In the case of an investment company, those dividends are not exempted from tax; the Investment Company merely has a right to offset the withholding tax that it has suffered against the withholding tax that is due on those distributions.

It is essential to state that corporate tax is not charged on every dividend. There are certain types of dividends that are not chargeable to tax under the CITAA. This is because they fall within the categories of income statutorily exempted from tax. This are-

i. Dividend distributed by a Unit Trust.

ii. Dividend derived by a company from another Nigerian company for the first five years, provided that the equity participation of the recipient company is either wholly paid for in foreign currency or by assets brought or imported into Nigeria; the beneficial owner of the dividend owns at least 10% equity in the paying company; and the company paying the dividend is engaged in agricultural or oil and gas operations.

iii. Dividend derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels.

iv. Dividend received from small companies in the manufacturing sector, in the first five years of their operations.

v. Dividend received from investments in wholly export-oriented businesses.

What appears from the above is that the aim of this exemption is to promote investment in particular areas of need for the economic development of the nation. For instance,

Nigeria needs to develop in the areas of exporting local products and materials and strengthen manufacturing and agricultural sectors as well as the area of oil and gas. Thus, the government exempts the above categories of dividends in order to attract local and foreign investors to contribute in developing those important aspects of economy.

The CITAA provides for the taxation of interest and royalty received by a company. Royalty is a payment to an owner for the use of property, especially patents, copyrighted works, franchise or natural resources. The payment is made to the legal owner of a property, patent, copyrighted work or franchise by those who wish to make use of it for the purposes of generating revenue or other such desirable activities. In most cases, royalties are designed to compensate the owner for the asset's use, and are legally binding. According to the Act, any company making a payment of royalty or interest which is not on inter-bank deposits to another company or individual persons must deduct tax at source at the rate of 10% from that payment.

Although the law states that tax should be withheld at 10%, in practice, tax on royalty is withheld at the rate of 15%. However, the legal question that may be posed here is whether the FIRS has power to alter the rate of tax statutorily imposed under the CITAA. Despite the fact that the Federal Inland Revenue Service Establishment Act (FIRSEA) empowers the FIRS Board to make rules and regulations for due administration of taxes in Nigeria, nevertheless the Act has not conferred any power to the Board to alter the rate. However, the CITA previously empowered the President to solely alter it, but this power has now been shifted to the National Assembly. Consequently the 15% tax rate collected by the FIRS from the royalty income of companies is illegal. This is because the rate of tax is a creation of statute. To tax without statutory authority is illegal. It

confuses investors on the actual rate of tax to be deducted at source from their investment income. Furthermore, it reduces the amount of profits expected by a company which may subsequently discourage further investment.

In the same vein, an interest may be earned by a foreign company from a Nigerian company. Consequently, the interest will be deemed to be derived from Nigeria and subject to withholding tax. Furthermore, the tax withheld constitutes the final tax payable by the foreign company. This is irrespective of the place of payment of the interest. However, the foreign recipient may be entitled to a foreign tax credit or exemption in his home state if there is an existing double taxation treaty between the two countries. Like dividend, there are also some sorts of interest excluded from taxation under the CITAA. These are-

i. Interest payable on a foreign loan granted on or after 1st April, 1978

ii. Interest on any loan granted by a bank on or after 1st January, 1997 to a company engaged in agricultural trade or business; or fabrication of any local plant and machinery; or providing working capital for any cottage industry established by the company, provided that the moratorium is not less than 18 months and the rate of interest is not more than the base lending rate at the time the loan was obtained.

iii. Interest payable on any loan granted by a bank on or after 1st April, 1980 for the purpose of manufacturing goods for export.

iv. Interest derived by a company from a country outside Nigeria and brought into Nigeria through Government Approved Channels (i.e. CBN and other approved banks).

v. Interest on deposit accounts of a non-resident company provided the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1st January, 1990 through Government Approved Channels.

Any income that is not taxable is not subject to withholding tax. The categories of interest payments listed above are exempted from tax under the CITAA and are consequently not subject to withholding tax deductions.According to the provision of the CITAA, a company must also deduct a tax at source and remit it to the FIRS whenever it makes payment to another company or individual persons liable to tax. The amount to be withheld is 10% and must be deducted at the date when the rent is either paid or credited, whichever first occurs. According to the Act, “rents” include payments for the use of or hire of any equipment, payment for charter vessels, ships, or aircraft, and all such other payments for the use or hire of movable and immovable property.

It should be noted that tax withheld on rents paid to a foreign company will be the final tax payable by the foreign company on that rent payment. Where a Nigerian company brings in rent payments received outside Nigeria, such rent payment will not be subject to withholding tax if it is brought in through an approved channel.The aim of this as it appears is to encourage transparency and discourage backdoor transactions that have negative impact on the economy of the nation.

It must be borne in mind that withholding tax is remitted to the tax authority in the currency in which the deduction was made. This means that transactions made in foreign currency are to suffer withholding tax in the same currency. Therefore, if the transaction was in Nigerian currency the tax must then be deducted in Nigerian Naira and

if it is in currency of United Arab Emirate (UAE), United Kingdom (UK) or United State (US), the deduction must be in UAE Dirham, Pound Sterling or US Dollar respectively. It will be subsequently remitted to the FIRS in the same currency. In like manner, penalty for default would also be calculated in the same currency. In order to avoid double taxation, the 10% withheld from the investment income of a company is regarded as final tax payable. Thus, tax credit notes are given to the taxpayers. However, the process of obtaining the notes is not easy. This is because ttaxpayers are required to file withholding tax returns monthly and then follow up with the tax authority to obtain credit notes for their customers. This process is expensive and time consuming. As the result of inefficiency in the tax administration, taxpayers usually go to the FIRS several times before they can obtain the notes. They spend more money on transport and other expenses. Besides, their valuable time, which they ought to invest somewhere, that may fetch more profit from another source is wasted. This problem can discourage investment.

Nigerian courts derived much assistance from English decisions in respect of taxation of corporate investment income. In the case ofAluminium Industries AktenGesellschaff v. FBIR a contract on an investment in Nigeria was made with the company. The place of payment of interest was agreed to be outside the country. The Supreme Court of Nigeria held that under the section 17 of the CITA 1961, the foreign company could not be made to pay tax on the interest. It is apparent from this decision that a foreign company could manipulate and use the provision of section 17 of the CITA 1961 to avoid the payment of tax on interest earned in Nigeria. This is a critical issue that deprived government from earning a substantial revenue from profits made on investment in Nigeria. In order to

avoid the repetition of this decision the provision of section 17 of the CITA 1961 was replaced by the provision of section 8 (2) of the CITAA 2007. Thus the Act after enumerating the taxable profit, provides-

Interest shall be deemed to be derived from Nigeria if

(a) There is liability to payment of interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment is made; or

(b) The interest accrues to a foreign company or person from a Nigerian company or a company in Nigeria regardless of whichever way the interest may have accrued.

In accordance with the above provision, tax is payable on interest irrespective of the place of contract or payment. Provided the interest is derived from Nigeria, the tax must be paid on it. This is a good development. Since without enough revenue government may not be able to cater for the yearning and aspiration of the investors in providing public infrastructures like good roads, water and power supply.

The CITAA also includes deemed income or profit under the sources of income chargeable to tax. This provision opens a gate of arbitrary power for the tax authorities to insert the income of non resident companies under deemed income source. This is with the aim of collecting maximum amount of tax from the source and regardless of whether or not relevant and authentic information on the actual basis for assessing the income are furnished to the authorities or not. This can leave a bad notion in the mind of foreign investors and create distrust which can lead to a dispute between the taxpayer and the tax authorities. This impacts negatively on investment decision and drives away foreign investors. Investors look at where they can maximise their profit not minimise it.

Once they discover that there will be no profit or gain in a particular area of investment in a country they will not longer like to push their money there. This may cause the country to lose huge amount of money that may come from Foreign Direct Investment (FDI) which is useful for the progress and development of the nation. Tax officers should therefore aim at assessing taxpayers based on actual profit unless it is difficult or impracticable to do so. Deemed income or deemed profit tax should only be a fallback option not the first consideration. Focus should be on collecting the right amount of tax, not the maximum amount of tax.

2.5 Corporate Tax Rate

Tax rate refers to the amount of money which is supposed to be paid by a company at the end of each year of assessment. It is normally imposed by statute in percentage. The question that may come up here is whether the Federal Government can impose a tax or alter a tax rate through budget speech or ministerial circulars.

In 2003 President Obasanjo made an attempt to introduce fuel tax via the budget speech. The Minister of Finance of the same administration also purportedly increased the VAT rate from 5% to 10% by way of the publication of an article in a newspaper after the proposal had been rejected by the National Assembly. However, in the case ofImprestBakalori v. FBIR BAC, the appellant is a company engage in construction business. Having failed to show adequate tax payable, the Board went ahead and raised a tax assessment of 2.5% on the turnover of the company. The assessment was raised on the ground of a broadcast made by the then Head of State in which he intimated the nation the turnover tax of 2½% would be imposed on construction companies that fail to

show adequate tax payable. It was held that a budget speech is no more than a mere intimation of or hint on proposed government fiscal legislation for the new fiscal year. It is used to serve the purpose of alerting everyone that the existing fiscal legislation would be changed so that no one can legitimately claim that the effect of the legislation was unforeseen when it is eventually promulgated. It therefore creates no liability per se. On this ground, the respondent has no right to impose a tax at the rate of 2.5% of the turnover of the appellant. Thus, the appeal was uphold. Consequently, the tax rate imposed on the basis of proposed legislation through the budget speech has no effect on companies. This is because the rate of tax is a statutory creation. To tax without statutory authority is illegal.

On the issue of tampering with the rate of tax the CITA previously empowered the President to solely alter it. This has now been shifted to the National Assembly (NA). According to the CITAA , it is the NA that has the power to impose, increase, reduce, withdraw, or cancel any rate of tax, duty or fee chargeable under the Act on the presidential proposal. However, it must be in accordance with the provision of the Constitution. This is a welcome development to control practice of amending the tax law through the budget speech or circulars. This is because taxation is a statutory matter. Nevertheless, it should be noted that a resolution of the National Assembly is insufficient to impose, increase, reduce, withdraw or cancel any rate of tax. Statutory enactment in accordance with Section 59 of the 1999 Constitution is still required for such an imposition, reduction, withdrawal or cancellation to be valid.

Historically, the legislation that governs the corporate tax in Nigeria is the Companies Income Tax Act. It was initially enacted in 1961. It is therefore the principal Act even

though that it has undergone a series of amendments from time to time. The Act is presently codified as the Companies Income Tax Amendment Act. According to the provision of the CITA 1961 the rate of corporate tax was 40%. The provision was amended in 1972 to increase the rate to 45% on the excess profits of over N10,000 . In 1975 the rate was still 45% but on the excess of over N6, 000 not 10,000 as demanded by the CITA 1972. From April 1, 1978 to March 31, 1979, the rate of the tax was raised to 50% on the excess. But after then the rate was reduced to 45% in addition to 10% special levy on bank excess profits. In 1987 the rate was reduced to 40% of the companies' profits. 20% was stipulated to be paid as tax by companies with small business, while 10% was imposed as special levy on bank excess profits. The levy was abolished in 1991. From 1992 to 1995 the rate was brought down to 35%. As from 1996 to date the rate stabilised at 30%.

Generally, the CITA policy from 1961 to 1990 was characterised with increasing tax rate and overburdening the taxpayers that induced negative effects on savings and investment. On the other hand the policy after the 1990 was quite different. The trend has obviously changed. Measures were taken in order to address the problem of tax rate which had negative impact on investment promotion. For instance excess profit tax and the capital transfer tax provided under the CITA were eliminated in 1991 and 1996 respectively. The corporate tax rate in addition, fell from 45% to 40% and then to 35% between 1992 to 1995. It was in 1996 that the rate was reduced to 30%. The reduction of the average rate of corporate taxation is a welcome development. This is because it can provide to the investors extra liquidity that is expected to have a positive impact on business financing.

The present CITAA provides that there shall be levied and paid for each year of assessment in respect of the profit of every company, tax at the rate of thirty Kobo for every Naira. In accordance with this provision the present corporate tax rate which is statutorily imposed on the profits of companies in Nigeria is 30%. The rates of corporate tax at international level vary from one country to another. For instance, Ireland corporate tax rate is 12.5 %; Hungary corporate tax rate is 18%; Canada corporate tax rate is 19%; Russia corporate tax rate is 24%; Norway corporate tax rate is 26%; United Kingdom (UK) corporate tax rate is 28%; and United State of America (USA) corporate tax rate is 35%.

It is obvious from the above that the tax rate of 30% provided and imposed by the CITAA on incorporated companies in Nigeria is among the highest in the world. This is a clear deviation from the growing international trend of harmonising the rate of corporate taxes. This can negatively affect the enhancement of country's global competitiveness. As a result of this rate, many investors may prefer to inject their resources in a country that is tax haven favourable to their business. For instance, as at 1996 when the Nigerian corporate tax rate was reduced to 30% the rate in Ghana was 8%. This is one of reasons that make Ghana a preferred location among investors willing to invest in West Africa. Presently, the normal corporate tax rate is 25%. As incentive, companies engaged in hotel industry are taxed at 22%. However, in Libya the tax rate is 20%. In Egypt it is also 20%. In Madagascar the rate is also 20%. In Sudan the rate is only 15%. Nigeria should therefore review its corporate tax rate to attract more investors.

The CITAA also prescribed the payment of the minimum tax in some certain conditions. Thus, it provides-

Where in any year of assessment, the ascertainment of total assessable profits from all sources of a company result in a loss, or where a company's ascertained total profits results in no tax payable, or to payable which is less than the minimum tax, there Shall be levied and paid by the company the minimum tax prescribed.

In accordance with the above provision, any company sustains loss in its year of assessment must pay a minimum tax rate. The same is applicable to any company sustain no gain or loss or sustains profits albeit less than the amount of minimum tax prescribed. In order to determine the rate of the minimum tax prescribed, the Act categorises companies incurred loss into two. The first one is the company with turnover of N500,000.00 or below. The rate of tax to be paid by the corporate bodies that has been in business for at least four calendar years is the highest of the followings:

(i) 0.5% of the gross profits of the company; or

(ii) 0.5% of its net asset;

(iii) 0.25% of its paid up capital; or

(iv) 0.25 % of its turnover of the year.

But if the turnover of the company is more than N 500,000.00 the rate shall be whatever is payable from any of the above plus additional tax on the amount by which the turnover is in excess at the rate of 50% of the rate used in (iv) above i.e. 0.25%. It should be noted that the minimum tax is not applicable to a company during the first four years of its commencement of business. It is also not applicable to agricultural trade or business as defined in section 9 of the CITAA, or to any company with at least 25 per cent

imported equity capital. The aim of this is to encourage newly established companies at their initial stage to remain in the business. It is also to attract moreinvestments particularly the FDIsto agricultural businesses in Nigerian. It is clear from the above that CITAA provides for the payment of corporate tax even if the company fails to secure any gain or profit. In other words, companies are obliged to pay tax even in the event of incurring loss in their business. This is a serious problem that has a negative impact on the companies in general and investment in particular. To tax a company operated at loss is to kill the zeal of investors to promote their business. This provision is therefore anti investment. It hampers existing business ability to grow and discourage would-be investors and risk taker. Furthermore, the provision negates the benefit of capital allowances which are granted as inducements to alleviate the cost of asset replacement. The provision is clearly disincentive. It may be argued that most Nigerian companies abuse the generosity of the tax allowance and continue to report tax losses year after year. The minimum tax provision may serve as a trap to catch such companies and block possible means to be utilised toavoid corporate tax. However, this provision should not be used to punish allcompanies that honestly comply with the provision of the law. It is the duty of the FIRS to loo for companies that are not complying and punish them accordingly.

A pre operational levy is imposed on any company that fails to commence business after 6 months of incorporation. In order to obtain a tax clearance certificate from the FIRS the company has to pay for each year of assessment the levy of –

(a) N20,000 for the first year; and

(b) N25,000 for every subsequent year.

It seems to be that the rationale behind this legislation is only generation of revenue. However, it is a fact that corporate tax is mainly payable from the profits of a company. Profits are therefore the basison which the tax is imposed. Accordingly, the imposition of pre-operational levy as it appears has no basis apart from revenue generation. However, taxing companies before the commencement of business is another silent killerof a business. Thisdefinitely discourages investment.

The Act equally prescribes lower rate of tax for certain companies. Companies enjoying lower rates are classified as either "small companies" or those in "preferred sectors." Small companies are those companies having an annual turnover of N1, 000,000.00 or less. Companies in the preferred sector are those in manufacturing, agricultural production, and mining of solid minerals or wholly in export trade. The lower tax rate of 20% is payable by these companies in the preferred sector of the Nigerian economy for the first 5 years of commencement of business.

It is very important to know that 30% is not the only amount paid from the companies' profits. There are various taxes and levies imposed by Nigerian tax laws upon the same profits of a company. For instance, Education Tax Act provides that education tax which is taxed at a rate of 2% shall be charged on the assessable profit of a company registered in Nigeria. This makes the amount paid by a company in Nigeria to be 32% from its assessable profits. More so, there is additional 1% imposed as Information Technology Tax (IT). It is backed up by the National Information Technology Development Agency

Act. The levy applies to companies and enterprises with annual turnover of N100,000,000:00K and above in following businesses.

(a) GSM Service provider and all telecoms companies

(b) Cyber Companies and Internet service provider

(c) Pension Manager and pension related companies

(d) Banks and other financial Institution

(e) Insurance companies

Additionally, another 10% is imposed on the same profits in the name of Withholding Tax (WHT). These are normally paid when a company makes payment or distributions to another company or individual shareholders. From the forgoing, the following corporate tax rates can be deduced from Nigerian tax laws:-

i. Companies Income Tax rate is 30%;

ii. Withholding Tax Rate is 10%;

iii. Education Tax Rate is 2%; and

iv. Information Technology Tax Rate is 1%

Consequently, the total rate of taxes statutorily imposed upon the profit of corporations in Nigeria is up to 43%. It is imposed by various provisions of Nigerian revenue laws. This is a clear example of multiple taxation. It has negative consequences on investment promotion.

The word ‘multiple’ is used to refer to anything that is more than two. Multiple taxation is said to have occurred when the same income or transaction is subject to more than one tax treatment. It is the imposition of several taxes on the same income of the tax payer. It could also be defined as taxing an income or transaction more than once. Double and triple taxation are all classified within the span of multiple taxation. It can occur either at national or international level. In other words, an investor may encounter the dilemma of corporate double taxation as the result of either interstates trade or international trade and commerce. Nigeria has the largest population in Africa. It has the second largest economy in the continent after the South Africa. However, as a result of poor infrastructure, lack of critical skills for business development and poor regulatory environment, the cost of production continues to skyrocket, leading in recent times to migration of businesses to neighbouring countries. And to compound these problems is the challenge of multiple taxation and double taxation which has become a nightmare for manufacturers, merchants and petty traders

In order to have a sustainable growth, job creation, and poverty reduction there is a need of economic diversification. Nigerian firms have a great role to play in this regards. This is because they are the engine of economic growth and diversification. But due to the challenging business environment most of them perform below expectation. Most Nigerians still live in poverty. Apart from the epileptic of electric power supply, multiple-taxation is one of the major impediments to doing business in Nigeria. Moreover, the Nigerian Federation comprises three tiers of government—the federal government, 36 State governments and the Federal Capital Territory, and 774 local governments. The exact number of taxes levied on businesses seems to vary significantly

between various states and local governments throughout Nigeria. Businesses may be subject to different taxes, charges, fees and levies. Indeed this has impacted negatively on the investment climate in Nigeria.

It was from the 1980s that multiple taxation became a matter of concern in the country. It was as the result of increasing decline of revenue allocation from the Federal Government to State Governments. This is what made the states and Local Government Areas to rise up and look for alternative solutions through other sources of internally generated revenue. Different kind of unconstitutional taxes are imposed through greedy revenue consultants employed by the state to achieve its desire and aspiration on revenue generation. The more a company or investor moves goods from one state to another the more he is confronted with incidents of multiple taxes, legally or illegally imposed. This will definitely affect the cost of their products. This is because companies take into account all operational expenses including the multiple taxes suffered and build them into the price chargeable for their goods and services. This is a serious issue that can impact not only the promotion of investment but also the economy of the nation.For instance, on March 8, 2010, the economic activities in the southern part of the country had nearly collapsed. It was as the result of one-week warning strike embarkedby the Amalgamated Foodstuffs and Cattle Dealers Association of Nigeria. It was due to the unbearable multiple taxes. The National Secretary of Association stated that-

"If you buy something in Maiduguri and you are bringing it to the South, nobody disturbs you in Yobe, Bauchi, Plateau and Nassarawa. But as soon as you come to Makurdi, you start facing extortion and it extends to Enugu, Anambra, Imo, Abia, Ebonyi, Rivers, Bayelsa, Delta, Edo, Akwa-Ibom."

According to him “each state through which their trucks pass from the North down to Lagos collects taxes. A trailer loaded with foodstuffs often ends up paying up to N100, 000.00 in taxes before getting to Lagos. The worst is the Ogun State government. After paying at their border towns, another round of taxes must be paid.” They claimed to have earlier met the commissioner of Agriculture of the affected states and even obtained an injunction restraining officials of these states from collecting illegal taxes from their members all to no avail. As a result of their strike, food items like beef, tomatoes, beans, rice, vegetables, chicken, carrot, onions, yams etc. immediately disappeared from the markets and where they existed the prices went out of the reach of the common man. Investment in manufacturing sub sector suffers more from multiple taxes. An investor may be confronted by different multiple taxes such as Import Duties; Export Duties; Sales Tax or VAT; Withholding and Income Taxes; Mobile Advertising and Billboard Levies; and Social Responsibilities Charges These constitute the major threats to the manufacturing sector in Nigeria. Thus they have become stumbling stones hindering the attraction of investment in the sector. For example, Manufacturers Association of Nigeria (MAN) had severally complained on the challenges its members were forced to go through as they moved their product around the country without anybody caring to listen. Consequently the manufacturing sector in country has presently become a shadow of its past, contributing less than 4% to national G.D.P. This is because different States and Local Government have heavily taxed them on the ground of boosting the internally generated revenue (IGR). They are everywhere harassed and bullied by different Regulatory Agencies and state officials. To worsen matters is the activity of touts evenly

distributed across the country, who in most cases seeks gratification from people doing business in their areas of operation.

In fact this is the actual manifestation of what is going on in the country. To tax an income more than once is indeed a serious matter. This is because it is a kind of undue exploitation which let a company or individual investor to go with a little or no profit. It will subsequently discourage him to pursue the business. In an environment where trade taxes, surcharges and a plethora of other levies add to the operational and transaction costs of businesses, their arbitrary implementation heightens the uncertainty to Nigerian enterprises and further increases the cost of doing business which may affect the investors. This made the Nigerian Economic Summit Group (NESG) to raised an alarm in 2008 on the effects of multiple taxation not only on the functions of companies but also on the administration of the tax. It states that multiple taxation is undermining the essence of tax administration and choking up the operations of large companies in the country. According to a survey conducted by the NESG, the performance of big companies grimly shows that over 84% of large firms are groaning under heavy multiple taxation imposed by government and its agencies while 77% of the small and medium scale businesses suffer the same fate. In 2009 Nigerian Newspapers published an article stating that shareholders across the country have cried out against multiple taxation imposed on them in their transactions on the stock market and called on the Federal Government to address the issue. In fact, multiple taxation has many adverse effects on business organisations and investment promotion in Nigeria. It is obvious that once there is a case of multiple taxation the cost of doing business will go up. This is a serious matter. It had made some companies to relocate outside this country. Some have

relocated to Ghana, South Africa and Canada. Furthermore, the effects of multiple taxation are not restricted only to the local companies, but also affect the flow of foreign direct investment into the country. In general, multiple taxation can hold back and suppress business operations and discourage potential foreign investor. This is because no rational foreign investor would want to invest in an economy where the cost of running business is extremely high and the environment hostile due to multiple taxation.Multiple taxation has the negative effect of decreasing the disposable income of individual since the affected companies are likely to shift the burden of the such taxes to the final consumer through high cost of their products and services. This will definitely not stimulate economic growth which Nigeria is in dire need of. Imposition of multiple taxes in arbitrary manner is capable of sending confusing political and economic signals which can be negative to a stable polity. Multiple taxation is also a subtle way of killing both big and businesses and drawback for potential investors, both from the domestic and external fronts. In the domestic front for instance, it can lead to low level of investment in the capital market. Multiple taxation may also adversely affect company in which shareholders invest. For instance a company may be forced to pay more than its legitimate tax as the result of multiple taxation. The natural expectation in this instance is that the company may try to engage in activities tending towards tax evasion. It will subsequently fail to meet its legitimate tax obligation. Investor's confidence is very essential in attracting capital to invest in a locality. Nevertheless, this confidence may tend toward zero in a situation whereby a company is brought under the scourge of multiple taxes.

Multiple taxation is not only confined to the local businesses and investments. It has also transcended to international level. For instance, a person may be subject to tax on the same income in one country on account of his personal status, residence, nationality or domicile. All of these are in addition to another tax in another country where the source of his income is situated. In effect, property may be taxed in the country where it is situated and also by the country where its owners resides. A person may be simultaneously liable to personal tax in various countries. For instance, one country may impose personal tax on account of nationality while another may base its personal tax on domicile or residence of the person concerned within its border. Furthermore, taxes may be claimed on the same criteria which are differently defined in different countries. For example, a person may be claimed as domiciled or resident in different countries in each of which he fulfills the legal conditions for such a status. Finally, various countries may apply different tests. For instance, tax on salaries and remuneration for professional activities may be demanded by the country where the act is performed, where it is paid for or where the employee or professional man resides or belongs by nationality or domicile. For many years the revenue authorities and the common law courts were indifferent to problems of double taxation. The best they could do was merely to reduce the taxable income from abroad by the amount of tax paid on it before being brought into the forum. However, when taxation in most industrial and trading countries assumed high rates particularly after the First World War the prevailing attitude of indifference to the problem of double taxation was abandoned. More so, since the profit of foreign trade by which the developed countries live were reduced out of all proportion to the risks. Again,

the complexity of the different national system of taxation called for urgent solution to the problem of international double taxation.

