



THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA
OCTOBER 2017: PROFESSIONAL EXAMINATION
PT 3: OIL AND GAS TAXATION

ATTEMPT ALL QUESTIONS. SHOW ALL WORKINGS. TIME: 3 HOURS.

1. Write short notes on the following as they relate to Petroleum Operations in Nigeria.
 - (a) “Take or Pay Contract” in the upstream. (4 Marks)
 - (b) Bonuses. (4 Marks)
 - (c) Overriding Royalty. (4 Marks)
 - (d) Joint Operating Agreements (JOA). (4 Marks)
 - (e) Unitization. (4 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 1

- (a) **Take or Pay Contract**

This is defined as an agreement which the purchaser of gas agrees to take a minimum quantity of gas per year if he is not prevented from doing so by circumstances beyond his control and if the gas is available for delivery to him. If the purchaser does not take the minimum quantity, he is required to pay for that minimum quantity at the contract price; normally he makes up for deficiency amounts in future years if he purchases in excess of minimum amounts.
- (b) **Bonuses**

Bonus is a fixed fee which is paid by the International Oil Company to the Federal Government at differing stages of the oil project. For example, signature bonuses are paid immediately after the completion of negotiations and signing of the production sharing contract. On the other hand, production bonuses are paid when the production from a specific contract area reaches a particular threshold.
- (c) **Overriding Royalty**

This is a term used to describe the right to receive additional income from the production of oil and gas from a well without paying for the drilling or any part of the operating expenses incurred in generating the income. It is functional undivided interest or right to participate in the oil and gas of a company in their proceeds made from a specified well or wells whose duration is limited to the terms of an existing lease and whose earner is not bound to participate in the funding of the maintenance expenses incurred in the generation of the interest.
- (d) **Joint Operating Agreement (JOA)**

This is the basic standard agreement entered into between the Federal Government represented by the NNPC and the various operators. It sets the guidelines and modalities for running the operations. It is different from the M. O. U. While it contains the basic understanding on the Joint Venture, the M. O. U. is a response to the specifics of fiscal incentives. In a Joint Venture arrangement, one partner is appointed the operator of the

venture and each partner in the venture is expected to contribute in the ratio of its equity shareholding to the operating costs of the joint venture.

(e) **Unitization**

This is a form of agreement between two oil exploration, development and production companies whereby the two companies jointly agreed to fund the operational costs of two or more oil concessions with large deposits of hydrocarbon that straddle the boundaries of the two oil companies sites or concessions. The two companies will appoint one of them to manage the boundaries as one with the sole aim of eliminating conflicts, reduce operational costs and thus realize much profit.

2. (a) Tax incentives are measures employed by government by way of tax reduction, exclusion or exemption in order to encourage individuals and businesses to invest such savings in the country.

You are required to state any Five (5) incentives, approved by government, for each of the following:

- (i) Gas Downstream Operations. (5 Marks)
- (ii) Oil and Gas Free Zone (5 Marks)
- (b) On 10 March 2016, your client, Superior Oil and Gas Limited, a subsidiary of a Multinational Company with Head Office in Qatar, received a letter from the Transfer Pricing office of the Federal Inland Revenue Service (FIRS) requesting the company to forward, among other requirements, the following:
- (i) The Company's Transfer Pricing Policy; and
- (ii) Transfer Pricing Disclosure and Declaration Forms.

The Managing Director of the Company, on reading the contents of the letter, became worried as he could not understand the essence of such requests.

As the Tax Consultant to the Company, you are required to:

- (i) Explain what Transfer Pricing Policy is. (2 Marks)
- (ii) Outline Eight (8) items to be included in the Transfer Pricing Disclosure and Declaration forms. (8 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 2

- (a) (i) Tax Incentives to **Gas Downstream Operations**

A company engaged in gaz utilization i.e downstream operations is allowed the following incentives as provided in section 39 of the CITA Cap C 21 LFN 2004:

(a) Initial tax free period of three years renewable for an additional two years subject to the satisfactory performance of the business.

(b) as an alternative to the initial tax free period, an additional investment allowance of 35 percent is granted; which shall not reduce the value of the asset;

- (c) (i) accelerated capital allowances after the initial tax free period, namely an annual allowance of 90 percent with 10 percent retention for investment in plant and machinery;
- (ii) Another accelerated capital allowance namely additional investment allowance of 15 percent which shall not reduce the value of the asset. It should be noted that the investment allowance of 35 percent and the additional investment allowance of 15% cannot be claimed by a company at the same time).
- (d) tax-free dividends are available 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.
- Interest on loan for gas project is to be deducted provided that prior approval was obtained from Federal Ministry of Finance before taking the loan.
- the profits of the downstream sector of the industry are chargeable to tax under Companies and Income Tax Act which is constant and a lower rate than under the PPTA.

(ii) **Oil and Gas Free Zone**

- No personal income tax for persons resident within the zone.
 - 100% repatriation of capital and profit
 - No foreign exchange regulation
 - No pre-shipment inspection for goods imported into free zone
 - No expatriate quotas
 - Initial tax holidays period has been extended from 3 to 5 years
 - Investment capital allowance has been increased from 5% to 15%
 - All dividend distributed during the tax holiday shall be tax free.
- (b) (i) Transfer Pricing Policy is a document required to be filed with Transfer Pricing Unit of the FIRS. It contains information that guides the conduct of related parties transactions within a group of companies. It is a tool for tax planning for entities operating across multiple tax jurisdiction and entities belonging to the same group or parent. Transfer pricing policy specifies the pricing mechanism for transactions between members of a group of companies.
- (ii) Transfer Pricing Disclosure and Declaration Forms (Contents for submission to the FIRS)
- Particulars of Reporting Company or Entity
 - Particulars of immediate parent company(ies)
 - Particulars of Directors of Reporting Companies
 - Particulars of five (5) major shareholders of reporting companies and related parties.
 - Particulars of subsidiary and other connected persons.
 - Particulars of External Auditors of reporting entity.
 - Particulars of company secretary of the reporting entity.
 - Particulars of the person making the declaration.
 - Ownership structure of reporting entity and related parties
 - Particulars of tax consultant of the reporting entity.

3. (a) Loss relief is a form of relief granted to all companies incorporated in Nigeria. Distinguish between the treatment of loss relief under Companies Income Tax Act and Petroleum Profits Tax Act. (5 Marks)
- (b) What is the penalty for failure to withhold tax under the Petroleum Profits Tax Act? (3 Marks)
- (c) Oke Mosan Petroleum Limited is an oil producing company in Calabar. Extract of its results for the year ended 31 December, 2014 are as follows:

	₦'000
Unadjusted profit	16,400,000
Capital allowance	4,860,000
Royalties	1,320,000
Custom duties	212,000
Non-productive rent	284,000
Petroleum investment allowance	700,000
Loss B/f	(3,691,000)

Using the above information and applying a tax rate of 85%, you are required to compute the chargeable tax for the relevant year of assessment. (12 Marks)
(Total 20 Marks)

SOLUTION TO QUESTION 3

Under CITA

No tax is due to be paid by a company where loss is incurred except in the case of minimum tax provision.

- Losses incurred in the preceding year of assessment in any trade or business are to be deducted from current year adjusted to arrive at assessable profit provided that certain conditions are fulfilled such as:
 - (ai) the aggregated deduction from assessable profit or income in respect of any such loss exceed the amount of such loss;
 - (b) the deduction for any year of assessment does not exceed the assessable profits in which the loss was incurred;
 - prior to the amendment of CITA in 2007, unrelieved losses were to be carried forward for a maximum period of four years following that year in which the losses occurred; with effect from CITA Amendment in 2007, losses can now be carried forward indefinitely;
 - Losses incurred by any company engaged in agricultural trade or business can carry the loss forward with no time limit.
- (ii) The following are also to be noted:
 - Relief of losses is automatically granted to a company, the grant does not require a formal application;
 - The loss from source A should not be relieved against profit from source B.

- Where an aggregated loss exceeds the actual loss incurred in business or trade, the law provides that the amount of loss to be relived should not exceed the actual loss incurred.
- Where a business has ceased operations, and there are still some unrelieved losses, such losses can no longer be carried forward as they are deemed to be terminal losses, and therefore deemed to be permanently lost.

Under PPTA

- Losses that cannot be fully deducted in any one period can be carried forward without time limit until fully relieved.
 - The company has right to defer the utilization of any loss relief available to it provided application is filled within five months after the year end.
 - The amount deferred will be deducted from the following year's accounting profits unless the company makes a similar election in that following year.
- (b) (i) Any person who being required to deduct withholding tax, fail to deduct or having deducted, fails to remit to the Federal Inland Revenue Service within 30days from the date the amount was deducted, or the time the duty to deduct arose, shall be guilty of an offence and liable on conviction to a fine of 200% of the tax not withheld or remitted plus interest at the prevailing commercial rate.
- (iii) The Federal Inland Revenue Service (FIRS) which is the relevant tax authority shall serve or sent by registered post to any person who withholds, or if withheld, fails to remit the amount required to be withheld and place which payment should be made, and the provision of the act relating to tax assessment and recovery shall apply.

(c) **Okemosan Petroleum Limited**
Computation of Chargeable Tax for 2014 Year of Assessment

	N'000	N'000
Unadjusted Profits		16,400,000
Deduct:		
Royalties	1,320,000	
Custom Duties	212,000	
Non-Productive Rent	284,000	
Education tax (wk 1)	<u>213,588</u>	<u>2,029,588</u>
Adjusted Profits		14,370,412
Loss b/f		<u>(3,691,000)</u>
Assessable Profits		10,679,412
P/A	700,000	
Capital Allowance	<u>4,860,000</u>	
	<u>5,560,000</u>	
Restricted to:		
85% of Assessable Profit	9,077,500	
Less: 170% of P/A	<u>1,190,000</u>	
	<u>7,887,500</u>	<u>(5,560,000)</u>
Chargeable Profit		<u>5,119,412</u>

Chargeable Tax = 85% x 5,119,412

4,351,500

Workings

(i) Education Tax
= (16,400,000 – 1,320,000 – 212,000 – 284,000 – 3,691,000) x 2/102
= ₦213,588

(ii) 85% of 10,679,412 = 9,077,500
Less: 170% of P/A (1.7 x 700,000) 1,190,000
7,887,500

4. (a) What is “Nigerian Content” as defined by the Nigerian Local Content Act, 2010? (5 Marks)
- (b) State the objectives of the local content policy of the Nigerian government. (5 Marks)
- (c) In ascertaining the adjusted profit of any company for any accounting period from its petroleum operations, some deductions are not allowed. State any Six (6) of such deductions. (6 Marks)
- (d) The Companies Income Tax Act (CITA), 2004 (as amended) makes provision for the issuance of tax clearance certificate for deserving tax payers.

