AN OVERVIEW OF REVENUE LAW IN NIGERIA

1.00 INTRODUCTION

1.01 Whether or not it is justiciable, the Constitution of the Federal Republic of Nigeria, 1999 established amongst other things for the government of Nigeria, economic and educational objectives for the welfare of its people.

Section 14 (2) (b) succinctly declares that

"the security and welfare of the people shall be the primary purpose of government".

These are lofty goals which in addition to the cost of governance requires funding.

How much of these goals, are met would largely depend on the funds available for the use of the government from revenue raised or generated by it.

1.02 The revenue would of course come in terms of taxes, levies, fees and other charges. The administration of these taxes, fees, levies e.t.c. are products of legislative enactments beginning from which of the tiers of government is empowered to make laws regarding various revenue items, and or administer the laws enacted to regulate same. Taxes are the major sources of revenue for the first two tiers of government and as such the thrust of this discourse will be on taxes.

1.03 In the Nigerian Federation, the National Assembly is empowered by S.4(3) of the Constitution of the Federal Republic 1999, to make laws for the Federation in respect of matters included in the exclusive legislative list to the exclusion of the Houses of Assembly of the States. The relevant items in respect of which the National Assembly has exclusive power to make laws are listed in the 2nd schedule part I as Items;

16 - Customs and excise duties

25 - Export duties

58 - Stamp duties

59 - Taxation of Incomes, Profits and Capital Gains

1.04 In furtherance of its powers, the Legislature enacted the following into law at various times.

(i) Personal Income Tax Act – Cap P8 Vol. 13 LFN 2004

(ii) Companies Income Tax Act – Cap C 21, Vol. 3 LFN 2004.

(iii) Stamp Duties Act – Cap S8 Vol.14 LFN 2004

(iv) Value Added Tax Act – Cap V1 Vol. 15 LFN 2004

(v) Petroleum Profit Tax Act - Cap P13 Vol. 13 LFN 2004

(vi) Capital Gains Tax Act - Cap C1 Vol. 2 LFN 2004

(vii) Customs Duties - Cap 45 Vol. 4 LFN 2004

(viii) Excise Duties - Cap 45 Vol. 4 LFN 2004

1.05 The National Assembly is also empowered to make laws in respect of matters on the concurrent legislative list as set out in the first column of Part II of the Second Schedule to the Constitution to the extent prescribed in the second column opposite thereto.

1.06 Item 7 D of Part II, Second Schedule to the Constitution, empowers the National Assembly, in the exercise of its powers to impose any tax or duty on;

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

(b) Documents or transaction by way of stamp duties ''

to provide that the collection of any such tax or duty or the administration of law imposing it shall be carried out by the Government of a State or other authority of a State.

1.07 It is palpable from the above that the power to legislate or impose a tax may not necessarily be coterminous with the power of collection or administration of the law regulating the tax imposed. Where an enactment of the National Assembly delegates collections of tax or duty on capital gains incomes or profit it shall regulate liability of persons to such tax in such manner as to ensure that same is not levied on the same person by more than one State. Same applies to the National Assembly in relation to the States.

1.08 It may suffice to say at this point that the only tax legislations enacted by the National Assembly and in respect of which the States are empowered to collect and administer the

taxes imposed are Personal Income tax, Stamp duties (Individuals only and Capital Gains Tax (Individuals only).

1.09 The Local Government has no powers of legislation in respect of taxes though may collect if so empowered by law. In the same vein, the powers of the State in respect of same are only in respect of matters on the concurrent list and to the extent that it does not conflict with any Act of the National Assembly where such exists.

2.00 DIVISION OF TAXING POWERS AND RESPONSIBILITY FOR COLLECTION OF CERTAIN TAXES

2.01 The imposition or assessment of a tax is the means by which the government obtains the revenue required for its activities. This is usually, by way of a monetary charge imposed by the government on persons, entities, transactions or property to yield public revenue.

The division of taxing powers in a country invariably depends on the system of government, whether it is federal or unitary. Nigeria runs a federal system of government.

In a bid to stem the challenges of multiplicity of taxes and levies in Nigeria, the Legislature enacted the Taxes and Levies (Approved List of Collection) Act 1998, whereby taxes, levies and fees collectible by the various tiers of government were spelt out as follows:

2.02 Taxes Collected by the Federal Government

1. Companies income tax.
2. Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals.
3. Petroleum profits tax.
4. Value added tax.
5. Education tax.
6. Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individuals.
7. Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja.
8. Personal income tax in respect of –

(a) members of the armed forces of the Federation.

(b) members of the Nigeria Police Force.

(c) residents of the Federal Capital Territory, Abuja; and

(d) staff of the Ministry of Foreign Affairs and non-resident individuals

2.03 **Taxes and levies to be collected by the State Government**

1. Personal income tax in respect of -

   (a) Pay-As-You-Earn (PAYE); and

   (b) Direct taxation (Self-assessment)

2. Withholding tax (individuals only)

3. Capital gains tax (individuals only)

4. Stamp duties on instruments executed by individuals.

5. Pools betting and lotteries, gaming and casino taxes.

6. Road taxes.

7. Business premises registration fee in respect of –

   (a) urban areas as defined by each State, maximum of –

      (i) N10,000 for registration; and

      (ii) N5,000 per annum for renewal of registration; and

   (b) rural areas –

      (i) N2,000 for registration; and

      (ii) N1,000 per annum for renewal of registration

8. Development levy (individuals only) not more than N100 per annum on all taxable individuals.

9. Naming of street registration fees in the State Capital.
10. Right of Occupancy fees on lands owned by the State Government in urban areas of the State.
11. Market taxes and levies where State finance is involved.

2.04 **Taxes and Levies to be collected by Local Government**

1. Shops and, kiosks rates
2. Tenement rates
3. On and off liquor licence fees
4. Slaughter slab fees.
5. Marriage, birth and death registration fees.
6. Naming of street registration fee, excluding any street in the State Capital
7. Right of Occupancy fee on lands in rural areas, excluding those collectable by the Federal and State Governments.
8. Market taxes and levies excluding any market where State Finance is involved.
9. Motor park levies.
10. Domestic animal licence fees.
11. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck.
12. Cattle tax payable by cattle farmers only.
13. Merriment and road closure levy.
14. Radio and television licence fees (other than radio and television transmitter).
15. Vehicle radio licence fee (to be imposed by the local government of the State in which the car is registered.
16. Wrong parking charges.
17. Public convenience, sewage and refuse disposal fees.
18. Customary burial ground permit fees.