In order to avoid the serious effects of multiple taxation, the government made a positive move for providing relief for any company or investor who has suffered from double or multiple taxation at both national and international levels. For instance the CITAA provides for the taxation of companies profits accruing in or derived from by any company in Nigeria. On the other hand, the PPTA provides for the tax of profits arises as the result of company's engagement in petroleum operations. The term 'petroleum operations' is defined as winning, obtaining and transporting petroleum or chargeable oil in Nigeria by a company or on its behalf. This includes any drilling, mining, extracting or similar operations or process. It does not include refining and any operation incidental to it. Sales or disposal of chargeable oil are also excluded from the definition of petroleum operations. The two provisions of both the CITAA and the PPTA may subsequently end up in double taxing a company that may negatively affect the promotion of investment in the country. Consequently the CITAA provides that the profit of any company engaged in petroleum operations shall be exempted from the tax under this Act. This indicates that once profits are taxed under the PPTA the same profits shall not be taxed under the CITAA. This is a welcome development even though the same paragraph is deleted in the un-gazetted 2004 Act. But the question here is about the reason of inserting the above provision in the CITAA while the PPTA can be the best place to explain it. The rationale behind this as it appears, is to ensure that profits accruing to a crude oil producing companies from sources not related to petroleum

operations that are taxable under the PPTA do not escape tax under the CITAA. Only the profit which is attributable to petroleum operations that is taxable under the PPTA.

In the same vein the CITA provides for the taxation of dividend distributed by a company to other companies or individuals as shareholders. The dividend could be taxed twice if it is viewed as part of the companies income. But it is provided that "dividend received after the deduction of tax shall be regarded as franked investment income of the company receiving the dividend and shall not be charged to further tax as part of the profits of the recipient company." This provision will definitely reduce the incidence of double taxation and encourage a shareholding companies to hold further investment in another company. This is because a company will have more money from the dividend which is not taxable. The amount can be used in another area of investment.The world has now become a global village. Foreign investments play significant role in the economic development of every nation. Investment and trade or business are used as determinants for the taxability of profits gained by individuals and corporate bodies.

At international level, cross border profit or income is normally liable to tax in the country from which it is derived in accordance with the tax law of that country. At the same time the tax law of the country of residence of the beneficiary also provide for taxation of the same profits or income when it accrues to or is received by the beneficiary. This is another phenomenon of double taxation that is capable of discouraging investors particularly from foreign countries and paralysing the activities of international trade. This is very dangerous. It has negative impact not only on attracting foreign investors but also on revenue generation and economic development of a nation.

CHAPTER THREE:

IMPACT OF CORPORATE TAX ADMINISTRATION ON INVESTMENT PROMOTION IN NIGERIA

3.1 Introduction:

Tax administration has a vital role to play on investment promotion. In Nigeria, the management of corporate taxes presently rests on Federal Inland Revenue Service (FIRS), which is established under the Federal Inland Revenue Service Establishment Act 2007 (FIRSEA) .

The aim of this chapter is to-

i. Examine the institutional framework that administers the taxation of

corporatebodies in Nigeria

ii. Identifyhow it affects the status of investment in Nigeria.

It will therefore discuss the criteria for determining the impact of Nigerian corporate tax law on investment promotion and the evolution of the managerial set-up for the administration of corporate tax in Nigeria. Structure and powers of the set-up are also explored. Assessment, collection and accounting of corporate taxation as part of the main functions of the Service are equally elaborated.

3.2 Criteria for Determining the Impact of CT Law

Semantically, the term "impact" has various words synonymous to it. These inter alia include; effect, influence, consequence, result, outcome and repercussion. Denotatively, the word is defined as a powerful effect that someone or something has on someone or something else. Impact of corporate tax law on investment promotion is therefore the effect or outcome appeared as the resultof the enactment and implementation of the recent amendment of the CITA.

It is good to state that Federal Inland Revenue Service (FIRS) is the government agency responsible for the administration of corporate tax. On the other hand, Nigerian Investment Promotion Commission (NIPC) is the agency saddled with the duty to promote investment in Nigeria.

Investment can be foreign or domestic. Foreign investment is an investment across the national boundaries of investors. It can be portfolio or direct investment. A portfolio investment is the one that investors have no control over it. It is an investment in a financial asset such as stocks and bonds. A direct investment otherwise known as Foreign Direct Investment (FDI) is the one which the foreign investor normally has direct

control over his investment. A foreign direct investor is therefore a person which can be individual or corporate body that has a direct investment in a country other than the country of residence of investment or the investor. Thus, a direct investment is an enterprise in which a single foreign investor control a significant percentage of ordinary shares not less than 10% or voting power of the business which is not less than 19%.

It is also good to state that development in modern technology has made the world a relatively global village. Thus, investors move their funds from one country to another without much difficulty. Foreign investors normally invest in another country in various forms of agreement. These inter alia include joint venture agreement, special contractual arrangement, technology and marketing agreement, co-production and specialization contract agreement and wholly foreign owned entity incorporated in Nigeria as a subsidiary.

In theory, there are many factors that influence the decision of investors to place their capitals in a particular area of business. Market size, production cost, favorable environmentand external promoters are among them.

During the colonial years, Britain was Nigeria's leading trading partner. The large Nigerian market attracted more investors from France to compete with British firms. In 1950s pioneer manufacturing investors stated to come up.After the independence, Nigeria diversified its trading partners. It now trades worldwide with about 100 countries. The United States replaced Britain as the primary trading partner in the 1970s. However, Britain remains Nigeria's leading trade partner. Other major trading partners are Germany, France, the Netherlands, Canada, Japan, Italy, and Spain.

In 1995, Nigerian Investment Promotion Commission (NIPC) Decree No,16 was promulgated. The decree established the NIPC with the aim of shouldering the duty of coordinating and monitoring all investment promotion activities in the country. It is to initiate and foster any measure that can enhancethe investment climate in the country. It is to identify specific project and invite interested investors to participate in it. The main intention of the Decree was to remove obstacles that hinder the flow of investment into the country.

To enhance revenue generation and attract more investment into a country for economic development of a nation tax reform is needed. This may come up as the result of many factors of which complexity and inefficiency of tax regime are included. Consequently, the main purpose of tax reform is the creation of an efficient tax system that generates more revenue and reduces tendency for economic distortions.It is therefore used to reduce the complexity of tax system, review the tax law, increase confidence of public on the tax system, encourage voluntary compliance of the taxpayers, bridge the gap between national development needs and the funding of the needs and improve tax administration to boost up the generation of revenue in the country.

Historically, Nigerian tax system has undergone several reforms. On January 9, 1991 a study group was inaugurated. The group was assigned to critically examine the Nigerian tax system since independence, assess the effectiveness of the system and proffer necessary recommendations. On April 20, 1991 another group was also inaugurated to assess the Nigerian direct tax regime. In 1998 another tax reform was introduced under Decree No 21 to solve the widespread problem of multiple taxation. Thus, each tier of government was assigned to collect specific taxes. Federal government was responsible

for the collection of eight taxes, states collect eleven taxes and local governments have twenty taxes to collect.

On August 6, 2002 another study group was also inaugurated by the then Federal Minister of Finance, MallamAdamuChiroma. Apart from assessing the extent of implementation and impact of the recommendation of 1991 study group, the group was also to review all aspects of Nigerian tax system and recommend on how to improve it. This inter alia includes the review of all Nigerian tax legislations and necessity of amendments, all assessment and collection procedures and entire tax administration and autonomy of tax authorities. In 2004, a new tax reform came to exist as the outcome of recommendations made by the study group of 2002 and a working group of 2003 which reviewed the work of the former. Both groups made wide consultations after which they came out with nine bills presented to the national assembly for ratification. These bills are: the Federal Inland Revenue Service Act 2004, Personal Income Tax Act 2004, Petroleum Profit Tax Act 2004, Value-Added Tax Act 2004, Education Tax Act 2004, Custom Excise Tariff etc (Consolidation) Act 2004, National Sugar Development Act 2004 and National Automotive Council Act 2004. The bills were not passed. It was in 2007 that new reform particularly in the aspect of corporate taxation came to exist. CITA Cap.C21, LFN, 2004 was amended under the CITAA No 11, 2007. Part one of the CITA 2004 on the administration of companies income tax was completely repealed. Instead, a new legislation for the administration of not only the corporate tax but all taxes collectible by the Federal Government was enacted. It is the Federal Inland Revenue Service Establishment Act (FIRSEA) No.13, 2007. The main aim of the reform is to enhance revenue generation and encourage investment in Nigeria.

It is relevant to state that the term “impact” is measurable. This can only be achieved by making reference to some indicators supported by facts and figures, volume and trend. For instance, the primary aim of corporate tax law is to generate revenue for government to effectively perform its duties. It is on this ground that the provisions of the law on CT administration are amended with the aim of enhancing the performance of the FIRS to boost up government revenue to be used in providing conducive business environment and incentivisinginvestors particularly the FDIs to give their own quarter of contribution for economic development of the nation. Therefore to measure the outcome of the recent corporate tax reform the volume oftax revenue collected by the FIRS, the number of companies attracted to invest and the volume of capitals and employment generated by the investorsare to be considered. In other words tax collection, attracted companies and capitals and employment generated by the investors serve as indicators for measuring the impact of corporate tax on investment promotion. Increase or decrees of the volume and rise and fall of the trend line of the indicators are clear criteria to show the positive or negative impact of the reform. The following table is an illustration tothese criteria.

Table 1: Total Revenue Collected by the FIRS from 2004 - 2010

YEAR	TOTAL TAX REVENUE (Naira)
2004	1,194,800,000,000.00
2005	1,741,800,000,000.00
2006	1,866,200,000,000.00
2007	1,846,900,000,000.00

2008	2,972,200,000,000.00
2009	2,197,600,000,000.00
2010	2,839,600,000,000.00

Source:

It should be noted from the above table that three years prior to the repeal of part one of the CITA on corporate tax administration and enacting the FIRSEA in 2007 the FIRS was only able to generate four trillion eight hundred and two billion Naira and hundred million naira (N4,802,800,000,000). However, in three years after the reform (i.e 2008, 2009 and 2010) the FIRS collected the sum of eight trillion nine billion and four hundred million Naira (N8,009,400,000,000). The amount was about twice of the amount of tax revenue generated before the reform. This has positively impacted on performance of the FIRS. For more detail, the following figure is designed.

Figure 1: Tax Revenue Trend from 2004-2010

Source:

The trend line shows a sudden rise from 2007 to 2008.with about 60% of the previous year collection. Although in 2009 the line has declined downward with about 26% reduction from the previous year collection, nevertheless, in 2010 the trend line has gone upward with about 29%. Generally, the trend has consistently moved upward. This is another sign of positive impact of the reform.

In the same vein, incentives are also provided under the corporate tax law. The essence of it is to promote investments, motivate investors to decide to invest in the country

particularly the FDIs. Consequently, to measure and evaluate the impact of corporate tax incentive provisions on investment promotion there is a need to consider the volume of investments in Nigeria. In other words, the value of investments before and after the 2007 amendment of the CITA is an indicator that can serve as criteria for determining the impact of corporate tax law on investment promotion. The following tables and charts are purposely designed to pinpoint on how to arrive at the impact.

Table 2: FDI Inflow into Nigeria from 2004 – 2009.

Year	Inflow in US Trillion Dollar
2004	2,127,090,000,000
2005	4,978,260,000,000
2006	4,897,810,000,000
2007	6,086,730,000,000
2008	8,248,600,000,000
2009	8,649,530,000,000

SOURCE:

The above table reveals that in 2004 the FDI inflow into Nigeria was over 2.1 trillion US Dollar. In 2005 the amount was about five trillion Dollars. In 2006, the amount was about 4.8 trillion Dollars. In 2007, the amount was around six trillion dollars. In 2008, it was about 2.8 trillion US Dollar. In 2009, it was about 8.6 trillion dollars. This indeed will assist in determining whether the law has positive or negative impact on investment

promotion. It the amount constantly increases, it is then a sign of positive impact on investment. But if it the amount decreases it is then an indication of negative impact.

3.3 Evolution of Federal Inland Revenue Service

The term ‘Inland Revenue’ has no statutory definition. However, the term is semantically used to mean ‘Internal Revenue’. Both are used interchangeably. For example the Oxford Advanced Learner’s Dictionary defines ‘Inland Revenue’ (in Britain) as the government department responsible for collecting taxes. This is almost the same definition given to the term ‘Internal Revenue Service’ in the United State of America (USA). According to the Dictionary, it is the government department responsible for collecting domestic taxes. In the same line, the Chambers English Dictionary defines the term ‘Inland Revenue’ the same as ‘Internal Revenue’ which is the department responsible for collecting taxes such as income tax and stamp duty. Consequently, the above definitions make the distinction between the two terms clear and apparent. The term ‘Inland Revenue’ is applied in Britain, while the term ‘Internal Revenue’ is used in the United State of America (USA). But in Nigeria the terms are used differently. ‘Inland Revenue’ is used only at the Federal level. The Federal Board of Inland Revenue and the Federal Inland Revenue Service are typical example to illustrate this point. On the other hand, the term ‘Internal Revenue’ is used to refer to the same government agency responsible for collecting taxes at the state level. State Board of Internal Revenue is an illustration to this. In other words, all 36 State Government responsible for tax collection in Nigeria are addressed as State Board of Internal Revenue.

Historically, the Nigerian Federal Inland Revenue Service was formally known as Inland Revenue Department which was one of the tax offices under the British colony. A part from Nigeria, Gold Cost (presently known as Ghana), Sierra Leone and Gambia were all British colonies. They were tagged as Anglophone (i.e. English Speaking) West Africa. Mr. Walter B.D. was the first commissioner of Income Tax appointed by colonialists for them. The commissioners of Gold Cost, Sierra Leone and Gambia were appointed as the deputies to him. The first Deputy Commissioner of Income Tax in Nigeria was Mr. Frank G. Lloyd. Mr. Franser G.S. who was considered the first assistant commissioner of Income Tax assisted him. Nigerian Inland Revenue was not autonomous until 1943. Mr. W.A.B. Carter was the first Nigerian Commissioner of Income Tax. In 1950s, Nigeria created a body known as Scutineer Committee. It was made up of a number of experienced professional lawyers, accountants and individuals who had a fair knowledge of taxation. The duty of the committee was to meet periodically, review taxable profits prepared by inspectors and make recommendations or give approvals before assessments were finalized. Their work was discontinued for it created more problems than they were meant to solve. Before the Nigerian independence, Native Authorities later on the Local Government Councils were in charge of assessment and collection of income tax. However, under the Nigerian Order in Council 1954, regions were given powers to impose tax at regional levels. Consequently they introduced finance laws that were revised and updated from time to time. In 1958, a revised edition of the Income Tax Law was made effective from June, 1958. The law provided for the appointment of a commissioner and his deputy by the Governor General. Section 3 (2) thereof provided that the commissioner may, by notice in the Gazette or in writing, authorize any person to

perform or to assist in performance of any duty imposed upon the commissioner by this ordinance.

For the first time in 1958, a board was established to administer the taxes in Nigeria. It was the Board of Inland Revenue which was in charge for the management and administration of income taxes of which corporation tax is included. It was established under the Income Tax Administration Ordinance of 1958. The name was later changed in 1961 when the Federal Board of Inland Revenue (FBIR) was established under Section 4 of the Companies Income Tax Act. FBIR operated then as a department in the Federal Ministry of Finance. Until 1979, the CITA 1961 was the only law on corporate taxation. The board was re-established under the CITA of 1979. In 1990 all amendments made on companies' income tax were consolidated under the CITA Cap. 60 LFN, 1990.A further transformation took place in 1993 when the Finance (Miscellaneous Taxation Provisions) Decree No 3 of 1993 established the Federal Inland Revenue Service (FIRS) as the operational arm of FBIR. The Act also created the office of the Executive Chairman of the Board. After some series of amendments the Board was constituted in accordance with the provision of section 1 of the Companies Income Tax Act. In 2005, FIRS was one of the Federal Ministries, Departments and Agencies (MDAs) that underwent massive changes. Subsequently Integrated Tax Offices, ITOs replaced the old tax offices -which were structured along tax types: Value Added Tax Office, Personal Income Tax Office, Petroleum/International Tax Office, Withholding Tax Office, Area Tax Office. The new one stop-shops for all tax types lessened the burden of taxpayers, who can now transact their tax businesses under one roof. To cater for the interest of oil and gas companies, as well as marketing and service companies, airlines, shipping agencies and all companies

with turnover of N1 billion- Large Tax Offices (LTOs) were created. It was in 2007 that FIRS was established under the FIRSEA as the government institution for administration of all taxes in general and corporate tax in particular. Thus the Act states that there is established a body to be known as the Federal Inland Revenue Service.

The FIRS is a body corporate with perpetual succession and a common seal. It can sue and be sued in its corporate name and can acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out any of its functions under this Act. It has powers and duties conferred on it by this Act or by any other enactment or law on such matters on which the National Assembly has power to make law. It is specifically established to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made from time to time by the National Assembly or other regulations made there under by the Government of the Federation and to account for all taxes collected.

Indeed the establishment of the FIRS under a separate statute is a welcome development in the Nigerian tax system. Prior to this, the government agency responsible for the administration of federal taxes in Nigeria was the Federal Board of Inland Revenue (FBIR) which was established under the Companies Income Tax Act. In order to avoid confusion and impression that the Board was solely established for the administration of the CITA, provisions governing the administration of each tax in Nigeria were found in different statutes imposing the tax. For instance, the provisions governing the management of petroleum profit tax are found in the Petroleum Profit Tax Act (PPTA). The legal framework for the management of personal income tax is only available in the Personal Income Tax Act (PITA). Consequently, tax administrators, legal practitioners

and other stakeholders used to find it difficult when it comes to the issue of a case related to administration of a particular tax. The enactment of the FIRSEA has now made references in such cases simple and easy. Furthermore, the Act also granted a number of powers and a measure of autonomy to the FIRS to enable it to discharge its statutory roles. For instance, the FIRS may recruit, discipline and determine the terms and other conditions of service of its staff outside the civil service structure. With the institution of the new structure, the FIRS has been reinvented in terms of dynamism and professionalism. In the same vein, the First Schedule to the FIRSEA provides for the different taxes and legislations administered by the Service of which the Companies Income Tax Act Cap. 60 LFN, 1990 is included.

3.4 Roles and Composition of FIRS

FIRS and its Board play significant roles in generating revenue that comes from corporate tax. In the past, the Federal Board of Inland Revenue (FBIR) played the administrative role for companies income tax and all taxes constitutionally collected by the Federal Government in Nigeria. Consequently, the functions of the Board were all stated under the CITA. However with enactment of the FIRSEA in 2007, all the CITA provisions on the functions of the Board have been repealed. The powers and duties of the Board have now been transferred to the FIRS. It is now fully responsible for carrying out all functions necessary for the administration of not only the corporate tax but the entire taxes imposed and collected in Nigeria. Thus the duties of the Service include-

i. Assess persons including companies, enterprises chargeable to tax.

ii. Assess, collect, account and enforce payment of taxes as may be due to the Government or any of its agencies.

iii. Collect, recover and pay to the designated account any tax under this provision.

iv. Review the tax regimes and promote application of tax revenues to stimulate economic activities and development.

v. Carry out the examination and investigation with a view to enforcing compliance with the provisions of the Act.

vi. Determination of the extent of financial loss, and other losses by the Government arising from tax fraud or evasion and losses arising from tax waivers and other related matters.

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

viii. Adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control technique on the detection and prevention of non compliance.

ix. Collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies of tax matters.

x. Establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transaction and the perpetrators and other persons involved.

xi. Provide and maintain access up to date, adequate data and information on all taxable persons, individuals, corporate bodies or all government agencies involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud.

xii. Maintain database, statistics, records and reports on persons, organisation, proceeds, properties documents or other items or assets relating to tax administration including matters relating to waivers, fraud and evasion.

xiii. Collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake and systematic and progressive implementation of such policies.

xiv. Issue Tax payer identification number to every taxable person in Nigeria in collaboration with State's Board of Internal Revenue and Local government Councils.

xv. Carry out and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria.

xvi. Carry out oversight functions over all taxes and levies accruable to the Government of the Federation and as it may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and ac- counting for revenues accruable to the Federation

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

For effective performance of the above functions, a supervisory body is established. It is at the apex of the structure and responsible for the management of the Service. It is known as FIRS Board. Thus, the Act provides that “there is established for the Service a board to be known as the Federal Inland Revenue Service Board (in this Act referred to' as "the Board") which shall have overall supervision of the Service as specified under this Act.”

It must be reiterated that the term “Board” here and in any legislation currently enacted in relation to corporate tax in Nigeria, does not mean the FBIR that was formally vested with the power to administer the CITA. It refers to the management Board of the FIRS. It is made up of an Executive Chairman and 13 other members.

The appointment of the Executive Chairman is vested on the President but subject to the confirmation of the Senate. On his appointment, the Chairman automatically becomes the chief executive and accounting officer of the Service. He is also responsible for the execution of the policy and the day-to-day administration of the affairs of the Service. He should therefore have cognate knowledge and skills in accountancy, economics, taxation, law and related fields. This is a good development in the area of tax administration. The CITA 2004 did not provide such condition. Consequently, the President may be tempted to use his power to appoint a person that will protect his egocentric interest or the interest of his political party. This may subsequently destabilise the Service and negatively affect its performance. The generated revenue will decrease. The government will be then be left with less amount of money to undertake its projects. This may definitely affect the investment activities in the country. Therefore, to avoid this there must be a check and balance of powers among the three arms of governments. It is also within the presidential

power to designate six other members with relevant qualifications and proficiency in revenue generation to represent each of the six geo-political zones. Other members of the board include-

1. A representative of the Attorney-General of the Federation;

2. The Governor of the Central Bank of Nigeria or his representative;

3. A representative of the Minister of Finance not below the rank of a Director;

4. The Chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 States of the Federation;

5. The Group Managing Director of the Nigerian National Petroleum Corporation or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent;

6. The Comptroller-General of the Nigeria Custom Service or his representative not below the rank of Deputy Comptroller-General;

7. The Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a Director;

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

It is obvious from the above that various interests and stakeholders are sufficiently represented. The composition of the Board is therefore quite commendable. The Act

also provides for the appointment of a secretary to the Board. However, the source of his appointment is quite different from the others. It is from the Board. It is based on some certain grounds. His main duties are to issue notices of meetings of the Board and keep records of its proceedings. He is also to carry out such duties as the Executive Chairman or the Board may, from time to time, direct.

The Chairman and other members of the Board, other than ex-officio can hold office for a term of four years which is renewable once only. He may cease to hold the office if he resigns his appointment as a member of the Board by notice addressed to the President. He can also be disqualified if he becomes of unsound mind or bankrupt or makes a compromise with his creditors. He could also be dismissed if he is convicted of a felony or any offence involving dishonesty or corruption. He cannot hold the office if he becomes incapable of carrying on the functions of his office either arising from an infirmity of mind or body. On the same line, the appointment could be terminated if the President is satisfied that it is not in the interest of the Service or in the interest of the public for the person to continue in office. He could also be removed from the office if he has been found guilty of contravening the Code of Conduct Bureau and Tribunal Act or gross misconduct in relation to his duties. If a person is appointed on the ground of a professional qualification he holds, he can only be disqualified by a competent authority. But the a person who becomes a member by virtue of the office heoccupies - such as the Governor of Central Bank of Nigeria his appointment, as a member of the FIRS Board, is terminated as soon as he ceases to hold the office.

The Board is saddle with certain responsibilities that assist the FIRS to effectively perform its functions. It is the duty of the Board to provide the general policy guidelines

relating to the functions of the FIRS. It is to manage and superintend the policies of the FIRS on matters relating to the administration of the revenue assessment, collection and accounting system. It is also within the competence of the Board to review and approve the strategic plans of the Service. It can equally employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service. Similarly, it can stipulate remuneration, allowances, benefits and pensions of its staff and employees but in consultation with the National Salaries, Income and Wages Commission. The Board can generally make regulations relating to conditions of service of the staff. This may -inter alia- include the appointment, promotion, termination, dismissal and discipline of staff or employees of the FIRS. It is also within the scope of its power to make regulations in relation to appeals by staff or employees against dismissal or other disciplinary measures. Generally, a discretionary power is given to the Board to do any other thing which in its opinion are necessary to ensure the efficient performance of the functions of the FIRS. The Act also provides for the establishment of the Technical Committee of the FIRS Management Board. Thus, it states that there is going to be a technical committee of the Board which is referred to in this Act as "the Technical Committee". The committee comprises the following members:-

1. The Executive Chairman of the Service as Chairman;

2. All the Directors and heads of departments of the Service;

3. The Legal Adviser of the Service; and

4. The Secretary to the Board.

It is noteworthy to state that the Technical Committee may co-opt from the Service such staff as it may deem necessary for the effective performance of its functions. The Committee is to consider all tax matters that require professional and technical expertise and subsequently make recommendations to the Board. It is also within the scope of its duties to advise the Board on' any aspect of the functions and powers of the FIRS under the FIRSEA. It can also attend to such other matters as may from time to time be referred to it by the Board.

