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SCHOOL OF POSTGRADUATE STUDIES

FACULTY OF LAW

COURSE CODE: PUL812

COURSE TITLE: LAW OF TAXATION II

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PUL812 – LAW OF TAXATION II

COURSE GUIDE

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INTRODUCTION

Taxation law generally regulates the how the income of individuals and companies are being taxed for public use.

Our discussion in this semester will focus on taxing powers and how they are distributed among the tiers of the governments. We will discuss the tax offences and their punishments including the duties and obligations imposed by governments as well as taxation of companies' income.

Course Learning Outcomes

At the end of the study in this unit, you should be able to

1) Understand the term 'taxing power'
2) Discuss how taxing powers are shared among tiers of the governments
3) Explain tax offences and their penalties

WORKING THROUGH THIS COURSE

To complete this course, you are advised to read the study units, recommended books, relevant cases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course should take you about 11 weeks to complete. You will find all the components of the course listed below. You need to makeout time for each unit in order to complete the course successfully and on time.

COURSE MATERIALS

The major components of the course are.

a) Course guide.
b) Study Units.
c) Textbooks
d) Assignment file/Seminar Paper
e) Presentation schedule.

MODULES AND STUDY UNITS

The discussion in this course is broken down to 15 (fifteen) study units that are broadly dividedinto SEVEN modules as follows –

MODULE 1 TAXING POWERS IN NIGERIA

Unit 1: Meaning of taxing powers

Unit 2: Analysis of taxing power between the three tiers of government

Unit 3: Freedom of inter-state trade, commerce and restrains on taxing powers between the three tiers of government

MODULE 2: TAX OFFENCES AND PENALTIES IN NIGERIA

Unit 1: Tax offences

Unit 2: Sanctions against tax Evasion and tax avoidance in Nigeria

MODULE 3: DUTIES AND OBLIGATIONS IMPOSED BY GOVERNMENT

Unit 1: Stamp duties

Unit 2: Other duties and obligations

MODULE 4: TAXATION OF COMPANIES INCOME TAX IN NIGERIA

Unit 1: The administration and chargeability of company income tax

Unit 2: Company income tax exemption and RELIEFS.

MODULE 5: Taxation of Capital Gains in Nigeria

Unit 1: The administration and chargeability of capital gains Tax

Unit 2: Capital gains tax exemptions and reliefs.

MODULE 6: PETROLEUM PROFIT TAX IN NIGERIA

Unit 1: Administration of petroleum profit tax in Nigeria

Unit 2: Petroleum profit tax reliefs and exemptions

MODULE 7: VALUE ADDED TAX IN NIGERIA

Unit 1: The administration of value added Tax in Nigeria

Unit 2: Value added tax chargeability.

All these Units are demanding. They also deal with basic principles and values, which merit your attention and thought. Tackle them in separate study periods. You may require several hours for each.

We suggest that the Modules be studied one after the other, since they are linked by a commontheme. You will gain more from them if you have first carried out work on the law of sea. You will then have a clearer picture into which to paint these topics. Subsequent units are written on the assumption that you have completed previous units.

Each study unit consists of one week's work and includes specific Learning Outcomes, directions for study, reading materials and Self-Assessment Exercises *(SAE).* Together, these exercises will assist you in achieving the stated Learning Outcomes of the individual units andof the course.

REFERENCES / FURTHER READING

Certain books have been recommended in the course. You should read them where so directedbefore attempting the exercise.

ASSESSMENT

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge acquiredduring the course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the Assignment file. Thework that you submit to your tutor for assessment will count for 30% of your total score.

SELF-ASSESSMENT EXERCISES

There is a self-assessment exercise at the end for every unit. You are required to attempt all theassignments. You will be assessed on all of them, but the best three performances will be usedfor assessment. The assignments carry 10% each. Extensions will not be granted after the duedate unless under exceptional circumstances.

FINAL EXAMINATION AND GRADING

The duration of the final examination for this course is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self- assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit and taking the examination to revise the entire course. You may find it useful to review yourself assessment exercises and tutor marked assignments before the examination.

COURSE SCORE DISTRIBUTION

The following table lays out how the actual course marking is broken down.

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments. Best three marks of the four counts at 30% of course marks.
Final examination	70% of overall course score
Total	100% of course score.

HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might giveyou in-class exercise, you study units provide exercises for you to do at appropriate times. Each of the study units follows the same format. The first item is an introduction to the subjectmatter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning objectives. These objectives let you know what you should beable to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you haveachieved the

objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self-Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self-Assessment Exercise as you come to it in the study unit.Examples are given in the study units. Work through these when you have come to them.

TUTORS AND TUTORIALS

There are 11 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of the tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group. Your tutor will mark and comment on yourassignments. Keep a close watch on your progress and on any difficulties you might encounter.Your tutor may help and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutorand returned to you as soon as possible.

Please do not hesitate to contact your tutor by telephone or e-mail if:

- You do not understand any part of the study units or the assigned readings.
- You have difficulty with the self-assessment exercises.
- You have a question or a problem with an assignment, with your tutor's comments onan assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face to face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

GENERAL INTRODUCTION/COURSE GUIDE

Under the first semester segment of the academic programme referred to as law of taxation I, PUL 806, the basic principles of law of taxation were discussed. But in this second semester, law of taxation II, PUL 816, we shall consider some of the major t ax legislation that cover most of the important aspects of Nigerian revenue laws ad practice.

The synopsis covers subject areas, such as the taxing powers between the various tiers of government from the federal to the local government levels under module 1. Module 2 considered the tax offences and penalties in Nigeria especially the issues of tax evasion and avoidance. Under Module 3 the duties and obligations of stamp duties, customs and excise duties are examined including the administration of the subject matter.

In module 4 and 5, the taxation of company income tax and capital gains tax are discussed especially on their administration and chargeability on tax payers in Nigeria. This will give students more foresight into the Nigerian tax system. The petroleum profit tax is also considered in module 6.

Finally, the Value Added Tax which is a very topical issue in Nigerian tax administrative system. Of course, students will be interested in these particular areas of tax laws. This is discussed in module 7 respectively. Below are the overall contents of the synopsis.

MODULE 1 TAXING POWERS IN NIGERIA

UNIT 1: Meaning and History of Taxing Powers

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1.3 Meaning and History of Taxing Powers

1.4 Meaning of Taxing Powers

1.5 History of Taxing Powers in Nigeria

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1.7 Summary

1.8 References/Further Readings/Web Sources

1.9 Answers to SAEs

1.1 Introduction

This unit discusses the meaning and concept of taxing powers, the history of taxing powers in Nigeria and the present position of taxing powers among the three tiers of government in Nigeria: viz. Federal Government, State Government and the Local Government.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Understand the term 'taxing power'
ii. Analyse how these taxing powers are distributed among the three tiers of government.
iii. Explain the position of 1999 Constitution of the Federal Republic of Nigeria

1.3 Meaning and History of Taxing Powers

1.3.1 Meaning of Taxing Power

Taxing power means the ability of a legal body vested with responsibility of imposing tax liability on the taxpayers' income. Usually, it is the Constitution that allocates these taxing powers. It is the power and authority by a tier of government to impose and collect taxes from the citizenry in that particular state. Thus, Abiola (2002) posit that taxing power is the power of a level of government to impose a tax by its own law and prescribe conditions for the collection and due administration of the tax either by its own agency or that of another level of government.

This power is the ability of government to levy tax or raise revenue through taxation. The power is said to have its origin in the implied common law powers of government and that such power "ought to know no bounds than the exigencies of the nation and the resources of the community.

This power has been variously described as an imperious necessity of all governments, which ought not to be restricted by merely legal friction", "not dependent upon the consent of the individual taxpayer" (Abiola:2009:44)

The power to tax is the ability or power of any government to levy tax or raise revenue through taxation. The power to tax is conceived as being inherent in sovereignty and essential to the existence of independent government. It is a right that resides in the government as part of itself and is co-extensive with that to which it is incident (Anifowose: 2010 185). What we are saying here is that, tax can only be levied by a recognized government. Tax exhibit sovereignty and it is the responsibility of government and not individual to impose.

(***What is taxing power and how is this power shred among levels of government?***)

Such power must be constitutionally derived. A tax power is not a mere power to collect taxes or levies because such powers is executive or administrative, but instead a statutory ground to impose tax. Any imposition and collection of tax outside the jurisdiction of tax statute or that is devoid of the state legislative arm approval is a self-ascribed taxing power which to that extent is null.

Self-Assessment Exercises 1

1. What was the major recommendation of Sir Louis Chick Commission on taxation?
2. Why do you think that the 1999 Constitutions, did not do much to improve on the lot of the states in terms of allocation of financial sovereignty?

1.4 History of taxing powers in Nigeria

Nigeria operated a Unitary System of Government until 1946. With the introduction of the Richard's Constitution in 1946, the Regions created were given some measure of administrative authority and responsibility. However, they were not autonomous. They could only legislate on certain local matters, with the sole power of taxation being under the control of the central government. That was the position until 1955 when Sir Louis Chick Commission recommended that, each of the regional legislatures should be given power to legislate on revenue matters within their region, was adopted. Consequently, Finance Law was enacted in the Eastern Region. This was followed by the Western Region Income Tax Law. The aftermath of that decision was the appointment of Raisman Commission. One of Its terms of reference was a recommendation, which would amongst other things, secure "that the maximum possible proportion of the income of regional governments should be in the exclusive power of those governments to levy and collect". The commission's recommendations were accepted and embodied in the 1960 Independence Constitution.