19. Religious places establishment permit fees.

20. Signboard and advertisement permit fees.

2.05 The views have been expressed by several legal and tax practitioners that taxes and levies listed above are not conclusive of the powers inherent in the government to impose taxes. It may be appropriate to observe also that the focus of the above law is on which of the tiers of government can collect the items listed and not which can impose the taxes.

3.00 AN OVERVIEW OF THE VARIOUS TAX LAWS AND RECENT DEVELOPMENTS

3.01 The Nigerian Tax Laws have undergone significant amendments in the last few years especially with a view of excising obsolete provisions and making the laws as much as possible to reflect present day realities.

The Personal Income Tax Act is one of the three tax laws enacted by the National Assembly concerning which the power to collect and administer is delegated to the States. Section 2 (2) of the said Act provides that:

'In the case of an individual, other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this Section, tax for any year of assessment may be collected only by the State in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act……..'

3.02 This is what is referred to as the Residency rule and it means no more than that the power to collect personal income tax on the income of an individual resides in the tax authority of this place of residence and not, that of his place of work. In Shittu V. Nigeria Agricultural & Cooperative Bank Ltd[14] per Obadina J.C.A.; delivering the lead judgement confirmed the position of the law on Residency as follows:

'Section 2 (2) of the Personal Income Tax Decree No. 104 of 1993, empowers the State Government to impose Personal Income Tax for every year of assessment on the Personal Income of individuals who are resident for the year in the State under the provisions of the First Schedule to the Decree'.

3.03 In Nigeria, the residency rule appears even more compelling, being a Nation of Federating entities. How for instance do you determine which of thirty six States Boards of Internal Revenue is entitled to exercise the power to tax the income of an individual who is resident in a particular state in Nigeria and earns income in another. Suppose this person resides in two or more states within Nigeria, how can you even determine whether an individual's residence itself is conclusive in all cases as to which tax authority can

exercise the power to tax? The answer to this lies in what is referred to as the residency rule.

3.04 In United Bank for Africa Plc. V. Odimayo (2005) 2 NWLR (Pt 909) 21 at 38 E-F the Court of Appeal had this to say; “one is said to reside if he lives, dwells, lodges or abides at a designated place. Residence is accordingly about personal presence at some place of abode with purpose to remain for some undetermined period. One can be said to reside in a place without necessarily staying permanently thereat. Residence conveys the fact of abode and the intention of remaining. It means more than the physical presence”.

3.05 Place of residence” in relation to an individual means a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest house or other place at which he is temporarily lodging unless no permanent place is available for his use on that day”.

3.06 SUPPOSE AN INDIVIDUAL HAS MORE THAN A PLACE OF RESIDENCE?

There are two major scenarios.

- It is possible for an individual to reside in both Ogun state, Nigeria and United Kingdom by way of example. Which of the tax authorities can tax that income?
- An individual may also have more than a place of residence in two or more states (territories) in Nigeria. Which of the competing states is entitled to taxes payable?

3.07 The answer to scenario 1 is provided by section 10 of P.I.T.A.- The gain or profit from an employment shall be deemed to be derived from Nigeria if the duties of the employment are wholly or partly performed in Nigeria unless;

- The duties are performed on behalf of an employer who is in a country other than Nigeria *and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria*; and
- The employee is not in Nigeria for a period or periods amounting to *an aggregate of* 183 days (*inclusive of annual leave or temporary period of absence;* or more in any twelve month period commencing in a calendar year and ending either within the same year or the following year; and
- The remuneration of the employee is liable to tax in that other country *under the provisions of the avoidance of double taxation treaty with that other country.*
- *The gains are taxable if the employer is in Nigeria or has a fixed base in Nigeria.*

3.08 In scenario 2, to determine which of competing tax authorities in Nigeria can tax the income of an individual who resides within their territories, recourse must be had to the concept called principle place of residence.

Principal place of residence of an individual will depend on the nature and source of the income.

(i) Where the source of earned income is pension in Nigeria, the place of residence will be where he usually resides.

(ii) Where the source of earned income is other than a pension in Nigeria, then it will be that place of those places nearest to his usual place of work.

(iii) If the individual has a source or sources of unearned income in Nigeria, his residence will be that place or those places in which he usually resides.

(iv)'in the case of an individual who works in the branch office or operational site of a Company or other body Corporate, the place at which the branch office or operational site is situate' provided that an operational site shall include oil terminals, oil platforms, flow stations, factories, quarries, construction site with a minimum of 50 workers e.t.c.'

3.09 There are other specific rules for determination of residence regarding foreign employments, Nigerian employments, other employments, pensions e.t.c. . These are no more than detailed and in some cases peculiar application of the residency rule.

3.10 There is a statutory provision for the resolution of disputes relating to the residence of an individual. This may be between an individual and a tax authority or even between two or more tax authorities. Cases of this nature are adjudicated upon by the Joint Tax Board.

3.2.0 The Personal Income Tax (Amendment) Act 2011 amended sections 2, 3, 10, 33, 36, 37, 38, 44, 47, 49, 52, 57, 60, 61-67, 70(5) 73(4), 74, 77, 81, 85, 86, 87, 88, 94(1), 95, 96(1), 97, 104, 106A, 108, FIRST, THIRD AND SIXTH SCHEDULE of the principal Act.

3.2.1 NOTABLE AMENDMENTS AND IMPLICATIONS

1. A new subsection (1A) to be added to wit:

'Not withstanding anything in the Principal Act, the relevant tax authority in a State shall have powers to collect tax under this Act from itinerant workers'.

(c) S. 2 (8) - The definition of personal emoluments was expanded to include benefits in kind.

Interpretation

(a) The tax authority of the place of residence of the itinerant worker can tax the income and not of where he is found during the year.