In practice, the functions and activities of FIRS are all categorised into four groups. These include-

1. Compliance and Enforcement Group (CEG)

2. Corporate Development Group (CDG)

3. Support Service Group (SSG)

4. Tax Operation Group (TOG)

Each of the above is manned by a Coordinating Director. Consequently the Executive Chairman and the four Directors are among the top administrative members executing the functions of the FIRS. The office of the Chairman plays the role of providing strategic direction and taking decisions on technical and operational matters that cannot be delegated. It is to administratively and technically supervise the entire activities of the FIRS and organise meetings within and outside the FIRS. It is to liaise with public and private stakeholders as well as with legislative and other parts of government. It is responsible for guaranteeing smooth operation of offices and departments within the

FIRS. The office also serve as a platform for taxpayers enquiries and complain. For effective performance of the above duties the Executive Chairman has two secretaries one in charge of the FIRS Board and the other in charge of the Joint Tax Board (JTB). A part from them there are two other officers. One is in charge of Internal Affairs Department and the other is responsible for Corporate Communications (i.e. ServicomNordal Officer).

3.5 Corporate Tax Assessment

The government agency responsible for the administration of corporate tax is FIRS. It is primarily charged with the power of assessment, collection and accounting for not only the corporate tax but all taxes accruable to the government. The FIRSEA provides that the Service (FIRS) shall assess persons including companies, enterprises chargeable with tax (and also) assess, collect, account and enforce payment oftaxes as may be due to the Government.

In accordance with the above provision, the Federal Inland Revenue Service is vested with responsibility to assess any persons chargeable with tax irrespective of whether it is individual or company. In other words, part of the duties of the FIRS is to inspect individuals and companies in order to determine whether they are liable to pay tax under the Nigerian tax laws or not. It is to assess, collect and account for the revenue generated from corporate tax. For instance,in 2013, about one trillion Naira was generated from corporate tax in Nigeria. The amount was equivalent to one fifth (1/5) of Nigerian Federal Government budget for that year. However, no tax will be collected without assessing the income of companies. Thus, corporate taxassessment is very important.

Looking at the revenue generated from the companies' income tax, the significance of it cannot be overemphasised.It is the base when it is compared with collection of tax that will not be possible without been preceded by tax assessment. Thus, the essence of corporate tax assessment is to ensure that all companies liable to pay tax under the CITAA are brought into the tax net and properly assessed for tax collection and revenue generation. More so, prospective investors may need to understand the process of making the assessment of corporate tax so as to know clearly, how CITAA can affect the status of their investment.

Statutorily, neither the CITA nor any other Nigerian tax law provides for the definition of the word "assessment" or the phrase "tax assessment" let alone the "corporate tax assessment". In it literal sense the term "assessment" has a broad meaning. It is a process for taking decision and final judgment about a person or a situation or any other thing.In the same vein the phrase ''tax assessment'' has been technically defined as "the process of measurement of a taxable person's tax obligation and putting him on notice in respect thereof." According to Okonkwori, "assessment of tax" could be defined as a process whereby the tax officers and tax payer come together and have discussion concerning the general state of the business in order to ascertain what to pay as tax." Professor Ayua simply defined it as "the process whereby the taxable income of taxpayers is ascertained." In the same vein, companies' income tax assessment involves ascertainment of total income of the company, making all deductions allowed and prescribed by law, applying of the companies' income tax rate and determining the tax payable. In the case of Oando Supply & Trading LTD v. FIRS, the appellant was served by the respondent notices of additional assessment for the 2006, 2007, and 2008 years of

assessment. The company sent to the FIRS a Notice of Objection (NOO) in writing, within the statutory period. It then decided to appeal against the assessment at the Tax Appeal Tribunal (TAT) for not having any information for six months on the NOO from the FIRS. But this was objected by the FIRS on the ground that the NOO was still pending since no Notice of Refusal to Amend (NORA) had been issued. The TAT can only entertain appeal against NORA but not against assessment. Consequently, the Tribunal lacks jurisdiction to entertain the appellant's application. It is incompetent and amount to abuse of court process. It was argued that the Companies Income Tax Amendment Act provides that the Federal Inland Revenue Service (Establishment) Act (FIRSEA) is the legislation that governs the appeals to the TAT. The FIRSEA provides-

An appeal under this schedule shall be filed within a period of 30 days from the date on which a copy of the order or decision which is being appealed against is made or deemed to have been made by the Service.

Accordingly, an appeal can only be raised against an order or decision but not NORA. The TAT held that despite the fact that the CITA did not stipulate any timetable within which the tax authorities must issue the NORA. But this does mean that company shall wait endlessly without launching an appeal. The law has always imposed a reasonable timetable of which 90 days was stipulated in this case. Failure to serve NORA within this period should enable the taxpayer to approach the TAT which has power to entertain appeals against orders and decisions of which assessment is included. This is because assessment is a decision as to the amount of tax due from the taxpayer to whom it is addressed, and an order directing him to pay that amount." However, before arriving at the decision as to the amount of tax due, the profit, assessable profit and total profit and

payable tax must all be ascertained. Consequently, corporate tax assessment could be defined as the process whereby the profit, assessable profit, total profit and payable tax of a company are all ascertained.

The word ‘process’ is denotatively used to mean a series of things that are done in order to achieve a particular result. It is a method of doing or making something. The process of tax assessment is the way to be followed, the steps to be taken and the stages to pass through for making a tax assessment. Process of corporate tax assessment is therefore the legal procedure of making the assessment of corporate tax. This involves ascertainment of profit, ascertainment of assessable profit, ascertainment of total profit and determination of payable tax.

To ascertain the profits of a company, provisions of the CITAA on exemption of profits and sources of profits must be taken into consideration. Accordingly, the CITAA imposed the payment of tax upon the profits of any company accrued in, derived from, brought into or received in Nigeria. Nevertheless, certain profits of corporate bodies such as Non-Governmental Organisations (NGOs) are exempted from it. This is with theaim of promoting investment and encouraging the establishment of charitable organisations and mutual firms for economic development of the nation.The CITAA also enumerated the profit sources deemed to be chargeable to tax from the companies’ income in Nigeria. These include trade or business, rent, premium, dividend, royalties, discount, charges, annuities and any other source of profit not mentioned in the Act. Others are deemed income, service fees, dues and allowances and gains from short-term money instruments like federal government securities, treasury bill, saving certificate, debenture certificate and treasury bonds. What should be noted here is that each source

of profits enumerated under the Act is independent. For instance, trade or business is an independent source; rent is another source; royalty is equally a source different from others; and gain from treasury bonds is also a separate source. It is not a condition that a company must gain its profits from all enumerated sources before it will be liable to tax. The company is liable to tax even if its profit is from one source such as dividend.

Ordinarily, determination of profit or loss in a business or trade of a company is not difficult once the company's accounting policies and principles of accounting are put into consideration. According to the principles of accounting, the profit or loss is the difference between the income and expenses incurred in generating the income. In other words, profit is income less expenses. In a trade or business, profits are normally accrued from the sale of goods or services. The gross profits is the sum of the cost of all sales of a company. The net profit is arrived at after deducting the overhead expenses. However, this cannot be used to determine the tax liability of a company. The accounting profits must be converted to the taxable profits known as adjusted profits. The process of this conversion involves the application of the provisions of the CITAA on allowable and non-allowable deductions. To arrive at the adjusted profit or loss of a company nontaxable profit has to be deducted from the accounting profit before the non-allowable expenses is added. It should also be stated that section 20 of the CITAA specifically provides for the deduction of interest payable on loan used as capital, rent, premium, salary, wages, benefit, allowance or any other approved remuneration incurred in production of company's profits. Expenses on repair of premises, plant, machinery, fixtures utensil, articles or any implement used in trade are also deductible. Bad or doubtful debts incurred, are equally deducted. It also provides for the deduction of

pension, provident or any other retirement benefits fund, society or scheme approved by the Joint Tax Board (JTB). .

Generally, allowable deductions are not restricted to the above expenses only. As a matter of fact, the Act provides that expenses wholly, exclusively, necessarily and reasonably incurred by a company in production of profits shall all be deducted. This is a general rule for identifying whether an item of expenses is deductible or not. It is not necessary to be among the above-enumerated items by name. An item of expenses is considered deductible so long as it fulfills the conditions generally set by the Act. It has to undergo a crucial test contained in the phrase "wholly, exclusively, necessarily and reasonably incurred in the production of profits". The choice of words is presumably intended to have a narrowing effect on the deductible allowances. In other words, the phrase is used so as to confine the scope of deductible expenses to only direct (i.e. wholly and exclusively) and unavoidable (necessary) outlays. The only expenses that can be deducted are those that are incurred with the sole purpose of producing profits.

To ascertain the Assessable Profit (AP) of a company the CITAA provides that theAP of a company is the adjusted profit that is assessable to companies' income tax in an assessment year. Unlike the adjusted profit which is computed based on the accounting year, the assessable profit is ascertained based on the government fiscal year referred to as the Year Of Assessment (YOA). Statutorily, the phrase "year of assessment" is defined as a period of twelve months, commencing from 1st January. It therefore eventually ends by 31st December. Consequently, the normal basis period for each year of assessment is twelve months. In the same vein, the CITAA, provides that the profits of any company for each year of assessment is the profits of the year immediately preceding

the year of assessment. Therefore, assessment of corporate tax is made on Preceding Year Bases (PYB). Consequently, a company is assessed for 2011 YOA on the basis of its income for the preceding year of 2010. However, an on-going company may elect to make up its accounts for a period of the twelve months to any date determined by its management. It has a choice under the CITAA as to the date to which it makes up its accounts, provided that the accounting year-and dates are maintained from year to year. It is therefore assessed on the basis periods for which its individual account is made up. The PYB is a general principle of tax assessment. However, some rules are exempted from it. These are the commencement rule, cessation rule and the assessment rule on change of accounting date. Thus, for new trade or business, the basis of assessment for the first three years is based either on the normal basis or actual year basis. Under the normal basis a company is assessed separately in each of the first three years as follows-

a. For the firstyear the assessable profit is the profits of that year (i.e. from the date of commencement to 31st December of the year)

b. For the second year the assessable profit is the amount of the profit of one year from the date of commencement of trade or business (i.e twelve months from it).

c. For the third year the assessable profit is computed on preceding year base but not be more or less than 12 months.

In the case of cessation of business by a company, the CITAA provides that the assessable profit of the year of assessment is the amount of profit of that year i.e. from January of the year to date of cessation. For the year preceding the year of cessation (tagged as penultimate year) two computation is to be made. The first one shall be on

actual basis and second one on preceding year basis. The higher of the two results is taken as assessable profit. This is done at the option of the FIRS.

It appears that the aim of this provision is to avoid undue delay in the process of collection of corporate tax in Nigeria. This is a good idea for it can block the opportunity of making use of it to avoid the payment of corporate tax. However, one of the characteristics of good tax system is simplicity. But these rules create unnecessary complications for demanding two types of computations in order to arrive at the assessable profit for the determination of tax payable. Furthermore, the rules particularly of the commencement of new trade or business often lead to double taxation that silently kills business and discourage investment. It is therefore another problem that has to be tackled.

To ascertain the Total Profits (TP) of a company the CITAA provides-

The total profits of any company for any year of assessment shall be the amount of its total assessable profits from all sources for that year together with any additions thereto to be made in accordance with the provisions of the Second Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of this section, section 32 and of the said Schedule.

It is good to state that subsection two of this section provides for the deduction of any loss incurred by a company in any trade or business during any preceding year of assessment. In the same vein,the second schedule of the Act provides for the deduction of capital allowance. Accordingly, the total profit of a company is its total assessable

profit from all sources less losses and capital allowance incurred and allowed to be deducted under the CITAA. In other words, total profit of a company is the aggregate amount of assessable profits from all sources less any loss and capital allowance.It should be noted that corporate tax rate is applied on the total in order to arrive at the actual amount payable by a company.

The CITAA also provides for the currency in which the assessment should be raised. Thus it is stated that tax assessment is made in the currency in which the transaction giving rise to the assessment was effected Thus raising of assessment must conform to the above provision. It must be in the currency which the company transacted. Consequently if the transactions made by the company were in foreign currency for instance Dinar, U.S. Dollar, Pound Sterling, Euro or Riyad, the assessment shall then be raised in such currency. But if the transaction was in local currency the assessment should be in Naira.

Nigerian tax system generally provides different types of tax assessment. All can be divided into two main classes. These are the Self Assessment and the Government Assessment.The government agency responsible for corporate tax assessment is the FIRS. However, the duty of making the assessment of corporate tax has been shifted to the corporate bodies themselves. Thus, it is called self assessment.

The Nigerian constitution made an adequate provision for the implementation of self-assessment. Thus, it states that it is the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly. Consequently, it is the duty of every person to assess himself in accordance with the provisions of tax

laws. It was in 1991 that self-assessment was first introduced into the Nigerian tax system, with operational effect in 1992. However, it was not effectively implemented until 2011.

The companies -under the self-assessment method- are entrusted with the responsibility to assess themselves for tax. They afterward, proceed to pay the assessment in accordance with the provision of the law. In other words, the duty of raising assessment is under this scheme shifted to the taxpayer. The company is therefore expected to accompany its tax returns with self-assessment notice and an evidence of payment to the FIRS through appropriate designated collecting bank. In corporate taxation self-assessment can therefore be termed as company's assessment.

For self-assessment purpose in Nigeria, the FIRS prepares forms known as tax returns. They are used to calculate the tax liability of a company. They are always available at the FIRS and obtainable free of charge from the relevant office, and must be filled and submitted to the FIRS within a stipulated period. As for a company that has been in business for more than eighteen months, it is expected to file its returns in not more than six months after the end of the accounting year. But for a newly incorporated company it is to submit within eighteen months (18) from the date of its incorporation or not later than six months after the end of its first accounting year end whichever is earlier. For instance, incorporation date for Bambale limited was May 1, 2013. The deadline for the submission of its first returns will be 18 months which would be October 31, 2014. But if it commenced business on June 1, 2013, its accounting date would be twelve months from the date which was May 31, 2014. Six months after the expiration of the accounting date would be November 30, 2014. Consequently October 31 is earlier than November

30. The due date for the submission of the first returns of Bambale ltd was therefore October 1, 2014. But if it decided to make its account on March 31 of every year, the six months after this would be September 30, 2014 which is earlier than October 31. 2014. As for the companies operating in Nigerian Stock Exchange, seven days after each calendar month is stipulated for them to file their returns for the preceding calendar month. The return may contain two types of transactions, namely. transactions in the primary market and the transactions in the secondary market. The returns of the first type of transactions should contain the type of offer; the services rendered; the amount of tax deducted at source and the amount of VAT payable. In the second type of return, the capital market operators are expected to disclose information about the number and value of the transactions carried out for the preceding calendar month. The operators must also state the commission received or paid and the tax withheld and payable VAT. Failure to comply with the provision of the CITAA on the time for filling returns is a statutory offence. It attracts penalty of N25,000 on convictionfor the first months in which the failure occurs and N5,000 for the subsequent month in which the failure continues.

It should be noted here that the Act provides for the penalty of the companies that only fail to file their returns within the stipulated period. However, it is silent on the penalty of companies that refuse to completely and deliberately file their returns. But as a general rule, the Act provides for the penalty of any offence against the CITAA which has not been specifically mentioned. The penalty is N20,000 as fine on conviction. If the offence is failure to furnish any required information, an additional sum of N2,000 is to be paid for each and every day during which failure continues. However, in spite of the above penalties, companies are still perpetrating the offence. For instance, in 2012

Nigerian Stock Exchange (NSE) revealed that out of 30,000 companies registered with the Corporate Affairs Commission (CAC), only 196 companies listed on stock exchange that regularly rendered their returns and paid their taxes. In 2013 alone it was discovered that about 350,000 companies did not render their tax returns in the country. This means that they did not pay their corporate taxes. Companies are not afraid of the penalties. This is not unconnected with the amount provided as fine. The amount is too meager. It can hardly deter the tax evaders or avoiders from perpetrating the offence. This is a serious problem that has to be tackled.

Corporate tax revenue is very essential to the government. This is because no company will like to invest in a place that has no security of life and properties. This cannot be provided without revenue. Consequently any attempt to deny this revenue should not be taken lightly. Tax evaders must be severely punished to protect the government revenue that keeps on its activities moving in the country.

Generally, self-assessment method is more autonomous for allowing the companies to act independently for their tax assessment. It creates confidence on the tax payer and fosters close relationship between the FIRS and the taxpayers. But it does not mean a total elimination of all kinds of dispute between the FIRS and companies on issues related to tax assessment. Moreover, it does not mean that FIRS will no longer exercise its power in raising a BOJ assessment when the need arises. The system has presently enhanced not only the corporate tax revenue but the whole revenue that comes from taxation. The following table is a clear indication of the impact of this provision.

Table 3: Tax Revenue Generated From 1996 – 2003 & 2012

Period	Years	Amount
8 years	1996 – 2003	N2.682,000,000,000
1 year	2012	N5,000.000.000.000

Source:

It is clear from the above table that from year 1996 to 2003, the FIRS collected a cumulative amount of 2.682 trillion naira in taxes , while in 2012 alone, which was the immediate year after the effective implementation of the self-assessment system, the tax collection was about 5 trillion naira from taxes. This is a good development. The amount can be used to restore peace and security particularly in the northern part of the country. It can also be used in government's activities that can promote investment in the country.

Another consequence for company's failure to comply with the provision of the CITAA on preparation of returns / self-assessment form and delivering them within the stipulated time is raising a government assessment. The CITAA provides-

The Board shall proceed to assess every company chargeable with tax as may be after the expiration of the time allowed to such company for the delivery of the audited accounts and returns provided for.

The assessment to be made here is the government assessment. It is normally raised by the FIRS or any government agency responsible for the assessment of tax. According to the above provision, the FIRS may raise the assessment in the event of company's default

to file its self-assessment returns at all or within the stipulated time. The Act also provides that where a company has delivered audited accounts and returns within the period, the FIRS may accept or reject the returns if there is any reason to do so.

The FIRS Information Circular states that normally there should be reasonable expectation of tax payment from the company before the Board can proceed to raise an assessment. Therefore, the inspector of taxes should always be guided by considering unabsorbed losses and capital allowances carried forward. He should also look at the possibility of a company being liable to tax under minimum provision. Economic trend/performance, sectorial /industrial economic performance and the performance of companies in similar lines of trade or performance below determined industrial averages analysis should also be put in mind. Where the returns are rejected the FIRS will determine the amount of the total profits of a company and make the assessment to its Best of Judgment (BOJ). The assessment is therefore called BOJ assessment. The same thing applies where a company has not delivered the returns after the expiration of the stipulated time. The FIRS will in this case also determine the amount of the assessable profits of the company and make a BOJ assessment. However, in determining the total profits, it is not the duty of the FIRS to grant any capital allowance or deduct any loss incurred by the company as the result of its failure or neglect to deliver the returns at all or within the stipulated period. It must be noted that expiration of the time stipulated for the returns/assessment forms is not a sole condition for raising a government assessment. The FIRS can make a BOJ assessment upon any company for any year of assessment and at any time before the expiration of the time within which such company is required to deliver the returns of assessment. However this must be on condition that the tax

officials duly authorized by the FIRS considers it necessary and expedient for any reason of urgency such as looming liquidation of a company.

It should be noted that tax officials making Best Of Judgment assessments must not be vindictive, arbitrary or capricious. They must ensure that it is based on fair reasonable percentage of the company's turnover for the relevant year. They must take into consideration local knowledge and repute in regard to the assessee's circumstances. Their knowledge of previous returns and assessment of the assessee must be put in mind. Any other matter that may help in arriving at a fair and proper estimate must also be taken into cognizance. Failure to observe these, may cause the assessment to be overturned by a court as it appears in the decision of High Court of Lagos State in the case of D Sam Nigeria Limited v. Lagos State Inland Revenue Service and the Privy Council decision in the case of Income Tax Commissioners v. Badridas Breweries Ramrai Shop, Akola.

The Act lucidly describes an assessment that can also fall within the frame of government assessment by stating that if any company disputes the assessment it may apply to the Board by notice of objection in writing, to review and revise the assessment made upon it. This provision refers to an assessment originally made but is objected as a result of dispute between the company and the tax officials. The FIRS, upon receiving a written notice of objection from the company should review and raise a revised assessment without any amendment. It may also decide to amend it which makes it to be called amended assessment.Government can also raise an additional assessment at any time in a year or within six years which the tax returns was filed to the FIRS. Additional assessment usually comes up as the result of queries raised by the tax officials on the tax

returns. It can also be raised as the result of back duty assessment which may be done on the ground of tax audit carried out on the tax payer. The CITAA also made a clear provision on the issue of additional assessment as follows:

If the Board discovers or is of the opinion at any time that any company liable to tax, tax has not been assessed or has been assessed at a less 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...

Although managing and superintending of policies of the FIRS in matters related to the administration of revenue assessment is part of the power vested on the FIRS Board, nevertheless the issue of assessment is the function of the FIRS not its Board. The word 'Board' here appears to be a replica and duplication of what was written in the provision of the Companies Income Tax Act Cap.C.21,LFN, 2004 and the Companies Income Tax Act Cap.19, LFN.1990. Under these Acts, assessment was part of the duties of the Board . But the provision of CITAA shifted this duty to Service. It is now the duty of FIRS to make and raise assessment. To leave the word 'Board' here may confuse some persons in understanding the provision of the Act. They may think of the former Board in charge of the administration of federal taxes in Nigeria. It may subsequently leave an unpleasant impact on the minds of investors. Consequently there is a need to amend the Act and substitute the word with the term 'Service'. More so, the key word in section 48 is "discovers." It has no statutory definition. To clarify the actual meaning attached to it, recourse most be sought from the Nigeria court decision. In the case of Commissioner of Revenue v. Attah , the court interpreted the word "discovers" to mean that additional

assessment to the best of judgment may be based on any information the commissioner can get and as such strict legal evidence is unnecessary. In an attempt to define the word, Hassan Ag. S.P.J. adopted the definition given by Bray J. in an English case ofR.v. Kensington Income Tax Commissioners. According to him:

The stage preceding an appeal is not that at which legal evidence is required, and it seems to me to be clear that the word: - "discovers" cannot mean ascertain by legal evidence. In my opinion it means: come to the conclusion from the examination he makes, and from any information he may choose to receive. There is nothing to prevent him from getting such information as he can.

The above definition can now make the FIRS to have a considerably wide authority to look for information for the purpose of assessing the profits of companies(i.e. where there had been an underassessment). Consequently, in the case of Western Sudan Exporters v. F.B.I.R the court pointed out that the word "discovers" in our Act, is capable of a wider definition than its counterpart in English Act. It was subsequently held that additional assessment may be raised where an error of law is discovered. But in the case of Mobil oil Nigeria Limited v. FBIR , the Supreme Court of Nigeria, adopted the interpretation of Lord Denning M.R. of the word "discovers" in an English case of Parking v. cattle the Supreme Court was of the view that the word 'discovers' simply means "finds out". An inspector of Taxes discovers not only when he finds out new facts which were not known to him and to his predecessors. He also discovers when he finds out that he or his predecessors drew a wrong inference from the facts which were then known to him. He also discovers when he finds out that he or his predecessors got the laws wrong and did

not assess when it ought to have been. Apparently, this is a very wide interpretation of the word "discovered".

From the above cases, it can be concluded that judicially, the word "discovers" has various definitions. Accordingly, it means "to come to conclusion from examination or from any error of law or simply to find out." In a nutshell, these definitions can all be summarized to mean that additional assessment can be raised where an additional amount comes to light from further examination of the company's account. This normally occurs after a lesser amount of tax has been raised or as a result of fresh information received or facts which come to light at a future date. It should be noted that it is not a condition for the FIRS to send a return form to the company before raising any additional assessment. In the case of Commissioner of Revenue v. Attah, Hassan, Ag. SPJ stated that "I do not agree with the contention that a return form must be served on the defendant before an additional assessment could be raised. I can find no such duty imposed upon the commissioner." It should also be noted that at any time the Service can raise an additional assessment on any company found to have been under assessed due to its under-declaration of it profits. So long as the company is under assessed as a result of fraud, wilful default or neglect on the part of the company, the Board can raise an additional assessment for these at any time. The issue of six years from the expiration of the year of assessment has not come up here. This is to send a kind of signal to the defaulters among the incorporated companies. They should know that they cannot escape from additional assessment at any moment in addition to the penalty they are liable to pay, once they are discovered that they are under-assessed.

It must be mentioned that for the purpose of corporate tax assessment, the FIRS is expected to prepare an assessment list of companies assessed to tax for each year of assessment. The list should contain the following information-

1. The names and the address of the companies assessed to tax;

2. The name and address of any person in whose name any such company is chargeable;

3. The amount of the total profits of each company;

4. The amount of tax payable by it; and

5. Such other particulars as may be determined by the Board.

Any company whose name appears on the assessment lists should be served with a notice of assessment. It is a statement of tax payable, by the company. It contains the taxpayer name and address; the taxpayer file reference number/ Tax Identification Number (TIN); the assessment number; the nature of the business of the tax payer; the relevant tax year; the turnover; and the assessable profit. The statement also consists description of the loss relieved (if any); the capital allowance claimed (if any); the taxable profit; the tax payable and the address of the tax office where the assessment was raised and the signature of a responsible officer of the tax authority.

The notice of assessment could be sent through registered post indicated in the list. According to the Act, the FIRS Board should state the amount of the total profits, the tax payable and the place at which such payment should be made. A clear statement of the rights of the company under the CITAA must also be included.

3.6 Collection of Corporate Tax

Collection of corporate tax is another important function of the FIRS. After assessing the company's income and ascertaining the chargeable tax the company is expected to pay the tax. FIRS is the government agent primarily saddled with responsibility to collect the corporate tax. It is therefore one of the most important functions of the Service. Assessment is useless without payment from the taxpayer and collection by the Service. This is because it is the collected revenue that government used for the discharge of its public project not the assessed income. In other words government can only have sufficient revenue for the execution of its plans and rendering services to the public on the ground of the revenue generated and collected by the FIRS.Corporate tax collection has no statutory definition. However, a scholar generally defines the words "tax collection" as the process or mechanism through which all assessed taxes which have been served on tax payer via notices of assessment are fully paid for and collected by the relevant revenue authority reaching the appropriate account with CBN. Therefore, corporate tax collection can be defined as the process whereby the company tax due are fully paid and received by the FIRS.