The 1963 Republican Constitution had two legislative lists-current and Exclusive lists, with provision for resolution in case of inconsistency in relation to matters he Concurrent Legislative List. If any legislation on of the issues contained in the Concurrent Legislative by Federal or Central Government conflict with any such legislation carried out by any of the regional governments, that legislature is void to the extent of the inconsistency. During the period of the military rule between 6 and 1979, there were a lot of changes in the tent of each list. Export duties and sales Tax ii cultural produce were abolished, poll taxes were brought to a uniform level throughout the country; a standardized personal income tax rate was established throughout the

country, thereby removing the state's power to vary the rate. Pools betting, casino and gaming were also abolished. The consequence of these measures was the increased dependence of the State Governments for the revenue on the Federal Government to over 70% in the period 1964- 1979

(Trace the development of taxing power in Nigeria)

The 1979 Constitution brought about certain changes to the position of taxing powers in Nigeria. These changes were retained by the 1999 Constitution. The relevant portions of section 4 of the 1999 Constitution are as follows:

Section 4:

1. The legislative powers of the Federal Republic of Nigeria shall be vested in the National Assembly for the Federation which shall consist of a Senate and a House of Representatives.
2. The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter Included in the 'Exclusive Legislative List set out in part 1 of the second schedule to this Constitution.
3. The power of the National Assembly to make laws for the peace order and good government of the Federation with respect to any matter Included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.
4. In addition, and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:

a. any matter in the Concurrent Legislative List set out in the first column of part II of the second schedule to this Constitution to the extent prescribed in the second column Opposite thereto; and
b. any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

5. If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that, other law shall to the extent of the Inconsistency, be void.

6. The legislative powers of a state of the federation shall be vested in the House of Assembly of the State.
7. The House of Assembly of a state shall have power to make law for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:

a. any matter not included in the Exclusive Legislative List set out in part I of the second schedule to this Constitution;
b. any matter included in the Concurrent Legislative List set out in the first column of part II of the second schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
c. any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

The 1979 and 1999 Constitutions, have not done much to improve on the lot of the states in terms of allocation of financial sovereignty, with the consequence that the Federal Government maintains its strong position. Thus, under the Exclusive Legislative List, set out in part I to the second schedule of the 1999 Constitution, the Federal Government has exclusive jurisdiction on the following taxes:

1. Item 16: Customs and Excise duties

2. Item 25: Export duties

3. Item 36: Revenue from shipping and navigation on International waters, inland water ways, and revenue from Federal ports.

4. Item 37: Mining rents and royalties

5. Item 58: Stamp duties

6. Item 59: Taxation of incomes, profits and capital gains, except as otherwise prescribed by this Constitution. Under this item the Federal Government has exclusive power to legislate on the taxation of individuals and companies throughout the whole federation.

7. Item 62: Trade and Commerce, and in particular;

a. trade and commerce between Nigeria and other countries, including import of commodities into and export of commodities from Nigeria, and trade and commerce between the states;
b. establishment of a purchasing authority with power to acquire for export or sale In world markets such agricultural produce as may be designated by the National Assembly;
c. inspection of produce to be exported from Nigeria and the enforcement of grades and standards of quality in respect of produce so inspected;
d. establishment of a body to prescribe and enforce standards of goods and commodities offered for sale;
e. control of the prices of goods and commodities designated by the National Assembly as essential goods or commodities; and
f. registration of business names:

8. Item 66. Wireless, broadcasting and television other than broadcasting and television provided by the government of a state; allocation of wave lengths for wireless, broadcasting and television transmission.

The Federal Government has exclusive right to legislate on all the enumerated subject-matters from the above items. The implication is that no other level of government apart from the Federal Government can impose the following:

1) Excise Duty
2) Import and Export Duty
3) Companies Tax or any other type of tax on companies
4) Petroleum Tax or any other tax relating to mines and minerals
5) Stamp Duties
6) Incomes, profits and capital gains taxes

7) Taxes relating to trade anc4 commerce in all its ramifications.

8) Communication and Tele-communication taxes.e.g. radio and television licence etc.

Now the important question is: Are there situations where the state or local government legislate and collect taxes on any of those *items* ***in the Exclusive Legislative List?*** The various states impose various taxes on companies like capital gains Tax, withholding tax, stamp duties, business premises registration fees, pools betting, lottering, gaming and casino taxes, economic development levy, tenement rates and such other taxes. Individuals within the various states are also, required to pay personal income tax, capital gains tax, stamp duties, withholding tax etc.

(How has the 1999 Constitution fared in the allocation of taxing power among levels of government?).

Certainly, there is duplication of taxes that are payable by both companies and individuals although the Constitution provides that the states and local government council, are to ensure that, the tax or duty is not levied on the same person by more than one state or local government council. The fact is that the Constitution is silent on the duplication of taxes payable to the federal and state governments. The question is whether duplication of taxes is allowed between federal and state governments? It is necessary to look at the concurrent legislative list to find out.

Itern D — Concurrent Legislative List provides:

> "In the exercise of its powers to Impose any tax or duty on-
>
> (a) Capital gains, incomes or profits of persons other than companies
>
> (b) Documents or transactions by way of stamp duties;

> The National Assembly may, subject to such conditions as it may prescribe, provide that the collection' of any such tax or duty or the administration of the law Imposing It, shall be carried out by the Government of a state or other authority of a state.
>
> Where an Act of the National Assembly provides for the collection of tax or duty on capital gain, Income or profit or the administration of any law by an authority of a state in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty In such manner as to ensure that such tax or duty is not levied on the same person by more than one state".

Since the Constitution provides that there must not be duplication of taxes on the same person by more than one state, no such provision is made with respect to taxes between federal government and state governments then It is safe to assume that it is possible for one person to pay stamp duties to both federal government and state government on the same subject matter or even withholding tax on Income of individuals from companies.

The provision of the constitution as stated above as it relates to the power to tax by the three, levels of government cannot but create conflict. This conflict is more pronounced in the areas of payment of stamp city, payment for business premises, development levy, withholding tax, sharing of value added tax (VAT) capital gains tax.

It is due to this conflict that the National Assembly has enacted the Taxes and Levies (Approved List for Collection) Act, 2004 on the 30th of September 1998. This Act stipulates the various taxes and levies that are to be collected by the three tiers of government, in Nigeria.

The Act states thus:

> Section 1(1) Notwithstanding anything contained In the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, the Federal Government, State , Government and Local Government, shall be responsible for collecting the taxes and levies listed in Parts I, Part II and Part III of the schedule to this Act, respectively, *(2)* The minister of Finance may, on the advice of the Joi1 Tax Board arid any order published In the Gazette, amend the schedule to this Act.

2 (1) Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria l979, as amended, or any other enactment or law, no person, other than" the appropriate tax authority, shall assess or collect, on behalf of the government, any tax or levy listed in the schedule to this Act, and members of the Nigeria Police Force, shall only be used in accordance with the provisions of the tax laws.

Parts I, II, and II of the schedule to the Taxes and levies Act of 2004' which are referred to above state as follows:

PART I

Taxes to be cóllect1 by the Federal Government

1. Companies income Tax
2. Withholding Tax on companies, residents of the Federal Capital Territory, Abuja and nonresident individuals
3. Petroleum profits tax.
4. Value Added Tax

5. Education Tax
6. Capital Gains Tax on residents of the Federal Capital Territory, Abuja, bodies Corporate and non-resident individuals.
7. Stamp Duties on bodies corporate and residents the Federal Capital Territory, Abuja.
8. personal income Tax in respect of

a. Members of the Armed Forces of the Federation;

b. Members of the Nigeria Police Force;

c. Residents of the Federal Capital Territory, Abuja; and

d. Staff of the Ministry of Foreign Affairs and non-resident individuals.

PART II

Taxes and levies to be collected by the State Governments.

1. Personal Income Tax in respect of —
    a. Pay-As-You-Earn (PAYE); and
    b. Direct taxation (Self-assessment).
2. Withholding Tax (individuals only)
3. Capital Gains Tax (individuals only)
4. Stamp Duties on instruments executed by individuals.
5. Pools betting and lotteries, gaming and casino taxes.
6. Road taxes
7. Business premises registration fee in respect of
    a. Urban areas as defined by each state, maximum of —

i. 10,000 for registration; and

ii. 5,000 per annum for renewal of registration; and

b. Rural areas

i. 2,000 for registration; and

ii. 1,000 per annum for renewal of registration.

8. Development levy (Individuals only) not more than ₦100 per annum on all taxable Individual.
9. Naming of street registration fees in the state capital.
10. Right of occupancy fees on lands owned by the State government urban areas of the state.
11. Market tae and levies where state finance is involved.

PART III

Taxes and levies are collected by the Local governments.

1. Shops and kiosks rates.
2. Tenement rates
3. On and off liquor licence fees.
4. Slaughter slab fees.
5. Marriage, birth and death registration fees.
6. Naming of registration fee, excluding any street in the State capital.
7. Right of occupancy fees on lands in rural areas, excluding those collectable by the Federal and State Governments.
8. Market taxes ad levies excluding ay market where state finance is involved.
9. Motor Park levies.
10. Domestic animal licence fees.
11. Bicycle, truck, canoe, wheel barrow and cart fees, other than mechanically propelled truck.
12. Cattie tax payable by cattie farmers only.

13. Merriment and road closure levy.
14. Radio and television licenses fees (other than radio and television transmitter).
15. Vehicle radio licence fees (to be imposed by the local government of the state in which the car is registered).
16. Wrong parking charges.
17. Public conveniences, sewage and refuse disposal fees.
18. Customary burial ground permit fees.
19. Religious places establishment permit fees.
20. Signboard and advertisement permit fees.

The Taxes and Levies (Approved List for Collection) Act, 2004 (amended in 2014) makes the three lists to show which tier of government that will collect particular taxes. Power to collect tax is not synonymous with power to impose the tax. At the same time, the fact that an arm of government has power to collect or impose a particular tax, does not make him a beneficiary of the said tax. For instance, it is the state government that collects personal income taxes, Pay-As-You-Earn taxes and direct taxation (self-assessment) under part II of the schedule to the Taxes and Levies Act, while it is the Federal Government through the National Assembly that imposes this tax under item. 59 of Exclusive Legislative List. Again, it is the Federal Government that collects the Value Added Tax through the State VAT offices for the benefits of the respective State Governments. The Federal Government only deducts administrative costs of collection of the Value Added Tax. The Federal Government is allowed to impose personal Income taxes on individuals so as to ensure uniformity from State to State.

In the taxing powers found in the Exclusive Legislative .1st and Concurrent Legislative List, the main areas of conflict are as follows:

a. Stamp Duty

Item 58 in the Exclusive Legislative List is on stamp duties. Equally, under Item D No. 7 (b) of the Concurrent 1egislative List, states have the power "to impose any x or duty on documents or transactions by way of tamp duties".