State Four (4) contents of the tax clearance certificate for an old company.

(4 Marks)

(Total 20 Marks)

SOLUTION TO QUESTION 4

- (a) Nigerian Local Content as defined in the Nigerian Local Content Act, 2010 is “the quantum of composite value added to or created in the Nigerian economy by a systematic development of capacity and capabilities through the deliberate utilization of Nigerian human, material resources and services in the Nigerian oil and gas industry”.
- (b) **Objectives of the Local Content Policy:**
- (i) the expansion of the upstream and downstream sector of the oil and gas industry.
 - (ii) the diversification of the sources of investment into the sector such that some of the funds would begin to come local sources, the promotion of indigenous participation.
 - (iii) the fostering of technological transfer
 - (iv) the increase in oil and gas reserves through aggressive exploration.
 - (v) Employment generation for all categories of Nigerians
 - (vi) increased production capacity
 - (vii) the integration of the oil and gas industry into the mainstream economy through local refineries and petrochemicals.
 - (viii) to promote a framework that guarantees active participation of Nigeria;s in Oil and Gas activities without compromising standards.
- (c) Deductions Not Allowed

- (i) any disbursement or expenses not being wholly and exclusively laid down or expended, or any liability not being a liability wholly or exclusively incurred for the purpose of those operations.
 - (ii) any capital withdrawn or any sum employed or intended to be employed as capital.
 - (iii) any capital employed improvement as distinct from repairs.
 - (iv) any sum recoverable under any insurance or contract of indemnity
 - (v) rent or cost of repair to any premises or part of any premises not incurred for the purpose of those operations
 - (vi) any amount incurred in respect of any income tax, profit tax or similar tax whether charged within Nigeria or elsewhere
 - (vii) the depreciation of any premises, building, structures, works of a permanent nature, plant, machinery or fixtures.
 - (viii) any payment to any provident, savings, widows, orphans or other society, scheme or fund except such payments are allowed under subsection (1)(g) of section 10 of this Act.
 - (ix) any expenditure for the purchase of information relating to the existence and extent of petroleum deposits.
- (d) Contents of TCC
- (i) Total Profits or chargeable income
 - (ii) Tax payable
 - (iii) Tax paid and
 - (iv) Tax outstanding or alternatively a statement to the effect that no tax is due.
 - (v) Name of Taxpayer
 - (vi) TIN number
 - (vii) TCC Number
 - (viii) Sector where the company's operating
 - (ix) Name of Issuing Relevant Tax Authority
 - (x) Relevant year of assessment
 - (xi) Date of commencement of business
 - (Xii) Expiry date of Tax Clearance Certificate; and
 - (xiii) Address of taxpayer
5. (a) State Five (5) major problems militating against the development of Oil & Gas industry in Nigeria. (5 Marks)
- (b) Distinguish between the following terms in the upstream sector of the Nigeria economy.
- (i) Exploration well
 - (ii) Appraisal well. (5 Marks)
- (c) (i) Briefly explain what is meant by "Marginal fields" in the Oil & Gas industry and the factors affecting such fields. (5 Marks)
- (ii) Distinguish between Petroleum Investment Allowance and Investment Tax Credit. (5 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 5

(a) **Problems Militating Against Oil & Gas Development**

- (i) Inadequate reservoirs for the storage of oil and gas
- (ii) Limited or inadequate appropriate market for the oil products
- (iii) Non-availability of the appropriate technology for the economic production of oil and gas and where they are available it is usually in short unobtainable supply.
- (iv) The cost of maintaining the petroleum pipelines is too high and beyond the capability of the oil producing countries.
- (v) Unfavourable pricing policies which is not attractive to investors in oil and gas exploration and production businesses.
- (vi) Frequent community violence has been scaring both the existing and intending investors.

(b) (i) **Exploration Well**

This is otherwise known as wildcat well. It is a well that is used to establish whether oil and gas is present or exist in the field. Exploratory well can result in the field. Exploratory well can result in proved reserves or dry holes. It is also known as discovery well where a commercial field has been discovered in commercial quantity.

(ii) **Appraisal Well**

This is drilled after successful exploratory drilling. It is drilled to confirm the commercial quantity or potential of an oil and gas reservoir where oil and gas has been confirmed to exist. This type of drilling is known as appraisal drilling.

(c) (i) **Marginal Fields**

A marginal field is an oil field that has been abandoned and were compulsory acquired by the Federal Government and then re-allocated to indigenous concession holders in order to boost indigenous participation in the oil and gas industry.

Paragraph 17 of the First Schedule to the Petroleum Act makes provision for marginal fields as follows:

- (1) The holder of an oil mining lease may, with the consent of and on such terms and conditions as may be approved by the President, farm out any marginal field which lies within the leased area.
- (2) The President may cause the farm-out of a marginal field if the marginal field has been left unattended for a period of not less than ten years from the date of the first discovery of the marginal field.
- (3) The President shall not give his consent to a farm-out or cause the farm-out of a marginal field unless he is satisfied—

- (a) that it is in the public interest so to do, and, in addition, in the case of a non-producing marginal field, that the marginal field has been left unattended for an unreasonable time, not being less than ten years; and
- (b) that the parties to the farm-out are in all respects acceptable to the Federal Government.

According to the paragraph, “marginal field” means such field as the President may, from time to time, identify as a marginal field,

Factors Affecting The Marginal Fields

- Size of its reserves
- Lack of nearby infrastructure or profitable consumers
- High development costs, fiscal levies and technological constraints
- Environmental concerns, political instability, access and remoteness
- The price and price stability of the produced gas/liquid

(ii) **Petroleum Investment Allowance**

This is applicable where a company has incurred any qualifying capital expenditure (QCE), wholly, exclusively and necessarily for the purposes of petroleum operations carried out by it. It is granted for the accounting period in which that asset was first used at the appropriate rate stated in the table below:

	QCE in respect of:	Rate per centum
(i)	Onshore operations	5
(ii)	Off shore operations up to & including 100 metres of water depth	10
(iii)	Off shore operations between 100m and 200 metres of water depth	15
(iv)	Off shore operations beyond 200 water metre	20

The allowance is granted to companies in the Joint Venture with the NNPC and other arrangements not covered by the DOIBPSC. It is claimed as part of capital allowance.

Investment Tax Credit (ITA)

This is applicable under production sharing contract signed prior to 1st July 1998 with NNPC. A credit referred to as investment tax credit at a flat rate of 50% of the qualifying expenditure is granted for the accounting period in which that asset was first used. It is a set off against assessable tax.

A PIA is used to reduce assessable profits while an Investment Tax Credit is used to reduce tax payable.



THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA
OCTOBER 2017: PROFESSIONAL EXAMINATION
PT 3: PRACTICAL CASES IN TAXATION

ATTEMPT ALL QUESTIONS. SHOW ALL WORKINGS. TIME: 3 HOURS.

SADET DRINKS NIGERIA LIMITED

Sadet Drinks Nigeria Limited is a group of companies operating in the soft drinks sub-sector of the Nigeria Food and Beverage Industry. There are three companies in the group, Sadet Bottling Nigeria Limited, Sadet Glass Nigeria Limited and Sadet Crown Cocks Nigeria Limited.

Sadet Bottling Nigeria Limited was incorporated in January 2010 with three factories in Lagos, Ibadan and Benin. Today the company has ten factories across the country's geo-political zones. Sadet Bottling Nigeria Limited (SBN) was originally sourcing its bottles and crown cocks requirements from other companies until 2011 and 2012 when the two other companies were incorporated to meet the increasing demand of the company for bottles and crown cocks.

Sadet Glass Nigeria (SGN) was incorporated in February 2011 and has its factory and office in Warri, Delta State. While Sadet Crown Cocks Nigeria Limited (SCCN) was incorporated in February 2012 and has its factory in Otta, Ogun State. Sadet Glass is owned 100% by Sadet Bottling Nigeria Limited while Sadet Crown Cocks is owned 60% by Sadet Bottling Nigeria Limited and the balance 40% of its shares are owned by other four shareholders.

In 2014, because of the incorporation of the other two companies, Sadet Bottling Nigeria Limited decided to adopt a group structure by incorporating a new company, Sadet Holding Nigeria Limited (SHNL) in July, 2014. SHNL owned all the shares of Sadet Bottling Nigeria Limited while all the shareholders of Sadet Bottling Nigeria Limited have their old share certificate cancelled and new shares of SHNL were issued to them. The group's head office is located in Ikeja, Lagos State. All corporate decisions are taken by the top management of SHNL at the head office while all business decisions are taken by each of the subsidiaries.

The top management of SHNL comprises of the following:

- | | | | |
|------|---------------------------|---|------------------------------------|
| i. | Mr. Lucas Adedire | - | Group Managing Director |
| ii. | Engr. Anthony Chukwuemeka | - | Group Technical Director |
| iii. | Dr. Esther Adebare | - | Marketing Controller |
| iv. | Mr. Bayo Garuba | - | Group Finance Director |
| v. | Mrs Fedelia Adaba | - | Group Business Development Manager |

Each of the companies also has its own top management that take decisions relating to their various companies.

All the subsidiary companies initially adopted 31st December as their accounting year end while the Holding company has 30th June as its accounting year end. However in 2014, a decision was made to change the accounting year end of the subsidiaries to 31st March of each year. Therefore, each of the subsidiaries did not prepare any financial statement in December 2014 while 15 months financial statements were prepared on 31st March 2015. To give effect to this change in accounting date, necessary approval was sought and gotten from the Federal Inland Revenue Service (FIRS).

In view of the fact that the group's operations cut across many states of the country, there have been various tax issues posing challenges to the company. And as a result of other responsibilities, which overstretched the group's finance staff, the group decided to appoint a tax consultant who will be handling all the tax issues of the group. In January 2016, the firm of Dagogo, Adedara & Co. (Chartered Tax Practitioners) was appointed as the group's tax consultant. The assignment of the tax consultant covers Companies Income Tax, Personal Income Tax, Capital Gains Tax and other statutory deductions such as Industrial Training Fund (ITF), Pension Fund, etc.