It is good to state that the CITAA provides different methods and devices for the collection of corporate tax. It depends on the mode of corporate tax to be paid. Normally companies pay provisional tax, self-assessment tax due, direct assessment tax, withholding tax, education tax, capital gain tax and value added tax.

The words provisional tax is used to mean an amount equal to the tax paid in the immediate preceding year of assessment. In this case, a notice of assessment is not

required to be served upon the company. What is only required from the company is to deposit its cheques with a completed bank deposit form with a bank designated by the FIRS to collect the corporate tax. The tax file number of the company as well as the assessment year in which the payment is being made must be recorded in the deposit form. A provisional tax is therefore not an assessment or a separate tax on companies. It is rather, a kind of advance payment against the company's tax liability yet to be determined for the year of assessment. It is used as a set off against the assessment of the year. It is normally made in order to ensure that the tax assessment is paid as early as possible. The CITAA provides that-every company shall, not later than three months from the commencement of each year of assessment, pay provisional tax .

The year of assessment normally commences from 1st January and ends by 31st December of each year. Accordingly, a company is statutorily required to pay a provisional tax before 1st April of each year. On the same line, the Act provides that any company which files self-assessment form is not required to pay provisional tax. Nevertheless, it should not be erroneously taken that payment of provisional tax is abolished on the premise that the CITAA imposes the filing of self-assessment form on all companies in Nigeria. This is because a filer of a self-assessment form should not be confused with the taxpayer who is obliged to file the self-assessment form. A company may file the form within or after the stipulated period. In other words, it may fail to comply with the provision of the CITAA on the time statutorily required to file the self-assessment form. This is a clear violation of the provision of the Act and hence constitutes a corporate tax offence. It is also against the spirit and intention of the form.

Consequently any company that files its returns out of time or neglects to file it is liable to pay the provisional tax irrespective of whether it has been assessed to tax on best of judgment of the FIRS or not. Therefore the payment could only be avoided by the company which files its self-assessment form for the year within the statutory period.. For instance, a company whose accounting year end is April 30 is statutorily required to file its tax return not later than October 31st of that year. But the year of assessment to which accounting year relates starts from January 1st, of the following year. If the company files its tax returns on January 2nd, it is presumed to have filed them within the time. Consequently the company is not liable to pay provisional tax. However if it fails to file the tax returns on January 2 and a notice of BOJ assessment is served on January 12, it is then going to pay provisional tax. Consequently, a company could only be obliged to pay provisional tax when it fails to file its returns within the limited period provided under the Act. On the same line, provisional tax is equally payable once there is objection or appeal against assessment or in a situation whereby the provisional tax is higher than the tax in dispute.

It is also within the provision of the Act that the self-assessment form which is filed with the FIRS should be accompanied by an evidence of full or part payment of the tax assessed. On the other hand, the Act also provides that a self-assessment filer should pay tax in one lump sum within two month from the date of filing the form. However a company may make an arrangement with the FIRS on application to be granted a special concession to make the payment on the basis of monthly installments. It should not be in more than six installments. But where the request for installments expires after the 30th day of November within the year of assessment the payment of any balance of such

tax may be made not later than that day. So also where a request for installment payment is made, the request shall be accompanied with proof of payment of the first installment to the designated bank.

In the case of any assessment directly raised by the FIRS , the tax will not be collectible unless if the relevant notice of assessment is duly delivered to the company. If the company receives the notice of such assessment and has no any objection or appeal against it, the tax is expected to be paid within two months from the date of delivery. But if the two months expires on or after December 14, the payment should be made not later than that day. Accordingly if the notice of additional assessment or BOJ assessment is received on November 8 or December 3, the company should pay the tax in not later than December 14 which is fourteen or seven days from date of delivery respectably.

In the case of a notice of additional assessment or any other type of original assessment delivered by the FIRS on or after December 14, the tax is paid within one month from the date of delivery so long as it is within the relevant year of assessment. However, if it is raised in relation to any of the previous years of assessment during the current year, the payment is going to be made within a month from the service of the notice of the assessment. If the company raised an objection or appeal against an assessment the tax determined after the resolution of the objection or appeal becomes payable within one month from the date of delivery of the notice of assessment. The limited time here may appear to be very short and burdensome on the company. This may subsequently reduce its income and negatively affect the investment decision of the company. Nevertheless, this does not create any additional burden that may affect the investment status of a

company. This is because the company is expected to have paid a provisional tax on the ground of the objection or appeal. Consequently, it is only going to pay the remaining balance.

Withholding tax is another FIRS collection device or mode of payment of corporate tax. In Nigeria the terms are used to mean the deduction of tax at source from payments (income) due to a benefiting party, by the paying party for onward remittance to the relevant tax authority of the benefiting party. It is therefore not another type of tax, but a mode of tax payment. It is an advance payment of a taxable entity's normal income tax, since it is available for set-off against the ultimately assessed tax.

The rationale behind the collection of withholding tax is to reduce the incidence of tax evasion by companies and individuals, thereby increasing the revenue earning potentials of government from income tax. It is also used to minimize the taxpayers tendency for tax evasion. Furthermore, through this device, all-year round flow of revenue to government is guaranteed without any delay or waiting for the financial or fiscal year-end when tax assessments and collection are carried out. Similarly, the effect of large tax payment on the cash flow of businesses is also reduced by the installment payment of tax via the withholding tax system. It is normally deducted from both earned income and unearned / investment income.

Statutorily, the CITAA provides for the deduction of tax at source from investment incomes, which include interest, royalty, rent and dividend payable by one company to another company. The paying company is required under the Act to deduct the tax either on the date of payment or the date when the company's account is credited whichever

occurs first. The company should then pay the deducted amount to the Board. The rate at which tax is to withheld is ten per cent. The Act also provides that person authorized to deduct tax includes government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.

Accordingly, administrative agencies are therefore expected to play dual tax roles. They are to withhold the tax when making a payment to another person on interest, dividend or rent and remit the amount to the relevant tax authority. It on this ground that agencies are to issue separate cheques to the FIRS on monthly basis for the payment of a withholding tax. For administrative convenience, the cheques are to be forwarded to the offices of FIRS nearest to a particular agency latest by the 1st day of every month. For the purpose of compliance, accredited officials of the FIRS goes round to enforce it. The tax, when paid over to the Board, automatically becomes final tax due from interest or rent of a non-resident recipient of the payment. In the same vein, the Act accords dividend received the status of a franked-investment income as soon as withholding tax is deducted. This means that the withholding tax on such dividend shall be the final tax on the income and that the net-dividend received shall not be regarded as a taxable income in the hand of the recipient. Conversely, any credit notes obtained for withholding tax suffered on dividend would not be available for set-off against a company's tax liability. However, where dividend received by a company is further re-distributed, the redistributing company is still required to withhold tax from such redistribution but is allowed to set-off the withholding tax suffered on the initial dividend from the tax withheld on the second distribution.

Since paying companies and other administrative agencies serves as government agents for the collection of withholding tax, the question that may arise here is on the non-resident companies that are not registered in Nigeria and therefore not having a place of business in the country. This means that such companies cannot be held accountable by Nigerian tax authorities for the deduction and remittance of withholding tax due from payments made to Nigerian companies. However to ensure that payments received from non-resident companies are also brought under the withholding tax net, FIRS requires that Nigerian organizations account on their own for withholding tax ordinarily due on payments received by them from non-resident companies. This is in line with the powers conferred on the relevant tax authority by the CITAA to appoint one person or company as agent of another towards the recovery of a tax. Therefore, an organization is expected to determine the withholding tax due on a taxable payment received from a non-resident company and remit same to the relevant tax authority on behalf of the non-resident company.

The CITAA also provides for the exemption of the profit of some companies from tax liability. This may create confusion as to the responsibility of a paying organization to deduct withholding tax from an entity whose incomes are exempted from tax. However this problem is clearly solved by the Act. Thus it states-

Nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under section 60, 61 and 62 of this Act, such that the provisions of sections 60, 61 and 70 of this Act shall apply to a dividend, interest, rent or royalty which is part of the profits or income referred to in subsections (1) (a) to (f) and (h) to (l) of this section.

Apparently, the above provision indicates that income tax exemption does not necessarily extend to withholding tax exemption. Thus, if a religious body or any other organization expands the sources of its income and extends its activities beyondwhat has been statutorily approved for tax exemption, such incomes become taxable to the extent of their profit tendency. Consequently, no ordinarily taxable payments shall be exempted from withholding tax. The specific exemptions provided for include:

1. Dividend of a small company involved in manufacturing during its first five years of operation

2. Dividend received from investments in wholly export-oriented businesses

3. Interest on the deposit account of a foreign non-resident company, provided that the deposit is in foreign currencies and brought into Nigeria through government approved channels.

In view of the above, it is usually recommended that a company demands for a copy of certificate of withholding tax exemption before it succumb to a plea not to withhold tax from payments due to a supplier. Additionally, the Act provides that income tax assessable on any company whether or not an assessment has been made, shall be recoverable from any payments made by any person to such company. This is a general principle on deduction of tax at source from any income taxable under the CITAA. Consequently, withholding tax is collected from any payment made to a company that has been assessed to tax or is to be assessed to tax in case of urgency. So long as the payment is regarded as an income subject to tax under the Act, a tax must be withheld from it irrespective of whether it is earned or unearned and whether an assessment has

been made or is yet to be made. It should however be noted that earned income comprises professional, vocational, trade or business income. Withholding tax is collected from any prospective taxpayer earned income subject to tax but has not been assessed. It is in connection to this that the applicable rates of withholding tax in respect of certain types of payment regarded as income subject to tax are specifically mentioned. The payments are in respect of the following earned income-

1. All aspects of building, construction and related activities;

2. All types of all contracts and agency arrangements, other outright sale and goods and property in the ordinary course of business;

3. Consultancy and professional services;

4. Management and technical services; and

5. Commissions.

The term "contract and agency arrangements" covers all forms of supplies, deliveries or the like through competitive bidding, tenders, LPOs or other similar arrangements whether oral or written. The term does not cover across-the-counter cash sales or supplies in the ordinary course of business. The rate at which tax is to be withheld on payments for contract of supplies, construction and allied services is five percent (5%) for Limited Liability Companies, individuals and non-corporate bodies. The withholding tax on consultancy fees, technical fees, management fees, directors fees, commission and all service fees other than those mentioned is ten percent (10%) when payable to limited liability companies. The applicable rate for such types of payment to individuals and non-

corporate bodies is five percent (5%). Persons authorized to deduct the tax from these payments are those mentioned in respect of withholding tax from investment incomes. Therefore, an individual cannot withhold tax from any payment he makes to another individual, or corporation. Additionally, any person made a deduction from the payment made by him is required to issue a receipt for the amount of tax deducted. The receipt is to be presented to the tax inspector by the company suffered the tax deduction as evidence that it is entitled to set it off against its assessed tax liability. The receipt should provide the FIRS the following information-

1. Name and address of the payee,

2. Nature of the activity or service in respect of which the payment is made,

3. Gross amount payable and the amount of tax deducted, and

4. The period covered by the payment.

With the above details, the relevant tax authority is expected to prepare and deliver withholding tax credit advices to each and every beneficiary contained in the schedule. FIRS has recently designed an amended schedule to be used in remitting withholding tax taken from companies. The amendments are in line with FIRS objective of automating the withholding tax credit claim system. The Minister of Finance and Economic Development is empowered under the Act to make regulations for the carrying out of the provisions of the CITAA on withholding tax. Generally, the principle provided by the CITAA on deduction of tax at source from any taxable income implies that even if provisions for the payment of withholding tax from unearned and investment income

have not been made it is equally legitimate to withhold tax from interest, rent and dividend.

It must be borne in mind that withholding tax is remitted to the tax authority in the currency in which the deduction was made. This means that transactions made in foreign currency are to suffer withholding tax in the same currency. Therefore, if the transaction was in Nigerian currency the tax must then be deducted in Nigerian Naira and if it is in currency of United Arab Emirate (UAE), United Kingdom (UK) or United State (US), the deduction must be in UAE Dirham, Pound Sterling or US Dollar respectively. It will be subsequently remitted to the FIRS in the same currency. In like manner penalty for default would also be calculated in the same currency.

The time within which the WHT is to be remitted to the FIRS is 30 days. The counting commences from the date the tax is withheld or the date the duty to deduct arises, whichever is earlier. The payment should be accompanied with a schedule showing the following details-

1. Name and address of each contractor/taxpayer ;

2. The registration number or the FIRS file reference number of each contractor taxpayer.

3. The value of the contract; and

4. The amount of tax withheld.

It is worthy to mention that apart from the Withholding Tax account there are four other types of accounts in which payment of corporate tax is made. Companies are therefore

required to make the payment to Federal Government of Nigeria / Federal Inland Revenue Service through them. A company may file a self-assessment return form and pay the tax accordingly. It may however discover that the assessment made for the year was excessive on the ground of some errors or mistakes in the return, statement or account made by or on behalf of the company. In this case the company may make a written application to the FIRS for relief. The application could be made at any time not later than six years after the end of the year of assessment within which the assessment was made. On receiving the application, the FIRS shall investigate the matter and give the relief by way of repayment.

Generally, FIRS plays a vital role in revenue generation. The recent reform that began with the enactment of FIRSEA that grants autonomy to tax administrative agency in 2007 and the amendment of CITAmade a significant changes that positively impacted on corporate tax revenue generation and subsequently affected the promotion of investment in the country. To specifically indicate the impact of corporate tax reform in 2007 and beyond the following table is created.

Table 4: Total Tax Revenue (TTR) and Corporate Tax Revenue (CTR) From 2004 - 2010

YEAR	TTR	CTR	%
2004	N1,194,800,000,000:00K		
2005	N1,741, 800,000,000:00K	N170,200,000,000:00K	9.7%
2006	N1,866, 200,000,000:00K	N246,700,000,000:00K	13.2%
2007	N1,846, 900,000,000:00K	N333,400,000,000:00K	18.05%

2008	N2,972, 200,000,000:00K	N420,600,000,000:00K	14.1%
2009	N2,197, 600,000,000:00K	N600,600,000,000:00K	27.3%
2010	N2,839, 600,000,000:00K	N666,060,000,000:00K	23.4%

Source:

What appears from the above table is that two years prior to the amendment of the CITA of 2007 the corporate tax revenue generated in 2005 and 2006 was four hundred billion Naira (N416, 900,000,000). But between the 2008 and 2009, two years after the amendment, the FIRS collected the sum of one trillion twenty one billion and two hundred million Naira (N1,021, 200, 000, 000). This is more than the double amount of CTR collected prior to the amendment of the CITA in 2007. This is a positive impact on revenue generation which subsequently impacts on investment promotion. To plainly show the corporate tax trend the following chart bar is designed.

Figure2: Total Tax Revenue and Corporate Tax Revenue Source

The trend of corporate tax in this figure shows a constant increase in volume of corporate tax revenue. However, before 2007 the increase was not more that 13.22%. In 2007 the amount increased with about 18%, in 2008 with about 14%, in 2009 with 27.33% and in 2010 with 23.46%. This has also shown a positive impact of the reform on revenue generation that can be used to undertake government activities on investment promotion. In other words, the presentreform of legal and institutional framework for corporate tax in 2007 aimed at enhancing the performance of the FIRS in generating sufficient revenue to the government. The reform has presently culminated in generating more revenue that is

useable by government to provide public services and infrastructures that promote investments. This is a positive impact on investment promotion in Nigeria.

However, in Nigeria, one of major problems that affect the revenue generated to the government is corrupt practices by public and political office holders. Within a short limited period, the revenue collected by the FIRS is mismanaged. Instead of using the fund appropriately in providing a better environment that attracts more investments for public interest, a single person loots it for his private use and selfish interest. For instance, in 2011, a former governor of Edo state was accused by the EFCC for embezzling N19 billion from the state treasury. In October, 2015, former Nigerian Oil Minister Diezani Alison Madueke was arrested in London with £13 billion equivalent to about N3.9 Trillion Naira. A former National Security Adviser (NSA) has recently accused of mismanaging more than $2billion USD meant to buy weapons for security of lives and properties and combating terrorist activities. This is a serious problem for it reduces the ability of state to provide public services and infrastructures which subsequently slows down the economic development of a nation and impedes foreign and domestic investment.

CHAPTER FOUR:

IMPACT OF CORPORATE TAX INCENTIVES REGIME ON INVESTMENT PROMOTION IN NIGERIA

4.1 Introduction:

Investment is one of the major determinants of sustainable economic growth. Consequently, any measure that can be taken to make business easy and encourage investment is very vital to the economic development of a nation. Nigeria needs to promote investment and attract investors for the enhancement of economy of the nation. To achieve this, the Federal Government of Nigeria introduces tax incentives as part of its economic policy. Unfortunately, it is revealed that in 2010, Nigeria is ranked 125 out of 183 countries on the easiness of doing business. This means that there is a problem with the incentives provided by the government.

In selecting locations and determining the most favourable sites for capital investment, various factors impact on companies' investment decision. Tax rate, tax base,tax administration and tax incentives are among the factors that impact on investment decision.

Corporate tax incentivesarevery important to prospective investors. However, thequestion here is whether tax incentives provided under the CITAA arethe major factors that attract investors and positively impact on investment promotion in Nigeria.

The aim of this chapter is therefore to-

i. Examinetheprovisions of the CITAA on tax incentives;

ii. Identifyany problem in the provisions

iii. State their impact on investment promotion in Nigeria.

Thus, it examines theconcept of corporate tax incentive as well asgeneral andsectorial incentives provided under the CITAA.

4.2 The Concept of Corporate Tax Incentives

The word "incentive" is semantically used to indicate something that encourage or motivate somebody to do something. Technically, the phrase tax incentives is defined by different scholars. For instance, Asada and Alubo define tax incentive as "a reduction by government in the payment of tax by a person or company so as to attract a person or a company to invest in a country." Martel, defines it as "any incentive that reduces the tax burden of enterprises in order to induce them to invest in particular projects or sectors." Omoigu, defines it as "special arrangements in the tax laws to attract, retain or increase investment in a particular sector. They are normally granted in order to stimulate growth in specific areas and assist companies or individuals in carrying on identified activities." Ede defines it as "fiscal measures used to attract local and foreign investment capital to

certain economic activities or particular areas in a country." From these definitions it is easy to understand that-

i. Tax incentives are legal provisions

ii. They are provided under the tax legislation

iii. They are provided for a different purpose

iv. Their main aim is to encourage investment for economic development.

Corporate tax incentives could be described as any measure used by government to cut down the tax burden of a company with the aim of motivation so that more investment could be dragged into a particular area of need. The incentives target at many types of activities, such as export promotion, employment and skills training, transfer of technology and location of headquarters. They are consequently exceptions to the general tax regime.

Accordingly, the Nigerian government has granted various incentives for national economic growth in general and stimulation of investment in particular areas of need. These include exemption of profits, allowable deductions, deductible donations, deduction for research and development and tax free period for newly incorporated companies under the commencement provisions. Others are accelerated capital allowance, reconstruction investment allowance, rural investment allowance, export processing zone allowance, income in convertible currencies in tourism, common wealth income tax and double taxation agreement. corporate tax rate for small companies, acquisition of pioneer status and frank investment income are also provided as incentives

under the CITAA.However in Nigeria, two methods are adopted in granting of corporate tax incentives. These are the tax reduction and the tax exemption. Tax reduction is a legal way to reduce the amount of payable tax. This can be in form of tax deduction or tax credit. Tax deduction is used to reduce the amount of tax payable through the companies' tax base. It therefore only affects the taxable income of a taxpayer. This inter alia, includes allowable deductions, deductible donations or deduction for research and development. In the same line, tax credit is used to reduce an amount of money or a specific percentage from the stipulated amount of tax to be paid by a taxpayer. It is normally deducted from the amount of tax payable by a company after the application of the tax rate. On the other hand, tax exemption is the most widespread tax incentive. It is used to completely or partially exclude the companies from liability to tax either on periodic or non periodic bases. Periodic exemption is an exemption of a company from tax liability within a stipulated period. Simply put it is a period of exemption from payment of taxes imposed by the government. It is therefore a tax relief or free period which is also known as tax holiday. It is normally given to the pioneer companies. Non periodic exemption is an exclusion of corporate body from tax liability without limiting the duration of the exemption. The case of NGOs and other corporate bodies whose profits are exempted from tax could be cited as an example of a non-periodic exemption.

4.3 Incentives Provided under the CITAA

The CITAA primarily imposed tax on the profits of companies. Consequently any type of income earned by a company or corporation is subject to tax unless it is exempted by the Act. Accordingly, the Act provides for the exemption of profits of certain corporate bodies from taxation as incentive to their activities that positively contribute towards the

development of the nation. However, provisions of the CITAA on the profits of corporate bodies exempted is an area which has not been given due attention. This is not unconnected to the nature of the activities of those corporate bodies. Some of them such as ministries, divisions, commissions, authorities, boards and services are even public agencies vested with responsibilities to perform the duties of the government. In other words, it is through these agencies that government execute its project and render its services to the public. Their activities are therefore financed by the government from the revenue generated from taxation. Beside, some corporate bodies are Non-Governmental Organisations (NGOs). They are ordinarily established not for profit making. Their activities even assist government particularly in an area of need which requires money to be injected from the government generated revenue in order to discharge its duties towards the citizens of the country. It is on this ground that their sources of profits though not all are exempted from tax.

From the above, the profits of corporate bodies exempted from tax can be divided into two namely, partial exemption and total exemption. Partial exemption is normally applied to the profits of Non-Governmental Organisations (NGOs) which refers to any association of persons registered under the CAMA or any law within the Federation. However a corporate body can not be an NGO unless it is basically registered for the advancement of any friendly, cooperative, religious, educational, literary, scientific, social development, cultural, sporting and charitable purpose. They are therefore non-profit making organizations.

4.3.1 Profits Exemption

The CITAAprovides that "there shall be exempted from tax the profits of any company being a statutory or registered friendly society, inso far as

such profits are not derived from a trade or business carried on by such society." In accordance with this provision, profits of friendly societies are exempted from tax. In Nigeria, friendly society has no statutory definition. However it could be defined as a mutual organisation which exists to promote benevolent activities. For future needs, it usually provides its members with provident benefits such as life and endowment assurance. It also provides them with relief or maintenance up to a specified limit during sickness, unemployment and retirement. It may be established with the aim of forming club for social, educational or recreational purposes. So long as it is a statutory society or registered under any law in Nigeria, its profits are exempted from corporate tax. But if the profits are derived from trade or business activities carried on by the society, it is then liable to pay tax in respect of these profits. It is also provided under the Act-

There shall be exempt from the tax the profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co-operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or

business in Nigeria carried on by some other persons or authority

Accordingly, co-operative society is another category of corporate bodies of which their profits are partially exempted from tax. Although Nigerian tax laws did not make any

provision for the definition of cooperative society, nevertheless, registration and activities of co-operative societies are governed by Nigerian Co-operative Societies Act (NCSA). Accordingly, the Act defines cooperative society as a voluntary association of individuals, united by common bond, who have come together to pursue their economic goals for their own benefits. A society can only be qualified to be registered as cooperative if it is a limited liability society and has the aim of promoting the socio-economic interests of its members. It can be registered as an industrial society or a primary or secondary society. The effect of registration lies essentially in rendering the society a corporate body with perpetual succession and a common seal. It also vests the society with power to hold property and enter into contracts. The registration also enables the society to institute and defend suits and other legal proceedings. It can also do all things necessary for the purpose of its constitution.

In Nigeria, many cooperative societies are designed to assist individual farmers, traders and producers of various goods in promoting their goods. They may engage in the activities of buying goods and reselling them to their members. It is on this ground that any profit derived from these activities is exempted from tax. But if the selling is extended to non members, any profit derived from it is taxable under the CITAA. In the same way, a society may be a beneficial owner of shares or interest in another company that carries on a trade or business in Nigeria. Any distribution received by the society from such company is equally taxable. Investment income payable to the society by any company resident in Nigeria is subject to tax and tax withheld is to be set off against computed tax payable. Investment income received from outside the country is exempted from tax.

As part of Non-Governmental Organisations (NGOs), cooperative societies play important role in complementing the effort of government in providing public services and infrastructures. They have been recording achievements in various places in the country. For instance, from 1976-1984, Mwagavul Development Association (MDA) in Plateau State, Nigeria, established five secondary schools in ManguLocal Government Area (LGA). In 1996, it was revealed that about six million Naira was spent on the teachers employed by the association. The expenditure of three community school projects embarked by the association in 2012 was more than N180,000,000. This is a great contribution to the development of the nation. The aim for granting tax exemption to such corporate bodies is to encourage the establishment of more organisations to assist government in providing services and infrastructures to the people.

The Act alsoprovides that there shall be exempt from the tax the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character. In accordance with this provision, profits of corporate bodies engaged in religious or educational activities are exempted from the payment of corporate tax. Likewise any corporate body established for the purpose of promoting charitable organizations. Mosques, churches, Nigerian Red Cross, Nigerian Red Crescent, government and missionary schools are examples of corporate bodies engaged in activities of public character.

Religion is described as a system of faith that is based on belief in the existence of a particular God or gods. It is a set of common belief and practices generally held by a group of people. In Nigeria, it will be totally absurd to ignore the contributions of religion to the development of the nation. Religious communities have become the key

determinants of history and destiny of the nation. It is one of the major factors determining the stability of a nation. The contribution of religion to the development of the nation can be easily identified if educational and health sectors as well as creation of job opportunities are looked.