From the wording of these items on the Exclusive Legislative List and the Concurrent Legislative List, acre is no distinction between the power to impose taxes on stamp duties vested on the Federal government and that vested on the State Government. This situation has caused untold hardship to tax payers. ***(What is 'duty' in relation to tax?).***

If a company borrows money from a bank by sing a property of one of the directors, he may pay stamp duty to the state for a tripartite legal mortgage, perceiving that the land used is within the state. They and may reject such stamp duty and refer the borrower to the federal stamp duty office because an incorporated company is involved. If he pays again to federal stamp duties office for stamping, he may not key get a refund from the state government. This becomes double taxation payment. If on the other side e first stamps the document at the federal stamp duties office and goes to state land registry to register the transaction, some states have the effrontery to fuse registration on the grounds that the document in question was not stamped in their state.

On the payment of stamp duty on each leaf in a cheque book, the duty is payable to the Federal Government because it is the bank concerned that effected the payment to the Federal Government when, in actual fact, it is the individual customers that really pays the stamp duty. It is not proper

for an individual that lives within a state to pay stamp duty on his cheque book to the Federal Government. This offends paragraph 4 part ii, Schedule to the Taxes and Levies Act.

The Taxes and Levies Act attempted to lay the issue to rest by specifying that the Federal Government, should collect "stamp duties On corporate and residents of the Federal Capital Territory, Abuja" and the State should collect stamp duties on instruments executed by individuals". These provisions of the Taxes and Levies Act are in respect of collection and not imposition. The words used in Concurrent Legislative are to "impose any tax or duty on documents or transactions by way of stamp duties". There are no restrictions imposed there.

(What is stamp duty and how is it differentiated from other forms of duty?).

b. Development Levy

The Taxes and Levies Act, in paragraph 8 of part II to the schedule, grants to the states, the right to collect development levy (from individuals only) of not more than N100 per annum. There is no provision or constitutional excuse for the states to demand from companies any form of development levy or the other. In paragraph 1, Part I of the schedule to the Taxes and Levies Act, it is specifically provided that it is the Federal Government that should collect company income tax. If after paying company taxes, to the federal Government and the States insist on collecting development Levies from the companies, it would certainly amount to double taxation.

In most states of the Federation, Companies are made pay development levies. In some states, as much as 5,000.00, is levied as development levy. It is doubtful any state of Nigeria charges as low as ₦100 per mum as stipulated by the law.

c.* B*usiness Premises Registration Levy

1 paragraph 7, Part II of schedule to Taxes and Levies Act, it is provided that the State Government should collect Business premises registration fee in respect of

a) Urban premises registration fee in respect of

i. ₦10,000 for registration; and

ii. ₦5,0OO per annum for renewal of registration; and

b) Rural areas

i. ₦2,000 for registration; and

ii. ₦1,000 per annum for renewal of registration.

It is not stated whether the states can collect these levies from companies, but one may assume that ace the states lack power to tax companies that the rove provisions would naturally apply to individuals. This is against the background that the Federal government, has based on its powers to Impose taxes on companies under the Exclusive Legislative List, enacted the Company Income Tax Act, 2004. Unfortunately, this is not the position in practice. In practice, the states insist that the companies should pay business premises levy. Even the local government councils Insist that companies doing business within their domain, should pay countless number of taxes and levies, including development and advert levy for the sign posts of the company. This is after the company has paid Income tax to the Federal Government under the CITA 2004. This practice is

unconstitutional and illegal. Any such tax assessment made upon companies is made without jurisdiction and is therefore, null void and, of no effect. Such a company is entitled to have the assessment declared a nullity and therefore set aside.

d. Power to Impose Value Added Tax

This is a consumption tax that took over the existence of sales tax. It is currently regulated by the Value Added Tax Act, of 1993. This tax is collected at each stage of the production and distribution chain. This type of tax took over the position of sales tax.

(State whether or not, the power to impose value added tax is in the exclusive list).

By virtue of section 4(2) of the 1999 Constitution, the National Assembly has exclusive legislative powers to make laws with respect to any matter contained in the exclusive Legislative List. The Houses of Assembly of States have no jurisdiction to make laws on any matters contained in the list. The National Assembly has powers (not necessarily exclusive) to make laws with respect to:

a) any matter on the Concurrent Legislative List; and
b) any other matter in respect of which, empowered to make laws in accordance the provisions of the Constitution.

The scope of the legislative powers of the Houses of Assembly of the states is provided in section 4(7) of Constitution:

The House of Assembly of a state shall have power o make laws ... with respect to the following matters, that is to say:

a) any matter not included in the Exclusive Legislative List set out in part 1 of the second schedule to this Constitution;

b) any matter included in the concurrent legislative list set out in the first column of part II of the second schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
c) any other matter with respect to which empowered to make laws in accordance with the provisions of this Constitution.

It is significant to note that section 4(7) by necessary implication, vests residual legislative Powers House of Assembly of the States. This therefore that the National Assembly cannot make law residual matters, since its legislative competence is limited to those matters on which it is expressly empowered to make laws by the Constitution. Item 59 of the Exclusive Legislative List gave the National Assembly power to legislate on taxation of incomes, profits and capital gains. It does not expressly include taxation of consumption. With respect to the Concurrent Legislative List, the only taxation therein is listed as item D (on collection of taxes). The scope of the legislative powers of the National Assembly, in this respect, is provided in paragraphs, seven and eight. In the exercise of its powers to impose tax or duty on: -

a) capital gains incomes or profits of other than companies; and
b) documents or transactions by way of duties, the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law Imposing it, shall be carried out by the Government of a state or other authority of a state.

Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, Incomes or profit or the administration of any law by an authority of a state' in accordance with

paragraph ‘7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or ‘duty is not levied on the same person by more than one state.

The above provisions deal with the powers of the National Assembly when Imposing tax on capital gains, incomes,’ or profits of Individuals, or stamp ‘duty on documents or transactions, to authorize the states, or authorities of the states (such as the State Boards of Internal Revenues), to collect such taxes or duties or administer such laws. The provisions also obligate the National Assembly to ensure that any such laws do not subject the tax payers to double taxation In respect of the same head of tax (capital gains, incomes or profits) or stamp duty in respect of the same document or transaction, in more than one state. The provisions and indeed, the entire concurrent legislative list are on taxation of consumption.

Although there is no express provision in the Constitution (including the legislative lists) empowering National Assembly to make laws Imposing VAT, yet item 6 2(a) of the Exclusive Legislative list, under which the National Assembly has exclusive power to make laws on trade and commerce, and in particular, trade and commerce between Nigeria and other countries, including import of commodities into and export of commodities from Nigeria, and trade and commerce between the states...

By virtue of item 68 of the list, the National Assembly also has exclusive powers to make laws, on matter incidental or supplementary to any matter mentioned elsewhere in this list.” The issue, therefore, turns on whether VAT is an incidental or supplementary matter to, the subject of 62, to impose VAT? Answer to this question is **yes.** The constitutionality of the Sale Tax of states was the subject of two landmark cases. **In Attorney-General, Ogun State V Aberuagba (1985) 1**

NWLR, Pt 3, 395, the Supreme Court was invited to decide the validity or otherwise of the Sales Tax Law of Ogun State, which provided in section 3(1) as follows:

A tax to be known as Sales Tax, shall be charged in accordance with the provisions of this law on all taxable products brought into the state and on the supply of goods and services in any inn not exempted from the requirement of registration under this law at the rate specified opposite each class of goods or service in the First schedule to this law.

In invalidating this provision, the court held:

Now, section 3(1) of the law imposes sales tax on products brought into Ogun State …. Since the sales tax is only chargeable on the products brought into Ogun State from another state or from outside Nigeria, it follows that the tax Is a discriminating tax directed against Inter-state or international trade and commerce which are within the exclusive regulatory power of the federation under item 61(a) of the amended 1999 Constitution. Accordingly, I hold so far as the law purports to impose sales tax on taxable products brought into the state, it offends the provision of inter-state or international and commerce and contravenes section 4(3) the Constitution declare the law to that extent.

The ***Aberuagba case*** was applied in **Nigeria Soft Drinks Company Ltd V. Attorney-General of Lagos State**, **(1982) 2 NWLR, Pt.57, 444**, where the Court of Appeal considered the constitutionality of the STL of Lagos State. Sections 1 of the law provided:

1. As from the commencement of this law a tax to a1led hereinafter in this law as “Sales Tax” be charged in the state subject to and in accordance with the provisions of this law on all

chargeable commodities listed In the first column schedule to this law at the rates specified In second column of the schedule.

2. Every purchaser or consumer of any of the chargeable commodities listed in the schedule shall be liable to pay 'sales tax at the time of the purchase or at the time of consumption.

In declaring the above provisions constitutional and distinguishing them from those of Ogun State, the court held that the *Sales* Tax Law of Ogun State was Invalid under section 3(1) and .3(4)(ii) because according to Bello JSC, the Sale Tax under the said two subsection is unconstitutional, null and void because the law imposed the tax on taxable products brought into t1e state which is a matter of inter — state trade and commerce which Is within the exclusive legislative power of the Federation.... It has been contended by the appellant that purchas5 made in Lagos State by persons who are residpt8 of another states, for retail or disposition to consumer in another state is also interference within the provisions of trade and commence per State. The arguments to my mind, misunderstand the nature of what the Sales Tax is about... If persons from other states come into Lagos state to buy for retail or disposition to consumers, in another state, the tax becomes payable just as other people resident in Lagos state who buy goods for retail or for consumption must pay the tax. In so far as the levy is uniform and not discriminatory it cannot in my opinion be regarded as interference with commerce and trade interstate. ***(With the help of the law, explain what you understand by 'sales tax').***

The ***Aberuagba and Nigerian Soft Drinks Company Ltd cases*** were decided with reference to sales tax and dealt with the constitutionality of state laws. It is submitted that it is constitutional for the state to enact laws on VAT if it is not discriminatory and if the law covers only intra state. The National Assembly can enact VAT laws if it covers interstate or goods from other countries

into Nigeria and even intra state, since the National Assembly has legislated on VAT, there is valid legislation on the VAT, and by the doctrine of *covering the field,* no state government can legislate on VAT under section 4(5) of the 1999 Constitution and if any state Assembly does so, that enactment will be void to the extent of inconsistency with the VAT Act.