(b) This will also apply to persons enlisted in the Armed Forces but do not hold a Commission (Other rank). Benefits in kind paid to this category of persons is now taxable and same must be declared to the tax authority.

2. **Income Chargeable**

S.3 (i) (b) - is substituted with a new paragraph (b) to wit:

'any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain'.

Interpretation

Salaries, wages, fees, allowances and all other gain or profit from employment including compensations, bonuses, premiums e.t.c. earned by an employee whether temporary or permanent are taxable. Only reimbursable expenses which do not amount to gain or profit are not taxable.

3. **S. 10 – Employment***

(a) S.10 1 (a) (i) has now being amended by the inclusion of the phrase 'and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria'

(b) S.10 1 (a) (ii) has been amended to include after the phrase 'amounting to' 'an aggregate of' and immediately after '183 days' the phrase 'inclusive of annual or temporary period of absence'.

(c) S. 10 1 (a) (iii) has been amended by adding 'under the provisions of the avoidance of double taxation treaty with that other Country'

(d) A new S. 10 (1) (b) to read 'the employer is in Nigeria or has a fixed base in Nigeria'

(e) Section 10 (5) is deleted and S.10 (6) to read S.10 (5).

Interpretation

(a) Every gain or profit from an employment is deemed to be made in Nigeria when the duty of the employment is carried out partly or wholly in Nigeria unless.

  (i) the employer does not live in Nigeria and additionally, the remuneration is not borne by a fixed base in Nigeria.

(b) An aggregate of 183 days is spent outside Nigeria which now includes annual leave and any temporary absence.

(c) There is an existing avoidance of double taxation treaty with that other Country.

4. **S.33 – Personal Relief & relief for Children & dependants***

(a) C.R.A. of ₦200,000 subject to minimum of 1% of gross income whichever is higher + 20% of earned income.

(b) Definition of gross emolument inserted as subsection (2).

Interpretation

(i) Gratuities is now included for the purpose of computing gross emoluments.

(ii) Personal relief inclusive of those for children & dependants has been reviewed upward to a minimum of ₦200,000 but can be more, provided 1% of gross income is more than ₦200,000.

5. **S. 36**

Adds a new subsection (6) which gives the Minister power by gazette to make regulations concerning presumptive tax regime which will guide assessments made where there are no records or income is unascertainable. There is a draft regulation in place and is going through the final stage of review.

6. **S. 37 – Minimum Tax***

Minimum tax reviewed upward to 1% where after allowable deductions, there is no chargeable income or tax payable on the chargeable income is less than 1% of the total income.

7. **S. 38**

(a) The marginal note ‘Avoidance of double taxation agreement’ to be substituted for ‘Double taxation arrangement’.

(b) A new subsection (1) is introduced to the effect that avoidance of double taxation treaties of the Federal Government will only have effect upon ratification of the National Assembly.

(c) The word ‘Agreement’ to replace ‘Arrangement wherever it occurs in S. 38

8. **S. 44 – Self Assessment by Individual**

Self assessments to follow a prescribed format as Minister may by gazette prescribe.

9. **S. 47 – Power to call for returns, books & Information**

(a) Phrase ‘including a person charged with the administration of FSB International Plc should be deleted.’

(b) The fines in subsection (3) reviewed upward to ₦500,000 and ₦50,000 respectively.

(c) A new subsection 5 is inserted to include government and private institutions to comply with S.47 when requested.

10. **S. 49 – Information to be delivered by bankers**

(i) Phrase ‘including a person charged with the administration of the FSB International Plc’ to be deleted wherever it appears in this Section.

(ii) The penalties for violation has been reviewed upward to ₦500,000 for body corporate and ₦50,000 for individual.

11. **S. 52 – Books of Account**

Subsection (1) substituted to penalize a taxpayer, ₦50,000 for individual and ₦500,000 for body Corporate when in the opinion of the tax authority the books of account are either not kept well or at all.

12. **S. 57 – Service of Notice of Assessment***

Notice of Assessment can now be served by electronic mail & by courier.

13. **S. 60 – Establishment of Appeal Commissioners***

A new S. 60 introduced to replace the former. The Tax Appeal Tribunal now empowered to entertain all cases arising from the operations of P.I.T.A. Consequently S.61-67 were deleted. It also puts an end to the existence of the Body of Appeal Commissioners.

14. **S. 70 (5) – Deduction of Tax on Interest**

FSB International Plc deleted where it appeared.

15. **S. 73 (4) – Deduction of Tax at Source**

(a) Excess payment on account of withholding tax shall be refunded by Tax Authority within 90 days except if it is a final tax with the option of setting off against future tax payments.

(b) National assembly can cancel or vary rates as proposed by the president.

16. **S. 74 – Penalty for failure to deduct tax**

(a) Failure to deduct WHT and remit deductions within 30 days will now attract a penalty of:

(i) 10% of the tax not deducted or remitted and
(ii) amount of tax not deducted or remitted and
(iii) interest at the prevailing monetary rate.

(b) Accountant General of the Federation now empowered to deduct unremitted taxes at source from allocations of Government institutions at the request of the State.

17. **S. 77 – Interest for late tax payment**

Interest to be calculated on an annual basis at the bank base lending rate.

18. **S. 81 P.A.Y.E.**

New Sections (2) – (4) introduced while existing sections thereafter to be renumbered (5) – (9). S. (2) – (4) are summarised as follows:

- Employers to file returns of all emoluments paid to employees not later than 31st January on a preceding year basis.
- Contravention by individual attracts a fine of ₦50,000 fine while corporate body pays ₦500,000.
- Income tax recovered by deduction from payment to be set off against tax assessment for purpose of collection but excess payment relating to WHT is recoverable within 90 days after assessment has been filed with the option of setting off against future payment.

19. **S.85 – Tax Clearance Certificate**

(a) Subsection (2) is amended by the addition of the obligation imposed on a tax authority, MDA's and commercial bank to verify the genuiness of a TCC presented to it from the issuing tax authority.

(b) A new paragraph subsection (3) (e) to read that a TCC must bear a Tax identification number.