Islam and Christianity have played a significant role in the establishment of schools in Nigeria. As the primary schools and their products multiplied, secondary schools were established to satisfy the demand for higher education. In 1859 The Catholic Missionary Society (CMS) established the C.M.S. Grammar School in Lagos. Methodist Boys' High School and St. Gregory's College were established in 1879 and 1881 respectably. Sunrise Secondary School in Abuja, Anwar-Ul-Islam Grammar School, St. Theresa College, Islamic High School, Ebira Muslim Community College and many others were also founded. In addition to this higher institutions were also established by religious organisations to argument the government effort to promote education for nation building. For instance, Al-Hikma University was established in Ilorin, AROIF Islamic Foundation and World Assembly of Muslim Youth (WAMY) and Fountain University was opened by NASFAT Islamic Organisation in Osogbo- Ondo state. Redeemer University in Lagos state and VERITAS University in Abuja were also operated by The Redeemed Churches.In addition to this, religious bodiescontributed a lot in the area of health by disseminating health education and spreading awareness on personal and public hygiene. It equally contributed in establishing hospitals, clinics and dispensaries for treatment of sick persons. Moreover, the role of religion in promoting peaceful coexistence cannot be overestimated. Religious clashes which negatively affect economic development of a country by destroying manpower and resources only occur when people

abandon the teaching of their religion. Generally religious bodies played a significant role in economic development of the nation and collective self awareness which draw together individuals, families and regions pulling them towards greater self-consciousness needed for building and animating a nation. Looking at the educational and health centres established and the role played by some religious leaders and organisation in promoting peaceful coexistence in the country it can be said the essence for the tax exemption of their profit has been significantly achieved.

In the same vein, it is not the profits of religious bodies that are only exempted from tax. The profits of any corporate body charitable in nature are also exempted from tax. This is regardless of whether it is for religious, educational or any other purpose.As long as the body is created for charitable purpose it is qualify for the exemption except it accrues income from trade or business.Charitable organisations are corporate bodies engaged in charitable activities. It is created for the purpose of philanthropic rather than pecuniary purpose. A charitable organisation is a group designed to benefit society or a specific group of people. Its purpose may be educational, humanitarian or religious. It goes beyond giving relief to the indigent, extending to the promotion of happiness and the support of many worthy causes. Charities normally promote goodwill and lessen the government's burdens. They are therefore ordinarily exempt from paying income taxes.

Profits of any company engaged in educational activities are also exempted from tax. Education in a broad sense is a process by which an individual acquires physical and social capabilities demanded by the society. It is an ultimate value and an agent of change. It is to a nation what the mind is to the body. A diseased mind is handicapped in coordinating and directing the activities of the body. Educational system is therefore one

of the most significant tools for development of the nation. This is because the aim of education is to produce a gentle and useful person in the society.

It should be noted that the above corporate bodies whose profits are exempted from companies income tax are known as Non-Governmental Organisations (NGOs). They are associations of persons registered under theCAMA. They are normally established on the basis of people's voluntary initiatives. They are mostly created for the advancement of religious, educational, scientific, cultural, sporting, social development, and charitable purpose. Thus, they are non-profit making organizations. They include organizations, institutions and companies engaged in ecclesiastical, charitable, benevolent or educational activities of a public character. Any organization registered under any law within the Federation as a friendly or co-operative society is also treated as a non-governmental organization. NGOs play significant roles in the development of thenation. For instance, in 2009 alone, there was more than 46,000 NGOs registered in Nigeria. The organisations contributedin building a strong, caring and well functioning society as well as in contributing to its welfare and economic growth. It is in recognition of this, that Government grants tax incentives to them in form of exemption of their profits from tax for humanitarian services they render do. The role of the tax authority is therefore to ensure that the tax incentives are appropriately enjoyed and not abused and the obligations associated with the tax benefits are complied with. However this does not mean that all profits earned by these corporate bodies are completely exempted from tax. Non liability to tax is not the same as exemption fromtax. Non liability to tax means a source of profit cannot be taxed.

Another income which is also exempted from tax is the profits of any company formed for the purpose of promoting sporting activities. Thus the Act states that “there shall be exempt from the tax the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Board may prescribe.” Therefore, sport promotion companies are only exempted from companies income tax on condition that their profits are wholly expendable for promoting the sporting activities. It must be mentioned that sport is an organized, competitive and skilful physical activity requiring commitment and fair play. It is therefore usually governed by set of rules and regulations. To be precise, sports are of different types. These include football, Table Tennis, Lawn Tennis, Golf, Rugby, Cricket, Volley Ball, Basketball, etc. In the Summer Olympic held in Beijing China in 2008, 28 summer sporting activities were contested for. It should also be noted that all forms of physical activities performed with the aim of improving physical fitness or mental well-being are within the scope of sporting activities. Any physical activity carried out for the purpose of forming social relationships or obtaining results in competitions is also within the concept of sporting activities. Sport industry contains thousands of jobs in, sporting events, trade shows and meetings, sport sponsors, sport related media, sport facilities, sport retailers and manufactures, and professional sport services, amongst others. Consequently the profits of any company formed for the purpose of promoting sporting activities in Nigeria are also exempted from tax. However this is based on condition that such profits are wholly expendable for the above mentioned purpose. This condition does not prohibit trading or business activities in this case. Therefore profits derived from the sale of tee-shirts, boots, bats and other sporting

equipment are all exempted from tax. The only condition here is that the profits should be wholly expendable on sport activities.

The CITAA equally states- that “there shall be exempt from the tax the profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union.” Thus, the profits of any trade union registered are exempted from corporate taxation. However before a union will qualify for this exemption it must be registered under the Trade Unions Act. Furthermore the profits must not be derived from a trade or business carried on by the union. The term “trade union” is defined as “any combination of workers or employers whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers and organize workers to promote, protect and improve - through collective action- in the interest of its members.” It is the combination of the efforts of employees, for the purpose ofregulating the terms and conditions of service. It is to defend workersagainst sharp practices not in the interest of productivity ingeneral.

The main objective for trade unions is to follow up the immediate economic interest of the workers in particular and the nation in general. Thus, they play a great role in the development of the nation. For example, in 1985,the Nigerian Labour Congress (NLC)stood against securing the World Bank/International Monetary Fund (IMF) loan and austerity programme proposed by the administration of General Ibrahim Babangida. The NLC arguedthat the poor citizens would suffer the loans most from the austerity measures for it would be squandered as it previously happened. In the same vein, from May 27, 1978 to 2002 the Federal Government increased prices of petroleum products

eighteen times and the NLC protested nine and promoted civil protests nationwide three times. In June 2007 the NLC called for a general strike to protest the sales of the government owned Petroleum Refineries in Port Harcourt and Kaduna and the increase of the rates of value added tax (VAT) and Income Tax from five percent each to ten percent. This has eventually forced the government to review its earlier decision. The rates were subsequently reduced and the sale of the government petroleum refineries in Port Harcourt and Kaduna was revoked. These are part of the union's contribution to the economic development in the nation.

Dividend distributed by Unit Trust is also exempted from corporate tax under the CITAA. A unit trust is an investment fund contributed by several investors for investment in stocks, bonds, money market instruments, real estate or anything within a portfolio of securities managed by a fund manager. It is a meansof investment which employs professionals of a fund to invest on behalf of different investors that pool their funds together for investment. Part of the advantage of this investment strategy is thatinvestors relieved from the severity of selecting the appropriate place for their investment. By trusting the funds in the professional fund manager the strategy also removes the hardship of managingthe investments from the investors. This is justified by expectingresult from the managersbetter than the achievement of individual investors. Usually, one justification for this is the expectation of better results from the managers than the individuals. Another is the fact that it allows them to benefit from a wider basket of investment assets which the managers are able to invest in with their funds. The investor may choose to toe this path exclusively or just as one option for his investments.

Like stocks, unit trust funds are denominated in units. Each investor buys into the funds by acquiring its units. In effect, what the investors directly receives is a certificate of ownership of a certain number of units of the fund, not the specific stocks, bonds or any other investment assets of the fund. The fund's assets themselves can be quite fluid, as the manager switches assets based on his reading of market opportunities. It is the prerogative of the fund manager to choose assets to invest in and the individual investor is not consulted. However, to protect investors and indeed meet their investment aspirations, each fund has its defined investment perimeter. In effect, what areas of investment it can undertake and the range of possible asset allocation to each asset class, are usually spelt out in its approved operational framework. The investor therefore generally knows the investment sectors that his money is being channeled into but not necessarily the specific assets. Such assets are in the name of the fund, not the individual investors. While there is collective ownership of the underlying fund assets by all the fund investors (in proportion to units of fund held), no investor has ownership of specific fund assets. Investors will therefore only be able to sell their units of the fund, if they choose to realise their investment.

It should be noted that most units trust are of the open-ended class. Such funds have no closing subscription date, meaning that subscription is an ongoing process. A person can become an investor by merely making payment for the units he needs atany day and fill some forms to enable him obtain a certificate or any other evidence for the subscription. However some unit trusts are grouped as closed-end funds. They issue a specific numbers of shares during a subscription period and when that is closed, a person would not be able to subscribe as in the open-end fund.

In an ordinary unit trust a beneficiary is entitled to the income and capital of the trust in proportion to the number of units held. Normally unit trust derives its incomes from dividends and interests otherwise known as investment income. Statutorily, withholding tax is deducted at source from such income. In order to avoid double taxing frank investment income that already suffered withholding tax, exemption is provided. However,sometimes the dividends may be derived from what is invested in a pioneer company on tax holiday. This does not affect the exemption for the Act has provided for the exemption of dividends distributed by unit trusts irrespective of the source of the income.

The CITAA also provides that-

There shall be exempt from the tax the profits of any company engaged in petroleum operations within the meaning of section 2 of the Petroleum Profit Tax Act, shall - in so far as those profits are derived from such operations and liable to the tax under that Act- be exempt from the tax imposed under this Act; and the forgoing provision of this paragraphs shall be deemed to have come into effect on first January 1958.

This is what was exactly provided under the CITA of 1990. However, it was deleted in the un-gazetted 2004 Act. The reason for deleting it is not clear even though it is not deleted in the CITAA No.11, 2007. However what is more important is the rationale behind inserting it in the CITA since 1958.

The Petroleum Profit Tax Act provides that "there shall be levied upon the profit of each accounting period of any company engaged in petroleum operation during that period, a tax to be charged, assessed and payable in accordance with the provision of this Act." In

accordance with this provision, tax is only imposed upon the profit of crude oil producing companies. Only companies engaged in petroleum operations that are taxed an assessed under the Petroleum Profit Tax Act. This means that for a company to qualify to fall within the provision of PPT legislation as opposed to normal company tax law [i.e. CITA], the company most engage in petroleum operations. The term "petroleum operations"has been defined by the PPTA as-

The winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or disposal of chargeable oil by or on behalf of the company.

It therefore involves production and sale of crude oil and natural gas and any operation incidental to it. The extraction of any product in the course of operation is incidental to petroleum operations. The sale or disposal of disused storage containers is equally incidental to petroleum operations. However, refining the crude oil in the refineries and the sale or disposal of refined products are neither petroleum operations nor incidental to it. Consequently, profits accruing from these are not taxed under the PPTA. Worthy to note is that there are three types of companies in petroleum industry. These are:

i. The crude oil producing companies.

ii. The petroleum products marketing companies.

iii. The service companies that provide to the oil producing companies

the service of seismic survey, logging, drilling, data interpretation etc.

From the above types only the profit of the crude oil producing companies are chargeable to tax under the PPTA. The profits of marketing companies e.g. Mobil Oil Nigeria Limited and other small independent marketing companies are not to be taxed under the PPTA. Oil servicing companies are also charged to tax under the Companies Income Tax Act.

It is apparent from the above that the reason behind exempting the profits of oil producing companies from tax under the CITA is to avoid double taxation that discourage investment. Furthermore, the CITAA excluded the profits of oil producing companies from tax while the PPTA confined the scope forthe taxability of the profits to the following four sources-

i. The aggregate of the proceeds of chargeable oil sold,

ii. The value of chargeable oil disposed of,

iii. The value of natural gas, and

iv. All income incidental to and arising from petroleum operations.

The CITAA exemption of the profits of crude oil companies from tax and the restriction of the PPTA on the profit may create an impression that profits of companies engaged in petroleum operations are not taxed under the both Acts once they are not falling within the scope of the four sources enumerated by the PPTA. This can be manipulated to avoid the payment of tax which can reduce the government revenue. For instance, an oil producing company may find it essential to build an air strip for its operations.

Nevertheless an organisation may need this service. If the company makes the facilities for a fee, the income derived from it is not taxable under the PPTA. Likewise if a crude oil company build an estate for the use of its staff but coincidently giveout part of it on lease to other corporate bodies, the profits derived from it are not taxable under the PPTA. This is because letting out of strip and estate is neither petroleum operations nor incidental to it. It is therefore not taxable under the Act.To block this gap, the CITAA inserted the phrase "in so far as those profits are derived from such operations and liable to the tax under the Act, within the provision of the Act.

Fostering economic development is another reason which is used to exempt profits of a company from being taxed under the CITAA. Accordingly any company or corporation established by the law of a State for that purpose, its profits are not to be taxed. However the profits are taxable if they are derived from any trade or business carried on by the corporation. They are equally taxable if they are derived from any share or interest possessed by the corporation in a trade or business in Nigeria carried on by some other person or authority. In other words, investment incomes earned by such company or corporation from another company or corporation which carries on a trade or business in Nigeria are not exempted from tax.

Investment income (i.e. dividend, interest, rent, or royalty) derived by a resident company from a non-resident company in a foreign country is equally exempted from tax under the CITAA. However this exemption is only granted on condition that the income is brought into the country through government approved channels. For avoidance of doubt, government approved channels is the CBN or any bank or corporate body appointed by the Minister of Finance as authorized dealer in foreign exchange. Investment incomes

are taxable if they are not brought into the country or they are brought in through unapproved channels. The aim of this exemption as it appears is to encourage repatriation of funds held by Nigerian companies outside the country so as to boast up domestic investment.

In the same vein, interest on deposit accounts of a foreign non resident company is also exempted from tax under the CITAA. But this is on condition that the deposits are transferred wholly of foreign currencies to Nigeria on or after January 1, 1990 through government approved channel. It is obvious from this that the idea behind this exemption is to attract foreign companies to borrow money to fund local investment.

Dividend received from small companies in the manufacturing sector in the first five years of their operation is equally exempted from tax. Accordingly, a company in manufacturing sector must engage in manufacturing activities. Consequently if a company engages in supplying row materials to a manufacturing company it is not exempted. Similarly a company buying and selling of manufactured products is not within the scope of manufacturing sector. The first five years of a company's operation which commence business on October 1,2000 and makes up account to March 31 wouldend on March 31,2005. If the dividend is not declared in any of the years, the beneficiaries cannot enjoy the exemption. The phrase "small companies" has not been defined in the Companies Income Tax Act. In the same vein, the level of activity of a small company has not been stated in this section. However, the CITAA provides-

Where a Nigerian company engaged in manufacturing or agricultural production, mining of solid minerals or wholly export trade, earns a total gross sales (turnover) of below one

million naira, there shall be levied and paid by the company, tax at the rate of twenty kobo on every naira of the total profits.

It could be deduced from the above provision that gross sales of small company engaged in manufacturing activities is the one which its total gross sales is below one million naira. If the company's gross sales in any of the years exceed one million naira, the dividend will not be exempted from tax.

Dividend received from investments in wholly export oriented businesses is also exempted from tax. This is regardless to whether the recipient of the dividend is resident or non resident company. Furthermore, the profits of any Nigerian company in respect of goods exported from Nigeria are also exempted from tax. This is on condition that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts. The dual purposes of this provision as it comes up is to encourage exportation of goods locally made and repatriation of fund to develop industrial sector in the country. Exportation of the whole of the company's products is not part of the condition for the exemption of company's profits. If sales are made locally and abroad the company's account should be split in order to know precisely the profit accruing from export trade. If the company's products are not wholly exported the exemption granted in section 19 (1)(p) cannot be employed. Accordingly, profits from goods sold locally are taxable under the CITAA.

Section 19 of the Act provides that profits of any company whose supplies are exclusively inputs to the manufacturing of products for export are also exempted from tax. To qualify for this exemption the exporter shall give a certificate of purchase of the

inputs of the exportable goods to the seller of the supplies. The input can be raw materials, or semi-processed or processed goods of the supplier company. The supplier company canrestrict its activities to supply to only one manufacturer.It can also supply the same or other materials to others provided that they also used the materials for manufacture of product for export. They should also be issueda certificate of purchase.

With the use of the word exclusively it does not appear that any part of profit of the supplier company will qualify for the exemption if any of the materials are sold to others who use them for purposes other than the manufacturer of product for export. It is not necessary for the manufacturer to provide information about the level of its export trade to the FIRS. It is enough sufficient for the manufacturer to export its products, not necessarily all, to qualify the supplier for claim to exemption of its profits from tax.

The profits of a company established within an export processing zone or free trade zone is also exempted from tax. The profit of a permanent establishment will also qualify if it operates within the zone. Only the profits derived from the company's exported products will benefit from the exemption, but how the profits is applied is not material. For example if 25% of the company's products are exported, 75% of the total profit will be assessed to tax.It should be noted that profit from local sales and export sales are two different source of profit and should be separated and identified in the books.

The profits of any corporate body established by or under the law or edict of a local government are totally exempted. The profits of a corporate body established under a federal or state law as a purchasing authority and empowered to acquire commodities

locally for export are also exempted. The fact that any part of the commodities ends of being sold in Nigeria will not affect the exemption granted.

The profits of a non-resident company which are earned abroad but are brought into or received in Nigeria are completely exempted from tax. The difference between non liability to tax and exemption from tax should be noted here. Profits earned abroad by nonresident company, whether or not it has a permanent establishment in Nigeria, and are not brought into or received in Nigeria are not subject to tax in Nigeria. On the other hand, such profit, if brought into or received in Nigeria are liable to tax by virtue of the provision of the CITAA which state that the tax shall for each year of assessment, be payable upon the profit of any company (i.e. resident or non-resident) accruing in, derived from, brought into or received in Nigeria

It could also be understood that it is not all the sources of profits earned by the above corporate bodies are exempted from tax. Non-liability to tax does not mean the same thing as exemption from tax. A source of profit which subject to tax does not attract tax if it is exempted from tax. This what appears in the case of Rev. M.F. Shadipo, T.R.B. Macaulay (Trustees of the Methodist Church Mission) and Development Trust (Nig) ltd v. FBIR. Non-liability to tax means that a source of profit cannot be taxed.

It is essential to state that apart from the above profits of corporate bodies enumerated by the Act, it is also provided that "the National Council of Ministers may exempt by order any company or class of companies from tax all or any profits of any company or class of companies from any source, on ground which appears to be sufficient." This means that the above council has power to exempt any company or profit from the tax statutorily

imposed. However, this should be done through an order or notice to be given by the council on its satisfaction to the ground for the exemption.Historically, this power was solely vested on the president. However,it could be used to achieve personal interest. The president may grant this exemption to his political associates. To avoid such abuse, the power has now been shifted to the council of the ministers. However, in spite of this, the abuse of power in granting tax waiver and exemption is still one of problems that has beennegatively affecting the revenue base of the country. It subsequently affects promotion of investment.For instance, in three years from 2011 to 2013, Nigeria lost N797.8bilion to waivers and tax exemptions. This is a great loss. The amountcan be used to make an attracting environment that is more suitable for investment.

4.3.2 Deduction of Expenses

Deductibility of expenses is another method used to encourage business and provide relief which positively impact on investment decision. Specifically the Act provides for the deduction of the following expenses-

i. Interest payable on money borrowed and employed as capital in acquiring profits. Consequently, interest on money borrowed to acquire a vehicle for the managing director of a company for his private use is not allowable under the CITAA. In the same vein capital allowance on or running coast of the vehicle are also not deductible even though that the vehicle may be included in the list of the company's fixed assets.

ii. Rent and premiums payable in respect of land or building occupied for the purpose of acquiring profits. However, the deduction is restricted to the maximum of

100% of the basic salary in the case of residential accommodation rented by a company's employee. Therefore any payment in above this amount is not allowed.

iii. Expenses incurred on salary, wages, benefit, allowance or any other remuneration paid to the senior staff and executives. The amount allowed should not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry responsible for labour matters.

iv. Expenses incurred for repair of premises, plant, machinery, fixtures utensil, articles or any implement used in acquiring the profits.

v. Bad or doubtful debts incurred in the course of a trade or business. However, the estimate of what constitute bad debts in respect of particular debtor should be proved to the satisfaction of the FIRS. If any of the amount of bad or doubtful debt is recovered after being deducted in a particular year of assessment, the amount is to be considered as chargeable profits of the year of recovery. Similarly, if such amount is waived, forgiven or refunded to a company, it is then regarded as profit and charged in the year in which the waiver or refund is effected.

vi. Contribution to a pension provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board (JTB).

vii. Authorised Deductions (Nigerian Railway Corporation) Rules.

viii. Expenses incurred wholly, exclusively, necessarily and reasonably for the purposes of trade or business and which is not specifically referable to any other period. Similarly the expenses incurred reasonably for the purpose of such trade or business and

which is specifically referable to the period of which the profits are being ascertained. In the same vein, the expenses proved to the satisfaction of the Board to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund are also deductible provided that they are not deductible under any other provision of this section.

ix. Any other deduction that may be given by the Minister in any given rule .

Generally, allowable deductions are not restricted to the above expenses only. As a matter of fact, the Act provides that there shall be deducted all expenses for that period by that company wholly, exclusively, necessarily and reasonably incurred in the production of those profits. This is a general rule for identifying whether an item of expenses is deductible or not. It is not necessary to be among the above-enumerated items by name. An item of expenses is considered deductible so long as it fulfils the conditions generally set by the Act. It has to undergo a crucible test contained in the phrase "wholly, exclusively, necessarily and reasonably incurred in the production of profits". Consequently, this phrase is the yardstick for determining whether an item of expenditure qualifies to be deductible expenses or not. But the question here is how can an item of expenses be established as wholly, exclusively and necessarily incurred in the production of profits.

However, it must be pointed out that the phrase "wholly, exclusively, necessarily and reasonably incurred" is not only contained in the CITAA. It is rather a common phrase in virtually all-taxing statutes in respect of direct taxes. The phrase is therefore found in the CITAA, PPTA and CGTA. The only difference between them is that the term

“reasonably” is omitted in the CGTA and PPTA. It has been observed that the choice of words is presumably intended to have a narrowing effect on the deductible allowances. In other words, the phrase is used so as to confine the scope of deductible expenses to only direct (i.e. wholly and exclusively) and unavoidable (necessary) outlays. The only expenses that can be deducted are those that are incurred with the sole purpose of producing profits. Therefore it is only the expenses that are blatantly extravagant in nature and for private benefit and selfish interest of the companies' directors and their associates that can be readily disallowed. This is because there is no common standard in determining what is whole, exclusive, necessary and reasonable. However, in the case of Shell Petroleum Development Company (Nig.) Ltd. v. FBIR, the Supreme Court of Nigeria held that the first two words in the phrase i.e. “wholly and exclusively” have virtually the same meaning. Both can mean “solely or entirely.” But the problem here is how to determine whether this is or not a correct statement of law. This essentially based on determining the applicability of the principle of duality on the phrase, which is under discussion.

In general, the phrase “wholly and exclusively” under the tax law contains the principle of duality. The phrase means that expenses of dual nature or purpose do not qualify as allowable except apportionment is possible so that the portion, which is not for the purpose of business, will readily be disallowed. From this angle, the word “wholly” refers to the quantum of the money expended while the word “exclusively” refers to the motive or object accompanying it. Consequently, if an item of expenditure is not solely for a business purpose or is partly for a business and partly non-business purpose the duality principle serves to disallow it, in whole or in part, only when the expense is possible to be

apportioned. Therefore, it is not proper to always take the two words “wholly and exclusively” with equal meaning as the Supreme Court did. The issue of duality might be possible to arise under the CITAA in a situation whereby staffs of MNCs combine business with their personal pleasure trips abroad. Undoubtedly, expenses of this nature have a duality of purpose. In the same vein, the term “necessarily” implies that the expenses should be such that the income cannot be derived without incurring the expenses. “Reasonably” then indicates that the amount of the item of expense incurred must be reasonable. In order to determine whether an outlay is reasonably incurred for the purpose of trade or business, a careful consideration must be on the amount incurred in relation to the profit or loss for the period as well as comparison with the expenses of previous years. Materiality of the amount to the whole financial records, the industry average or standard and the relevant regulatory approvals should always be taken into consideration.

4.3.3 Deduction of Donations

Donations are not normally regarded as business expenses. This is because it may be given for a variety of reasons which inter alia include securing of future favours, displaying wealth or affluence, showing sympathy or genuine concern and making atonement for some past misdemeanours. None of these can be said to have anything to do with the production of profits which is being considered for taxation or with the protection of company’s assets. However to encourage the giving out of donations for worthy causes to some extent the government allowed deduction of a fraction of such

donation from trade or business profits for tax purposes. Thus the CITAA provides that there shall be deducted the amount of any donation made to any fund, body or institution in Nigeria. Accordingly, donations made by a company are deductible before arriving at the amount of assessable profit. However, this is on condition that the donations are made out of the profits of the company, and are not expenditure of a capital nature. The provision of this section is applicable to the public funds, statutory bodies and institutions and ecclesiastical, charitable, benevolent, educational and scientific institutions, established in Nigeria, which are specified in the Fifth Schedule to the CITAA.

Accordingly, the schedule provides for the list of funds, bodies and institutions in Nigeria to which donations may be made. These inter alia include the Boys Brigade of Nigeria, the Boys Scouts of Nigeria, the Christian Council of Nigeria, the Cocoa Research Institute of Nigeria, the Girl Guides of Nigeria, the Institute of Medical Laboratory Technology and National Commission for Rehabilitation and the National Library. Others are any educational institution recognised by government,any hospital owned by state or federal government and any university teaching hospital or any private hospital owned or operated by a society not profit making. For the purpose of deduction, donation can also be made to the Nigerian Council for Medical Research, the National Science and Technology Development Agency, the Nigerian Institute for International Affairs, the Nigerian Institute for Oil Palm Research and the Nigerian Institute for Trypanosomiasis Research. Any donation made to the Nigerian Museum, the Nigerian Red Cross, the National Youth Council of Nigeria, National Sports Commission and its State Associations, the Nigerian Society for the Deaf and Dumb and the Society for the Blind is also deductible. The Nigerian National Advisory Council for

the Blind, Associations or Societies for the Blind in Nigeria, Training Centres and Residential Schools for the Blind in Nigeria, the National Braille Library of Nigeria (NBLN), the Nigerian Youth Trust (NYT) are equally within the scope of corporate bodies that donations made to them are deductible. Similarly the Institute of Chartered Accountants of Nigeria (ICAN) Building, Fund Van Leer Nigerian Educational Trust (FNET), Southern Africa Relief Fund (SARF) and Islamic Education Trust (IET) are among those enumerated under the schedule for the purpose of deduction.