Self-Assessment Exercise 2

1. What was court position on taxing powers of State and Local government to tax on privately owned property?

1.5 Analysis of taxing Powers between the Three Tiers of Government

The Taxes and Levies (Approved List for Collection) Act, Cap T 2 LFN, 2004 streamlines and for the purposes of certainty specifies the taxes collectable by every tier of Government. Section 1(1) of the Taxes and Levies Act, 2004 states as follows:

"Notwithstanding anything contained in the Constitution of Federal Republic of Nigeria 1999 as amended, or in any other enactment or law, the Federal Government, State Government and Local Government, shall be responsible for collecting the Taxes and Levies listed in part 1, part II and part III of the schedule to this Act, respectively".

Part 1 to the said schedule to the Taxes and Levies Act, lists the taxes to be collected by the Federal Government as follows:

1. Companies income tax
2. Withholding tax on companies residents of the Federal Capital Territory, Abuja and nonresident individuals.
3. Petroleum profits tax.

4. Value added tax.
5. Education tax.
6. Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies Corporate and non- resident individuals.
7. Stamp duties on bodies corporate and residents of the Federal Capital territory Abuja.
8. Personal income tax in respect of: -

a) Members of the Armed Forces of the Federation

b) Members of the Nigeria Police Force

c) Residents of the Federal. Capital Territory, Abuja; and .. .

d) Staff of the ministry of Foreign Affairs and non- resident Individual.

Part II of the schedule to the Taxes and Levies Act lists the taxes to be collected by the State Government as follows:

1. Personal income tax in respect of: -
    a. Pay- As- You- Earn (PAYE); and
    b. Direct taxation (self- assessment).
2. Withholding tax (individuals only)
3. Capital gains tax (individuals only)
4. Stamp duties on instrument executed by individuals.
5. Pools betting and. lotteries, gaming and casino taxes.
6. Road taxes.
7. Business premises registration fee in respect of
    a. Urban areas as defined by each state, maximum of:

    i. ₦10,0OO for registration; and

ii. ₦5,000 per annum for registration; and

b. Rural areas

i. ₦2. 000 for registration; and

ii. ₦1 000 per annum for renewal of registration

8. Development levy (Individuals only) not more than ₦100 per annum on all taxable individuals.
9. Naming of street registration fees in the State Capital.
10. Right of occupancy fees on land, owned by the State in urban areas of the State.
11. Market taxes and levies where State Finance Is involved.

Part III of the schedule to the Taxes and Levies Act lists the taxes to be collected by the Local Government as follows:

1. Shops and Kiosks rates
2. Tenement rates
3. On and off liquor license fees
4. Slaughter slab fees
5. Marriage, birth and death registration fees
6. Naming of street registration fee, excluding any street in the State capital.
7. Right of occupancy fee on lands in rural areas, excluding those co1lectable by the Federal and State governments.
8. Market taxes and levies excluding any market where State Finance is involved.
9. Motor Park Levies.
10. Domestic animal license fee.
11. Bicycles truck, canoe, wheelbarrow and cart fees, other than a mechanical propelled truck.
12. Cattle tax ‘payable by cattle farmers only.

13. Merriment and road closure levy.
14. Radio and television licence fees (other than radio and television transmitter).
15. Vehicle radio license (to be imposed by the local government of State in which the car is registered).
16. Wrong parking charges.
17. Public conveniences, sewage and refuse disposal fees.
18. Customary burial ground permit fees.
19. Religious places establishment permit fees.

The Taxes and Levies (Approved List for Collection) Act is enacted in substantial conformity with items 16, 25, 36, 39, 58, 59, 62 and 66 of the Exclusive Legislative list of the 1999 Constitution which enumerates the taxing powers of the Federal Government; item D paragraph 7, 8, 9 and 10 of the concurrent legislative list of the 1999 Constitution which set out the tax matter upon which both the Federal Government and State Government can legislate upon; and schedule 4 of the 1999 Constitution which sets out tax matters upon which the local government can legislate upon.No tier of government is allowed to collect taxes which it is not allowed to collect or should be collected by another tier of Government pursuant to the Act.

In **Knight, Frank & Rutley V.A.G. (Kano State) (1998) 7 NWLR Pt. 556, 37** the issue was whether State Governments had concurrent competence with Local Government Council to embark on property assessments designed eventually to lead to rate collections? The Supreme Court per Wali JSC said: '… *the power to assess rates on privately Owned houses or tenements for the purpose of levying such rate Is within the exclusive statutory power of each Local Government as conferred on it by section 7(5) of 1979 Constitution and paragraphs 1(b) and (j)*

of the Fourth Schedule of the 1999 Constitution...' Uwais CJN further said that: *"Only Local Government Councils have the power to assess and impose on privately owned property"*.

In Knight Frank case, the Government of Kano State signed a contract with two firms of accountants. The agreement was to take retrospective effect from 1980 and required these accountants to provide consultancy and training services for the evaluation of specified tenements in and around Kano metropolis for the purpose of the future assessment of rates thereon. Part of the consultancy fees was paid upfront but after the consultants had done part of the work, Kano State terminated the agreement.

The reasoning of the State Government was that the assessment/evaluation of tenements for property rating was a matter exclusively within the jurisdiction of the relevant Local Government Council. The termination of the contract took place after the 1979 Constitution had been subverted in Nigeria and replaced on 1st January, 1984 with Military rule.

The trial Judge, Saka Yusuf, concluded that by virtue of section 7 (5) and the Fourth Schedule of the 1979 Constitution along with the provision of the 1977 Local Government Edict of Kano State, Edict No 5 of 1977, that it was only the Local Government authorities that could execute the sort of contract the State Government had in this case entered.

The Court of Appeal unanimously affirmed the decision and by a majority of four to one, the Supreme Court upheld the views of the two lower courts. It held that the functions assigned by the 1979 Constitution to the LGC's under the Fourth Schedule were functions only they could exercise. The court thus, held that since rating and assessment of private houses or tenements for the purpose of levying of rates was one of the said Local Government Councils' functions both in the Constitution and under Kano State Legislation, that the present agreement by which the State

Government contracted the services of the two accounting firms to execute that responsibility was an exercise *ultra vires* their powers. Consequently, it was held unconstitutional, null, void and of no effect. The court was not moved by the fact that the contract. had been part performed by both sides. The court was less impressed by the fact that section 7 (5) of the 1979 Constitution had long since been suspended with effect from 1st January 1984, that is, nearly four years before Kano State unilaterally determined the contract on 9th December, 1987.

(Give a succinct analysis of taxing powers between the three tiers of government in Nigeria)

By the Knight Frank decision therefore, the Supreme Court had legally established the proposition that there was competence in the Local Government Council to impose and collect tax under the 1979 (and thus impliedly also, the 1999) Nigerian Constitution, and that no other tier of Government could interfere with this power and function of the Local Government Councils found in section 7(5) of the 1999 Constitution and paragraph 1(b) and (j) to the fourth schedule to 1999 Constitution. It is further submitted that any of the tiers of Government that makes a tax assessment for a tax it does not have power to collect, contrary to the relevant provisions of the 1999 Constitution and the Taxes and Levies Act, that tier of Government makes the tax assessment without jurisdiction and that assessment is null, void, and of no effect and the tax payer is entitled to have the assessment quashed.

1.6 Summary

In conclusion, it can be seen that taxing power means the legal constituted authorities with the mandate to make tax laws for the country. It is also important to have an idea about the taxing powers in Nigeria from the colonial era to date. We also noted that taxing powers had been divided

between the three tiers of government. Summarily, we have discussed the meaning and history of taxing powers in Nigeria. We also considered the division of taxing powers between the federal, state and the local government levels.

1.7 References/Further Readings/Web Sources

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1.8 Answers to Self-Assessment Exercise 1

1. In 1955 Sir Louis Chick Commission recommended that, each of the regional legislatures should be given power to legislate on revenue matters within their region, was adopted. Consequently,

Finance Law was enacted in the Eastern Region. This was followed by the Western Region Income Tax Law.

2. This is because, under the Exclusive Legislative List, set out in part I to the second schedule of the 1999 Constitution, the Federal Government has exclusive jurisdiction on many items including:

a. customs and Excise Duties

b. Export Duties

c. Mining rents and Royalties

d. Revenue from shipping and navigation on International waters, inland water ways, and revenue from Federal ports.

e. Taxation of incomes, profits and capital gains, except as otherwise prescribed by this Constitution.

Answers to Self-Assessment 2

1. In **Knight, Frank & Rutley V.A.G. (Kano State) (1998) 7 NWLR Pt. 556, th**e Supreme held that the power to assess rates on privately Owned houses or tenements for the purpose of levying such rate Is within the exclusive statutory power of each Local Government as conferred on it by section 7(5) of 1979 Constitution and paragraphs 1(b) and (j) of the Fourth Schedule of the 1999 Constitution…' Uwais CJN further said that: "Only Local Government Councils have the power to assess and impose on privately owned property"

UNIT 2: Freedom of Inter-State Trade, Commerce and Restrains On Taxing Powers Between the Three Tiers of Government

2.1 Introduction

Since Nigeria became a Federation in 1954 the question of sharing taxing powers between the Federal Government and the States has always been a subject of tremendous concern t6 all.' This concern has been particularly heightened by the 1979 Constitution which has enhanced the Federal' Government's taxing power by explicitly placing within its exclusive competence the more important forms of taxation such as customs and excise duties, mining rents and royalties, export duties, stamp duties, taxation of incomes, profits and capital gains while leaving the residuary matters at the disposal of the States.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Understand the need for freedom of trade and commerce in Nigerian federal system.
ii. Analyse the impacts of trade and commerce
iii. Discuss inter-governmental immunities under our tax laws.