(c) New subsections (4)(t)(u)(v) added to the effect that the tax authority shall also request for evidence of tax payment in respect of applications for plot of land and change of ownership of vehicle by vendor.

(d) The fine for misrepresentation or falsehood relating to application for TCC reviewed to ₦50,000.

(e) A new subsection (9) imposes a fine upon conviction in the sum of ₦5,000,000 upon any person including a government body.

20. **S. 86 – Joint Tax Board**

(a) S. 1 Companies Income Tax Act in S. (2) (a) to be substituted by 'Section 11 FIRS Act (Establishment) 2007.

(b) 'Federal Civil Service Commission' in subsection (3) to be substituted by 'Joint Tax Board'

21. **S. 87 – S.B.I.R.**

New subsections (2) (a) (b) & (e) to replace the existing ones to wit:

(a) Chairman shall be a person experienced in taxation and member of a recognised professional body appointed by the Governor subject to confirmation by the House of Assembly.

(b) Directors from within or outside the State Service.

(f) three other persons appointed by the Governor on Personal merit each representing a Senatorial District.

22. **S.88 – Functions of the State Board***

Subsection (1) (b) amended to empower the Revenue Authority to retain a minimum of 5% of revenue collected as may be approved by the State House of Assembly to defray its cost of collection & Administration.

23. **S.94 (1) – Offences & Penalties**

(a) Fine of '₦200' in subsection (1) reviewed to ₦5,000.
(b) Fine of 'Forty naira' in line 5 of subsection (1) reviewed to 'one hundred naira'

24. **S.95 (1) (b) – Penalty for making incorrect returns**

'10%' in subsection (1) (b) is replaced with '₦20,000'.

25. **S.96 (i) (b) – False Statement and returns**

(a) Fine of ₦5,000 or imprisonment for five years in subsection (i)(b)(iii) is replaced with '₦50,000' for individuals and ₦500,000 for corporate bodies with imprisonment of not more than six months.

(b) ₦1,000 in line 3 of the proviso in subsection (1)(b)(iii) to read '₦10,000.

26. **S. 97 – Penalty for offences by authorised and unauthorised persons**

'₦1,000' in S. 97 to read '₦100,000'.

27. **S. 104 – Power to Distrain***

(a) The tax authority can no longer exercise its powers under this section without a Court order.

(b) The powers of distress pursuant to a Court order is exercisable against the goods, chattels and effects of the taxpayer anywhere in Nigeria.

28. **S.106 - Immunity from Action**

(a) S. 106 A (i) added to empower the Minister to make regulations to give full effect to the provisions of P.I.T.A. May do so on the recommendation of Joint Tax Board.

(b) S. 106 (2) added to wit:
The National Assembly may upon proposal by the President review or cancel tax rates.

29. **S. 108 - Interpretation***

Itinerant worker defined to be any person except members of the armed forces who works or earns his livelihood in more than one State in a year of assessment. He must spend at least 20 days in 3 months of any assessment year.

Interpretation

As stated in S. 2 (1) (A) the State where the itinerant worker resides rather than where he is found can impose tax on the income earned. The definition has changed significantly.

30. **Amendment of the 1st Schedule – Principal Place of Residence***

A new paragraph (d) is added to wit:

'in the case of an individual who works in the branch office or operational site of a Company or other body Corporate, the place at which the branch office or operational site is situate' provided that an operational site shall include oil terminals, oil platforms, flow stations, factories, quarries, construction site with a minimum of 50 workers e.t.c.'

Interpretation

Where a person has more than a place of residence on a relevant day, and that person earns his income as a worker in the branch office or operational site of a company, the tax authority empowered to tax that income is the tax authority of the place where the branch office or operational site is located.

This has not in anyway altered the hallowed principle of residency in taxation in Nigeria.

31. **Third Schedule – Income Exempted***

(a) Paragraphs 2 & 3 deleted.

(b) A new paragraph 7 to wit:

'Interest on any loan granted by a bank on or after 1st January, 1997 to a person engaged in:

(a) agricultural trade or business; and

(b) the fabrication of any local plant and machinery.

(c) A new paragraph. 14 to wit:

(14)(1) ‘Pension granted to any person pursuant to any enactment or law for the time being in force’

(2) ‘Wound and disability pensions granted to members of the armed forces or of any recognised national defence organisation or to a person injured as a result of enemy action’

(d) ‘Pensions Act’ in paragraph 15 to read ‘Pensions Reforms Act’ 2004.

(e) S. ‘31A’ is added to wit:

‘31A’ Income earned from -
(a) bonds issued by Federal, State and Local Governments and their agencies.
(b) bonds issued by corporate including supra nationals, and
(e) interest earned by holders of the bonds and short terms securities listed in paragraphs (a) and (b).

Interpretation

(a) The official income of the President, Governor, Vice President and Deputy Governor is now taxable.

(b) Interest on any loan granted to any person will be tax exempt only if it is for agricultural trade or business and the fabrication of any local plant and machinery (for agricultural purposes).

(c) Pension is now tax exempt and is of a general application.

(d) Income/interest earned from Government bonds and other approved bonds are tax exempt.

32. **Sixth Schedule***

(1) Flat rate Consolidated Relief Allowance on income ₦200,000 + 20 % of income.

(2) **Tax Exempt Deductions**

(a) National Housing Fund
(b) National Health Insurance Scheme
(c) Life Assurance Premium
(d) National Pension Scheme

(e) Gratuities

(3) After the relief allowance and exemptions are granted, balance of income is taxable.

Tax Income Rates

Graduated tax rates with CRA of ₦200,000 of 20% of Gross income, subject to a minimum tax of 1% of Gross Income, whichever is higher.