In addition, donations made to any public fund established and maintained for providing money for theconstruction or maintenance of a public memorial relating to the Nigerian civil war, the Armed Forces Comfort Fund or any public institution established welfare of members of the Nigerian Army, Navy or Air Force are also deductible.Donation to a public fund purposely established for raising money to provide government school or any school owned by a society or association not for commercial purpose also falls within the ambit of deductible expenses. Whatsoever expended to a public fund established or approved by Government in aid for the relief of drought or any other national disaster in the country is also regarded as deductible donation. Donation of any amount can be made out of the profits of any company to any fund, body or institution in Nigeria as listed in the fifth schedule to CITAA. There is no restriction as to the number of organisations to whom donation may be made. However the total amount of donation allowed as deduction is subject to a limit of 10% of total profit of the company making the donation for that year of assessment before the amount allowed is deducted.

The CITAA empowered the Minister of Finance to add to or delete from the list provided under the schedule of the Actthrough publication in the official gazette. Anyaddition to

the list must be a public fund or body or an institution established by a statute or of a public character. Consequently any donation made to any fund or body not specifically mentioned in the schedule is not deductible. For instance, if any of the fund, body or institution mentioned above change its name, the minister's approval has to be sought and given and a publication of the change is to be made in the official gazette before deductible donation can be made to the organisation. Donation made to any church or mosque organisation not within the corporate bodies enumerated in the schedule isnot allowed. In the same line, donation made to any person however pathetic their individual circumstances is equally disallowed.Any payment made to any of these bodies or institution for valuable consideration is not a donation and is not allowable, unless it qualifies for deduction under allowable expenses.

The Act also provides that "there shall be deducted the amount of donation to a university and other tertiary or research institutions for research or any-developmental purpose or as an endowment out of the profits of the period by the company." In accordance with this provision donation made to the above mentioned institutions for research or any other development purpose are made out of the profit of the year of assessment. Donations deductible from profits should not in total exceed 15% of total profit or 25% of tax payable for the year in which the donation is made, whichever is higher. It should be noted that the donation may be of a revenue or capital nature. It must be made from the company's profits and it is tied to a percentage of total profits or tax payable which is also a product of total profits. If a company withdraws amount of money from its profits and buys a motor vehicle or a giant generating plant for presentation to an institution, its capital assets will not reduce. If an institution needs a house and the company takes

money from profits and erect the house for presentation to the institution, the presentation is not of a capital nature even though the donee is acquiring a capital asset. A capital expenditure is what the company has incurred in acquiring an asset for its own use for an enduring purpose. It is deductible from the profits only through the grant of capital allowance.

4.3.4 Allowance for Research and Development

Another area which is also very important for investment is the issue of research and development. Thus, the CITAA provides that "for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of reserve made out of the profits of that period by that company for Research and Development."

Accordingly, any companythat engaged in research and development activities for its commercial purpose can enjoy a special allowance. It can create a reserve fund out of its current profit for this purpose. Irrespective of the amount of the reserve created, the amount allowable for tax purposes should not exceed 10% of the company's total for that year before the deduction of the amount allowed. The total profit should be ascertained first before charging the amount for the research. However, if the benefit of the research does not go beyond the year of expenditure, the expenditure is deducted from profits as wholly, exclusively, reasonably and necessarily incurred for the purpose of the trade or business. If a reserve had been charged against profit in the previous year, the amount incurred less the reserve charged previously should be charged against current profit. If the company is expected to derive an enduring benefit from the research, the total amount

expended less amounts which might have been charged as reserve from year to year will be capitalised as qualifying expenditure on research and development. An initial allowance of 95% is allowed under the Second Schedule of the CITAA. Annual allowance is however not available because 5% of the expenditure is to be left in the books until the benefit of the research is no longer of any relevance when the amount will be written off.

4.3.5 Reconstruction Investment Allowance

Reconstruction investment allowance is also a way that reduces the amount of tax liability that can incentivise investors. Thus the CITAA states that “where a company has incurred an expenditure on plant and equipment there shall be allowed to that company an investment allowance and shall be in addition to an initial allowance under the second schedule to this Act.” The rate of investment allowance is 10%, of the actual expenditure incurred on plant machinery and equipment which is in use in trade or business. However, all provisions of the Second Schedule applicable to an initial allowance are also applied to reconstruction investment allowance. It is therefore granted once and for all. The only difference between reconstruction investment allowance and initial allowance is that in ascertaining the tax residual value of qualifying expenditure of an asset of the former, the allowance is not taken into account. However, it can be claimed more than once on the same asset if the ownership of it is transferred from one person to another provided that the old and the new owners make use of the asset for the

sole purpose of their trade or business. Butan owner of an asset cannot claim for the allowance on any expenditure incurred on a new asset while an event occurs within five years from the date on which the expenditure was incurred.If the allowance has already been granted before the occurrence of the event it must then be withdrawn and recaptured. The event referred here is any of the followings -

i. Any sale or transfer of the asset to another personwho acquires it for a chargeable purpose by not using it or having plan of making use of it for hisbusiness or for using it as scrap to be disposed.

ii. Any appropriation of the asset by converting it to any use other than a chargeable purpose of trade or business of the company.

iii. Any sale, or transfer or other dealing with the asset perceived to be artificial or fictitious for the sole purpose of incurring expenditure to avoid tax by gaining advantage of the incentive for obtaining the tax allowance.

A company may incur an expenditure on an asset of which the allowance was made but not withdrawn. In the knowledge of the company there is any of the above events that occurred before the expiration of the five years stipulated by the Act. It has then become its duty to inform the FIRS of the events in a noticemustcontain the name and address of the person to whom the sale or transfer is made. To block any chance for tax avoidance, the Act required the buyer and the purchaser or transferee or their representatives to give the FIRS all information they have about any transactions on any sale or transfer of the asset. Failure to supply the FIRS with the required information without reasonable excuseis a statutory offence.

4.3.6 Rural Investment Allowance

The CITAA provides-

Where a company incurs capital expenditure on the provisions of facilities such as electricity, water or tarred roadfor the purposes of a trade or business which is located at least 20 kilometres away from such facilities, provided by the government there shall be allowed to such company as addition to initial allowance under second schedule to this Act an allowance at the appropriate rate per centum of the amount of such expenditure.

The essence of rural investment allowance is to advertise for the need of more hand to develop the rural areas. Consequently, investment in the area is promoted by granting special allowance to any person establishes a company in rural area. The rate of the rural investment allowance as prescribed by the CITAA is as follows-

(a) No facilities ……………………………………………..100%

(b) No electricity …… ……………………………………..50%

(c) No water …………………………………………………..30%

(d) No tarred road ……………………………………………. 15%

(e) No telephone - ………………………………………………5%

The rural investment allowance is normallygranted against the profits of the year in which the date of completion of the investment falls. In the event of inability to fully effect the allowance as the result of incurring loss, the allowance will not be available for

carry forward to any subsequent year. Similarly the allowance or any fraction was not given where there is no assessable profits or the assessable profits is less than the total allowance for the year in which the investment was made, it is also not allowed to carry it forward.

4.3.7Export Processing Zone Allowance

This is another allowance which is granted to the investors in Export Processing Zone (EPZ).The CITAA states that any company which has incurred expenditure in its qualifying building and plant equipment is going to be given an allowance. But the allowance is granted if the expenditure is on approved manufacturing activity in an export processing zone of capital allowance in any year of assessment. The rate of the allowance is 100%. However, the Actdid not assign to the two phrases of 'export processing zone' and 'approved manufacturing activity' a clear meaning. It rather refers to the meaning assigned to them under the Nigerian Export Processing Zone Act (NEPZA). Thus, the NEPZA provides that "the President may, from time to time by order, upon the recommendation of the Nigeria Export Processing Zones Authority established under this Decree, designate such area as he thinks fit to be an export processing zone." This provision is not clear on the definition of EPZ. It only establishes the presidential power on declaring an area to become an EPZ. However, it could be understood that EPZ is an area designated by the President upon recommendation of the Nigeria Export Processing Zones Authority. Although the main purpose of enacting the NEPZA has not been clearly stated in the Act, nevertheless it could be understood from various laws of many countries establishing EPZ that the objectives remained the same. The major aims of creating export processing zones is to

diversify the revenue base of economy, develop disadvantaged regions, attract local and foreign investors, promote export related business, support technology transfer and generate employment. In the same vein, NEPZA provides that legislative provisions pertaining to taxes, levies, duties and foreign exchange regulations shall not apply within the zones. Consequently, EPZ can be defined as an economic area whereby local and foreign investors operate free from the Nigeria tax laws, levies, duties and foreign exchange regulations. Presently, there are 26 areas in Nigeria, designated as EPZs.Some of them are in operation while others are under construction.

In accordance with the provision of the CITAA, a company can only enjoy EPZ allowance if it engages in manufacturing activities approved as listed above. This incentive is only applied in respect of expenditure incurred on qualifying building and plant equipment. It does not therefore apply to motor vehicles, furniture and the fixtures. The rate which is granted to the company in any year of assessment is 100% capital allowance. It should however be noted that a company granted this allowance is not more entitled to any investment allowance under the CITAA. This includes the 10% investment allowance normally granted in respect of qualifying expenditure on plant and machinery. The reason behind this is not far reaching to be understood. This is because 100% capital allowance is capable of making the fixed asset to disappear from the book of account. According to the provision of the Act any profit or gains of a 100% export oriented undertaking established within and outside an Export Free Zone shall be exempt from tax for the first three consecutive assessment years. But this is on condition that

(a) The undertaking is 100% export oriented,

(b) The undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;

(c) It manufactures, produces and exports articles during the relevant year and the export proceeds form 75% of its turnover;

(d) The undertaking is not formed by transfer of machinery or plants, previously used for any purpose to the new undertaking or where machinery or plant previously used for any purpose is transferred does not exceed 25% of the total value of the machinery or the undertaking;

(e) The undertaking repatriates at least 75% of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria.

The incentive is a kind of writing off of the affected fixed asset in the year of their purchase. The company does not have to export its manufacturing products. Its operation in an export processing zone and the fact that its products are approved qualify the company for the 100% capital allowance. In fact, companies operating in export processing zones do not all have to be manufacturing companies. Any of them can engage in approved activities specified under the NEPZA which provides that approved enterprises operating within a zone is exempted from all federal, state, and local government taxes, levies and rates. Companies engaged in any of the approved activities within the zone are therefore exempted from any tax. They are permanently exempted from paying taxes.

Obviously, the aim of the above incentive is to attract more investment to the zones for economic development of the nation. Consequently, the volume of the value of export from the zone discloses the volume of investment. This is shown in the following table-

Table 5: Non-Oil Mineral Export Value from the EPZs

Year	Export Value from EPZs
2004	N222,653,594
2005	N50,637,842
2006	N132,869,860
2007	N349,605,185
2008	N764,406,137
2009	N714,406,137
2010	N1,593,961,360
2011	N2,104,726,220
Grand Total	N5,934,222,498

Source:

The above table, shows that in 2004 the export value of non-oil mineral from the EPZs was N222,653,594. In 2007, the value was N349,605,185. In 2008 the immediate year after corporate tax reform, the value skyrocketed to N764,406,137. In 2011, the value reached N2,104,726,220. This is a positive impact for it is a sign that more investments are attracted to the zones. Four years from 2004 to 2007 the export value stood at N756,766,481 four years after the amendment of the CITA i.e. from 2008 to 2011 the total value was N5,934,222,498. The value increased with about 784%. This shows that the present provisions of incentives for export promotion through the EPZs have positive bearing on promotion of investment in Nigeria,

4.3.8 Allowance for Mining of Solid Mineral

Another important aspect that also received a special treatment in the CITAA is mining of solid minerals. There is significant evidence that Nigeria has over 34 different solid minerals distributed in the country's richly endowed geology. Some of the known minerals include; gold, coal, bitumen, iron-ore, tantalite/columbite, lead/zinc, sulphides, barytes, cassiterite, limestone, talc, feldspar and marble. Ownership of solid mineral resources is vested in the Nigerian federal government. To explore ormine and sell mineral resources, it normally grants the titles ofreconnaissance permit, exploration licence, mining lease, small scale mining lease, quarrying lease, and water use permit. The use of land for mining operations is given priority over other uses of land, and is considered (for the purposes of access, use and occupation of land for mining operations)

to constitute an overriding public interest within the context of the Nigerian Land Use Act.

It is worthy to note that the Ministry of Mines and Steel Development which is responsible for formulating policies and regulating operations in the solid minerals industry, has prioritised the development of seven strategic minerals namely- coal, bitumen, limestone, iron ore, barytes, gold and lead/zinc. As world-class minerals, these have been carefully chosen for development in view of their strategic importance to Nigeria's economy, and the sufficient quantities that are available to sustain mining operations for years to come.

However, incentives on mining activities include: firstly, a three to five years tax holiday for new mining companies and a system of deferred royalty payment determined by the investment level and nature of the project; secondly, a 95% capital allowance on qualifying capital expenditure incurred on exploration, development and processing; thirdly, an annual indexation of unclaimed balance of capital expenditure by 5% (only applicable to mines that commence production within five years of enactment of the Nigerian Minerals and Mining Act 2007); fourthly, the carrying forward of losses; fifthly, exemption from customs and import duties on approved plants and machinery, equipment and accessories – imported specifically and exclusively for mining operations; and lastly, interest income tax relief.

From the angle of corporate taxation, the CITAA provides that a new company going into the mining of solid minerals shall be exempt from tax for the first three years of its operation. If one year is twelve months, the phrase 'the first three years of its operation'

in this provision means thirty six months. This means that within this period the company will not be demanded to pay tax on its mining activities. The activities of mining solid minerals are deemed to have commenced on the first day of companies operation. This may not be necessarily the same with the date of incorporation.

It should be noted that the Act did not provide that the operations of companies engaged in mining activities should be treated the same way as those of pioneer companies in respect of the application of the rule of commencement and cessation. Incurring loss within the first three years cannot be a reason to extend the period of exemption. However, the loss can be carried forward and deducted from profit of post exemption period. Similarly the Act does not provide for the treatment of fixed assets in use during the exemption period of mining mineral companies. This implies that capital allowance and tax computation should therefore be prepared in the normal way within the exemption period. The following table ofFDIs inflow into the mining sector can serve as evidence on the impact of this incentive on investment promotion and attracting investors.

4.3.9 Allowance for Tourism

Convertible currency (CC) is a currency that can be quickly and easily bought and sold for other currencies without government restrictions. The value of CC is normally determined by market forces without government interference. It therefore fluctuates depending on the fundamental economic factor of the currency's country. U.S. dollar, Japanese Yen, British Pound and EURO are examples of convertible currencies.

In order to encourage investment in tourism economic sector, the CITAA provides that 25 per cent of incomes in CC is exempted from tax. This is on condition that the CC is an income derived by a hotel from foreign tourists. The amount must also be put in a reserved fund which must be utilized within five years. It must beused for erecting new buildings for the expansion of hotels or conferencecentres or provision of new facilities for the development of tourism sector.

To determine the impact of the above provision, the number of companies attracted to the sector has to be considered. The following table is a detail of the number of hotels and other accommodation facilities from 2005 to 2009.

Table 6: Hotels and Other Accommodations Facilities in Nigeria

	2005	2006	2007	2008	2009	
Hotels	1880	1974	2012	2046	2077	
Other Acc.		1087	1125	1137	1148	1163
Total	2967	3099	3149	3194	3240	

Source:

The above table indicates that the number of registered hotels in 2005 which was two years prior to the amendment of the CITAA in 2007. The number was 1880. Two years after the amendment which was 2009 the table reveals that the total number of the hotels

has increased to 2077. The same thing with other accommodations facilities registered in Nigeria. Their number has increased from 1087 in 2005 to 1163 in 2009. This also indicates that provision of corporate tax incentive on tourism has a positive impact on promotion of investment. Furthermore the number of tourists also signifies the anticipated income in convertible currency earned by those who invest in tourism sector. For instance, arrival of international tourist in the country has increased from 1,031,000 in 2005 to 1,186,800 in 2009. This represents 15.1% growth. The number of business tourists, in turn, grew by 17.2% over this period, from 618 600 to 725 200. Business arrivals accounted for 61% of tourist arrivals, while leisure arrivals represented 39% of the total. This will definitely enhance the availability of convertible currency in tourism sector. This is because the tourist will look for accommodations and also make some business transactions from which convertible currencies are accrued. In a nutshell, the incentive provided under the CITAA for tourism has a positive impact on investment promotion.

4.3.10 Allowance for Utilisation of Gas

The CITAA provides that a company engaged in gas utilisation (downstream operations) shall be granted incentives. Accordingly, any company engage in marketing and distribution of natural gas for commercial purpose is entitle to series of incentives. However, the term natural gas here means the marketing and distribution of natural gas for commercial purposes. It also includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines. The incentives here are-

a. Tax holiday for three consecutive years renewable for additional of two more years;

b. Alternatively an additional allowance of 35% will be granted. However any company befits from this incentive should not claim any other incentive under this section.

c. The following accelerated capital allowances would be granted after the tax free period-

a. 90% annual allowance with 10 % retention, for investment in plant and machinery;

b. 15 % additional investment allowance;

d. Tax free dividend during the tax free period, where-

i. The investment for the business was in foreign currency, or

ii. The introduction of imported plant and machinery during the period was not less than 30 percent of the equity share capital of the company;

e. interest payable on any loan obtained with the prior approval of minister for a gas project, shall be deductible.

It should be noted that tax free period of a company shall start on the day the company commences production as certified by the ministry of petroleum resources.

4.3.11 Allowance for Rural Investment

Investment tax relief is also allowed to any company incurred an expenditure on electricity, water, tarred road or telephone for the purpose of a trade or business. But this is on condition that the company is located in at least 20 kilometres away from the same facilities provided by the government. The relief is allowed at the following rate of the expenditure -

(a) No facilities at all ……………100%

(b) No electricity…………………..50%

(c) No water……………………….30%

(d) No tarred road…………………15%

(e) No telephone……………………5%

The relief could only be claimed for three years. Therefore a company will not be allowed to claim the investment tax relief for more than three years. Furthermore, any company granted the pioneer status is not entitle to this allowance.

4.3.12 Allowance For Cross Border Profits

Cross border profit or income is normally liable to tax in the country from which it is derived in accordance with the tax law of that country. At the same time the tax laws of the country of residence of the beneficiary also provide for taxation of the same profits when it accrues to or is received by the beneficiary. This is another phenomenon of

double taxation that is capable of discouraging investors particularly from foreign countries and paralyzing the activities of international trade. This is very dangerous. It has negative impact not only on attracting foreign investors but also on revenue generation and economic development of a nation. For the avoidance of such problems and encouragement of cross border trade activities, relief method for tax paid or payable in the source country is normally employed.

It is noteworthy to state that corporate tax relief is granted either unilaterally by the country of residence of the beneficiary or bilaterally by making an agreement between two countries. Thus the CITAA provides-

If any Nigerian company (which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits) proves to the satisfaction of the Board that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits

.

The above provision points out that in Nigeria unilateral corporate tax relief in respect of cross border profits or income is only provided for the companies or individuals that receive profit or income from Commonwealth countries. The relief is normally granted under the title of Commonwealth Income Tax.

It is good to know that Commonwealth Income Tax is defined under the CITAA as-

any tax on income or profits of companies charged under a law in force in any country within the Commonwealth or in the Republic of Ireland which provides for relief from

tax charged both in that country and Nigeria in a manner corresponding to the relief granted by this section .

Since there is no formal negotiated agreement between Nigeria and any Commonwealth country to provide for double taxation relief, it is therefore regarded as unilateral relief. But in spite of this, there is an indication from the above definition that the relief will only be granted if the source country makes similar provisions in its tax law. For any year of assessment the rate of tax is the rate of companies' income tax which is presently 30% unless it is reduced by tax credit resulting from an incentive granted to the company. This rate will not be affected by withholding and advance payment of tax. More so the rate of the tax is determined by dividing the Commonwealth paid or payable by actual amount credited to or received by the Nigerian resident.

It is relevant to state that only the United Kingdom, Pakistan and Canada that have bilateral tax treaty with Nigeria among the Commonwealth nations. Bilateral tax treaty is said to have existed when two countries negotiated and entered into an agreement for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital gains. The aim of this treaty or agreement is to provide relief from double taxation for certain profits accrued from one country to a company or an individual resident in the other country.

Commonwealth tax relief is normally granted in accordance with the provision of the CITAA. Thus the Act state-

(a) If the Commonwealth rate does not exceed

one-half of the rate of tax under this Act, the

rate at which relief is to be given shall be the Commonwealth rate of tax;

(b) In any other case the rate at which relief is to

be given shall be half the rate for tax under this Act.

In accordance with the provision of the CITA 30% is the rate stipulated by the Act. Consequently the Commonwealth Tax Rate (CTR) may be 15% which is the ½ of Nigerian corporate Tax Rate (NTR) or less than this. It may also be more than 15 % or even 30% or more. If the Commonwealth rate of tax is 15% or less, the relief granted is calculated at Commonwealth tax rate which is the actual tax paid or payable, but not exceeding half of the Nigerian tax rate. But if CTR is more than 15% which is the half of the NTR , the relief will not exceed 15% of the NTR. Once the payment of Commonwealth tax is made in accordance with the provision of the source country, the FIRS does not care about the process followed in arriving at the Commonwealth tax. Only the information about the after tax profit and tax levied in that country that will be required by the FIRS. It should be noted that any claim for relief from tax for any year of assessment under this section shall be made not later than six (6) years after the end of that year. If the claim is admitted, the amount of the tax to be relieved shall be either re-paid out of the tax paid for that year of assessment or set-off against the tax which the company is liable to pay for the year. In the same vein, the bilateral mode of relief is another way for combating the problem of double taxation. Thus it is stated-

If the Minister by order declares, that arrangements specified in the order have been made with the Government of any country outside Nigerian with a view to affording relief from

double taxation in relation to tax imposed on profits charged but this Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this Act.

Nigeria has a number of treaties known as Double Taxation Agreements (DTA) with a number of countries that are not within the commonwealth nations. The essence of the agreements is to ensure that the tax payable in Nigeria on the profits of a Nigerian company being remitted into the country are reduced by the amount of "foreign Tax" paid abroad and vice versa. Any order made under the provisions of the Act may include provisions for relief from tax for periods commencing or terminating before the making of the order and provisions as to profits which are not themselves liable to double taxation. In order to carry out the provision of any arrangement on double taxation the Minister in charge of finance may make rules for this purpose.

4.3.13 Deduction of Capital Allowance

Expenses of a revenue nature wholly, exclusively, necessarily and reasonably incurred by a company in the course of it trade or business are allowable as deduction from the companies income. However expenditure incurred by a company on a fixed asset acquired within a particular accounting year may be charged and deducted from the

income of that year irrespective of whether they are paid or payable. This is on condition that the useful life of the asset does not extend beyond the accounting year in which it is acquired. But in a situation whereby the useful life of the asset extends beyond the year a proportion of the expenditure will be charged to the profit and loss account of each year during which the assets is in use. Therefore in determining the taxable income which is the total profits upon which the tax rate is applied the CITAA provides-

The total profits of any company for any year of assessment shall be the amount of its total assessable profits from all sources for that year together with any additions thereto to be made in accordance with the provisions of the Second Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of this section, section 32 and of the said Schedule.

Accordingly, the total profits of a company is equal to the amount of assessable profits after the deduction allowed under the 2nd schedule to the CITAA. Thus the schedule provides for a general deduction on expenditures that are capital in nature incurred for the purpose of earning profits. This is notably known as capital allowance which is a claim against assessable profits of companies before arriving at taxable income and payable tax. It is only calculated when a company is computing its tax liabilities. Thus it is another sort of incentives that has also been provided under the CITAA.

Ascertainment of capital allowance of a company for each year of assessment is similar to the ascertainment of assessable profits for each year. Consequently, there must be basis period by reference to which capital allowance is determined as it is the case with assessable income. The basis period for capital allowance is the period by reference to

the profits of which any assessable profits for that year fall to be computed under the provision of the CITAA. Thus, as the basis for computing assessable profits, the Act provides that the profits of any company for each year of assessment from such source of its profits shall be the profits of the year immediately preceding the year of assessment from each such source. The year of assessment is a period of 12 months. The assessable profit for each year of assessment is the profits of the year immediately preceding the year of assessment. The computation of companies' assessable profits for each year of assessment is therefore done on preceding year basis which is the basis period for making the capital allowance. In other words, the basis periods for computation of capital allowance for any year of assessment is the same as the basis periods for ascertaining the assessable profits of that year. For instance, the basis period for ascertaining the capital allowance of a company for 2013 year of assessment can be from January 1 , 2012 to December 31, 2012; April 1, 2011 to March 31,2012; February 1,2011 to January 31, 2012; or October 1, 2011 to September 30,2012. Thus the capital allowance is calculated on basis of preceding year of assessment. Any qualifying capital expenditure incurred within the twelve month period is granted capital allowance. This is a general rule but has some exceptional cases which include-

a. Commencement of a trade or business

b. Cessation of trade or business

c. Change of accounting date.