This unit is to understand the need for freedom of trade and commerce in Nigerian federal system. It is also to make the student know the impacts of trade and commerce as well as inter-governmental immunities under our tax laws.

Self-Assessment Exercises 1

1. List some areas where State governments have taxing powers.
2. Explain the rationale for commerce clause in any Federal Constitution

2.3 The Need for Freedom of Commerce and Trade in a Federal System

The States enjoy taxing power in respect of the following items: taxes on lands and buildings, taxes on the entry of goods into the State for consumption, use or sale; taxes on the sale or purchase of goods; taxes on goods and passengers carried by road or inland waterways, road tax-vehicle licences and registration fees; tools, entertainment tax on cinema houses, betting and gambling, and so on. Although some of these taxes have not been employed by the States to generate revenue for the execution of their social and economic programmes, the reality is that the financial resources available to the Federal Government have far exceeded those available to the State Governments. As Professor Nwabueze rightly observed ***(B.O Nwabueze(1983) Federalism in Nigeria under Presidential Constitution. Sweet & Maxwell, London.***

While the state governments' sources of independent revenue have shrunk, federally-collected revenue available for sharing has increased considerably. The shrinkage of the States independent revenue and the increase in the distributable pool considerably increased rather than reduced; the dependence of the States on federally-collected revenue beyond what it was before October 1, 1979.

The above position no doubt, has caused tension and controversy between the Federal Government and the State Governments. This has been inevitable considering the increasing expenditure commitments of the States, the constantly increasing demands |upon the. States for schools, roads, medicare, and. other social services have made it necessary for them, to explore avenues which can increase their resources. The States have: therefore, been forced to seek every available source

of revenue and this is evidenced by the fact that several States including Lagos, Ogun, Bendel, Ondo, Cross River, Benue, Kano and Kaduna imposed Sales tax and other taxes on commercial transactions; and properties. It is a matter of economic survival for the States.

(How does freedom of commerce and trade help the economy in a federal system like Nigeria?)

Thus, because each State has its own regulatory and taxing authority and revenue needs, it can use the various forms of taxation not only to raise revenue but also to perform other functions such as; protecting- producers or sellers from non-resident competitors. For instance, if goods produced in Lagos states bear sales tax and the same goods when sent to say Benue state are also subject to sales tax in that state, does this not amount to double or duplicative taxation of the same commodity which is inimical to national commerce or to unified economy? Or is it proper for a state to tax the citizens of other states for a licence or privilege to carry on commerce with itself? Does this not discourage inter-state Commerce? Or can a State acquire the whole of a commodity with the object of preventing it from being sent to other States? Is such an action not unconstitutional? Or has a State the, power to impose taxi on all cattle crossing the State boundary?

These are some of the, questions we, shall be considering hi this chapter. The main thrust of the chapter is focused on the need to prevent the strangulation of the national economy which has the effect of preventing optimum employment and production if there are no systematic instrumentalities. Attempts will thus be made in this chapter to find ways and means of reconciling the conflicting and competing demands of the State and national interest.

As will be seen shortly, all federal constitutions contain a commerce clause though with variation in its content. It therefore becomes necessary to examine the rationality of this practice that is the policy of the commerce clause. This cannot be done without appreciating the essence of federalism. A federal constitution involves distribution of political and economic power between the central and the state governments, each being supreme and sovereign in its own sphere. This distribution is made on the principles of granting power to the central government on matters of national concern or in matters where uniformity of laws throughout the country is considered desirable and granting powers to the states in matters which concern or can be said to be of essentially local interest. Looked at in this way, it is correct to say that in a federal constitution the central government and the State face each other as equals across a precise constitutional line which defines their respective jurisdictions.

This at once presents a source of fascinating and important political and economic problems as sectional and local interest can grow to an extent as to be inimical to the interests of the nation as a whole. These problems are bound to arise in the intercourse between the Central Government and the states and between the States *inter se.* For instance, the officials of a State may feel that since they are not accountable to the inhabitants of other States, they could mount trade barriers between the State and those of other States in order to supply their fiscal needs or promote the commercial and economic well-being of their citizens or they could impose taxes, the burden of which will fall mainly on residents' of other states, all with the consequences of reprisals and trade wars from the victim States. This will seriously impair inter-State commerce and trade thereby harming the national economy as a whole.

The Courts had a field day on the above issues in the following cases: **Attorney-General Lagos State v Eko Hotels** (2017) LPELR-43713(SC), **Uyo Local Government Council v Akwa Ibom State Government & 1 Or** (2020) LPELR 49691, **Attorney-General Rivers State v. Federal Board of Inland Revenue Service** FHC/PH/CS/149, 2020 Judgment delivered on 9/8/2021 and **TSKJ Constuces Internacionals Sociadade Unipessoal LDA v Federal Board of Inland Revenue FHC/ABJ/TA/11/12,** where the FHC ordered the Minister of Finance to disband the Tax Appeal Tribunal-this decision caused uproar.

To prevent inter-State commerce and trade becoming a prey to undesirable practices and to foster a feeling of belonging to the same nation though the people may be living in particular geographical divisions of the country, each Federal constitution either in the commerce clause or in other provisions guarantees to every citizen the freedom of movement throughout the country and to reside and settle in any part thereof as well as the freedom to trade with any part of the nation. The idea is that the strength of the nation can be achieved by minimizing interstate barriers and frictions and by ensuring as far as is necessary an open or unified national economy. Thus, in America the Supreme Court has always said that the commerce clause was intended to secure free trade in the United States ***(Memphis Steam Laundry Inc. v Stone (1952) 342 US 385***

Justice Jackson went as far as stating that the commerce clause in the U.S. Constitution was, the court's mandate to effect the realisation of an open economy ***(1949) H.P & SONS Inc. v Du Mond 336 U.S 538*** and that Suite taxes that stood in the way of the free national economy

were invalid regardless of the needs of the States and of the disruption that Invalidation might cause their economies.

As for Nigeria, the 1999 'Constitution as amended, has been designed as shown in several provisions to ensure no discrimination, uniform duties, uniform income tax rates, uniform customs duties, no preference, free trade on the basic objectives of the Constitution is therefore to have an economic system of inter-State trade that allows an individual and his goods to pass from State to State without hindrance or molestation. Crucial issues are yet to receive judicial pronouncement on the economic objectives of the commerce provision of the 1999 Constitution as amended.

The principle that appears to emerge from the above discussion is-that the basic objective of the commerce clause in any Federal Constitution is to ensure an open or unified national economy or free trade by vesting in the Federal Government the power to regulate inter-state commerce. This therefore established an area of trade for the inter-state business free of state and local tax measures. This approached may be objected to by those who would want the states to retain their position as separate governments exercising independent functions in the Federal system. Such people will therefore see the commerce clause as a legalized strangulation of the states denying them the right to take socio-economic, reformative regulatory measures for their progress.

(In what ways have the provisions of the Constitution that guarantee to every citizen, the freedom of movement throughout the country and to reside and settle in any part thereof helped the economy?).

Secondly, the commerce clause may be attacked on ideological grounds. The emphasis emerging from judicial elaboration of the commerce clause is on free competition otherwise known as Competitive Capitalism and this may not Find favour with the left or radical members of the

society who may feel less sure of the long-term safety in the free trade or. *laissez-faire* approach to our economic issues.

Given our own circumstances as a developing country which is supposedly based on social justice or principles of egalitarianism it may riot be desirable to have an absolute freedom of inter-State commerce. In other words, it may be necessary in order to prevent the abuse of the commerce clause and the emergence of a wholly capitalist system and its abuses to have some statutory or judicial limitations on its use.

In the light of the above, die commerce clause should play this role. It should prevent a situation where there will be regional or State markets that will have little or no contact with one another. Rather it should encourage the emergence of a national market so that any manufacturer producing goods in any State, say Lagos, knows that such goods can be marketed anywhere in the country and the customer say in Kaduna in the course of his economic and life cycle can always get the best value for his money whenever he goes to the market, either in terms of the quality of the goods he purchases or in terms of the price he pays for them.

2.4 Trade and Commerce in Nigeria

There is no provision in the Nigerian Constitution of 1999 expressly guaranteeing freedom of inter-state trade and commerce; What we have, instead, is that the Exclusive Legislative List empowers the Federation to make laws in respect of trade and commerce, and in particular; trade and commerce between Nigeria and other countries including import of commodities into and export of commodities from Nigeria, and trade and commerce between the States.

It can thus be seen from the above, that the importance of the Commerce Clause in the Nigerian Constitution lays in the fact that it permits the Federation to deal exclusively with inter -State trade

and commerce. It is, however, unclear to what extent the Federal Government can regulate the inter-State trade and commerce or how the commerce clause intends to act as a self-executing bar to State actions incompatible with freedom of trade and commerce.

To get a clue to the above issues one must turn to other provisions of the 1999 Constitution which provides that national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited. It therefore makes it a duty on the state for the purposes of promoting national integration to: *Provide adequate facilities for and encourage free mobility of: people, goods and services throughout: the federation. (See the case of Uyo LGC v Akwa Ibom State Government supra)*

(State the position of the 1999 Constitution in respect of freedom of inter-state trade).

Finally, it requires the -State to "foster a feeling of belonging and involvement among the various-peoples of the Federation that loyalty to the nation shall override sectional loyalties. The 1999 Constitution guarantees the right of all citizens to move freely throughout Nigeria or to reside in any part of Nigeria, and entitles all citizens to freedom from discrimination and on the basis of a person's place of origin, particular community, ethnic group, religion and so on, it will be seen that the 1999 Constitution as amended, guarantees freedom of inter-state trade and commerce in Nigeria. In other words, the 1999 Constitution on the whole has been intended to secure or foster frère trade among the states of the federation. Furthermore, there are several matters (banks, banking etc, Copyright, Custom and Excise duties. Export Duties, Registered Companies,

Insurance, Labour including trade unions, mines and minerals, patents, trade or business names, post, telegraphs and telephones, etc.) relating to inter-State trade and commerce which under the 1999 Constitution are under the exclusive legislative competence of the federation. Thus these matters strengthen the hands of the Federal Government in fostering free trade area throughout Nigeria.