However, the immediate issues that the consultant have to resolve is to attend to the tax audit notifications from Delta, Ondo and Lagos States. Although the companies are related as subsidiaries and holding company, transactions between the companies are at arm's length. Each of the subsidiary is allowed to sell to external market and could also buy from the external market. The purpose of this arrangement is to keep each of the companies on its toes and thereby able to compete effectively within the market. This arrangement also eliminates the problem of transfer pricing that would have occurred within the group which can also lead to disaffection among the management of the subsidiary companies. It also eliminates the problem which the group would have had with FIRS.

The Tax Consultant is also in the process of filing the tax returns of the companies with FIRS and you are provided with the summarised income statements of the companies as in Appendices 1 to 4.

APPENDIX 1

SADET HOLDING NIGERIA LIMITED INCOME STATEMENTS FOR THE YEAR ENDED 30TH JUNE

	2015	2016
	₦'000	₦'000
Revenue (1)	<u>45,000</u>	<u>65,000</u>
Overheads:		
Salaries	25,000	30,000
Legal expenses (2)	5,000	--
Depreciation (3)	7,200	7,200
Repairs and Maintenance	2,200	2,150
Administrative expenses	1,850	1,980
Electricity	245	360
Other expenses	<u>255</u>	<u>260</u>
	<u>41,750</u>	<u>41,950</u>
Net operating profit before tax	3,250	23,050
Tax expenses	<u>1,040</u>	<u>7,376</u>
Profit after tax	<u>2,210</u>	<u>15,674</u>

Notes:

	2015	2016
	₦'000	₦'000
1. Revenue comprises:		
Dividends from subsidiary companies	15,000	25,000
Other income	<u>30,000</u>	<u>40,000</u>
	<u>45,000</u>	<u>65,000</u>
2. Legal expenses was in respect of the incorporation of the company.		
3. Assume that the depreciation charge during the periods represent the capital allowance claimable.		

APPENDIX II
SADET BOTTLING NIGERIA LIMITED
INCOME STATEMENTS FOR PERIOD ENDED

	12 Months to 31 Dec. 2012	12 Months to 31 Dec. 2013	15 Months to 31 March 2015	12 Months to 31 March 2016
	₦'m	₦'m	₦'m	₦'m
Revenue	1,600	1,800	1,950	2,050
Cost of Sales	<u>880</u>	<u>980</u>	<u>1,050</u>	<u>1,100</u>
Gross Operating Income	720	820	900	950
OVERHEADS				
Salaries	180	205	225	245
Depreciation	85	85	85	85
Power and Electricity	165	182	193	201
Administrative Expenses	55	58	67	69
Repairs and Maintenance	35	45	55	50
Other Expenses	<u>20</u>	<u>15</u>	<u>25</u>	<u>35</u>
	<u>540</u>	<u>590</u>	<u>650</u>	<u>685</u>
Operating Profit before Tax	180	230	250	265
Tax Expense	<u>58</u>	<u>74</u>	<u>80</u>	<u>85</u>
Profit after tax	<u>122</u>	<u>156</u>	<u>170</u>	<u>180</u>

Note:

There were no capital allowances claimable during the periods.

APPENDIX III
SADET GLASS NIGERIA LIMITED
INCOME STATEMENTS FOR THE PERIOD ENDED

	12 Months to	15 Months to	12 Months to
	31 Dec. 2013	31 March 2015	31 March 2016
	₦'000	₦'000	₦'000
Revenue	50,000	55,000	65,000
Cost of Sales	<u>28,000</u>	<u>30,000</u>	<u>32,000</u>
Gross Operating Income	22,000	25,000	33,000
OVERHEADS:			
Salaries	2,500	2,750	3,050
Depreciation	5,000	5,000	5,000
Power and Electricity	1,050	1,080	2,050
Administrative Expenses	500	750	800
Repairs and Maintenance	250	350	300
Other expenses	<u>100</u>	<u>70</u>	<u>100</u>
	<u>9,400</u>	<u>10,000</u>	<u>11,300</u>
Gross operating profit before tax	12,600	15,000	21,700
Tax expense	<u>4,032</u>	<u>4,800</u>	<u>6,944</u>
Profit after tax	<u>8,568</u>	<u>10,200</u>	<u>14,756</u>

Note:

Capital allowances agreed with FIRS for the periods are as follows:

	₦
31 st December, 2013	4,000
31 st March, 2015	3,500
31 st March, 2016	5,500

APPENDIX IV
SADET CROWN COCKS NIGERIA LIMITED
INCOME STATEMENT FOR THE PERIOD ENDED

	12 Months to	15 Months to	12 Months to
	31 Dec. 2013	31 March 2015	31 March 2016
	₦'000	₦'000	₦'000
Revenue	28,000	32,000	35,000
Cost of Sales	<u>14,500</u>	<u>15,800</u>	<u>16,300</u>
Gross operating income	13,500	16,200	18,700
OVERHEADS			
Salaries	1,800	1,950	2,050
Depreciation	3,500	3,500	3,500
Power and electricity	850	900	980
Administrative expenses	250	300	320
Repairs and maintenance	150	200	250
Other expenses	<u>50</u>	<u>100</u>	<u>100</u>
	<u>6,600</u>	<u>6,950</u>	<u>7,200</u>
Operating profit before tax	6,900	9,250	11,500
Tax expenses	<u>2,208</u>	<u>2,960</u>	<u>3,680</u>
Profit after tax	<u>4,692</u>	<u>6,290</u>	<u>7,820</u>

Note:

Capital allowances agreed with FIRS for the periods are as follows:

	₦
31 st December, 2013	2,500
31 st March, 2015	2,800
31 st March, 2016	3,500

QUESTIONS

1. As the Tax Consultant who has just been engaged by the group. Dagogo, Adedara & Co., you are required to:
 - (a) List the documents you will request for from the group and why? (10 Marks)
 - (b) Discuss the steps you will take in respect of this new engagement. (10 Marks)(Total 20 Marks)

SOLUTION TO QUESTION 1

- (a) The documents the consultant will collect from the group are:
 - (i) Copy of the companies certificate of incorporation to ensure that the companies are properly registered with the Corporate Affairs Commission;
 - (ii) Copy of the certified true copy of each of the companies' Memorandum and Articles of Association to ensure that the companies are acting within their object clauses and provisions of their articles;
 - (iii) Copy of the certified true copy of each of the companies particulars of directors, form C07, to identify the directors of the companies;
 - (iv) Certified true copy of CAC2 – allotment of shares; CAC2.1 – appointment of secretary and CAC3 – Notice of Registered office of each of the companies. This is to ensure that companies have complied with the provisions of CAMA 1990;
 - (v) Certificate of increase in share capital including stamp duties, registration fees, Board's resolutions for each of the companies to ensure no liability will crystallise in future on failure to pay appropriate stamp duties on increase in share capital;
 - (vi) Contract documents on Rent and other agreements. This is to ensure that appropriate withholding taxes have been paid;
 - (vii) A copy of signed audited account of each of the companies. The consultant will require these to prepare tax calculations for the purpose of filing tax returns for the companies;
 - (viii) Fixed Assets registers/schedules. He will require these to calculate capital allowances for each of the companies for the purpose of filing tax returns;
 - (ix) Monthly payroll and Directors' emoluments schedule for each of the companies. These will enable the consultant to calculate personal income tax payable by the companies to the various states; and
 - (x) A copy of the holding company's letter to the tax authorities, Federal Inland Revenue Services (FIRS) and various States Internal Revenue Service, appointing them as tax consultant to the group.

- (b) The consultant should take the following steps:
- (i) Write a letter to the holding company, the client, about his understanding of the assignment, in clear terms and requesting that the client signs and return copy of the letter as a proof of the client's agreement with the terms of the engagement;
 - (ii) Request for necessary documents of each of the companies in the group as enumerated in (a) above;
 - (iii) Seek the client's consent to contact the immediate past tax consultant of the client, if any;
 - (iv) Familiarise himself with the tax affairs of the companies in the group by going through relevant files and making copies of relevant documents for his file;
 - (v) Agree his fees with the client from the onset and how reimbursable expenses will be treated, either will be paid by the client or borne by the consultant;
 - (vi) Assign one of his assistants to be in charge of the tax affairs of the companies in the group, so that one of his staff who will be reporting to him will be able to take full responsibility for filing necessary return;
 - (vii) Visit the locations of each of the factories of the companies to familiarise himself with the appropriate staff in each location especially those he will be dealing with in the course of the assignment; and
 - (viii) Visit all the relevant tax offices where the companies are rendering returns to introduce himself to the tax official in charge of his client's tax affairs.

EXAMINER'S REPORT

The question tests candidates understanding of how a tax consultant will handle a new engagement, documents to request for and steps he will take. Performance was above average as all the candidates attempted the question and scored above average.

2. Calculate the adjusted profits of Sadet Holding Nigeria Limited for the relevant years of assessment. (20 Marks)

SOLUTION TO QUESTION 2

SADET HOLDINGS NIGERIA LIMITED ADJUSTED PROFITS FOR 2014, 2015 AND 2016 YEARS OF ASSESSMENT

2014: 1/7/2014 – 30/6/2017	₦'000	₦'000
Profit as per accounts at 30/6/2017		2,200
Add: Disallowed expenses		
Depreciation	7,200	
Legal expenses	<u>5,000</u>	<u>12,200</u>
		14,400
Less: Income not taxable:		
Dividend from subsidiaries		<u>15,000</u>
Adjusted Profit for the year		(600)

Adjusted Profit 2014 year of Assessment (600 x 6/12)		(300)
2015 year of assessment:		
1/7/2014 to 30/6/2015		
Profit as per accounts		2,200
Add: Disallowed expenses:		
Depreciation	7,200	
Legal Expenses	5,000	<u>12,200</u>
		14,400
Less: Income not taxable		
Dividends from subsidiaries		<u>15,000</u>
Adjusted profit		(600)
2016 Year of Assessment:		
Preceding year basis (1/7/14 – 30/6/15)		
Profit as per accounts		2,200
Add: Disallowed expenses		
Depreciation	7,200	
Legal expenses	<u>5,000</u>	<u>12,200</u>
		14,400
Less Income not taxable:		
Dividends from subsidiaries		<u>15,000</u>
Adjusted Profit		(600)

EXAMINER'S REPORT

The question tests candidates understanding of relevant years of assessment .Performance was very poor as almost all the candidates demonstrated lack of understanding of the question. Candidates are advised to revise all the previous subjects in the Institute examination when preparing for future examination since any of the subject could be tested in practical cases examination.