(1)	First ₦300,000	-	7%
(2)	Next ₦300,000	-	11%
(3)	Next ₦500,000	-	15%
(4)	Next ₦500,000	-	19%
(5)	Next ₦1,600,000	-	21%
	Above ₦3,200,000	-	24%

4.0 COMPANY INCOME TAX ACT

4.1 Tax is payable for each year of assessment of the profits of a company at a rate of 30%. Although a reduction was recommended by the work group and study group to reduce same to at least 20%. This was jettisoned in spite of the boost it would have had on local and foreign investment. Companies which pay dividend to its shareholders have obligation to first, pay tax on its profits at the companies tax rate. Generally, in Nigeria, Company dividends or other distribution whether or not of a capital nature made by a Nigerian company is liable to a tax of 10% at source. Dividends paid in form of bonus or scrip shares to individual shareholders are not subject to tax. In the same vein, dividends paid to corporate shareholders are excluded from the profits of the corporate shareholder in computing its tax liability.

4.2 The tax reform exercise heralded the recent amendment of the Companies Income Tax Act, as amended ("the Principal Act") by the Companies Income Tax (Amendment) Act ("the Amending Act"). The FIRSEA. was promulgated and consequently the sections establishing the Federal Board of Inland Revenue (FBIR) and the Body of Appeal Commissioners (BAC) established under the CITA were amended. A Tax Appeal Tribunal (TAT) was set up.

4.3 Secs. 1 to 7 of the CITA (which formed Part 1 on the establishment, composition and powers of the FBIR) were repealed by the Amending Act to avoid overlapping provisions, some of which could have been conflicting.

4.4 Specifically, Sec. 2(2) of the Amending Act provides that the "Federal Board of Inland Revenue established under the Principal Act is dissolved". The establishment of the FIRS under a separate statute of its own makes for easy reference by administrators, practitioners and researchers. The FIRSEA granted a number of powers and a measure of autonomy to the FIRS to enable it to discharge its statutory roles.

4.5 In view of the establishment, under the FIRSEA, of the TAT with jurisdiction to settle disputes arising from the operation of all of the federal taxing statutes listed in the First Schedule to that Act, Secs. 53-57 of Part X of the Principal Act dealing with Appeals to the Body of Appeal Commissioners were abolished and substituted with the provision that "Appeals shall be as provided in the Federal Inland Revenue Service Act". Accordingly, appeals from the decisions of the FIRS in respect of the companies income tax, personal income tax, capital gains tax, petroleum profits tax, education tax, technology tax and VAT now lie with the TAT.

4.6 Sec. 63(5) of the Principal Act has been amended by removing the provision that a withholding tax deduction set-off against the tax liabilities of a company cannot exceed the amount of the assessment for the year. Sec. 19 of the Amending Act also provides that excess payments are to be refunded by the FIRS within 90 days of the assessment if duly filed, with an option for set-off against future taxes.

4.7 Sec. 13(3) of the Amending Act increased the penalty for failure by companies to file annual returns as and when due from NGN 500 to NGN 25,000 for the first month of default and from NGN 400 to NGN 5,000 for every subsequent month. A higher sanction of NGN 100,000 or two years' imprisonment on conviction is provided for in respect of principal officers or other similar agent of an errant company who has connived at, or consented to the default by a company. The penalty for sundry offences has also been increased from NGN 200 to NGN 20,000 on conviction and from NGN 40 to NGN 2,000 for each day the failure continues.

4.8 The pre-operation levy for companies that are yet to commence business six months after incorporation has been increased to NGN 20,000 for the first year and NGN 25,000 for every subsequent year. The penalty for failure to deduct or remit withholding tax as and when due has been reduced from 200% on conviction to 10% a year of the tax not withheld or remitted, as the case may be. The removal of the requirement of a criminal conviction has turned the penalty from a judicial one into an administrative one.

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4.9 A new Sec. 41(4) of the Principal Act, an income tax assessment must be made in the currency in which the transaction took place. The statutory period of filing a withholding tax return has been reduced from 30 days to 21 days by Sec. 20 of the Amending Act.

4.10 Sec. 4 of the Amending Act amended the applicable tax regime in respect of insurance companies in Nigeria as follows:

The Amending Act expands the scope of tax exemptions in respect of the interest payable on bank loans

"providing working capital for any cottage industry established by the company". The requirement under Sec. 9 (7)(b) of the Principal Act that the cottage industry must have been established under the Family Economic

– Life insurance business and non-life insurance business are distinguished through the keeping of separate books of accounts and the filing of separate returns for each class of insurance.

– If there are several types of insurance within a class, these form one type of insurance. Losses from one type of business cannot be set off against the income of another type of insurance. However, losses can be carried forward and set off against the profits from the same class of insurance, but limited to a four-year period.

– The profits of non-life insurance business (whether Nigerian or non-Nigerian) are determined for tax purposes by adding together gross premiums, interest and other income receivable in Nigeria, less reinsurance and a deduction from the balance of a reserve for unexpired risks.

– The allowable deduction for non-life insurance business with regard to unexpired risks is 45% of total premiums; for marine cargo insurance it is 25% of total premiums.

– The profits of a life insurance business (non-Nigerian companies) that are to be assessed for tax purposes are investment income less management expenses, including commission.
– If part of the profits accrue outside Nigeria, investment income is determined by the sum of the premiums less agency and head office expenses. Total allowable expenses and outgoings are restricted to 15% of the total profits of the company.

– The profits of a life insurance business (Nigerian companies) are determined for tax purposes as the investment income less the management expenses, including commissions. Total allowable expenses are restricted to 15% of the total profits.

– Life insurance business is granted the following allowable deductions:

(1) 1% of its gross premium or 10% of profits, whichever is greater, in respect of a special reserve fund;

(2) all normal allowable business outgoings; and
(3) an amount to make a general reserve fund equal to the net liabilities on policies.

– An insurance company that engages an insurance agent, loss adjustor and insurance broker must include in its annual tax returns a schedule of the names and addresses of service providers, the date of their employment and the payments made.

4.11 “Cottage industry” is defined as “an industry where the creation of products and service is home-based, rather than factory-based”. The two conditions to be entitled to the relief now are that: (1) the tax moratorium must not be less than 18 months long;
and (2) the rate of interest on the loan must not be more than the base lending rate at the time the time the loan was granted.

Sec. 8 of the Amending Act, removed the four-year limitation and brought the treatment of losses under CITA into line with that on Petroleum Profits Tax Act.