Self-Assessment Exercise 2

1. Identify the Constitutional provisions that guarantee free trade and commerce in Nigeria
2. What step (s) had been taken to prevent the likelihood of a high incidence of multiple or duplicative taxation due to the introduction of sales tax by many States and what are the difficulties?

2.5 Impact of Freedom of Trade and Commerce on tax laws

The freedom of trade and commerce may be impaired by fiscal measures. For instance, a Sales tax may be imposed by a State on the sale of a commodity only if it is imported from [another or the rate of tax imposed on the sale of a commodity, when imported, is higher than that imposed on the sale of the same commodity produced and sold within the taxing State. These are tax measures that-definitely violate the freedom of commerce as embodied in the 1999 Constitution (as amended). The commerce clause has not, however, been used by the Federation to enact comprehensive legislation regulating inter-State trade and commerce in Nigeria. *(See A.G River State v FIRS supra)*

In the past there were no crucial issues that would compel the Nigerian judiciary to make pronouncements on the scope of the commerce clause and its ramifications. However, at the moment with the proliferation: of various - State taxes in the country, the Court will soon (as it started in the dying days of the second republic) be confronted with the grave and delicate task of determining the legislative competence of state Governments especially in introducing tax measures to alleviate their economic problems. Thus with the complete dearth of judicial decisions on the commerce clause in Nigeria and lack of imagination on the part of the federation in the area of inter-State trade and commerce, Nigerian courts should draw inspiration from the experiences of India which are most valuable and relevant to us, in resolving the conflict between the taxing powers and revenue needs of the states and the requirements of a unified, national economy characteristic of a federal system. First, India has similar socio-economic conditions. Secondly, to foster free flow of inter-State trade and commerce throughout the territory of India, the Indian commerce clause is in a simple, precise and yet comprehensive language. It has for example expressly provided for limitations on the freedom of commerce to accommodate regional interests while at the same making it possible for the Central Government to intervene in times of crisis. On the basis of these general principles, the Supreme Court of India then lays down certain conditions which tax measures must satisfy to be valid.

(What is the relation between Freedom of Trade and Commerce, and tax laws?)

What we need today is a provision in the Constitution in terms which prohibit the imposition of restrictions upon inter-State trade. The Constitution should however-make it clear that without prejudice to the above, necessary restrictions may be imposed in the interest of defence, peace, safety, public order, public morality, public health and for the purpose of providing, maintaining or securing supplies and services necessary to the life of the Community, with these provisions in

our Constitution, the rights of the individual to trade inter-State will be protected. In some States today, measures are sometimes introduced which have, the effect of restricting a trader in his inter-State activities like discriminatory levies for a licence to do business in some Suites. The Federal, Government too interferes with the freedom of commerce. For instance, there are countless custom check points on major roads in the country interfering with the free flow of inter-State trade and commerce. Many states in the country had introduced sales tax. There was therefore the likelihood of a high incidence of multiple or duplicative taxation.

One of the solutions to this problem was to promulgate a Central Sales Tax Law that would allocate the income of, an inter-State business among the several States ha which it did business. This was done with the promulgation of the Sales Tax Decree No. 7 of 1986. The problem, however, with this approach was that a rational apportionment, formula was very difficult to devise and even where one was devised it, could lead to diverse, reasonable interpretations by the States. It may, be necessary in order to overcome this problem to have a Federal Administrative Agency which, could collect and distribute the State revenues on some agreeable statutory formula Such an agency may also promulgate rules and regulations for implementing; the statutory provisions. This has now led the federal Government to promulgate the Value Added Tax Decree No 102 of 1993 now VATA, 2004 thereby, replacing the Sales Tax Law.

Our Courts are now silent on the problems of inter-State trade and commerce because crucial issues have not as yet demanded solution. The Court will definitely be faced in future with such issues as whether a particular tax law falls within some particular power of a particular legislative body as there is bound to be a temptation on the part of an impecunious State legislature to enact "colourable" legislation, that is, to give a tax one name when in fact it is something else. When

such issues arise, and very soon they will, our courts no doubt will benefit from the relevant precedents and general principles laid down hi other jurisdictions

2.6 Inter-Governmental Immunities

(Can a government be taxed by the agent of another government?). The question that arises with regard to taxation is whether Federal Government instrumentalities and agents can be taxed by the States and vice versa. This question has assumed more importance as both the Federal Government and the States have the power to carry on business. Thus apart from enterprises carried on by the Federal and State agencies and contractors, there are Government operated undertakings-: in transportation, communication and other public utility services. In some cases, there are businesses enterprises carried on by me Government to the exclusion of private competition. The- Federal and State Governments through their agents also own lands and earn rents and royalties from them. *(A.G Rivers State v FIRS supra)*

The question posed above has not arisen in this country yet, but if it does the court should decide the issue by an examination of; the provisions of the Constitution. That Constitution confers specific enumerated powers on the Federal Government, leaving the residue to the States. In doing this, sight should not be lost of useful experiences of other jurisdictions, in particular the American doctrine of immunity of instrumentalities. The same considerations should apply to State Instru-mentalities that may engage in similar activities.

We have seen above the problems associated with taxation *vis-a-vis* inter-State Commerce and Government instrumentalities. These problems have not yet demanded urgent solutions in Nigeria. Fortunately for us, most of the matured Federal systems have a lot of experience in this area. We have tried to provide some guiding' principles which our law makers and our Courts may

follow when called upon to provide solutions to the problems of inter-State Commerce and Government instrumentalities for the purposes of taxation.

Under the federal system of government, freedom of trade and commerce is very significant due to its impacts on our tax laws. Hence, it is important that it should be inserted in the ***Grundnorm-*** the Constitution. This will give all the citizens and all taxpayers the sense of belonging to the country Nigeria.

2.7 Summary

We are able to discuss the need for trade and commerce clauses in our Constitution. We also saw the impacts of trade and commerce on our tax laws. What is more the issue of inter-governmental immunities as it affects trade and commerce was analysed and discussed respectively.

2.8 Reverences/Further Readings/Web Sources

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2.0 Answers to Self-Assessment Exercise 1

1. The States enjoy taxing power in respect of the following items: taxes on lands and buildings, taxes on the entry of goods into the State for consumption, use or sale; taxes on the sale or purchase of goods; taxes on goods and passengers carried by road or inland waterways, road tax-vehicle licences and registration fees; tools, entertainment tax on cinema houses, betting and gambling, and so on.

2. The reason behind commerce clause in Federal constitution is to prevent inter-State commerce and trade becoming a prey to undesirable practices and to foster a feeling of belonging to the same nation though the people may be living in particular geographical divisions of the country, each Federal constitution either in the commerce clause or in other provisions guarantees to every citizen the freedom of movement throughout the country and to reside and settle in any part thereof as well as the freedom to trade with any part of the nation. The idea is that the strength of the nation can be achieved by minimizing interstate barriers and frictions and by ensuring as far as is necessary an open or unified national economy.

Answers to Self-Assessment 2

1. This can be seen under Chapter II the Constitution bothering on the Fundamental Objectives and Directive Principles of State Policy.

2. One of the solutions to this problem was to promulgate a Central Sales Tax Law that would allocate the income of, an inter-State business among the several States ha which it did business. This was done with the promulgation of the Sales Tax Decree No. 7 of 1986. The problem, however, with this approach was that a rational apportionment, formula was very difficult to devise and even where one was devised it, could lead to diverse, reasonable interpretations by the States

MODULE 2: TAX OFFENCES AND PENALTIES IN NIGERIA

Unit 1: Tax Offences and Penalties

Contents

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1.3 Tax offences and Penalties

1.4 Meaning of tax avoidance and tax evasion

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1.8 References/Further research

1.1 Introduction

Developing countries such as Nigeria have a fundamental teething problem of Tax Evasion and tax avoidance. It is more acute with private business concerns, limited liability companies and some private individuals. As for salaried workers, the pay-as-you earn. system of taxation tends to ameliorate the incidence of tax evasion and tax avoidance to a limited extend. The tendency of some corrupt and inept tax officials do not help matters much as some of them connive with tax defaulters to perpetrate tax evasion and tax avoidance techniques. In Nigeria, there are weak or inefficient and defective legislations against tax evasion and tax avoidance. Regrettably, inadequate machineries as well as lack of skill personnel in the tax administrative bodies and authorities makes it difficult to control tax evasion and avoidance. This study will highlight some of these tax legislations on the subject matter with a view to ascertaining the causal effect of anti-

tax evasion and tax avoidance legislations in Nigeria. AT the end, a laudable solution may be proffered to help in reducing the causes and problem of tax evasion and tax avoidance in Nigeria.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Explain what is tax evasion, and
ii. Discuss tax avoidance as major tax offences in Nigeria
iii. Distinguish the two terminologies perfectly.

1.3 Meaning of Tax Evasion and Tax Avoidance

Nigerian tax laws do not define the above terms. Simply put, tax evasion can be defined to mean the refusal to pay tax. It could also mean fraudulent and illegal means of limiting a person's tax liability such as making false returns or refusal to pay tax at the right time. This actually constitutes a serious breach of tax law. It is seen as an immoral and disrespectful practice not to pay tax.

Tax avoidance on the other hand is a dubious and crafty means employed by a tax defaulter through the manipulation of taxing provisions so as to reduce his tax liabilities. It was held in the case of IRC ***V. FISHER'S EXECUTOR (1920) A. C 395***, that tax avoidance is not a bad activity or repugnant, but it can be sure to be a clear legalized action. . *(See TSKJ Constuces Internacionale Sociadade Unipessoal LDA v FIRS FHC/ABJ/TA/11/12*

It is most respectfully submitted that no matter how, any attempt to dodge the payment of tax should be shunned as it constitutes a reprehensible conduct which reduces government sources of

revenue. Hence, it should not be seen as a good attitude in all ramifications. This seems to be the view of the court in the case of ***LATILLA V. I.RC. (1943) A.C 377***

Self-Assessment Exercises 1

1. Explain the term, 'tax avoidance'
2. How does the above diver from tax evasion?

a. ***Tax avoidance:***

The court seems to have two views in relation to tax avoidance. One view takes neutral stand that there is nothing evil or wrong in tax avoidance schemes. For instance, Lord Summer stated in the Case of ***IRCV. FISHER'S EXECUTORS (Supra)*** that:

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

The facts of the case involve a limited liability company with large undistributed profits which has resolved to capitalised part of those profits and to distribute them *prorata* among its ordinary shareholders as a bonus in the form of 5% debenture stock. The whole aim being to prevent the shareholders from paying super tax on the bonus. It was held that the bonus paid in the debenture stock was not income in the hands of the shareholders and was therefore not liable to super tax.