Thus, if a company has just commenced a trade or business, the basis periods computing capital allowance for the first two years will not be the same as the basis period for

computing assessable profits of the company. The same case applies to a newly established company that commences its business activities and opted for assessment on actual year basis for its first three years. Thus, it is provided that "where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date, and in no other basis period." This means that in the case of overlapping of two basis periods, what will be deemed to fall in the basis period ending at earlier date is the period common to both. This exceptional rule is not applied for the purpose of making an annual allowance. It is also provided "where two basis period coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment."

Accordingly, the basis period for the second and third years following the year in which a trade or business commenced may coincide. In this case the periods will be treated as overlapping. It should be noted that it is only when some certain conditions are fulfilled that a company can qualify for the grant of capital allowance. The capital expenditure has to fulfill the conditions otherwise the company incurred it will not be entitle to the allowance. Accordingly, the capital expenditure must be incurred wholly exclusively and necessarily for the purpose of trade or business. This entails that expenditure can be of a dual nature. It can be partly for the purpose of business and partly for other purposes. In this case capital allowance is only given in respect of the part of expenditure incurred for the purpose of trade or business. In the same vein, an expense incurred by a company for a generator in the house of its Managing Director is not wholly, exclusively and necessarily incurred for the purpose of its trade or business. Consequently it is not

qualify as capital expenditure.The asset representing the capital expenditure must be in use at the end of the basis period. This implies that any asset disposed during the basis period will not qualify capital allowance. To determine whether an asset is in use or not is a matter of fact. However, there are some instances whereby the determination is difficult. These includes-

1. The interval between the period an assets was first acquired and the period when it is first put into use.

2. Any period of temporary disuse.

Furthermore, the ownership of the asset should not be in doubt. In other words, the expenditure must be incurred on asset owned by the company. More so, the company has to make a claim in writing before the allowance could be given. However the FIRS may grant it even without a formal claim in writing if the FIRSfeels that it is reasonable and just to it. Above all, the allowance is only granted if the capital expenditure is qualifying. Expenditure can only be qualifying if it is incurred in a basis period and falls within the range of capital expenditure enumerated under the CITAA. These are qualifying plant expenditure, qualifying building expenditure, qualifying mining expenditure, qualifying plantation expenditure, qualifying research and development expenditure, qualifying agricultural expenditure, qualifying public transportation motor vehicle expenditure and qualifying public transportation (inter-city) new mass transit coach expenditure.

According to the Act qualifying plant expenditure is defined as expenditure incurred on plant, machinery or fixtures. The Act does not go further to define what a plant or machinery is. In the case of Yarmouth v. France , it was held that plant , in its ordinary

sense, includes whatever apparatus is used by a businessman for carrying on his business-not his stock in trade which he keeps for permanent employment in his business. This description has been adopted by the Court in the case of Hilton v. Maden and Ireland, Ltd. It was that knives and tools used with shoemaking machines were machinery or plant and the expenditure on them was qualifying plant expenditure. The term plant also includes equipment such as adding and accounting machines as well as large construction plants and vehicles. It does not include certain materials used for profession. The library of a solicitor for instance is not a plant. Expenses incurred in a basis period for replacement of old edition ofbooks in such library or for purchase of law report or periodical or journal are allowable deductions but not capital allowance.

The Act also defines qualifying building expenditure as expenditure incurred on the construction of buildings, structures or works of a permanent nature, other than expenditure on plant or mines. The word building here could either be an ordinary building or an industrial building.Industrial building means any building or structure in regular use-

i. As a mill, factory, mechanical workshop or other similar building;

ii. As a dock, port, wharf, pier, jetty or other similar building structure;

iii. For the operation of a railway for public use or a water or electricity undertaking for the supply of water or electricity for public consumption; and

iv. For running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

In spite of the above definition it is not easy to determine whether a particular building is an industrial building or even apart of an industrial building. The guiding principle in the case of doubt is to look for the purpose for which a particular building or structure is built or being used. Qualifying mining expenditure is capital expenditure incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature. Qualifying plantation expenditure is also a capital expenditure incurred in connection with a plantation on the clearing of land for planting or on planting (other than replanting).The capital allowances commonly known under the CITAA are Initial Allowance and Annual Allowance. The table that indicates the appropriate rate for initial allowance is as follows-

Qualifying Expenditure in respect of:	Rate %
Building Expenditure .. .. ………………………………...…………………	15
Industrial Building Expenditure .. .. .. ……………………..…………………	15
Mining Expenditure .. .. …………………………..……………………..	95
Plant Expenditure (excluding Furniture and Fittings) .... ……… ……..	50
Manufacturing Industrial Plant Expenditure .. ……………………………	.50
Construction Plant Expenditure (excluding Furniture and Fittings)	50
Public Transportation Motor Vehicle. .. .. ……………….……………………	95
Ranching and Plantation Expenditure .. .. ……………………………………..	30
Plantation Equipment Expenditure .. .. ……………….………………………..	95

Research and Development Expenditure .. .. ……..……………………………95

Motor Vehicle Expenditure .. .. .. ………………..…………………………..50

Agricultural Plant Expenditure .. .. .. ……………..…………………………95

Housing Estate Expenditure .. .. .. ……………………………………………..50

Furniture and Fitting Expenditure .. .. … ………………. ……………...25

As for the annual allowance the rate is as follows-

Qualifying Expenditure in respect of:	Rate per cent
Qualifying Building Expenditure .. .. ……………………………………..10	
Qualifying Industrial Building Expenditure .. .. .. …………………………….10	
Qualifying Mining Expenditure .. .. ……………………………………..nil	
Qualifying Plant Expenditure .. .. ………………………………………25	
Qualifying Plantation Equipment Expenditure .. .. ……………………………nil	
Qualifying Ranching and Plantation Expenditure .. .. ………………………...50	
Qualifying Housing Estate Expenditure .. .. .. ………………………………...25	
Qualifying Public Transportation (Inter-City) new Mass Transit Coach Expenditure………………………… ……………………………………nil	
Qualifying Research and Development ………... ……………………………nil	

It could be understood from the above, that the system of capital allowance has been designed to stimulate development in the affected sector. This is because the above two forms of allowance are similar in granting a given amount to the company in the relevant period.It should also be noted that after the computation of capital allowances the amount is applied to the assessable profit before arriving at the chargeable profit. The 30% companies income tax rate is then applied to the chargeable profit. However, there are some restrictions to how much capital allowances can be deducted from the adjusted profit. For businesses other than those in the manufacturing and agricultural sector, the maximum capital allowance that can be claimed cannot be more than two-third of the assessable profit. This means that tax must be paid on at least one-third of the assessable profit.

In a nut shell a study revealed that capital allowances incentives encourage foreign investors to invest in the various sectors of Nigerian economy. Therefore corporate tax provision on capital allowance has a positive impact on promotion of investment.

4.3.14 Temporary Exemption

Pioneer status is another important tax incentive normally granted to qualified industries particularly those located in economically disadvantaged areas. The grant of pioneer status gives a company a preferred position in getting established through exemption from corporate tax. Pioneer companies are companies engaged in manufacturing, processing, mining, servicing and agricultural industries whose products have been declared pioneer products on satisfying certain conditions. In granting a company pioneer status, the industry or product is regarded as one that is not already carried on in the

country or the existing industry is not producing enough to meet the current or expected requirements. The concept is further broadened to include any industry or product for which has a favourable prospect of development. The policy relating to pioneer industry is based on the desire of the government to encourage the development of new or relevant industries that will reduce the country's dependent on imports. This is because the tax holiday will enable the industries concerned to surmount start-up challenges and make a reasonable level of profit within its formative years. It is expected that the profit so made is to be re-invested into the business.

Companies' income tax is principally governed by the CITAA. Nevertheless a corporate tax incentive to pioneer industries was originally laid out under the Aid to Pioneer Industries Ordinance (APIO). This was repealed by the Industrial Development (Income Tax Relief) Ordinance (IDITRO). This ordinance was subsequently repealed by the Industrial Development (Income Tax Relief) Act (IDITRA) which has been in operation till date. The Act empowers the Federal Executive Council (FEC) to publish from time to time a list of industries or products as pioneer industries or products. An industry or product will not qualify to be published in the list unless the council is satisfied that the industry is not being carried on in Nigeria on a scale suitable to the economic requirements of the country or is not being carried on at all. The council may also include an industry in the list if it is satisfied that there are favourable prospects for the growth and development of the industry in the country. It may also declare a particular industry or product a pioneer by publishing it in the list if it feels that it is expedient in the public interest to encourage the development or establishment of the industry or product in Nigeria.

Thus, it is provided under the Act that application may be made for the issue of pioneer certificate, and the council may issue the certificate to the companies in any proper case. Accordingly, any company intends to engage in an industry or manufacture new products which have not been designated pioneer can apply for pioneer certificate so that the industry will be included in the list of pioneer industries and its products will be declared pioneer. A successful application in either case is issued with a pioneer certificate. However no application for the issue of certificate should be made unless the estimated cost of qualifying capital expenditure to be incurred by the company on or before production day is not less than N50,000.00. This is in the case of a company controlled by indigenous. But in the case of any other company the amount should not be less than N150,000.00. In addition to this, the applicant company must state whether the company or proposed company when established is going to be indigenous controlled company. It must also state the particulars of the assets on which qualifying capital expenditure will be incurred. The sources of the assets together with their estimated cost on or before production day and during a period of 3years after that should all be included. The place in which the assets are to be situated must also be stated. An applicant company must also estimate the probable date of its first production and specify any product proposed to be produced together with their estimated quantities and value during a period of one year from production day. It must give the particulars of the loan and share capital or the proposed loan of the company. In the case of application by a company already incorporated, it must give the name, address and nationality of each director of the company and the number of shares held by him. But in the case of a proposed company it must give the name, address and nationality of foreign promoter. Again the applicant

must sign a declaration that all the particulars contained in the application are true. He must undertake to produce proof of the truth of any such particular which the minister may require him to furnish. A non-refundable fee of a hundred Naira is expected to accompany the application.

Where a pioneer certificate is issued the pioneer companies relief exempts such a company from the companies' income tax for a period of three years. The period may be extended by a maximum period of two years on satisfying the Federal Executive Council as to the volume of investment, rate of utilization of the local content, expansion, efficiency and the utilization of raw materials. The two years may start with one year and followed with another year. If the company is established in a disadvantaged rural area, the maximum period can be seven years. It should be noted that presently there are sixty nine (69) types of industries and products declared pioneer by the federal government. Any investor wants to enjoy this incentive should therefore invest in any of them. These inter alia includecultivation processing and preservation of food crops and fruits; integrated dairy production; deep sea trawling and processing; mining lead, zinc and iron and steel from iron ore; manufacture of iron and steel from iron ore and smelting and refining of non-ferrous base metal and the manufacture of their alloys. Others approved industries are mining and processing of barytes, bentonites and associated minerals; manufacture of oil well drilling material containing a predominant proportion of Nigerian raw materials and the manufacture of cement. Manufacture of glass and glassware; manufacture of lime from local limestone; quarrying and processing of marbles; manufacture of ceramic products; manufacture of basic and intermediate;

formulation and manufacture of pharmaceuticals and manufacture of yeast, alcohol and related products are also among the industries declared pioneer.

Moreover, manufacture of paper pulp; manufacture of yarn and man-made fibers; manufacture of machinery involving the local manufacture of substantial proportion of components thereof and manufacture of products made wholly or mainly of mental are equally included. The pioneer list also containsmanufacture of nets from local raw materials; manufacture of gas cylinders; the processing of local wheat flour materials; rubber plantation and processing; gum/Arabic plantation and processing; manufacture of fertilizers ammonia, urea;vehicle manufacture and oil palm plantation and processing. It also consists of manufacture of automotive and other components; book printing; large scale mechanized farming; cattle ranching and piggery of not less than 500 herds; manufacture of gypsum; re-refining or re-cycling of waste oil; manufacture of electrical appliances/ equipment/components and parts; ship building, repairs and maintenance of ocean going vessels and manufacture of computer and computer chips. Furthermore, manufacture of cameras, photographic equipment and other materials; diving and underwater engineers; local fabrications of machinery, equipment; manufacture of tools; installation of facilities for aircraft manufacture and maintenance of aircraft; installation of scientific instruments and communication equipment and manufacture of gas and distribution are also within the list. Manufacture of solar energy powered equipment and gadgets; large-scale inland fishing farms; bitumen mining and processing; salt production; manufacture of firefighting equipment and detection systems; manufacture of cables; manufacture of medical equipment; Mineral oil prospecting and production; manufacture of lubricants and manufacture of flat sheets are also pioneer industries.

Similarly among the industries entitled for tax holiday are manufacture of oven, cookers, cold rooms, refrigerators, fridges, freezers, air conditioner; manufacture of agricultural machinery and equipment; manufacture of materials handling and equipment; establishment of foundries; manufacture of alum; manufacture of enzymes; manufacture of concentrates; manufacture of welding electrodes; manufacture of nails. Finally in the in the pioneer list are manufacture of iron rods; manufacture of hops; information and communication technology (ICT); Tourism; real estate development and utility services.

It can be seen from the above that pioneer relief is spread across wide range of industries. Pioneer companies have therefore invested in various aspects of economic activities particularly needed in the country. The following table is a historical record of grants of pioneer status in 50s and 60s –

Table 7: Grant of Pioneer Relief between 1955 - 1960

No. of Companies Applied for Tax Holiday	No. of Granted the Pioneer Relief	No. of Companies Commenced Operation
340	197	101

Source:

Historically from the above table, a total number of 340 companies applied for the Companies Pioneer Relief between 1955 and 1960. 197 companies were successful. However only 101 companies out them actually commenced operations and obtained their qualifying capital expenditure and production day certificate. This information can also be described as a chart as follows-

Figure3: Tax Holiday from 1955-1960

Source:

If the number of companies registered is 638 and the number applied for pioneer relief is 340 of which 197 were successful and 101 commenced operations, then the percentage of the companies applied is 53%. 31% are successful and 16% are the only once that enjoyed the relief by commencing their industrial operations.

It should be noted that, inspite of the number of industries declared pioneer, most of the companiesthat were granted the tax holiday were absent in intermediate and capital goods industries. Furthermore, most of the industries were simple import substitution industries. It therefore laid down the foundation for an industrial sector in general and import substitution industries in particular. The pioneer relief at that period did not provide any guiding principles on selective industrial investment priorities necessary to the economic development of the nation.

However, inspite of theabove, the pioneer industries relief has significantly contributed to the industrial development in the country. As at that period, Nigeria had little or no industries at all. But between 1957 to 1968, the pioneer companies undertook a total initial investment of over 94 million Naira . In 1965, their fixed assets were valued at a little over N100 million. In 1966 it was valued at about 114 million Naira. The number of workers employed by these companies were about 29, 000. Their combined estimated capital investment between 1955 and 1965 was 136.5 million Naira. The amount was about 45% of the total industrial investment in Nigeria for that period. The employment

generated by the companies for the two years was about 100,000. In 1966, the total foreign investment in Nigeria was about 350 million Naira. About 81% of the foreign investment in 1963 was ownedby foreign parent companies. It is a fact that pioneer certificates are still been issued to above industries. However, the number of Nigerian companies applying for and obtaining pioneer status approval has considerably reduced.The following table is recent data collected before and after the 2007 corporate tax reform.

Table 8: Total Number of Pioneer Companies (TNPC) From 2005 - 2010

Year	2005	2006	2007	2008	2009	2010
TNPC	12	66	54	23	49	58

SOURCE:

It can be seen from this table that the TNPCs granted pioneer status from 2005 to 2007 was 132. By the end of 2010 which is there years after the amendment of the CITA, the TNPCs reduced to 130. This was not unconnected to the problem of global economic meltdown that affected many companies and investors.

Table 9: Total Value of Pioneer Investment (TVPI) in Billion Naira From2005-2010

Year	2005	2006	2007	2008	2009	2010
TVPI	2.1	11	4.8	0.5	338,8	621.6

Source:

As pointed out in the above, 2008 was a difficult year. Despite the fact that that the number of companies attracted to pioneer industries is about twice of the number of companies granted pioneer status, nevertheless, the amount invested by the companies in 2005 was more than four times of the TVPI in 2008. The amount was 0.5 billion Naira. It was equivalent to only 19% compared to the 2.1 invested in pioneer industries in 2005. Generally from 2005 to 2007, about 17.9 billion Naira was invested in pioneer industries. However, in spite of the global financial crisis, 960.9 billion Naira was recorded as TVPI From 2008 to 2010 in Nigeria. The amount was about 98% of the TVPI for six years, from 2005 to 2010. This has greatly shown the impact of provision of the law on investment promotion.The volume of employment generated as the result of the grant of this incentive is another indicator to gauge the impact of this incentive provided under the law. This is because generation of employment is part of the conditions stipulated for a company to qualify to be granted apioneer certificate. The following table deals with this matter.

Table 10: Total Employment Generated (TEG) by Pioneer Companies From 2005 - 2010

Year	2005	2006	2007	2008	2009	2010
TEG	5,597	5,890	9,956	2,355	63,686	14,771

Source:

The total employment generated by pioneer companies from 2005 to 2007 was 23,443. Three years after the amendment of the CITA in 2007 the pioneer companies generated the total number of 80,812 employment vacancies. The number was about 77.5% of the

total employment generated .within this six years period. This is an indication of great impact of the law of investment promotion.

Figure 4: Total Number of Employment Generated by Pioneer Companies

Source:

Theaim of pioneer status is to encourage the establishment of new and relevant industries to reduce dependency on importation of products and develop economically disadvantage areas and benefit from experience and technology of others. Thus, when number of the companies and the volume of the investment attracted as well as the number of unemployment reduced by the grant of this tax holiday, in can easily be concluded that the objectives of the holiday are relatively achieved. In other words, the present corporate tax incentive regime on pioneer companies has a positive impact for attracting more investment. The regime has therefore positive impact on investment promotion.

But the problem here is the attitude of some official in charge of granting the incentives. For instance, in May, 2015, it was revealed that between 2010 and 2014, at least 15 oil companies were fraudulently granted tax holiday (pioneer status) by officials of the Nigerian Investment Promotion Commission (NIPC). Nigeria have lost over $20 billion within the period. This is a problem that impacts on investment promotion for it reduces the government revenue that can be used to provide suitable condition that can attract investment.

To generally determine whether the present corporate tax incentive regime has positive or negative bearing on investment promotion, the total value of attracted investments prior and after the 2007 tax reform has to be reconsidered. This can be presented as follows-

Figure 5: FDI Inflow Trend from 2004 to 2009. Source:

It should be noted from the above that the FDI inflow has generally kept on rising up prior and after the recent corporate tax law amendment except in 2006 in which it dropped with about 1.6%. Although the trend did not rise in a regular percentage, however it is noticed that value of the inflow is less than six trillion US Dollar. From 2004 to 2006, only $12,003,160,000,000 was attracted from the FDI. However, out of $34,988,020,000,000 attracted as FDI in seven years from 2004 to 2007, $22,003,160,000,000 was the value of investment flow into the country within three years, from 2007 to 2009. The amount was about 66% of the total value of FDIs attracted within the period. This is a clear evidence on the positive impact of the present corporate tax regime on investment promotion in Nigeria.

CHAPTER FIVE:

A CRITIQUE OF CORPORATE TAX OFFENCES AND PENALTIES IN RELATION TO INVESTMENT PROMOTION IN NIGERIA

5.1 Introduction

Government needs fund to discharge its duties which inter alia include provision of public services and infrastructures. One of the tools used by the government to raise fund and generate revenue for financing its projectsis corporate taxation which is normally imposed by statute. Paying tax has therefore become inevitable.Companies must comply

with the provisions of tax laws. They should pay the right amount of tax at the right place and in the right time.

However, Non-compliance with tax rules and regulations has become a big problem in Nigerian tax system. As the result of various loopholes existing in Nigerian tax laws,companies legally reduce their tax liability or illegally escape from it. They avoid or evade the payment of tax. This practice has undoubtedly results in a gap between the potential and actual tax collections .Consequently, one of the obstacles that faces the payment of any tax is the problem of tax avoidance and evasion. It is a widespread problem not only in the Nigerian tax system but also in every tax system in the world. For instance, the Nigerian government has repeatedly complained of widespread incidence of tax avoidance / evasion in the country. Taxpayers use different devices to escape or minimize their tax liability. Companies deliberately employ fraudulent means to evade tax. Moreover, the attitude of some corrupt tax officials does not help the matter. It is through connivance with them, the offence of tax evasion or avoidance is being perpetrated. This has aggravated the issue and made it among the most difficult problems facing the economy of the nation. For instance in 2005, the EFCC consultants discovered a conspiracy between revenue officers and Chevron Nigeria ltd. The company connived with the officers and replaced assessment notice for a higher amount of 21,838,977 US Dollar with 12,005,455 USD. Thus the FG was denied the difference of 9,833,492 USD from the company for 1996 year of assessment alone . The Nigerian Agip Oil Company (NAOC), also involved in another scandal in Rivers State. The company was accused of evadingdifferent taxes and was ordered to pay over a billion naira to the government. However, companies in oil and gas industry are not the only

corporate tax offenders. Banks, manufacturing companies and other industrial organizations are also involved in corporate tax avoidance / evasion. This is a serious problem particularly when the huge amount of revenue that comes from corporate tax is considered. Once some companies are able to escape - by legal or illegal means- the payment of tax the theoretical equity of the taxis lost.

The aim of this chapter is to –

i. Examine the provisions of the CITAA on offences and penalties

ii. Identify any loophole that could be utilised by tax payer to evade or avoid tax

iii. Identify any problemthat mayimpact on promotion of investment in Nigeria.

It therefore discusses the concept of corporate tax evasion, corporate tax avoidance and corporate tax planning. It also analyses the methods employed by companies to avoid or evade tax. It equally examines the offences and penalties provided by the CITA in order to ensure compliance and curb avoiding and evasive attitude of companies.

5.2 Conceptual Issues

Reducing tax liability is not always illegal exercise. There are legitimate ways to reduce taxes. However, companies usually employ three techniques to reduce their tax liabilities. These are tax evasion, tax avoidance and tax planning.

The word 'evasion' is synonymously defined as avoidance, dodge or escape. While the term 'avoidance' is equally defined with different words which inter alia

include evasion, elusion, abstention, abstinence and prevention. To avoid means to evade, to escape, to dodge,to abstain or refrain from something. Consequently, the word 'avoidance' has the same meaning with ''evasion'' at semantic level. Both refer to the act of not doing something. Tax evasion has no statutory definition. Thus scholars and legal sages made various attempt to do so. For instance, Hornby defines tax evasion as the crime of deliberately not paying all the taxes that you should. Osuegbu,defines it as a'deliberate effort by individuals, companies, trusts and other entities to evade tax by illegal means'. It is a contravention of the tax law whereby a person who derives a taxable income either pays no tax or pays less tax than he would otherwise be bound to pay. It usually entailsdistortion of the true state of companies' account to reduce their tax liability. Accordingly, corporate tax evasion is a deliberate act of violating the corporate tax law by paying less than the payable amount or not paying it at all or paying it not within the stipulated period.

In the same vein, tax avoidance has also not been statutorily defined. Thus, the Advance Learners' Dictionary defines it as the ways of paying only the smallest amount of tax that you legally have to, by taking advantage of provisions in the tax law. Another scholar also defines it as a legal application of the tax laws to one's own advantage, in order to reduce the amount of tax that is payable by means that are within the law. It is the art of dodging tax without actually breaking the law. It therefore involves the exploitation of loopholes and gaps in tax and other legislation in ways not anticipated by the law. Tax avoiders normally take advantage of the tax code and exploit loopholes therein byengaging in special activities with the sole purpose of reducing their tax liabilities through an ambiguous tax provisions. Thus, corporate tax avoidance can be

defined as crafty and dubious ways which could be employed by companies, through the manipulation of taxing provisions in order to minimize their tax liability.The courts have no unanimous opinion on the issue of corporate tax avoidance. For instance, in the case of IRC v. Fisher's Executors , the defendant was a limited liability company with undistributed profits. In order to avoid paying super tax, it decided to capitalize part of the profit and distribute them pro rata among its shareholder as a bonus in form of 5% debenture stock. The motive behind this was to prevent the shareholders from paying super tax on the bonus. It was held that the bonus paid in the debenture stock was not income in the hand of the shareholders. It was therefore not subject to super tax. It was in this regard Lord Summer stated that-

The highest authorities has always recognised that the subject is entitle to so arrange his affairs as not to attract taxes imposed by the Crown (government), so far as he can do so within the law. And that he may legitimately claim advantage of any express terms or of any omissions that he can find in his favour in taxing Acts. It may be a question whether this consideration of justice and public policy apply equally to the law strictly control by statute, in any case where it has no interest in either payment of or escape from a tax that is now levied upon it .

It is apparent from this that the court decided the case in favour of the defendant. This is the position of the courts prior to the First World War. The stand was characterised by judicial neutrality on tax avoidance cases. To avoid tax by then was not illegal or blameworthy. This points out that the judges did not consider the significance of taxation as an effective weapon for revenue mobilization and economic development of a nation. Those judges -as it appears in the case of J.P. Harrison Watford ltd v. Griffith - opined

that avoiding a payment of tax is a necessary phenomenon. It is not a moral issue and should not be stigmatized as undesirable practice by the court. This is a problem. Any attempt to avoid tax constitutes reprehensible conduct of reducing government revenue. Without revenue government cannot provide conducive environment that attracts local or foreign investors.

On the other hand, the pre-war judicial neutrality has been challenged. Judges presently shy away from the previous stand of the courts. To avoid tax is currently regarded as immoral and evil act to be sanctioned. In the case ofLatilla v. IRC , Viscount Simon lamented that-

"In attempting to device method of disposition of income by those who were prepared to adopt them might enjoy the benefit of residence in this country while receiving the equivalent of such income without sharing the appropriate burden of British taxation. Those who adopt them are entitled to do so. No doubt, that they are within their legal right. But that is no reason why their effect should be regarded as commendable exercise of ingenuity or as a discharge of the duties of good citizenship."