4.12 By way of a new Sec. 21A of the CITA, donations to universities and other tertiary or research institutions in respect of research or any developmental purpose are now tax deductible, subject to a maximum of 15% of total profits or 25% of the tax payable, whichever is greater. The upper limits may be varied by an order of the Minister, subject to the approval of the Federal Executive Council and published in the Federal Gazette.

4.13 Hitherto, for a donation to be deductible it had to meet the following conditions:
The Amending Act removed condition (3), whilst increasing the percentage of the total profits of a company in condition (4) that can be used for donations to universities and other tertiary or research institutions.

4.14 Sec. 14 of the Amending Act abolished the provision that companies that filed returns benefited from a 1% discount (bonus) of the tax payable for early filing, as provided for by the Principal Act. The implication is that the self-assessment system, which was previously deemed to be optional in respect of corporate tax, is now a statutory duty for corporate taxpayers.

4.15 Sec. 5 of the Amending Act provides for the inclusion of the profits of the companies established in free-trade or export processing zones to be tax exempt. he Export Processing Zone Act. However, the provisions in the Amending Act are subject to the condition that 100% of the production of the company is to be wholly for export if it is to benefit from the tax exemption.

4.16 Sec. 9 of the Amending Act abolished the 5% rural investment allowance (granted in addition to initial allowances) previously enjoyed by companies in respect of capital expenditure incurred in the provision of telephones in areas at least 20 kilometres from where such a facility is provided by the government.

4.17 Sec. 10 of the Amending Act abolished the 25% investment tax credit for companies engaged wholly in the fabrication of spare parts, tools and equipment in respect of qualifying capital expenditure. The 15% investment tax credit allowed to companies that had incurred expenditure on the replacement of obsolete plant and machinery was also abolished by Sec. 12 of the Amending Act. In addition, the 15% investment tax credit previously available to a company that purchased locally manufactured plant, machinery or equipment for use in its business was abolished. Furthermore, Sec. 12 of the Amending Act abolished Sec. 30(41) of the Principal Act in respect of the relief relating to the replacement of obsolete plant and machinery. Previously, if a company had

incurred expenditure in respect of the replacement of obsolete plant and machinery, the 15% investment tax credit was granted to the company.

4.18 In computing the deductions to be allowed for the purposes of determining the profits or losses of a company, the Amending Act repealed the provisions in Sec. 20(24) of the CITA that allowed as a deduction to a property-holding company the expenses attributable to the maintenance of the property and directors' remuneration. By this amendment, a property-holding company now cannot deduct such expenses attributable to the maintenance of a property.

4.19 The power previously vested in the Minister to alter the rate of tax or allowances by regulation under the Principal Act was abolished by Sec. 23 of the Amending Act. Now, the National Assembly may on the proposal by the President by a resolution of each of the Houses of National Assembly impose, increase, reduce, withdraw, or cancel any rate of tax, duty or fee chargeable as specified in section 29 and Second Schedule to the Act and in accordance with section 59(2) of the Constitution of the Federal Republic of Nigeria, 1999.

4.2.0 **The Amendment to the 5th Schedule of the Companies Income Tax Act**

4.2.1 The Minister of Finance, as empowered under section 25(6) of CITA LFN 2004 (as amended) on December 14, 2011, caused to be published an amendment to the 5th Schedule of CITA.

4.2.2 The commencement date of the amendment is December 12, 2011. The thrust of this amendment is to expand tax deductible donations. In addition to the existing bodies eligible for tax deductible donations listed in the Act, donations to Institutions, bodies or funds engaged in the following broad categories of activities will now be tax deductible provided such organisations are not set up for the purpose of profits or gains to the individual members of the society, association or person.

1. Promotion or defence of human rights
2. Women empowerment and development
3. Re-orientation, rehabilitation, welfare support service for orphans, widows, physically challenged, refugees and all categories of persons that may require social or economic rehabilitation and transformation
4. Youth empowerment and development
5. Leadership and Resource Development
6. Promotion of National Unity and Patriotism
7. Promotion of Social and Economic Development
8. Accident prevention and control activities
9. Information system development and awareness
10. Creation of awareness for transparency in governance and electoral processes
11. Promotion of national unity and patriotism
12. Museum development and promotion of sports, arts and culture

13. Rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development
14. Any professional body established under an Act of the National Assembly for the regulation and practice of the profession.

4.2.3 The Minister for Finance recently caused to be published in the Federal Gazette the Companies Income Tax Exemption and Vat Act (Modification) Orders. These orders have commencement dates of January 2, 2012 and serve to exempt income and proceeds from the disposal of debt securities from income tax and VAT.

5.0 Petroleum Profits Tax

The administration of the Petroleum industry is basically classified into two classes:

(a) Upstream – comprising

- Exploration, survey, development, drilling, appraisal wells, pipeline, transportation of Crude Oil.

(b) Downstream

- Crude oil marketing, petroleum product marketing, refineries, petrochemicals, oil servicing, distribution, gas utilization, transportation of Crude Oil in Ocean tankers.
- Upstream is taxable under Petroleum Profit Tax Act while downstream is taxable under Companies Income Tax Act.
- Business arrangements under Oil & Gas can be classified as:
  (i) Joint Ventures
  (ii) Profit Sharing contract
  (iii) Risk Service Contract

The business arrangements as will be seen invariably influence the Fiscal & tax regimes.

5.1 Nigerian law by virtue of the Petroleum Profits Tax Act requires all companies engaged in the extraction and transportation of petroleum to pay tax. The taxable income of a petroleum company comprises proceeds from the sale of oil and related substances used by the company in its own refineries plus any other income of the company incidental to and arising from its petroleum operations.

5.2 The taxable income of a petroleum company is subject to tax at 85%, but this percentage is lowered to 65.75% during the first 5 years of operation. Where oil companies operate under production sharing contracts they will be liable to tax at a rate of 50%.