It appears the ruling of the court in favour of the defendants was sentimental and pathetic owing to the fact that it happened after the 1st world war. Hence, nothing was seen as blameworthy or illegal to avoid tax. One can have argued that the holding could have been different if a similar case should come upon in this 21st Century. It will be foolhardy to say, for example, that a Nigerian court can deliver the same decision in a case between F.B.I.R. and a multinational corporation with a similar fact as the case above. As stated above, there are two views as regards tax avoidance by the Courts. The case of ***AYRESHIRE PULLMAN MOTOR SERVICES & D.M. RITCHIE V. I.R.C. (14 T.C 754*** follows ***FISHER'S case. (SUPRA)***

These rulings clearly show that the judges in these cases did not value the importance of taxation as an effective weapon for revenue mobilization and economic growth of a nation. They also seem to loose sense on the issue of equitable burden of taxation and uniformity of taxable persons having the same income. Indeed, judges now have a re-think by shying away from pre-war judicial neutrality in cases involving tax avoidance. Tax avoidance is seen as evil that must be nipped in the bud. As Viscount Simon L.C. said in ***LATTILLA V. IRC. (Supra)*** that:

> "… in attempting to devise methods of disposition of income by those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such

> income without sharing the appropriate burden of British taxation… those who adopt them are entitle to do so:- no doubt that they are within their legal rights, but that is no reason why their effects should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of a good citizenship…"

Sir Wilfred Greene M.R. Sarcastically stated in ***LORD HOWARD V. IRC. (1942) 1 K.B 389 that:***

> "…For years a battle of Manoeuvre has been waged between the legislature and those who are minded to throw the burden of taxation off their shoulders on to those of their fellow subjects. In that battle, the legislature has often been worsted by the skill, determination and resourcefulness of its opponent of whom the present appellant has not been the least successful… the legislature has determined to put an end to the struggle by imposing the severest of penalties. It scarcely lies in the mouth of the taxpayers, who plays with fire to complain of burnt fingers."

It is therefore very encouraging that judges are now ready to not only regard tax avoidance as evil, but proceed to pass decisions and make laws through judicial precedent against tax avoidance. Tax legislation is not there simply to collect revenue, there are social and economic overtones that mark it.

The second view on tax avoidance is those that consider tax avoidance as necessary phenomenon. Some of those judges said tax avoidance is not a moral issue and should not be stigmatised as undesirable practice by the courts. This seems to be the holding of the courts in the case of ***J.P. HARRISON WATFORD LTD. V. GRIFFITHS. (1961) 40 T.C 290 w***here Lord Justice Up John did not see anything wrong with dividend stripping transaction. It is unfortunate to think that sanctioning tax avoidance devices on the pretext of intelligent tax planning is a bad omen. There is no way a tax payer should have the right to determine what amount of his income should be taxed, because, such proposition violates the basic principle of tax law.

The above two views on tax avoidance has been taken and noted. What should be considered seriously is that taxation generally is arbitrary. If government is to guarantee free employment, social and economic stability, then tax avoidance schemes should be seen as a social evil that must be legislated against. It is therefore noteworthy that judges nowadays are ready to deal seriously with any tax avoidance schemes. It is worthwhile to consider tax avoidance measures under the Nigerian Tax Law.

Some tax legislation has been made to check tax avoidance by taxable persons. For instance, schedule 2, paragraph 1 of Personal Income Tax Act, 2004 provided for settlement schemes and trusts directed against avoiding tax. Section 2 (5) of the Act also made provisions against the use of family income to escape tax. It counteracts all artificial transactions meant to escape tax. These Provisions also made provisions that will dictate certain sums as income for tax purpose which otherwise should not be subject of tax. These tax avoidance measures in the legislations mentioned above are not fool proof since most self-employed persons, Doctors, Lawyers, accountants, traders, surveyors, contractors, to mention but few use several techniques to escape from their tax liabilities. Case law also made attempt to check the activities of tax avoidance. ***(FBIR V NASR) 1961 ALLNLR 408.*** In addition, the Companies Income Tax Act, 2004 has devices provisions aimed against tax avoidance; even though not fool proof.

For instance, the structure of most limited liability Companies can easily be utilized to give a person or group of Persons the control or enjoyment of income without legally being the owner. These usually reduce their liability to pay high rate of taxes and sometimes avoid paying the Tax. In this vain S.17 (1) C.I.T.A, 2004 was promulgated to cover all companies in few hands. Hence, where a Nigerian Company is under the control of five or less persons and refused to distribute to its shareholders' dividends, or profits made in any of its accounting period so as to reduce its tax burden the Federal Board of Inland Revenue is permitted to treat such profits or dividend as distributed to the shareholders so long it does not affect the company's business. This qualification is applied in order to allow companies who wish to develop and expand by using the profits so made in the accounting years. If not companies could have been stultified from growth and expansion by the provision of section 17(2), CITA, 2004.

As for multinational and transnational corporations, they adopt transfer prices which are not at arm's length prices in order to minimise tax. Most of these multinational Corporations deals with sale of goods, provision of services, licensing of patents, granting of loans, and equipment leasing etc. By these kinds of business, the multinational corporation can easily sale goods to a subsidiary corporation in a tax haven at lower prices or a parent company overpricing its exports to foreign subsidiaries so that by inflating the cost of product or raw materials, a corporation can increase the margin of profit which will definitely be concealed for tax purposes. This leads to artificially lower profits and therefore lower tax collections in the taxing country. The movement of profits from one company to another distort tax liability which gives room for tax avoidance. To check this, the Companies and Allied Matters Act, 2004 enjoin all foreign Companies doing business in Nigeria to incorporate as separate and distinct entities from their parent companies. But it appears both 1968, 1993 and 2004 Companies legislation created two separate and distinct persons in law which

are controlled by the same multinational corporation. This gives them another leeway to engage in tax evasion and avoidance activities in such transactions like interest, royalties, chares in action, contract etc.

Nigerian courts lack judicial dynamism in checking the activities of the multinational corporations by not lifting the corporate veils of the subsidiary corporations in Nigeria to find out the real parent corporations for purpose of tax liabilities. For instance, in the case of ***REISS & CO. (NIG.) LTD. V. F.B.I.R.*** (***1976 FRC 7***), the question arose as to whether the Federal Revenue Court could disregard the legal entity of Nigeria subsidiary for the purposes of taxing the profits of the expatriate parent company which
Were derived in Nigeria, Justice Karibi-Whyte stated thus:

> "… It is in evidence that the appellant was before 23rd September, 1960 only an overseas branch of Reiss & Co. (Armsterdam). Following upon the promulgation of the Companies Decree 1968 and in compliance with the provisions of Part x of that Decree the Nigerian branch became incorporated as a separate legal entity with its own Managing Director and Board of Directors. There is however evidence before me that Reiss and Co. (Amsterdam) still has a controlling shareholding of 55% of the shares of the appellant company … The separate legal entity of the appellants cannot be denied …. Respondent (F.B.I.R.) cannot impugn the legal situation successfully without adducing sufficient evidence to the contrary."

From the above case it can be seen that Nigerian judges lack judicial will unlike the British Judges to lift the corporate veil in order to distinguish the subsidiary corporations from the parent

corporations in relation to their legal entities for purposes of taxation. (ALUMINIUM INDUSRIES V FBIR (1971) NMLR 339

English judges easily strike down any tax evasion and avoidance devices. For example, in the case of ***LITTLE WOOD MAIL ORDER STORES LTD. V. MCGREGOR*** (***1961) 45 T.C 536*** Lord Dening Said:

> "The doctrine laid down in Salmon & Co.(supra) has to be watched very carefully. It has often been supposed to cast a veil over the personality of a limited company through which the court cannot see. But that is not true. The courts can and often do draw aside the veil. They can, and often do pull off the mask. They look to see what really lies behind."

By the above decision, the court declined to treat a subsidiary of the little woods as an independent company for tax purpose.

However, recent tax legislation in Nigeria made provisions to tackle the issue of tax avoidance which Nigerian judges lack the ability to rule effectively upon. For instance, interest is deemed to be derived from Nigeria if there is liability to payment of the interest by a Nigerian Company or a company in Nigeria notwithstanding which form or way the payment is made of the interest accrued as is provided in 1990 Company Income Tax Act. As stated earlier, foreign Companies uses royalties, management fees, technical assistance fees, etc. to transfer profits oversea. S. 61 A of the repealed Companies Income Tax Act 1961 was made to check this by providing for the taxation of management fees or royalty when a company pays fees or credits such fees to another company.

Multinational Corporations in Nigeria employ crafty means to avoid tax and Nigeria tax authorities are not equipped enough to control this nefarious situation. This is partly because the tax authorities find it difficult to determine 'arm's length' prices since there are no variable market substitutes. What is more, it is difficult to obtain accurate data from foreign or multinational corporations operating in Nigeria particularly in terms of their pricing and cosigns since they will not be willing to give information about their parent company pricing policies etc.

So what Nigerian tax authorities can do is to identify all these limitations and with the help of the international economic organs like World Bank, International Monetary Fund, ECOWAS etc. enact new legislations that will tackle negative tax avoidance techniques by these multinational corporations.

(Is tax avoidance lawful at all times?)