- Determine the tax payable by the subsidiary, Sadet Bottling Nigeria Limited, for the relevant years as a result of the change in its accounting year end, if possible given the data provided, otherwise give reasons. (20 Marks)

SOLUTION TO QUESTION 3

SADET BOTTLING NIGERIA LIMITED CALCULATION OF TAX PAYABLE.

2014 is the date there is a change in accounting year. Therefore, tax payable will be determined as follows:

Based on the old accounting date:

2014 = 1/1/13 - 31/12/13

2015 = 1/1/14 - 31/12/14

2016 = 1/1/15 - 31/12/15

Or

Based on the new accounting date:

2014 = 1/4/12 - 31/3/13

2015 = 1/4/13 - 31/3/14

2016 = 1/4/14 - 31/3/15

Calculation of Adjusted Profit

	2012	2013	2015	2016
	₦' m	₦' m	₦' m	₦' m
Profit per accounts	180	230	250	265
Add: Depreciation	<u>85</u>	<u>85</u>	<u>85</u>	<u>85</u>
Adjusted profit	265	315	335	350
Capital Allowances	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Assessable profit	<u>265</u>	<u>315</u>	<u>335</u>	<u>350</u>

Assessable Profit: Old Accounting Date	₦' m
2014 = 1/1/13 – 31/12/13	315
2015 = 1/1/14 – 31/12/14 = 335/15 x 12	268
2016 = 1/1/15 – 31/12/15	
Total = (335/15 x 3) + (350/12 x 9)	<u>329</u>
	<u>912</u>

Assessable Profit: New Accounting Date

		₦' m
2014 = 1/4/12 – 31/3/13	$= \left(\frac{265}{12} \times 9 \right) + \left(\frac{315}{12} \times 3 \right) =$	277.50
2015 = 1/4/13 – 31/3/14	$= \left(\frac{315}{12} \times 9 \right) + \left(\frac{335}{15} \times 3 \right) =$	303.25
2016 = 1/4/14 – 31/3/15	$= \frac{335}{15} \times 12$	<u>268.00</u>
	Total	<u>873.75</u>

Since the total assessable profit from the old accounting date, ₦912m, is more than that of the new accounting date, the revenue authority will use old accounting date to assess the company to tax.

Therefore tax payable by Sadet Bottling Nigeria Limited for the period will be:

	2014	2015	2016
	₦' m	₦' m	₦' m
Assessable Profit	<u>315</u>	<u>268</u>	<u>329</u>
Company Income tax @ 30% =	94.5	80.4	98.7
Tertiary Education Tax @2%	6.3	5.36	6.58

EXAMINER'S REPORT

The question tests candidates' understanding of tax rules regarding change of accounting year end. Performance was very poor as only few candidates understood the rules regarding change of accounting year end. Candidates are advised to adequately prepare for future examination by familiarizing themselves with all tax rules as any of these could be tested in practical cases examination.

4. Explain the followings in the context in which they are used in the case:

- (a) Holding company
 - (b) Subsidiaries
 - (c) Transfer pricing
 - (d) Arm's length transaction
- (20 Marks)

SOLUTION TO QUESTION 4

(a) **Holding Company**

A Holding Company is a company that owns more than 50 percent interest in another company. In the case, Sadet Holdings Nigeria Limited is a holding company with controlling interest in Sadet Bottling Nigeria Limited, Sadet Glass Nigeria Limited and Sadet Crown Cocks Nigeria Limited. The holding structure can also be used as a tax strategy. Also, one important reason of using holding and operating companies is because it is a planning strategy that helps to limit liability risks in the business structure. An ideal business structure, just like Sadet group, consists of an operating entity that does not own any vulnerable assets and a holding entity that actually owns the business' assets.

However, the better approach is usually one where the holding company owns the operating company. This is the case in Sadet Holdings.

(b) **Subsidiaries**

A subsidiary company is a company in which another company owns more than 50% of its shares. In the case of Sadet group, Sadet Bottling Nigeria Limited, Sadet Glass Nigeria Limited and Sadet Crown Cocks Nigeria Limited are subsidiaries of Sadet Holdings Nigeria Limited.

A subsidiary could be partly owned or fully owned by the holding company. In Sadet group, Sadet Bottling Nigeria Limited and Sadet Glaass Nigeria Limited are fully owned subsidiaries of Sadet Holdings Nigeria Limited while Sadet Crown Cock Nigeria Limited is partly owned by Sadet Holdings Nigeria Limited.

(c) **Transfer Pricing**

Transfer Pricing refers to the price charged for goods or services supplied or transferred by one division of an organisation to another division of the same organisation or one member of a group to another member of the group.

In the case of Sadet group, goods and services supplied or transferred from any of the companies in the group will be done at a transfer price which will be determined by the group. Sadet Glass Nigeria Limited and Sadet Crown Cocks Nigeria Limited will have to supply or transfer their products to Sadet Bottling Nigeria Limited at a transfer price and can be at arms length or determined price.

According to CITN (2014), it is the price at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises.

(d) **Arm's Length Transaction**

In tax practice certain persons are treated as being so closely involved with each other that they are viewed as same person and transactions between them are treated differently from those at arm's length.

Arm's length transactions are therefore transactions that are conducted between two persons who are not connected. It can also be defined as transactions that are done at their open market prices.

In the case of Sadet group, all the companies will be treated as connected persons and the transactions between them will be scrutinized by the tax authorities to ensure that they are at arm's length or otherwise.

EXAMINER'S REPORT

The question tests candidates understanding of the concepts of holding company, subsidiaries, transfer pricing and arm's length transaction. Performance was very poor as most all the candidates demonstrated lack of understanding of these concepts. Candidates are advised to prepare adequately for future examination.

5. (a) What is the responsibility of tax consultant in respect of the tax audit letters from Delta, Ondo and Lagos States? (10 Marks)
- (b) List the documents the various states tax auditors would need to carry out their audit and why they will need them. (10 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 5

- (a) The following are the consultants responsibilities in relation to tax audit of his client:
- (i) He must ensure that the tax records of his client are up to date;
 - (ii) He must liaise with the client and the tax officials coming for the audit to agree a date for the audit;
 - (iii) He must carry out a pre-audit inspection of his client's accounting documents with a view of determining additional tax liabilities that are likely to arise. He is to discuss this with his client in advance before the tax audit and give reasons why this is so;
 - (iv) He must get all the necessary accounting record and files ready for the audit;
 - (v) He must be on ground on the day of the audit before the tax auditors arrive to:
 - See that all arrangements for the audit have been made; and
 - receive the tax auditors and introduce them to his client;
 - (vi) He should hold a pre-audit meeting with the tax auditors in conjunction with his clients representative;
 - (vii) He or his staff must be on ground throughout the duration of the audit;
 - (viii) At the completion of the audit exercise, he must hold a post-audit meeting with the tax auditors in conjunction with his client's Chief Finance Officer to clarify any issues that the tax auditors may bring up for clarification; and
 - (ix) When an assessment notice (demand notice) arising from the audit is received by the client, it will normally be sent to the tax consultant by the client. The consultant will take the following steps:
 - Compare the assessment with his own pre-audit figures of additional tax he previously computed and note the areas of difference;

- if the additional assessment is in agreement with his calculation, he should discuss with his client on the possibility of settling the additional liability;
 - if the additional assessment is more than what he has previously calculated, he should raise an objection, after discussing with his client, within the time stipulated by law; and
 - he has to attend all the reconciliation meetings until the issue of the additional assessment is settled.
- (b) The documents that the various states tax auditors will need to carry out their audit and why are:
- (i) Payment vouchers in respect of transaction of the company that took place in the various states. The auditors will need these to determine compliance with withholding tax provision and to determine any under deduction of withholding tax. The auditors will also need them to check for any staff emoluments paid outside the payroll such as leave allowance, commission, etc;
 - (ii) Payroll documents: These will be needed to determine tax payable by the staff;
 - (iii) Audited accounts or management accounts of the company. This is needed to ensure that the personal cost recorded on the accounts agree with the payroll figures;
 - (iv) Schedule of PAYE tax remittance and photocopy of receipts. These are required to determine the total tax remitted by the company; and
 - (v) Schedule of Withholding Tax (WHT) paid to each state together with their revenue receipts. These are required to determine the WHT remitted;
 - (vi) Rent schedule, to determine that appropriate WHT have been paid on all rents paid by the company;
 - (vii) Name and addresses of directors and copies of their tax clearance. This is to ensure that appropriate tax have been paid by the directors on their allowances;
 - (viii) Last clearance letter for previous tax audit. This is to ensure that liability in respect of past audit liability has been paid by the company;
 - (ix) Expatriate quota, if any. This is to capture the names of the expatriates in the employment of the company and assess them to tax; and
 - (x) Schedule of development levy paid. This is to ensure that development levy for all the staff have been paid.

EXAMINER'S REPORT

The question tests candidates understanding of a tax consultant's responsibilities concerning tax audit by state's internal revenue service and the documents that would be required for the audit. Performance was good as about 60% of the candidates scored over 50% of the allocated marks. Candidates are advised to familiarize themselves with practical areas in taxation when preparing for examination in Practical cases in Taxation in the future.



THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA
OCTOBER 2017: PROFESSIONAL EXAMINATION
PT 3: SOLID MINERALS TAXATION

ATTEMPT ALL QUESTIONS. SHOW ALL WORKINGS. TIME: 3 HOURS.

1. The Federal Government is worried that despite the abundant mineral resources that abound in almost all the states of the federation and the various incentives offered by the government to attract investment into the solid minerals sector, there has been no significant investment in this sector. Perhaps, many potential investors are not aware of these incentives.

Your firm has been commissioned by the Federal Government to present a thirty minutes paper at a seminar organised for some foreign investors who wish to invest in the solid minerals sector in Nigeria.

The Managing Partner of your firm has therefore mandated you to make the presentation to the prospective investors which should cover:

- (a) Introduction; (1 Mark)
- (b) Four (4) objectives of tax incentives; (4 Marks)
- (c) Ten (10) tax incentives for companies operating within the solid minerals sector as contained in the Companies Income Tax Act, Cap. C21, LFN 2004, the Industrial Development (Income Tax Relief) Act, Cap. 17, LFN 2004 and the Minerals and Mining Act, 2007. Some incentives are repeated in the three Acts mentioned. No additional points will be awarded for repeated incentives.