5.3 There are however some concessions granted petroleum companies known as, Capital Allowance and Petroleum Investment Allowance; the former is deducted in arriving at

the taxable income and entails expenditure on equipment, pipelines, and storage facilities, buildings and drilling costs, these are referred to as qualifying assets. The applicable rate of Capital Allowance for any year is of 20% of the cost of the qualifying assets applied on a straight-line basis for the first 4 years and 19% for the 5th year. The latter is regarded as an addition to capital allowance and covers allowance in respect of new investments in assets for petroleum exploration; it is available in the accounting period in which the assets are first used.

5.4 Taxation of Profits are as stated under S.9 of the Petroleum Profit Tax Act which is summarized as follows :

(S.9 [1])
Profits are calculated based on petroleum operations within each accounting period.

-PROCEEDS OF SALE OF CHARGEABLE OIL ***SOLD BY*** THE COMPANY DURING THAT ACCOUNTING PERIOD

-VALUE OF ALL CHARGEABLE OIL ***DISPOSED OF*** BY THE COMPANY DURING THAT ACCOUNTING PERIOD.

-VALUE OF ALL CHARGEABLE NATURAL GAS IN THAT ACCOUNTING PERIOD AS DETERMINED IN ACCORDANCE WITH THE 4TH SCHEDULE.

-ALL INCOME OF THE COMPANY FOR THAT PERIOD ***INCIDENTAL TO & ARISING FROM*** ONE OR MORE OF ITS PETROLEUM OPERATIONS.

-Adjusted Profits are calculated by the value of Profits less outgoings & expenses which were ***wholly, exclusively &necessarily incurred*** within or outside Nigeria listed in S.10 as well as the ***cost of transportation of chargeable oil*** by sea-going tankers as provided in S.14.Deductions are limited by S.13 &S.15 which list ***expenses which are not allowed as deductible*** & which empowers the board to disallow the deduction of ***expenses of transactions it considers being artificial, fictitious or not sufficiently independent from the petroleum operations.***

5.5 **ASSESSABLE PROFITS (S.9 [4])**

Assessable profits are the adjusted profits less the loss incurred by a company during a previous accounting period in accordance with S.16 and; the loss incurred in previous accounting periods by a foreign company now reconstituted as a Nigerian Company (provided such a claim is made within 2 years after the incorporation of the reconstituted company) as provided in S.18.

5.6 **CHARGEABLE PROFITS (S.20)**

Chargeable Profits are the Assessable Profits less the sum total of Capital allowances (provided for in the 2nd schedule to the Act (inclusive of ITC’s & PIA’s)

5.7 The deductions allowed are the lesser of either the aggregate sum of allowances provided for in the 2nd schedule to the Act or; a sum equal to 85% assessable profits less 170% of Petroleum Investment Allowance as provided for in the 2nd schedule.

5.8 S.20(3) places a ceiling on these deductions to ensure that in spite of all the deductions made here, the amount of chargeable tax shall be at least 15% of the tax that would have been chargeable if no deductions were made from the assessable profits.

5.9 **ASSESSABLE TAX**

Assessable Tax is calculated on the Chargeable Profits at the rate of 85% or; 67.75%, applicable to companies which have not commenced sales or bulk disposal of chargeable oil by continuous production or sales, in order to enable them amortise their pre-production expenditure (usually for a period of 5 years) after which the rate of 85% shall apply.

5.10 **CHARGEABLE TAX**

Prior to the promulgation of the Finance (Miscellaneous Taxation Provisions) Decree No 30 of 1999, Chargeable Tax was calculated as the amount of Assessable Tax less certain Tax offsets. Those tax offsets however ceased to be tax offsets by that law and became available as deductions in computing the adjusted profits for the relevant accounting year.

5.11 S.22 applies to Crude oil Producing companies which have executed a Production Sharing Contract (PSC) with NNPC and entitles them to ITC at the rate of 50% of Chargeable Profits for the duration of the (PSC), such that the Chargeable Tax is Assessable Tax less ITC (85% / 67.75% less 50%) of Chargeable Profits. This means that chargeable tax is split between NNPC & the crude oil producing company for payment.

5.12 **ADDITIONAL CHARGEABLE TAX**

Where the amount of Chargeable Tax calculated is less than the amount it would come to if the proceeds of sale were a reference to the amount obtained by multiplying the number of barrels by the relevant sum per barrel, the company shall be liable to pay additional amount of chargeable tax for the relevant accounting period.

6.0 **Value Added Tax (VAT)**

This Value Added Tax Act came into being in 1993, in place the Sales Tax Act. It is a consumption tax levied at each stage of the consumption chain, and is borne by the final consumer. It requires that a taxable person registers with the Federal Inland Revenue Service to charge and collect VAT at a flat rate of 5% of all invoiced amounts of taxable goods and services. Nigeria has the lowest Vat rate ever. Some few years back, key stakeholders resisted the attempt of government to review same to 10%.

6.1 VAT paid by a business on purchases is known as input tax, which is recovered from VAT charged on company's sales, known as output tax. If output exceeds input in any

particular month the excess is remitted to the Federal Inland Revenue Service(FIRS) but where input exceeds output the taxpayer is entitled to a refund of the excess from FIRS though in practice this is not always possible.

6.2 A Taxpayer however has the option of recovering excess input from excess output of a subsequent period. It should be stated at this point that recoverable input is limited to VAT on goods imported directly for resale and goods that form the stock-in-trade used for the direct production of any new product on which the output VAT is charged.

6.3 VAT is imposed "on the supply of all goods and services other than those goods and services listed in the First Schedule to this Act".

6.4 The new design, therefore, fundamentally changed the standard for determining chargeable goods. The bright line rule for determining whether a particular good or service is taxable under extant law is whether it is specifically exempted in the First Schedule. In the absence of any specific exemption, the good or service will be taxable thus giving the tax a very wide base. Based on the original design, there were 17 chargeable goods and 24 chargeable service.

6.5 By the VAT Amendment Act 2007 the list of goods and services are as follows:

Part I – Goods Exempt

1. All medical and pharmaceutical products
2. Basic food items
3. Books and educational materials
4. Baby products
5. Locally produced fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exported goods.
7. Plant and machinery imported for use in the Export Processing Zone.
8. Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations.
9. Tractors, ploughs, agricultural equipment and implements purchased for agricultural purposes.