This is the present judicial view in many countries of the world. Sanctioning devices used by companies to avoid tax is necessary. To think otherwise is unfortunate. It is not the companies right to determine what is or not subject to tax from its income. This contradicts the basic principle of taxation which is not an optional payment but arbitrarily imposed by statute in order to accumulate money for financing public projects. So long as government shoulders the responsibility of ensuring social and economic stability, there is no reason for the avoidance of tax. Therefore, anyschemeemployed to avoid tax

is an evil that must be combated. The question that may come up here is whether tax planning falls within the scope of tax avoidance.

Despite the fact that tax planning is a means for reducing companies' tax liability, nevertheless it is not regarded as avoidance of tax. Tax avoidance is an act of reducing tax liability by contradicting the spirit of tax law and intention of tax legislator. It is therefore taken as non compliance to the law. On the other hand, tax planning is an art of studying the provisions of the law to identify areas where a business could take economic action that allows for little or no tax payment. It is therefore an ability to identify the opportunities available for minimising tax liabilities of individuals, companies, groups, communities etc. It is an arrangement of financial activities in such a way that maximum tax benefits are enjoyed. Tax planning does not derive benefits from the loopholes of the tax laws. This is because some provisions of the tax laws were duly made for the purpose of tax planning to reduce the tax liability of the taxpayer. A person needs only to have proper knowledge of those provisions and make use of them in his investment. Thus, tax planning isnot only to minimise tax but to optimise and boost up the benefits provided by the tax laws as incentives that can draw more investors to a particular area of need. Tax planning is therefore not a non compliant habit. It is rather a right of a company for it is part of tax compliant behaviours.

Accordingly, companies can take advantage of reliefs and allowances provided under the CITAA and other related legislations to plan for their tax liabilities. They can therefore decide to invest in business activities whose profits are exempt from tax. A company may decide to engage in business activities that promote sport in the country. It can also decide to invest in a rural area so as to enjoy the rural investment allowance.

5.3 Curbing Anti-investment Promotion Attitude of Companies

Like many other persons, corporations incessantly involve in dodging the payment of tax. To curtail this horrific practice, FIRS is statutorily empowered to treat the undistributed profits as distributed, for the purpose of withholding tax on dividend. The FIRS is also empowered to set aside artificial or fictitious transactions and to impose adjustments to reflect arms length transactions. It can also refuse to grant initial allowances where sale or transfer of businesses is between connected companies. It is also empowered to assess companies on turnover basis where the normal basis of assessment cannot reveal the true profit of a business. The CITAA also imposed the presentation of Tax Clearance Certificate (TTC) by a taxpayer and empowers the FIRS to do everything legally approved to make a tax payer compliant with the provisions of the payment and penalises the perpetrators of the offence.

Agencies are obliged to demand for TCC of 3 consecutive years from any person has specific commercial transaction with the agency. The transactions for which TCC is required are application for government loan for industry or business; registration of motor vehicles; application for firearms license; application for foreign exchange control permission to remit funds outside Nigeria; application for certificate of occupancy; and application for award of contracts by governments and its agencies or registered companies. Others are application for trade license; application for approval of building plans; application for transfer of real property; application for import or export license; application for plot of land; application for buying agent license; application for pools or gambling license; and application for registration as contractor. Application for distributorship; stamping of guarantor's form for Nigerian passport; application for

registration of a limited liability company or a business name; and application for allocation of market stall must all be accompanied with the TCC. Furthermore, stamping of the statement of nominal share capital of a company to be registered or any increase in the registered share capital of any company; and application for statement of amount of loan capital are also included within the transaction requires the presentation of TCC.

This is a good measure for making the companies and other taxpayer to comply with the statutory obligation imposed upon them in paying their tax liability. However it has been observed that several government agencies are negligent in demanding for the TCC before engaging in any transaction with corporations as required by the law. For instance, Corporate Affairs Commission (CAC) does not demand for it from those who want to establish companies or increase their share capital. Motor licensing office does not look for it before registering a company's motor vehicle. Government agencies responsible for the approval of building plans for companies do not ask for it before giving the approval. Commercial banks do not care about it for the purpose of opening account for companies and corporate bodies. This is a problem. Revenue cannot be sufficiently generated while the activities of tax avoiders and evaders are rampant. The activities are anti-investment promotion that must be curtailed.

5.4 Statutory Offences and Penalties

In spite of the above measures for combating avoidance and evasion of tax attitude that serves as anti-investment promotion in Nigeria, some deviant companies still contravene the provisions of corporate tax law. A company is not a natural personthat can manipulate

figures by itself to avoid or evade tax. It is through its staff or any outsider that the act is carried out.

Statutorily the CITAA identified some acts as offences against the corporate tax law. It equally spelt out penalties for violation of the provisions of the Act. However the various penalties in the principal Act that governs the taxation of companies income could unwittingly serve as incentives for tax evasion. For instance, penalty for general offences or any form of corporate tax evasion or non-compliance with the provision of the CITA that has not been specifically mentioned was a fine of N200 only. The amount was ridiculously low. Even where stringent penalty was imposed such as fine of 200% for failure to deduct or remit tax withheld at source, it was not really enforced due to one form of corruption or another in the tax administration. The CITAA has now altered some of those penalties in order to reflect current realities or make them more administrable.

Any person found guilty of an offence under the CITAA for which no penalty is specifically provided will be liable on conviction to a fine of N20,000. However, if the offence is the failure to furnish a statement or any other information statutorily required, he is liable - in addition to N20,000 above - to a further sum of N2,000 for each and every day during which such failure continues. Failure to pay the fines will make him to be liable to imprisonment for six months. The same penalty applies if the offence is a failure to keep records required by the Act. The liability for the further sum of N2,000 commences from the first day after the conviction, or any other day which the court deemed fit.

It is obvious that the main objective of the provision is to compel the staff of the company such as accountants that play a key role in determining the actual tax liability to cooperate with the tax officials. This is to avoid facing any negative consequence of such acts. Furthermore, the amount of fine is inadequate compare to the huge amount of money they earn especially from the foreign and multinational companies. The amount must be increased so that the desired goal could be achieved.

Failure to comply with the requirements of a notice served on a person is an offence under the Act. Failure to attend in answer to a notice or summons served on him without any reasonable justification is another offence. Failure to answer any question lawfully put to him in the event of his attendance also constitutes an offence against the CITAA.

The FIRS can impose a penalty of an amount equal to the tax chargeable for the preceding year of assessment upon any company fails to comply with the requirements of any notice given to it. This is on condition that a written notice of the penalty must be served upon the company. The FIRS can sue the company in a competent court to recover any amount of the penalty remains unpaid for thirty days after service of the notice together with full costs of action as a debt due to the government. The court can rely upon the certificate signed by an authorized FIRS official stating the name and address of company, the date of service of the said notice, and the amount of the unpaid penalty in order to give judgment. The FIRS can collect the amount of the penalty wholly or partly before the judgment if there is a sufficient ground for doing so

Sometimes a company may employ the work of some professionals such as lawyers or accountants to advise them on how to unlawfully mitigate the amount of tax to be paid.

A lawyer may subsequently advise the company on different ways and techniques on how to alter facts and make false statements in order to evade or avoid corporate tax. It is on this ground that the CITAA provides that a person other than a company is guilty of an offence if he deliberately makes a false statement with the intention of reducing the tax liability. He is also guilty if he assists another person to make and deliver any false information or to prepare and induces him to keep false accounts or particulars with aim of mitigating the tax liability. He is also guilty if he evades tax without any justifiable cause. On conviction, a person in all of the above three circumstances, is liable to a fine of N1,000 or to imprisonment for five years, or to both. The FIRS can compound any offence and stay or compound any proceedings before judgment but with the leave of the court.

It should be observed that the FIRS Board has a number of discretions to exercise in connection with the offences and penalties. It has the power to compound offence. It also has a power in its discretion to stay proceeding as well as compounding it. This may create an avenue for the tax officials to abuse the power. Bribery and corruption and undue exploitation of influence can be spread among the tax officials of the Board. In order to discourage these acts, the CITAA provides that a tax official can be a guilty of an offence under the CITAA, if he demands a company to pay him an amount more than the authorised assessment of the tax. He is also guilty of an offence if he withholds for his own use or otherwise any portion of the amount of the tax collected. He is also guilty if he renders a false return of the amount of tax collected or received by him. Deceiving any person, embezzling any money or using his position to deal wrongfully with the FIRS Board also constitutesan offence. In the same vein, a person can be guilty of an

offence if he collects or attempts to collect the tax while he is not authorised to do so. Any person found guilty in any of the above five conditions he will be liable on conviction to a fine of N600 or to imprisonment for three years or to both.

The above fine of six hundred naira is too small. Hardly can it deter the officials from committing such offence. It is necessary for the tax officials to understand that total and complete honesty is demanded from them. An effective way of getting that honesty is to apply a severe punishment on dishonesty. Each tax official, especially in the assessment and collection section of the FIRS, should be required to submit a net worth statement at his employment. The statement should be intermittently checked particularly when suspicion arises about him or his life style has changed beyond that which his salary and previous wealth can afford.

It should be noted that institution of proceedings for, or the imposition of a penalty and fine or term of imprisonment served under the CITAA will not relieve any company from liability to payment of any tax for which it is or may become liable. Under the CITAA an offence is deemed to have occurred in the town where the registered office of the company is situated or any other place deemed appropriate by the FIRS.

The Act provides that every company must file a self-assessment returns with the FIRS in a prescribed form that demands for certain information. The time within which the returns must be filed is not more than 6 months after the end of the company's accounting period in case of a company that has been in business for more than eighteen months. But in the case of a newly incorporated company the returns should be filed within either 18 months from the date of its incorporation or not later than 6 months after the end of its

first accounting period, whichever is earlier. Self-assessment should be filed not later than 8 months after the end of its accounting period. Failure to file or late filling of the returns (i.e filing it not within the stipulated period) is an offence which attracts the following penalty-

(a) N25,000.00 in the first month in which the failure occurs; and

(b) N5000.00 for each subsequent month in which the failure continues.

But if the offence is committed by deliberate act or negligence of a company's staff or its agent, on conviction, the person will be liable to a fine of N100,000 or imprisonment for a term of two years or to both.

The Act also provides that where an asset in respect of which an investment allowance has been made is sold or transferred it shall be the duty of the purchaser or transferee or their representatives to give any information required on this. Failure to comply with this constitutes an offence. Any person found guilty of it shall be liable on conviction to a penalty not exceeding N100 in addition to the amount of tax lost by granting of the allowance in respect of the expenditure in question. To tell a person deliberately refuse to comply with the above provision that he is liable to a penalty of one hundred naira is absurd and ridiculous. The penalty cannot serve as deterrent.

In order to obtain full information in respect of a company's profit, the FIRS can give notice to a person requiring him to complete and deliver additional returns. It can also require him to personally appear before a tax official for examination on any matter related to the profits. The person may also be required to produce books, documents or any other information in a particular place within a stipulated period for tax purpose. The

Service may also ask the person to orally or in written give any other information contained in the notice. The notice should clearly indicate the time within which the additional returns and information should be delivered to the Service. The time should not be less than seven days from the date of service of the notice. Any person contravenes this provisions commits an offence. He shall consequently be liable on conviction to a fine equivalent to the amount of the tax liability in addition to paying the tax due.

Failure to deduct or remit withholding tax within twenty one days from the date the amount is deducted or from the time the duty to deduct arose is an offence under the CITAA. Any person found guilty of it, is liable to a fine of 10% per annum of the tax not withheld or not remitted. This is in addition to the amount of tax deducted plus interest at the commercial rate. The penalty was 200% as provided by the CITA 2004. Furthermore, the removal of the requirement of a criminal conviction by omitting the phrase 'on conviction' existing in the principal Act , has turned the penalty from a judicial one into an administrative one. The question is whether the new penalty, which is less than the commercial lending rate could encourage corporate tax evasion or not.

The amendment of the provision of the CITA on offences and penalties is quite commendable. This is because one of the rationale behind the provision of penalties against offences is to deter people from perpetrating the offence. Government is seriously making effort to combat the problem of tax avoidance / evasion. Nevertheless, the task is still hectic. Some provisions are still in need of amendment for they don't reflect the current situation. Furthermore, Nigeria faces many challenges in the war against tax avoidance and tax evasion. Inadequate tax education, poor record keeping and

underground economy are among the serious challenges facing the administration of taxes in general and management of corporate tax in particular. Other problems are advancement in technology and Globalization, cash based of the Nigerian economy and sophistication in tax planning schemes especially among the Multinational companies.

Generally, both tax avoidance and evasion have negative impacts on promotion of investment. This is because they lead to loss of government revenue which could be utilized to provide security and other social amenities. Nobody will like to take risk of investing in an area where there is no peace and stability. Nobody will like to gamble with his life and properties together with safety of his staff by investing in no go area. Also, giving a chance for some taxpayers to avoid or evade taxes brings segregation among the taxpayers. It therefore impairs the chances of realising the distributional or equity goals of taxation. Furthermore, if tax evasion and avoidance become too widespread and out of control, honest taxpayers may lose faith in tax administration and be tempted to join the ranks of tax evaders and avoiders. This may aggravate the problem of insufficient money for government to execute its projects. Implementation of government policy may become very difficult under this circumstance. Again, in an economy characterised by widespread tax avoidance and evasion, taxpayers may not develop a sense of belonging and concern in fiscal discipline.

CHAPTER SIX:

SUMMARY OF FINDINGS, CONCLUSIONRECOMMENDATIONS AND CONTRIBUTIONS

6.1 Summary of Findings

Corporate tax is a tax statutorily imposed upon the profits of companies and corporate bodies. It is mainly exacted for revenue generation to enable government to properly perform its duties. In Nigeria, corporate tax revenue occupies a significant position in the economy of the country. About one trillion Naira was collected by the Federal government as corporate tax in 2013. This was equivalent to one fifth of Nigerian Federal Government budget for that year.

In the same vein, investment is very vital for it creates jobs, alleviates poverty, reduces unemployment and brings foreign capitals to the country. Thus, promotion of investment has become imperative for economic development of a nation. Government has to prepare a set of activities to attract investors. Such activities are referred to as investment promotion. Part of it is to provide investment climate and advertise for it in order to convince investors to invest or reinvest in the country.

However, before investing in a particular area, companies normally make a feasibility study of the investment project and determine on how, when, where and how much capital will be spent on the available opportunities for the investment. This is what is called investment decision. In making it, there are various factors that are taken into consideration and eventually impact on it. The question is whether corporate tax is part of them and whether the legislation governing it has impact on investment promotion. Accordingly, the research has arrived at the following findings-

6.1.1 High Rate of Corporate Tax

The present corporate tax rate which is statutorily imposed on the profits of companies in Nigeria is 30%. However, the rates of corporate tax at international level vary from one country to another. Nigerian corporate tax is among the highest in the world. It occupies the second position after the USA that has the corporate tax rate of 35%. As a result of this rate, many investors may prefer to inject their resources in a country that is tax haven favourable to their business. For instance, as at 1996 when the Nigerian corporate tax rate was reduced to 30% the rate in Ghana was 8%. This is one of reasons that make Ghana a preferred location among investors willing to invest in West Africa.

6.1.2 Imposition of Tax on Company's Capital

Normally, corporate tax is imposed upon the profits of any company accrued in derived from, brought into or received in Nigeria. Company's profit is therefore the income chargeable to tax. However, the CITAA prescribed the payment of minimum tax oncompanies where their total profits result in a loss, or no tax payable, or the payable tax is less than the minimum tax Furthermore, a pre operational levy of N20,000 for the first year and N25,000 for every subsequent year is also imposed on companies after 6 months of incorporation prior to the commence of business.

Corporate tax is generally payable on profits not on capital. The company's profits are therefore the ground on which the tax is imposed. To oblige companies to pay corporate tax in the event of incurring loss or to be paying certain amount of money ahead of the commencement of business is to tax their capital. To tax companies before the commencement of business or companies that operated at loss has negative impact on investment promotion. To tax them is to discourage them from investment.

6.1.3 Multiple Taxation

It has also been found that 30% is not the only amount paid from the companies' profits as tax. There are various taxes and levies imposed by Nigerian tax laws upon the same profits of a company. For instance, Education Tax Act provides for the payment of 2% from the assessable profits of a company. National Information Technology Development Agency Act also imposed 1% on the same profits of a company. This is a clear example of multiple taxation. It has negative impact not only on promotion of investment but also on the economy of the nation. One-week warning strike embarked by the Amalgamated Foodstuffs and Cattle Dealers Association of Nigeria on March 8, 2010, is a good example on how economic activities could be negatively affected as the result of multiple taxation.

More so, 10% is deducted at source from the profits in the name of withholding tax. The law tagged any income from which withholding tax is paid as Frank investment income. It is not subject to further tax. In spite of this however, it is regarded as the assessable profits of a company and taxed at the normal rate of 30% if the company has no any assessable profit apart from it. Consequently the total rate of taxes statutorily imposed by different provisions of Nigerian tax law upon the profit of incorporated companies has reached 40%.

6.1.4 Non Compliance with Corporate Tax Law

It has also been found that lawyers, accountants and other professionals employed to assist a company on how to avoid tax are also guilty of offence under the Act and liable to a fine of one thousand Naira on conviction.Similarly, any staff of the FIRS connives

with a company to avoid or evade tax is also guilty of an offence under the Act and will be liable on conviction to a fine of six hundred Naira only. To tell a person such amount as penalties for the offence committed under the Act is absurd. This amount cannot stop any person from committing what he intends to do in violation of the provision of corporate tax law. Perpetrating the offence can eventually reduce the amount of collectible revenue. Lack of sufficient revenue is capable to paralyses the effort of government in making and providing necessary things for investment promotion.

In addition, any person contravenes the provision of any section of the CITAA for which no any penalty specifically provided is liable to a fine of N20,000 on conviction. Moreover, non-compliance with the provision of the Act on filing self-assessment return form within six month from the expiration of the account year or 18 month from the commencement of business is a statutory offence. It attracts penalty of N25,000 on conviction for the first months in which the failure occurs and N5,000 for the subsequent month in which the failure continues. This provision encourages companies for non compliant attitude rather than deterring them. About 350,000 companies were discovered not rendering their annual tax return and assessment forms. This means that they did not pay their corporate tax. This is a serious problem that affects generation of revenue which subsequently affects the promotion of investment.

6.1.5 Mismanagement of Revenue Collected

Corrupt practices by public and political office holders remains one of major problems that affect the revenue generated to the government in Nigeria. As the result of it, they mismanage the revenue collected by the revenue authorities within a short limited

of time. In other words, corruption is one of the fundamental factors that cause mismanagement of tax revenue collected by the FIRS. Thus, it slow down the economic development of a country. It impedes foreign and domestic investment and reduces the ability of state to provide public services and infrastructures. Consequently, it has a strong negative impact on investment promotion.

6.2 Conclusion

It is apparent from the forgoing that corporate tax is part of the factors considered by corporate bodies for investment decision. Corporate tax law has strong impact on investment promotion in Nigeria. It is the legal framework for the taxation of companies to generate revenue for government in order to undertake its duties and promote investment. Contrary to the provisions of the CAMA, the CITAA did not segregate between Nigerian and foreign companies. Once profit is earned in Nigeria it is subject to tax except it is exempted by the law. This has direct impact on revenue generation which affects the performance of government in providing public services and infrastructures of which investment promotion is included. The corporate tax legislator also declined from providing a statutory definition of some terms like income, tax and trade or business for merely being simple that bear their ordinary meaning. The definition may also create a lacuna that will be used to reduce the collectible amount from corporate tax. Furthermore, corporate tax incentives provided under the law has strongly impacted on investment promotion.

However, 30% corporate tax rate, re-taxing frank investment income that raise the rate of corporate tax to 40% and additional three percent tax on the same corporate income in the

name of education and information and technology tax all discourage investment in the country. Furthermore, taxing companies that operate at loss silently kills business and discourages investment. Additionally, some provisions of the CITAA against corporate tax evasion and avoidance are not deterrent. Rather they serve as a source of encouragement to dodge the payment of corporate tax. This subsequently reduces thegovernment revenue and paralyses its functions. This normally affects the investment promotion in a negative manner. Consequently, it can be deduced from the above that corporate tax is one of the factors considered by investors to decide on where to invest their capitals. Corporate tax law that imposes it has positive and significant impact on revenue generation and investment promotion. However some provisions of the law have negative impact on investment. Thus there is a need to amend them.

6.3 Recommendations

To this extent, the work has been summarised. The major findings have been identified. Recommendations have therefore been made as follows-

6.3.1 Corporate Tax Rate Reduction

The rate of tax statutorily imposed upon the profit of any company in Nigeria is thirty percent (30%). This rate is among the highest in the world. To avoid negative impact on the flow of foreign investment to the country, the amount should be reduced to 20%. This is to harmonisewith some African countries such as Libya, Egypt, Mauritania and Madagascar and other Asian and European countries such as Turkey, Thailand, United

Kingdom and Russia. The reduction will definitely attract more investors and retain the existing ones.

6.3.2 Repeal of Minimum Tax Provision

Section 22A(1) of the CITAA provides for the payment of corporate tax if the company fails to secure any profit. This is a serious problem that has a negative impact on companies in general and their investment in particular. Consequently, the provision should be amended.

6.3.3 Elimination of Corporate Multiple Taxation

To encourage more investors, corporate multiple taxation must be eliminated. Companies' income tax alone is enough. Generating revenue to enable government to provide public services and infrastructures like education and development of information technology is part of the objectives of taxation in general and the corporate tax in particular. Consequently, companies income tax alone is enough on companies assessable profits.

6.3.4 Amendment of CITAA Provision for Non-Compliance

N600, N1,000, N20,000 and N25,000 provided under sections 74, 73(1), 71(1) and 41 (3)of the CITAA respectively as fine for corporate tax avoidance or evasion are not adequate. To ensure compliance and generate more revenue that can be used for investment promotion, the amount must be increased to reflect current realities. The amounts should be raised to N60,000, N10,000,N200,000,and N250,000 respectively. This is in consideration of the huge amount of profits earned by companies nowadays

particularly transnational corporations. Consequently, provisions of the said sections of the Act should be amended.

6.3.5 Good Governance and Judicious Management of Revenue Collected

Good governance and judicious management of tax revenue is one of the most effective ways for investment promotion. Once the revenue collected is properly utilised on actual projects that have a direct impact on the taxpayers it will automaticallyencourage companies to invest more and positively impact on investment promotion. Once the revenue is not looted or squandered it will positively impact on investment promotion.This is because government will have more money for public services and security of life and properties. This will definitely encourage companies to expand their investments and attract new investors and increase the flow of FDIs to the country.

6.4 Contribution to Knowledge

Generally the workhas mainlyascertained the impact of Nigerian corporate tax law on investment promotion. In the field of knowledge, the works has specifically made the following contributions-

6.4.1 Satisfaction of the Current Need

The first contribution of this work to knowledge is that it satisfied the current need for a tax literature that provides an alternative solution to over dependence of government on oil revenue.Presently, Nigeria is in a serious economic recession. Inadequate revenue to cater for government need for the execution of its projects and other functions is one of the major problems. Upstream oil and gas sector has become the dominant driver of

Nigeria economy which has become over-dependent on the sector. It provides the bulk of funding for the three tiers of government and over 95% of the foreign exchange earning in country. About 70% of the government revenue comes from the sector.

The collapse of the oil price in the international market has contributed in reducing the revenue earned by government from oil sector. Consequently alternative to this must be sought to recover from the recession. If the government budget in 2013 was about five trillion Naira and the Federal Government tax collection was about the same amount of which one fifth of it is from corporate taxation, then this should be part of the alternative sources to be emphasized on by the government. Therefore any work on it is very much needed. This is part of the literary contribution to knowledge of this research. This is because it provides reference for various institutions, non-governmental organisations and government agencies.The work is useful to academic staff, students of law and taxation, legal practitioners and other stakeholders in the field of taxation.

6.4.2 Addition to Existing Literatures and Filling the Gap left by them

The second contribution to knowledge made by this work is that is has provided a reference on the topic. In addition, absence of a single literature with caption of this thesis is a significant contribution to the field of this knowledge. Furthermore, even the existing literatures connected to the topic are not adequate. The issue of the impact of corporate has not been given due attention. Materialsrelated to the topic of this work are scattered in various books of taxation. This thesis has filled this gap.

6.4.3 Identification of the Loopholes and providing solutions to the Problems

Another contribution to knowledge made by the work is that it has identified some loopholes and problems in provisions of the present corporate tax legislation that slow down the promotion of investment. This inter alia include, the high rate of tax provided by the Act, the payment of minimum tax by a company incurred lost in a year of assessment, as provided under section 22 of the Act and the double taxing the Frank investment Income which is not subject to any tax apart from 10% of the dividend provided by the Act. Others are provisions of section 71 and 41 of the CITAA on penalties for non-compliance with the provision of the Act. The Act was primarily enacted for revenue generation and other fiscal policies of which investment promotion is included. Identifying any loophole that hinders from attaining the purpose of the enactment and recommending solutions to the problems is great contribution to knowledge.

6.4.4 Providing Criteria for Evaluating the Impact of Corporate Tax Law on Investment Promotion

Another contribution of this work to knowledge is that it has improvised criteria for evaluating the impact of Nigerian corporate tax law on investment promotion. This is because the term “impact is measurable. This is normally made by making reference to some indicators supported by facts and figures, volume and trend. To determine the impact of corporate tax law should be used. Since enhancement of revenue generation for effective performance of government functions is one the primary objectives of corporate tax reform which resulted in amendment of the CITA and enacting the FIRSEA 2007, the volume of tax collected before and after the 2007 reform is used as determinant. The number of companies attracted to invest and the volume of capitals and employment

generated by the investors are also setas indicators for positive or negative impact of the present law reform on investment promotion. Specifically, the research used the criteria and evaluated the impacts of corporate tax administration and tax incentive regime on promotion of investment in Nigeria. This is another important contribution to knowledge.

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