(15 Marks)

(Total 20 Marks)

SOLUTION TO QUESTION 1

(a) Introduction

Thank you for the privilege to speak to you on the subject matter. I consider this topic to be very relevant at a time when diversification of the economy is now a priority for the Government.

Prior to the discovery of petroleum in Nigeria, agriculture and solid minerals were the main stay of the Nigerian Economy. Since the discovery of crude oil, the solid minerals sector was relegated to the background. With the global fall in the price of crude oil and oil revenue accruable to the government, the Federal Government has realized the need to pay more attention to the solid minerals sector.

Consequently, a number of incentives have been offered by the Government to attract investors into this sector.

The objective of this presentation is to introduce you to the various incentives which are available to companies operating in the solid minerals sector in Nigeria.

(b) Objectives of Tax Incentives

Tax incentives are designed to:

- (1) attract foreign investment in Nigeria in capital intensive projects.
- (2) encourage investors to invest in certain preferred sectors of the economy.
- (3) shift investment to preferred sectors;
- (4) discourage inevitable capital outflow
- (5) encourage voluntary compliance.
- (6) encourage innovation, research and development.
- (7) enhance or accelerate the growth of small businesses.
- (8) encourage businesses to make financial contribution to activities which the government considers socially desirable but which may not directly contribute to their profits.
- (9) encourage urbanization.
- (10) improve the welfare of its citizens.
- (11) . encourage the growth of infant industries;
- (12) encourage dispersal of industries;
- (13) to shift investments to preferred sector of the economy; and

(c) Tax incentives available to companies operating in the mining of solid minerals

Apart from the Nigerian Mining and Minerals Act 2007, three other laws that provide for incentives for companies engaged in mining operations are the Companies Income Tax Act (CITA), the Industrial Development (Income Tax Relief) Act, (IDITRA) 2004 and the Value Added Tax Act.

INCENTIVES PROVIDED UNDER THE NIGERIA MINERALS AND MINING ACT, 2007

Section 24 of the [Act](#) provides the following incentives for companies or enterprises engaged in Mining Operations:

- 24 (i) In determining its total profits, any licence holder is eligible to deduct from its assessable profits a capital allowance of ninety five percent of qualifying capital expenditure incurred in the year in which the investment is incurred.
- 24 (i) (a) eligible to deduct all certified' exploration, development and processing expenditure, 'including feasibility study and sample assaying costs and
- 24 (i) (b) can also deduct all infrastructure costs incurred regardless of ownership and replacement.

Mining Loss

Section 24 (2) The amount of any loss incurred in mining operations shall be deducted as far as it is possible from the assessable profits in which the loss was incurred up to a limit of four years after which period any unrelieved loss shall become lapse.

Section 25.-(1) -Exemption From Payment Of Customs And Import Duties

All operators in the mining industry are granted exemption from payment of customs and import duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mining operations;

(b) .expatriate quota and resident permit in respect of the approved expatriate personnel ; and

(c) personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria,

(2) The plant, machinery, equipment and accessories 'imported 'pursuant to subsection (I) of this section may be disposed of by the holder of Mineral title upon the full payment of customs and import duties in respect thereof

Section 25 (i) (a) Exemption from Customs and Export Duties

By virtue of Minerals and Mining Act, mining companies are exempt from the payment of custom duties in respect of plant, machinery, equipment and accessories imported specifically and exclusively for mining operations.

Section 25 (i) b) Immigration

Expatriate Quota and resident permit in respect of approved expatriate personnel.

Section 25 (i) © Remittance Quota For Expatriate Personnel

Personal remittance quota for expatriate personnel, free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.

Section 26 Permission to Retain and use Earned Foreign Exchange

Section 26 provides for permission to retain an earned foreign exchange by providing that *“Where the holder of a mineral title earns foreign exchange from the sale of his minerals he may be permitted by the Central Bank of Nigeria to retain in a foreign exchange domiciliary account a portion of his foreign exchange earnings for use in acquiring spare parts and other inputs required for the mining operations which would otherwise not be readily available-without the use of such earning.”*

Section 27 Guaranteed Free Transferability Of Funds

Similarly, the Act also guarantees free transferability of funds through the CBN in convertible currency in respect of:

a. payments in respect of loan servicing where a certified foreign loan has been obtained by the holder for his mining operations; and

b. the remittance of foreign capital in the event of sale or liquidation of the mining operations or any interest therein attributable to foreign investment.

Section 28

Tax Relief Period

A three year tax relief period is available for [the first](#) 3 years for any company granted a Mineral Title which commences on the date that the licence holder commences operations. The tax relief period may be extended for a further period of 2 years by the Minister provided the Minister is satisfied as to:

(a) the rate of expansion, standard of efficiency and level of development of the company in mineral operations for which the Mineral title was granted;

(b) the implementation of any conditions upon, which lease was granted; and

(c) the training and development of Nigerian personnel in the operation of the mineral concerned

Section 30 Tax Deductible Reserve For Environmental Protection,

Companies engaged in the exploitation of mineral resources shall establish a tax deductible reserve for environmental protection, mine rehabilitation, reclamation and mine closure costs. However, the appropriateness of the reserve must be certified by an independent qualified person taking into account the determination made under the provisions of the Act

Section 32 Annual Capital Cost Indexation

This section provides for Annual Capital Cost Indexation, such that the unclaimed balance of capital cost shall be increased yearly by 5 percent for mines that start production within 5 years from the date of enactment of the Mining Act.

Section 33(2) Reduction or Waiver of Royalty

By virtue of this section which provides for royalty, any mineral obtained in the course of exploration or mining operations shall be liable to pay royalty as prescribed in the regulations made under the Act. However, the Minister may reduce or waive royalty on any mineral which the Minister is satisfied is being exported solely for the purpose of analysis or experiment or as a scientific specimen, not being in greater quantity than is reasonably necessary for that purpose.

Section 33 (3) Deferment Of Payment Of Royalty

The minister may defer the payment of royalty for a specific period on the approval of the Federal Executive Council for economic reason.

Pension Fund

Pension fund contribution for mining companies are tax deductible.

INCENTIVES UNDER THE CITA

Section 36 Tax Relief Period

Under the CITA, mining companies are granted a tax relief period for the first three years only. There is no option for extension of the period. By the provision of the CITA a new mining company is exempted for 3 years from paying tax, as section 36 of the CITA provides that “*a new company going into the mining of solid minerals shall be exempted from tax the first three years of its operation.*”.

Reduced Tax Rate

A company which is engaged in mining of solid minerals and earns an annual turnover of less than one million naira (N1m) is assessable to income tax at the lower rate of 20% (instead of the standard rate of 30%) for the first 5 years of assessment under the Companies Income Tax Act (CITA).

Tax Losses

Losses incurred after the first three years of commencement of business can be carried forward indefinitely under CITA.

INCENTIVES UNDER THE Industrial Development (Income Tax Relief) Act

Dividends

Under the Industrial Development (Income Tax Relief) Act (IDITRA), dividends paid out of the pioneer profits of a mining company (being a pioneer company) are not subject to tax in the hands of the beneficiaries.

Losses

From production date, losses incurred during pioneer period are only expensed for tax purposes after the expiration of the pioneer period.

2. In response to the Federal Government's appeal to local and foreign investors to come and invest in the solid minerals sector in Nigeria, an Indian Mining Company has taken up the challenge to establish a mining company in Akwa Ibom State.

The Promoters of the company have heard that the right to search for or exploit mineral resources may be obtained through one of the six mineral titles stipulated in the Minerals and Mining Act, 2007.

Required:

- (a) (i) List any Four (4) mineral titles stipulated in the Minerals and Mining Act, 2007. (2 Marks)
- (ii) State Four (4) of the circumstances under which a mineral title may be revoked. (6 Marks)
- (b) (i) Most taxpayers find it difficult to distinguish between Tax Concession, Tax Avoidance and Tax Evasion. As a Tax Practitioner, explain to a taxpayer who is interested in the distinction by highlighting the differences. (6 Marks)
- (ii) Within the context of Nigerian Tax System state Four (4) instances where tax can be avoided. (6 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 2

(a) (i) Mineral Titles Stipulated in the Minerals and Mining Act, 2007

- (i) Reconnaissance Permit;
- (ii) Exploration Licence;
- (iii) Small Scale Mining Lease;
- (iv) Mining Lease;
- (v) Quarry Lease; and
- (vi) Water Use Permit

(ii) Circumstances for Revocation of a Mineral Title

The Minister for Solid Minerals Development may revoke any mineral title if:

- (i) The mineral title holder is convicted by a court of competent jurisdiction for an offence under the Mining Act or its regulations and the time for appealing against the conviction, if any, has lapsed or the appeal has been dismissed or withdrawn or struck out for want of prosecution.
- (ii) The mineral title holder breaches any provision of the Mining Act or regulations made or of any terms or conditions of his mineral title.
- (iii) The mineral title holder breaches any order or notice issued or given under the Mining Act or regulations made under it or on being required by the Minister for Solid Minerals Development by notice to show cause within a time specified in the notice why the mineral title should not be revoked, the holder fails to comply or show adequate cause.
- (iv) The mineral title holder surrenders the mineral title before the expiration of the term of the license.
- (v) The mineral title holder is declared by a court of competent jurisdiction to be insolvent or bankrupt, except as part of a scheme for reorganization, amalgamation or an arrangement with its creditors.
- (vi) No progress is made in the organization of the mining operations in the case of all mineral title other than a Reconnaissance Permit by the end of the period provided for in the mineral title.
- (vii) In the case of a Small Scale Mining Lease or Mining Lease, the holder wholly discontinues operations under the Lease during a continuous period of six months.
- (viii) A Title can also be revoked upon written advice of the Minister and after 30 days' notice of the intention to revoke the mineral title containing in detail the grounds thereof is given to the holder and during the period fixed the holder has failed to remedy the breach or remove the grounds for revocation within the required period.
- (ix) The holder of a mineral may also at any time during the period of the validity of the title, upon application to the Mining Cadastre Office in the prescribed form and manner, and upon meeting prescribed conditions, relinquish the area or part of area covered by the mineral title, on the provision that the geometry and dimensions of each surrendered area shall satisfy the prescriptions of the Act and its regulations.

(b) (i) Tax Concession

This is the right granted to a company by the Federal Government to explore and extract or mine minerals within an area. This however, involves application and granting of mining licenses or exploration license.