Part II – Services Exempt

1. Medical services
2. Services rendered by Community Banks, People's Bank and Mortgage Institutions;
3. Plays and performances conducted by educational institutions as part of learning and;
4. All exported services.

7.0 Education Tax

An education tax of 2% of assessable profits is imposed on all companies incorporated in Nigeria. This tax is viewed as a social obligation placed on all companies in ensuring that they contribute their own quota in developing educational facilities in the country. This was one of the nine Bills forwarded to the National Assembly but was withdrawn. The National Executive Council has recently approved that this contribution be tax deductible and directed that the Ministerial implementation committee fashion out modalities of actualizing same. A sub committee of the MIC which met on May 2nd - 4th 2013 has recommended the amendment of the Education Tax Act to treat payment under the Education Tax Act as a levy, in which case it would be allowed for tax purposes.

8.0 Stamp Duties

The administration of stamp duty, is jointly carried out by the State and Federal authorities, depending on the type and nature of the document. Stamp duties are regarded as transaction taxes, and the rates chargeable would depend on the classification of the document. Some documents attract stamp duties on flat rate basis while others are assessed ad- valorem.

9.0 Self Assessment Regulation

The Federal Inland Revenue Service (FIRS) issued the Tax Administration (Self Assessment) Regulations 2011 which was officially gazetted on 19 December 2011. The regulation seeks to modify the existing self assessment procedure where taxpayers are required to compute their tax liabilities, file and make payment by the due date or in approved instalments.

9.1 The Regulation would regulate the filing of tax returns for the under listed legislations:

- Companies Income Tax Act (CITA)
- Personal Income Tax Act (PITA)
- Petroleum Profits Tax Act (PPTA)
- Value Added Tax Act (VATA)
- Education Tax Act (ETA)
- National Information Technology Development Agency Act (NITDA)
- FIRS Act
- Capital Gains Tax Act (CGTA)
- Other tax regulations and laws that may be enacted from time to time.

9.2 The Regulation which becomes effective from the commencement date of 12 December 2011, would apply to all returns filed in 2012 relating to the 2011 financial year and onwards. Taxpayers are now required to notify the tax authorities of their intention to pay taxes in instalments before the filing due date as defined in the relevant laws with the final instalment made by the due date when filing the returns. Instalments can be made within 2 months of the filing due date subject to a maximum of three instalments. Instalments after the due date will however attract interest.

9.3 CITA provides that the due date for payment should be two months from the filing date where a lump sum is made or in such instalments as may be approved by the FIRS, not exceeding six. Interest should therefore not accrue on payments made within two months after the due date for filing otherwise it is inconsistent with the Act. Although instalments are subject to approval by the tax authorities, imposing interests on approved instalments clearly defeats the purpose of instalment plans as envisaged in the relevant laws.

9.4 A taxpayer may apply for extension of time to file returns but specific circumstances to be considered by the relevant tax authority as stated in the Regulations are (1) Death of taxpayer in the case of an individual or death of a principal officer such as the Chairman, Director or Company Secretary in the case of a company or (2) A natural disaster.

Both circumstances are to be supported by verifiable evidence. Late filing outside extension granted regardless of whether tax due has been paid will be liable to a penalty.

9.5 It is implicit that taxes must be paid as and when due regardless of any approval for extension of time for filing granted by the tax authority. Such tax payments may have to be estimated given that in many cases the actual amounts may not be known. There is no extension for the filing of VAT returns. The filing due dates for tax returns are as contained in the existing laws with the following additions or exceptions. There is an additional requirement regarding filing of returns under PITA that same be in the required format approved by the tax authority. The employer should file annual returns showing total annual emolument, tax relief, total tax deducted for each employee together with a declaration under oath on the relevant forms not later than 30 days after the end of each year. The tax authority may issue an administrative assessment where a taxpayer fails to file returns or as a result of underpayment arising from a tax audit or investigation. The minimum notice period to conduct an audit is 7 days. No notice period is stated for an investigation. Taxpayers can object to such assessments in line with the objection procedures in the relevant Acts. Demand notices can now be sent to agents. It does appear that services of this nature may be invalidated outside an express notification by the taxpayer should the service be contested. The Act provides for service on taxpayers. Income tax returns must be signed by the relevant taxpayer in the case of individuals while tax returns for companies can only be signed by the Director or Company Secretary.

10.0 Transfer Pricing Regulations

The transfer pricing regulation s has a commencement date of August 2, 2012. These regulations apply to transactions between connected taxable persons. The regulations are to provide guidelines on the anti avoidance sections in our tax laws. Notable examples are :

- Section 17 PITA (1993) (as amended)
- Section 22 Companies Income Tax Act (1961) (as amended)
- Section 15 Petroleum Profits Tax Act (as amended)

10.1 Tax pricing refers to how related parties price goods, assets, services and other commercial transactions between them. The price paid for goods or services delivered or received have a direct impact on the profits of the seller and buyer and by implication, on the tax payable. Unlike transactions between independent parties, related parties tend to place less emphasis on ensuring that price charged for a transaction mirrors the prevailing market rate. The tax authority is more concerned with cross border transactions because any mispricing could mean a shift of tax base from a high tax jurisdiction to a low tax jurisdiction or a tax haven.

10.2 Taxpayers can enter into advance pricing agreements (APAs) with the FIRS. An APA is an agreement between the FIRS and the taxpayer in which both agree to the method and manner in which related party transactions will be priced for a specified future period. An APA may be entered into with the FIRS only or jointly with the competent authority of the connected taxable person. There is no application or processing fee payable to the FIRS for APAs but the threshold is an annual transaction value which is not less than NGN250 million (approximately USD 1.6 million). The APAs will cover transactions for a maximum of 3 years subject to cancellation by either the taxpayer or the FIRS under certain circumstances.

CONCLUSION

The laws relating to the administration of revenue in Nigeria will increasingly continue to be on the front burner for sometime to come. The governments have come to appreciate the revenue potentials in taxation when it is harnessed maximally. While taxation is necessary for obvious reasons, there is need to address the issue of multiplicity of same on the citizenry and of course to ensure that the tax structure equally reflects our Federalism.

Thank you.

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