Tax Avoidance

This is a deliberate act by a Taxpayer to pay less tax than he ought to pay or not to pay tax at all by using the various opportunities, rights and privileges available in the tax laws and provisions, such as investing in foreign business that will make the income exempted from tax and other incentives under CITA and those specific incentives under solid minerals.

Tax avoidance is not criminal in nature.

Tax Avoidance has also been described as the legal utilization of the tax regime to ones' own advantage to reduce the amount of tax that is payable by means that are within the law.

Tax Evasion

This occurs where the taxpayer practically neglects to pay tax. In such circumstances, the taxpayer either does not declare the correct position for tax purpose or does not file any returns.

This is considered criminal in nature and may result in the taxpayer being convicted.

(ii) Instances when tax can be avoided in Nigeria

- (i) Where certain expenses are incurred, which would not have been otherwise be incurred, just because such are allowable and will thus reduce profit for tax purpose.
- (ii) Where capital expenditure are incurred with the purpose of claiming capital allowance which will ultimately reduce profit.
- (iii) Investing in a foreign investment with the aim that the income therefrom will be exempted from tax.
- (iv) Where a loss is incurred, such loss may be carried forward for a relief against taxable profits for some subsequent years immediately after the year which the loss was incurred.
- (v) Where a business invests in certain sectors of the economy such as agricultural, manufacturing, mining etc. because of the special relief and incentives available to such business. For example, in mining of solid minerals business capital allowance is not limited. It can be claimed almost 100% in the year the expense to purchase the asset was incurred.
- (vi) Creation of a legal separate entity such as a Trust or Foundation to which one's properties are donated. Assets of the owner are then transferred to the new company or Trust.
- (vii) Applying for and obtaining a Company's Tax Clearance Certificate before expiration of six months of commencement of business to avoid paying the mandatory pre operational levy.
- (viii) Relocation to a Tax Haven such as Cayman Island or Monaco to pay little or no tax.

3. (a) In reaction to the downward spiral of crude oil prices and shortfall in Nigerian's foreign exchange reserves, the Nigerian Government has made some efforts to review its policy on the development of the solid minerals sector. Outline Seven (7) of these efforts. (7 Marks)
- (b) Metallurgic Mining Company Limited, one of the leading mining companies submitted its tax returns to the Federal Inland Revenue Service. The tax returns disclosed a Companies' Income Tax (CIT) payable of ₦6,543,650 in respect of the 2013 accounting year.

In arriving at this amount you were informed that the following deductions have been made:

Item	Amount (₦)
Agreed loss brought forward	9,500,000
Customs Duty on plant and machinery	600,000
Capital allowances for the year	16,320,000
Environmental costs	3,000,000
Cost of assets not connected with the operation	750,000
Domestic expenses incurred by the Managing Director	350,000

You were further informed that;

- (1) The statutory CIT rate is 30% and Tertiary Education Tax rate is 2%.
- (2) Taxable income not reported is ₦2,500,000.
- (3) Customs duties paid were incurred on plant and machinery which is not exclusive to the mining industry.

You are required to compute the tax payable by the Company for the relevant year of assessment. (13 Marks)

(Total 20 Marks)

SOLUTION TO QUESTION 3

- (a) Efforts of Government towards the development of solid minerals sector
- (1) Enactment of new National Policy on Solid Minerals Development – 1998.
 - (2) Enactment of the Minerals and Mining Act 1999 and its amendment in 2007..
 - (3) Development of the seven year strategic action plan for Solid Mineral Development in Nigeria (2002, 2009).
 - (4) Establishment of Nigerian Geological Survey Agency.
 - (5) Establishment of sustainable management of mineral resource project.
 - (6) Establishment of the Mining Cadastre Office to grant Mining Permits and licenses.

- (7) Establishment of the mines Environmental Compliance Department to ensure best international practice.
- (8) Establishment of the Artisan and Small-Scale Mining Department as a focused department for small entrepreneurs and local content.
- (9) Establishment of the Federal Ministry of solid minerals.
- (10) Grant of incentives to holders of mining license
- (11) Training and development of personnel in the operations of minerals industry.

(b) (1) **METALLURGIC MINING COMPANY LIMITED**
COMPUTATION OF 2014 YOA LIABILITY

	₦	₦
Taxable profit reported 6,543,650/30%		21,812,167
Add:		
Agreed loss brought forward	9,500,000	
Capital allowance for the year	<u>16,320,000</u>	
		<u>25,820,000</u>
		47,632,167
Add taxable income not reported		<u>2,500,000</u>
		50,132,167
(2) Add: Disallowed expenses		
Custom duty on plant & machinery	600,000	
Cost of assets not connected with operation	750,000	
Domestic expenses by MD	<u>350,000</u>	
		<u>1,700,000</u>
Revised Assessable Profit		51,832,167
Deduct Losses b/fwd		<u>(9,500,000)</u>
		42,332,167
Deduct capital allowances		<u>(16,320,000)</u>
Taxable Profit		<u>26,012,167</u>
CIT @ 30% = ₦26,012,167 x 30%		<u>7,803,650.00</u>
TET @ 2% of Assessable Profit = ₦51,832,167 x 2%		<u>1,036,643.33</u>

N.B: Environmental Costs are tax deductible for mining companies in accordance with the Minerals and Mining Act 2007.

Customs duty paid on plant and machinery is not tax deductible as it is a capital expenditure.

4. (a) (i) Within the context of mining and mineral operations, explain what “Nigerian Extractive Industrial Transparency Initiative” (NEITI) is.
(2 Marks)
- (ii) Itemize Four (4) objectives of (NEITI). (4 Marks)

- (b) State and explain Six (6) key benefits derivable by a country implementing NEITI. (9 Marks)
- (c) “In the Nigerian Mining and Minerals Act 2007 some protection rights are granted to the existing community”. Highlight Five (5) of these protection rights. (5 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 4

(a) (i)

In 2003, Nigeria voluntarily signed up to the global Extractive Industries Transparency Initiative (EITI). Thereafter, the Nigeria Extractive Industry Transparency Initiative (NEITI) which is the subset of a global initiative was established by the Nigeria Extractive Industries Transparency Initiative Act 2007. Nigeria joined the EITI basically to promote prudent management of revenues from its abundant natural resources to reduce poverty and ensure sustainable development.

NEITI is supervised by the Office of the President of Nigeria through the Office of the Secretary to the Government of the Federation. It is an autonomous, self-accounting body which by law, reports to the National Assembly. It is a body corporate with perpetual succession, with a common seal which may sue and be sued in its corporate name, and acquire, hold and dispose of movable and immovable properties in the discharge of its functions under the NEITI Act.

The EITI principles are based on the belief that prudent use of natural resources contributes to economic growth, sustainable development and the reduction of poverty in resource-rich countries.

Nigeria joined EITI in 2003 and became candidate country in September 2007 and was designated as EITI Compliant during the 5th EITI Global Conference in March 2011. To date, not less than five EITI Reports have been produced covering the Solid Minerals Sector for the period from 1 January 2007 until 31 December 2012.

(ii) Objectives of NEITI

The primary objectives of the NEITI as contained in the Nigeria Extractive Industries Transparency Initiative (NEITI) Act are-

- (a) to ensure due process and transparency in the payments made by all extractive industry companies to the Federal Government and statutory recipients;
- (b) to monitor and ensure accountability in the revenue receipts of the Federal Government from extractive industry companies;
- (c) to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the Federal Government from extractive industry companies;

- (d) to ensure transparency and accountability by Government in the application of resources from payments received from extractive industry companies; and
- (e) to ensure conformity with the principles of Extractive Industries Transparency Initiative.

(b) Key Benefits of NEITI

(i) Demonstrating Commitment to Transparency

Implementation will send signal to stakeholders that Government is concerned about the transparency and accountable payment and receipt of revenue from Extractive Industry. This will make the companies adhere strictly to improving transparency.

(ii) Efficiency in Revenue Collection

With increasing scrutiny of payment and revenues more revenue are generated through tax collected from the industry.

(iii) Enhanced Communication

NEITI implementation will provide a platform for communication between all stakeholders, and thus develop consensual solutions to problems.

(iv) Reduce Conflict

Implementation will reduce the risk of conflict and promote stability which will promote a favourable investment climate.

(v) Improve Credit worthiness

Through regular NEITI reports on payments and revenues, a country may be able to improve the credit worthiness of the government and of companies.

(vi) Disclosure and accountability

The implementation will provide the opportunity to disclose what has been paid to different government agencies; the public will then be in position to hold those agencies accountable for how these revenues are used in public expenditure programmes.

(vii) Promote Stability

Implementation of NEITI will promote stability. Investing in Extractive Industries is capital intensive and dependent on long-term stability to generate returns.

(c) Protection Rights

(i) Where it had been customary for any citizen of Nigeria to win certain minerals by virtue of his membership of that community whose custom is to win before the commencement of the 1999 Decree such right is protected but subject to Minister's approval.

(ii) In the course of prospecting or mining, the Act prohibits any person from carrying out operations on, in or under any area held to be sacred or permit injury or destruction of any tree or other thing which is the object of veneration.

- (iii) A licensee or leasee who causes injury or damage to any area, economic tree or thing shall pay fair and adequate compensation to the persons or communities affected by the injury.
 - (iv) No explosive should be used for the extraction of sand, clay, laterite and stone for personal use by the local inhabitants of an area in accordance with the local custom of the community of that area.
 - (v) Applicant for mineral title in respect of a mining area shall give notice of his intention in a prescribed manner to the owner or occupier of the land and consent must be obtained before the license is granted.
 - (vi) A licensee or leasee shall pay compensation to the land owner who suffer damages as a result of pollution of any source of water used for domestic and other purposes as a consequence of the exploration or operations.
5. (a) The administration of the Nigeria Minerals and Mining Sector is vested in the Ministry of Mines and Steel Development through some departments, some of which are:
- (i) Mines Inspectorate Department;
 - (ii) Mines Environment Compliance Department.
State Five (5) functions of each of these departments. (10 Marks)
- (b) Within the context of solid mineral and mining operations, explain briefly the term “Net Smelter Return Royalty”. (4 Marks)
- (c) (i) In relation to the Nigerian Minerals and Mining Act 2007, define the term “Beneficiation”. (2 Marks)
- (ii) State Four (4) objectives of Beneficiation. (4 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 5

(a) (i) Functions of Mines Inspectorate Department

Section 17 of the Nigerian Minerals and Mining Act specifies the following as the functions of the Mines Inspectorate Department-

- (a) exercise general supervision over all reconnaissance, exploration and mining operations to ensure their compliance with the Act;
- (b) supervise and enforce compliance by mineral title holders with all mine health and safety regulations prescribed under the Act and any other law in force;
- (c) prepare and render records, reports and returns as required by the Minister or as prescribed by Regulations;

- (d) take custody of mineral resources required by any Court to be forfeited to the Government ;
- (e) -with the prior approval of the Minister, dispose of any mineral .resources forfeited to the Government;
- (f) carry out investigations and inspections necessary to ensure that all conditions relating to mineral titles and the requirements of the Act are complied with;
- (g) discharge such other duties as may be assigned from time to time, by the Minister; and
- (h) review and recommend to the Minister, programmes for controlling mining operations.

(ii) Mines Environmental Compliance Department

Section 18 of the Nigerian Minerals and Mining Act specifies the following as some of the functions of the Mines Environmental Compliance Department-

- (a) Review all plans, studies and reports required to be prepared by holders of mineral titles in respect of their environmental obligations under Mining Act.
- (b) to monitor and enforce compliance by holders of mineral titles with all environmental requirements and obligations as required by the aw and Regulations and by any other law in force;
- (c) periodically audit the environmental requirements and obligations established pursuant to the Act, its regulations and by any other law in force and make recommendations thereon to the Minister; and
- (d) liaise with relevant agencies of Government with -respect to the social and environment issues involved in mining operations, Mine closure-and reclamation of land.

(b) Net Smelter Return Royalty (NSR)

This is the type of royalty which is determined as a percentage of the value received from the sale of mineral product produced at the mine site. All the costs associated with further downstream processing are deducted before calculating the base value for the royalty. These are the costs incurred wholly by the miner in respect of those products from the time when the smelter or refinery products are delivered to and accepted by the purchasers including smelting and refining costs, realization costs transportation cost of the smelting to the point of delivery.

(c) (i) Beneficiation

Beneficiation is the value added through research to allow the minerals produced to meet appropriate standards for use where the minerals' natural products do not meet the requirements for specified use.

Other difinitions are as follows:

- (i) In the mining industry or extractive metallurgy, beneficiation is any process that improves Tools.

(2)The mining industry or extractive metallurgy, beneficiation is any process that improves (benefits) the economic value of the ore by removing the gangue minerals, which results in a higher grade product (concentrate) and a waste stream (tailings). Examples of beneficiation processes include froth flotation^[1] and gravity separation.(WIKIPEDIA)

(3)Beneficiation, or value-added processing, involves the transformation of a primary material (produced by mining and extraction processes) to a more finished product, which has a higher export sales value.

(www.dmr.gov.za/beneficiation-economics.html)

(4)Is the treatment of raw material (such as iron ore) to improve physical or chemical properties especially in preparation for smelting(Merriam Webster)

(ii) Objectives of Beneficiation

- (1) Establishes a greater degree of cooperation and coordination between the relevant ministries and agencies.
- (2) To promote incentives and benefits for projects that support further local downstream beneficiation.
- (3) To promote investment in mineral beneficiation activities through ensuring competitive and stable costs of public services and goods such as electricity and transport.
- (4) Government intends to continue to support research with a view to developing new or improve beneficiation techniques and to developing new applications for locally produced mineral products.
- (5) To support the establishment of joint venture research and training programmes among Government Institutions and the private sector in order to produce the necessary skilled and productive manpower required for mineral beneficiation developments.
- (6) To review policies and regulations that constrain the downstream development.



THE CHARTERED INSTITUTE OF TAXATION OF NIGERIA

OCTOBER 2017: PROFESSIONAL EXAMINATION

PT 3: TAX MANAGEMENT

ATTEMPT ALL QUESTIONS. SHOW ALL WORKINGS. TIME: 3 HOURS.

1. (a) The organization of Economic Cooperation and Development (OECD) Glossary of Tax Terms defines tax planning as “arrangement of a person’s business and/or private affairs in order to minimize tax liability”.

You are required to state any Ten (10) matters that should be considered when carrying out tax planning. (15 Marks)

- (b) State Five (5) goals that could be achieved through tax planning. (5 Marks)
(Total 20 Marks)

SOLUTION TO QUESTION 1

(a) TEN MATTERS THAT SHOULD BE CONSIDERED WHEN CARRYING OUT TAX PLANNING

The matters that should be considered when carrying out Tax Planning are:

- (i) List of approved taxes and levies;
- (ii) Important dates as may relate to tax issues;
 - Filing of tax returns.
 - Filing of notice of objection.
 - PAYE monthly remittances.
 - PAYE annual returns.
 - Withholding tax monthly returns and remittances.
 - VAT monthly returns and remittances.
 - Monthly pension returns and remittances.
 - Monthly National Housing Fund returns and remittances.
 - Monthly National Housing Fund returns and remittances.
 - Yearly Industrial Training Fund returns and disposal.
- (iii) Timing of fixed assets Acquisition and disposal;
- (iv) Timing of capital allowances claim and amount of claim;
- (v) Where to invest and what to invest in - wise investment decision required
- (vi) Adequate and proper deduction of PAYE;
- (vii) Making specific provision for bad debts and not general provisions;
- (viii) The type of lease should the company adopt – finance lease or operating lease;
- (ix) The type of securities to invest in - property or stocks and shares – capital gains on stock and shares are free of taxes; treasury bills and bond
- (x) Adequate deduction of withholding taxes;
- (xi) Possibility of claiming roll-over relief on capital gains;
- (xii) Consider current tax incentives;
- (xiii) Pioneer companies and products;
- (xiv) Rural investment allowance;
- (xv) Export free zone tax incentives;
- (xvi) Companies can merge to reduce tax payable
- (xvii) Increase in fixed assets to be able to claim more allowances

- (xviii) Using increase in employee's remuneration to reduce the company's overall tax; and
 - (xix) Investment allowance – by replacing old plant and machinery.
- (b) Five (5) Goals That Could Be Achieved Through Tax Planning.
Proper Tax Planning can achieve the following goals:
- (i) Lower current year's tax;
 - (ii) Defer current year's tax to future years;
 - (iii) Reduce tax in future years;
 - (iv) Maximize the tax saving from allowable deductions and reliefs;
 - (v) Taking advantage of all available tax incentives;
 - (vi) Minimising capital gains tax;
 - (vii) Avoid penalties for underpayment of estimated taxes;
 - (viii) Pay tax on time to avoid penalties and interest;
 - (viii) Free up cash for investment of estimated taxes;
 - (ix) Manage your cash flow by projecting when tax payments will be required; and
 - (x) Ensure you get all tax credit available.

EXAMINER'S REPORT

The question tests candidates' knowledge of objectives of carrying out tax planning. The question was very straight forward and performance was good. More than 50% of the candidates score over 60% of the marks allocated.

The commonest pitfall was that some candidates repeated the same points under part (a) and part (b) of the question. Candidates are advised to improve on their preparation for future examinations.

2. It is a known fact that many state governments in Nigeria are facing serious challenges in their assessment and collection of taxes of self-employed persons.

Required:

- (a) Explain what is meant by "Self-employed Persons". (5 Marks)
 - (b) What are their challenges? Suggest ways by which these challenges may be addressed. (10 Marks)
 - (c) Describe the concept of presumptive tax regime. (5 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 2

(a) **Self Employed Persons**

These are tax payers who are not in regular/formal employment but generally engage in self-employment as traders, farmers, artisans/craftsmen, partners in a partnership, registered businesses, sole proprietors and entrepreneur. Most times they operate in the informal sector and may not be registered by any government agency.

- (b) (i) Challenges Faced in the Tax Administration of Self Employed Individuals are:
- Difficulty in establishing the data-base of such persons;
 - Low level and ineffective of education and enlightenment;
 - General tendency towards tax evasion;

- Difficulties in enforcing tax laws because they are generally not registered and outside the tax net;
- Their income level is generally low and may be poor, hence, they see no reason to pay tax;
- No reliable database of taxpayers;
- Informal sector not in the tax net;
- High cost of tax administration relative to tax revenue;
- Operators do not keep records of their businesses and income;
- Merging of business operations with personal expenses makes tax assessment difficult; and
- Most of the businesses are not registered with the relevant government authorities e.g. Corporate Affairs Commission, etc;
- Limited tax personnel to cover the large number of self-employed persons that are widely dispersed across most of the state;
- General complaints about poor governance create apathy towards tax payment; and
- Most of them cannot see how government is spending taxpayers' money of those that are complying and therefore not willing to pay taxes.

(ii) How Government can Mitigate/Deal with the challenges of informal sector in tax administration are:

- Working through their trade association;
- Massive public enlightenment and tax education;
- Building of database of self-employed persons;
- Enforcement of registration with the Corporate Affairs Commission (CAC) which can serve as a source of information of potential tax payers;
- Starting with small tax assessment/charges and growing up gradually for individual taxpayers;
- Governments should ensure judicious use of tax revenue for development to encourage tax payers;
- Encouraging them to keep records of their business especially the registered businesses and partnership businesses;
- Back duty assessment may be employed; and
- A flat tax amount can be imposed on different categories of informal sector operators/businesses for a start.
- Enforce the presumptive Tax regime.

(c) Presumptive tax is a form of assessing tax liability using indirect methods such as income reconstruction or by applying base-line taxation across the entire tax base. Presumptive methods of taxation are thought to be effective in reducing tax avoidance as well as equalizing the distribution of the tax burden.

It differs from the usual rules based on the taxpayers' accounts. The business entity is required to declare a given percentage of his business turnover as his income and has to pay a fixed percentage of it as tax.

Presumptive tax is a form of tax regime designed to bring tax payers operating in the informal sector e.g. artisans, traders, etc. into tax net. If presumptive tax is applied properly, it will contribute to the overall development of the tax system and the economy. For example presumptive tax may be on the following basis: 3% of turnover of the taxpayer or ₦2,500 per month whichever is higher. There is a gazette for the operation of presumptive tax regime. This should be implemented.

EXAMINER'S REPORT

This question tests the knowledge of the candidates on informal sector taxation (taxation of self - employed person). The question was well attempted by the candidates and performance was above average.

The commonest pit falls was the inability of most candidates to explain the concept of presumptive tax regime. Candidates are advised to pay more attention to this area of the syllabus as examiners sets more question in the areas in view of the interest this area of taxation is generating in practice.

3. The Federal Inland Revenue Service (FIRS) Establishment Act 2007 allows the use of Tax Consultants in the execution of some of its functions.

Required:

- (a) What are the roles of the Tax Consultants under the Act? State where they are restricted. (5 Marks)
- (b) State Five (5) tax revenue sources in each of the following levels of government in Nigeria:
- (i) Federal Government (5 Marks)
- (ii) State Government (5 Marks)
- (iii) Local Government (5 Marks)
- (Total 20 Marks)

SOLUTION TO QUESTION 3

- (a) The Roles of Tax Consultant under the Act are:
- Collection of data on the taxpayer in relation to the assigned tax year from the taxpayers records;
 - Classification of tax data in terms of income, expenditure, assets etc.; and
 - Presentation of report on the tax payer to the FIRS based on the assigned task.

Areas in which Tax Consultants are restricted under the Act are:

- They cannot carry out routine responsibilities of the Tax Inspectors of the FIRS;
- They cannot carry out tax assessment but only to lay information at their disposal before the FIRS; and
- They cannot be involved in tax assessment collection or accounting for tax.

- (b) (i) Tax revenue sources of the Federal Government are:
- Companies income tax;
 - Petroleum profit tax;
 - Value added tax;
 - Education tax;
 - Withholding taxes on companies, residents of FCT and non-resident individuals;
 - Capital gains tax on body corporate, Residents of the FCT and non-resident individual;
 - Stamp duties on corporate bodies and residents of the FCT; and
 - Personal income taxes of:
 - * Residents of FCT;

- * Staff of Ministry of Foreign Affairs and non-resident individuals;
- * Members of the Armed forces; and
- * Members of the Nigerian Police Force.

- (ii) Tax revenue sources of the State Government are:
- Personal income tax in respect of:
 - * Pay-As-You-Earn (residents of the state exclude those under Federal jurisdiction); and
 - * Direct taxation (self-assessment).
 - Withholding taxes (individuals, partnership);
 - Capital gains tax (individuals);
 - Stamp duties on instruments created by individuals;
 - Road taxes;
 - Market taxes and levies where the state has funded such project;
 - Pools betting, Lotteries, Gaming and Casino taxes;
 - Street naming/registration fees in the state capital;
 - Development levies (individuals); and
 - Rights of occupancy on land owned by the state government in urban areas of the state.
- (iii) Tax revenue sources of the Local Government are:
- Tenement rates;
 - Shops and kiosk rates;
 - On and off liquor license fees;
 - Slaughter slab fees;
 - Market taxes and levies except those financed by the state;
 - Radio and Television license fees;
 - Merriment and Road closure fees;
 - Bicycle, canoes, wheelbarrow and other cart fees;
 - Wrong packing charges;
 - Signboard and advertisement permit fees;
 - Public convenience, sewage disposal fees;
 - Customary burial ground permit fees;
 - Religious places establishment permit fees;
 - Domestic animal license fees; and
 - Cattle tax (payable by cattle owners only).

EXAMINER'S REPORT

The question tests the following areas of the syllabus:

- Role of tax consultant under the FIRS Establishment Act; and
- Tax revenue sources for various tier of Government.

The question was well understood by the candidates and performance was good. Although some candidates could not correctly state tax revenue expected to be collected by various tiers of Government. The question also tests the knowledge of the students in the current approved list of taxes and levies (order 2015).

Candidates are advised to pay more attention to all areas of the syllabus for better performance in future examination.

4. (a) With respect to Industrial Development (Income Tax Relief) Act, discuss the following:
- (i) Restrictions on trading prior to end of tax relief period. (2 Marks)

- (ii) Restrictions on distribution of dividends and granting of loans. (2 Marks)
- (iii) Provision for plantation industry. (3 Marks)
- (iv) Accounting periods. (3 Marks)

(b) Robert Cocoa Processing Co. Ltd. was established in 2008 and commenced operations on 1 July in the same year.

The adjusted profits or loss of the company are as stated below:

	₦
Period to 30 September 2009	(800,000)
Year ended 30 September 2010	1,700,000
Year ended 30 September 2011	2,950,000

Capital allowances for the relevant years of assessment were computed and agreed with the Federal Inland Revenue Service as follows:

	₦
2008 Year of assessment	750,000
2009 Year of assessment	600,000
2010 Year of assessment	700,000
2011 Year of assessment	550,000
2012 Year of assessment	480,000

Required:

Determine the company's income tax liability for all the relevant years, assuming the company was denied pioneer status. (10 Marks)

(Total 20 Marks)

SOLUTION TO QUESTION 4

- (a) (i) Prior to the expiration of its tax relief period a pioneer company shall not carry on any trade or business other than the pioneer trade or business. Otherwise any profit earned from any of its pioneer business before the expiration of the tax relief period shall be liable to tax.
- (ii) During its tax relief period, a pioneer company shall not:
 - Distribute any dividend/bonus to its shareholders in excess of the credit balance in the account maintained for exempted profits as at the date of such distribution; and
 - Grant any loan without first obtaining the consent of the Minister of Finance which shall only be given if he is satisfied that the pioneer company is obtaining adequate security and a reasonable rate of interest for any such loan.
- (iii) The company is deemed to commence on the date when planting first reaches maturity. Any expenditure incurred on the maintenance of a planted area up to that date is deemed to be qualifying plantation expenditure and is eligible for capital allowances.

- (iv) The accounting period shall be:
- A period not exceeding one year commencing on its production day;
 - A successive period of one year thereafter; and
 - A period not exceeding one year ending at a date when its tax relief period ends.

(b) **ROBERT CO. LTD**
INCOME TAX COMPUTATION

Date of commencement of business – 1 July, 2008 commencement provisions

Assessment Year	Without Election Basis Period	With Election Basis Period
2008	1/7/08 – 31/12/08	1/7/08 – 31/12/08
2009	1/7/08 – 30/6/09	1/1/09 – 31/12/09
2010	1/10/08 – 30/9/10	1/1/10 – 31/12/10
2011	1/10/09 – 30/9/10	1/10/10 – 30/9/10
2012	1/10/10 – 30/9/11	1/10/10 – 30/9/11

Without Election

<u>2008</u>		
6/15 x ₦800,000 Loss		<u>(320,000)</u>
2008 Assessment		NIL
Capital allowance unutilized	<u>750,000</u>	
<u>2009</u>		<u>(640,000)</u>
12/15 x ₦800,000		
2009 Assessment		NIL
Loss b/f	320,000	
Loss for 2009	<u>640,000</u>	
	<u>960,000</u>	
Loss c/f cannot exceed actual Loss		<u>(800,000)</u>
Capital allowances for the year	600,000	
b/f	<u>750,000</u>	
c/f	<u>1,350,000</u>	
<u>2010</u>		<u>(640,000)</u>
12/15 x ₦800,000 Loss		
2010 Assessment		NIL
Capital allowances		
For the year	700,000	
B/f	<u>1,350,000</u>	
C/f	<u>2,050,000</u>	
Loss c/f cannot exceed actual		<u>(800,000)</u>
<u>2011</u>		
Adjusted Profit for the year		1,700,000
Less loss relief		<u>(800,000)</u>
		900,000
Less capital allowances - for the year	550,000	

- b/f	<u>2,050,000</u>	
	2,600,000	
Amount that can be relieved	<u>900,000</u>	<u>900,000</u>
- c/f	1,700,000	
2011 Assessment		<u>NIL</u>
<u>2012</u>		
Adjusted profit		2,950,000
Less capital allowance		
- For the year	480,000	
- b/f	<u>1,700,000</u>	<u>2,180,000</u>
Chargeable profit		<u>770,000</u>
Tax @ 30%		<u>231,000</u>

With Election

The Assessment for 2009 and 2010 assessment years would be:

2009 – 1/1/09 – 31/12/09 ₦
 $9/12 \times (\text{₦}800,000) + 3/12 \times \text{₦}1,700,000$
 $(\text{₦}480,000) + \text{₦}425,000$ (₦55,000) Loss

2010 – 1/1/10 – 31/12/10
 $9/12 \times \text{₦}1,700,000 + 3/12 \times \text{₦}2,950,000$
 $\text{₦}1,275,000 + \text{₦}737,500$ ₦2,012,500 Profit

- (a) The two years together will give a profit of ₦1,957,500. Based on election as against a NIL assessable profit without election. It is not to the taxpayer's advantage to elect.
- (b) Cocoa processing will fall into the business of manufacturing, hence no restriction of capital allowance.

EXAMINER'S REPORT

The question test candidates understanding of the following areas of the syllabus:

- Tax provisions of Industrial Development (Income Tax Relief) Act; and
- Pioneer status.

Many of the candidates that attempted the question performed badly in all areas of the question. Candidates could not discuss the various provisions of Industrial Development (Income Tax Relief) Act. While others could not calculate the company income tax liability for all the relevant years under pioneer status.

Candidates are advised to pay attention to all sections of the syllabus for better performance in future.

5. (a) Mergers and acquisitions are transactions in which ownership of companies or other businesses are transferred or combined. It is therefore fundamental to conduct due diligence before such transactions.

Enumerate Seven (7) areas to focus upon when carrying out such due diligence.
(14 Marks)

- (b) State any Three (3) reasons that may necessitate merger and acquisitions.

(6 Marks)

(Total 20 Marks)

SOLUTION TO QUESTION 5

- (a) Seven areas to focus upon when carrying out due diligence are:
- (i) Existing and pending litigation;
 - (ii) Memorandum and Articles of Association;
 - (iii) Ownership of company;
 - (iv) Shareholding/Directors of the company;
 - (v) Share capital;
 - (vi) Taxation matters;
 - (vii) Regulatory compliance issues;
 - (viii) Insurance and liability;
 - (ix) Employees and related information;
 - (x) Financial information;
 - (xi) Pending and potential litigations;
 - (xii) Financial matters;
 - (xiii) Customers/Sales; and
 - (xiv) Nature/cultural background of the company.
- (b) Reasons for Mergers and Acquisition are:
- (i) The creation of more wealth for shareholders;
 - (ii) The quest for increased market share and reduced competition;
 - (iii) The building drive of the business managers;
 - (iv) The prevailing local economic situations in a country can also create favourable conditions for mergers and acquisition activities;
 - (v) Diversification of product or services;
 - (vi) Regulatory authority directives to merge; and
 - (vii) To acquire technological advancement.

EXAMINER'S REPORT

This is a question on merger and acquisition. It is a very straight forward question and candidates performance was above average.

Candidates are advised to pay more attention to all areas of the syllabus for better performance in future.