All said and noted, it can be said that the reason for tax avoidance in Nigeria is more on the inadequate provisions in the taxing statutes which gives room to tax avoidance. High tax rate cannot be reason for tax avoidance in Nigeria because Personal Income Tax rate and Company Income Tax are not high in Nigeria. It is therefore prudent to overhaul and redraft Nigerian Tax legislation in order to cover all the lacuna that gives rise to tax avoidance situation under the Nigerian tax laws.

b. Tax evasion

We earlier defined tax evasion as refusal to pay tax by a taxable person. It involves fraudulent concealment of income that is subject to tax. Also, false entries in books of account or failure to keep account books amounts to tax evasion. It is a known fact that companies usually declare losses, whereas in actual fact they amass huge profits with heavy remunerations and bonuses

reserved for their directors and shareholders. These profits are not known because they are not declared. This is pure tax evasion. Any company that always declare losses every year supposed to liquidate. But this is not the case in Nigeria. They still carry on business unabated this shows that their declaration of losses are false such acts constitutes tax evasion of the highest order. On the part of a self-employed professionals such as Lawyers, Doctors, Accountants, Traders etc. they falsify their income with a view to evade tax. Their expensive life style shows that they make much income which they falsify so as to pay little or no tax. This is tax evasion.

It can be argued that in actual reality, it is the civil servants who pay tax constantly and regularly due to the system of Pay-as-you earn (P.A.Y.E.) But sometimes the parastatals use to refuse remitting these taxes to the relevant tax organs. It is for the revenue board to ensure that these taxes are remitted. If not, it can be classified as another form of tax evasion. What is more almost all Nigerian Civil Servants are alleged to be married with four children to enable them claim married and children tax reliefs. This is tax evasion because it is not possible to have situation that all civil Servants should be married with a given number of children. The problems of tax evasion is not unconnected with assessment to personal income tax of self-employed persons, lack of voluntary tax compliance, non-report of gross understatement of profits or income, omission and refusal to render tax returns to the relevant tax authorities.

(***Why do you think tax evasion and tax avoidance are classified and the major taxation problem in Nigeria?)***

The Federal Government tried to check tax evasion by introducing the technique of Tax Clearance Certificate by those who wish to transact business with any government department or seeking any elective post. The payment of provisional tax within 30 days by Companies on declaring interim

dividends also helps to check tax evasion. In addition, VAT (Value Added Tax) has been introduced nationwide to replace sales tax in all business transactions in Nigeria with a view to check tax evasion. Also some statutory tax provisions were enacted to control tax evasion under PITA, 2004 and CITA, 2004 respectively. For instance, section 86 PITA, 2004 provided for monetary penalties and criminal sanctions against tax evasion. Under Section 66 of the Act, a tax authority can sell the properties of a defaulting taxpayer to recover the tax due. The mal-administration of tax personnel e.g. corrupt and inept tax officials who collude with taxpayers to evade tax has to a large scale encourages tax evasion in Nigeria.

1.4 Sanctions Against Tax Offences

Tax evasion and avoidance in Nigeria can be reduced through the following ways:

a) Tax authorities should be given stronger power to enable them effect tax assessment and implementation. This can be done by giving them the right to forceful entry into offices of Companies and other taxable persons to examine books of accounts and other documents or bank accounts.

b) There should be a mechanism for identifying corporate bodies and taxable persons to be assessed e.g. their addresses and place of residence to enable tax notices to be served on them.

c) Emphasis should be placed on the education, training and organisation of workshops for tax personnel. Computer technology for purposes of taxation should be introduced without any hesitation.

d) Effective Criminal and Civil Sanctions and Penalties should be introduced effectively into the taxing statutes. This will discourage corporate bodies and taxable persons from

engaging in any tax evasion techniques. It will make them think twice to evade tax. The current Civil and Criminal Sanctions seems to be too weak to handle the situation.

It can be observed from the foregoing that tax avoidance and tax evasion is a real concern which constitute a serious hindrance in the administration of tax not only in Nigeria, but the world at large. But, with a good and efficient tax management techniques, the problems of tax evasion and avoidance will be reduced remarkably. In Nigeria, being a developing nation it will be of immense help to the Nigerian Economy if effective measures are embarked upon, not only to control tax evasion and avoidance, but also to improve revenue generation in Nigeria so as to enhance massive economic growth and development of the country.

(What constitute the solution to tax offences in Nigeria?).

Refusal to pay tax at alt all is tax evasion and by using tax laws through intelligent tax planning could be considered as tax avoidance. But, strictly speaking, tax avoidance and tax evasion are all tax offences that the law imposes either civil or criminal sanctions

1.5 Summary

Under this unit, we were able define the meaning of tax evasion and tax avoidance. We also considered the judicial decisions in respect of these terms. At the end of the unit we examine the sanctions against these tax offences and penalties.

1.6 References/Further Readings/Web Sources

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1.7 Answers to Self-Assessment Exercise 1

1. Tax avoidance has been defined as a dubious and crafty means employed by a tax defaulter through the manipulation of taxing provisions so as to reduce his tax liabilities. It was held in the case of IRC ***V. FISHER'S EXECUTOR (1920) A. C 395***, that tax avoidance is not a bad activity or repugnant, but it can be sure to be a clear legalized action.

2. Tax evasion as refusal to pay tax by a taxable person. It involves fraudulent concealment of income that is subject to tax. Also, false entries in books of account or failure to keep account books amounts to tax evasion. The difference between the two is that, while tax avoidance may be lawful or legal, tax evasion is illegal and constitutes an offence at all times.

MODULE 3: DUTIES AND OBLIGATIONS IMPOSED BY GOVERNMENT DUTIES IMPOSED BY GOVERNMENT

Unit 1 Stamp Duties

Contents

1.1 Introduction

1.2 Learning outcomes

1.3 Stamp Duties

1.3.1 Stamp Duties

1.4 Administration and General Nature of Stamp Duties

1.5 Summary

1.6 References/Further Readings/Web Sources

1.7 Answers to SAEs

1.1 Introduction

It can be said that a duty means the tax one pays on things when a person buys some goods and brings them into the country. In Nigeria, categories of duties that can be imposed by the government are stated in the second schedule to the amended 1999, Constitution of the Federal Republic of Nigeria. The duties are Custom and Excise Duties, items 16, Export Duties, item 25, and Stamp Duties which is the 58th items on the Exclusive Legislative List. We shall examine the duties that government can impose under the Nigerian law. The reasons for the imposition of these duties will be considered.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Explain the term 'stamp duties are'
ii. Analyse the categories of items subject to stamp duties,
iii. List the categories of items exempted from stamp duties

.

1.3 Stamp Duties

Stamp duties are one of the oldest taxes. They are taxes paid to the federal or state government on documents for the purpose of conferment of legal approval or authority. Stamp duties may be specific or *advalorem* taxes imposed upon instruments otherwise called written document. A learned scholar, ***Ola C. S (1981)***, posit that stamp means an impression by means of a die, or an adhesive stamp for denoting any duty or fee on a document. Stamp duties are taxes paid in perfecting documents. Apart from the fact that, stamp duties are one of the oldest taxes, it is specific or "*ad valorent*" taxes imposed upon instruments otherwise called written documents. Anoher learned Sage on Law of taxation, (***M.T. Abdulrazaq 2002:568)*** stated that Stamp duties are an everyday affair yet little or no attention is paid to its details which are very important for the day to day running of most business in Nigeria today. ***(What is stamp duty and why is it different from other types of duties?).*** Stamp duties are strictly taxes on documents and not on transactions or personal tax. It is a tax that is governed by the Stamp Duties Act 1939 as amended by numerous acts that followed. Stamp duties is one of the most important ways of making legal document acceptable in the criminal proceeding, evidence relating to document cannot be given in the Nigerian criminal proceeding except when same is duly stamped. Thus, the definition of

stamp duty is that it is a form of tax levied on legal document in order to have legal recognition for the effective perfection of such document.

Self-Assessment Exercises 1

1. How many parts does the Stamp Duties Act have?
2. What are the administrative functions of the Commissioner for Stamp Duties?

1.4 Administration and General Nature of Stamp Duties

From historical perspectives, stamp duties were originally introduced in 1694 in England. In Nigeria today, a stamp duty is administered by the provisions of Stamp Duties Act, 2004 and it is managed by the commissioners of stamp duties. The process of determining formally the correct duty is by adjudication and to achieve this, the instrument must be sent to the Commissioner of Stamp Duties for adjudication. The administration of Stamp Duties administration in Nigeria, going by the provision of section 4(1)(2) of the Stamp Duties Act, the power is vested on both the Federal as well as the State government. It states that:

> The federal government shall be the only competent authority to impose, charge and collect duties upon instruments specified in the (4) schedule to the Act if such instruments relate to matters executed between a company and an individual, group or body of individuals; while the state government shall collect duties in respect of instruments

executed between persons or individuals at such rate to be agreed with the federal government.

In the case of ***A.G. V CAMPLOUGH (1878) 3 EX 214***, the law of stamp duties is governed solely by statute and no document can be charged with stamp duty unless it comes within the clear words of an Act Parliament.

(Explain the nature and administration of stamp duties).

The stamp Duties Act is divided into three parts. Part 1 consists of a number of general provisions and contains the charging section, which imposes a stamp duties specified in the schedule on the Act on the documents set out in the schedule. These are arranged in alphabetical order and are called the heads of charge. Each head of charge may be divided into several sub heads. Part II consists of a number of explanatory sections which relates to and supplements the various heads of charge. Part III contains supplementary provisions relating to stamp duties. The duties specified in the schedule are of two kinds, fixed and *ad valorem*. Fixed duties do not vary with the consideration for the document whereas the *ad valorem* duties vary with the amount of the consideration and in accordance with the scales stated in the schedule as amended by subsequently Acts. In Nigeria, as earlier said, Stamp Duties is levied by both state and Federal Government. All the federation Units (states) as well as the central Government are empower by law to establish their own stamp duties office and appoint their own commissioner who will be in charge of proper execution of stamp duties issues and according to S. 6 SDA, 2004, such Commissioners are to be appointed by the relevant Civil Service Commission.

a. **Categories of items subject to Stamp Duties**

The under listed items are liable to stamp duties before becoming effective as a legal instrument. Letters of Power of Attorney, Leases, Bank Notes, promissory Notes and Bills of Exchange, Bills of Landing, Conveyances on Sale, Duplicate and Counterparts, Mortgages, Agreements, Appraisement, Instrument of Apprenticeship, Contract Notes, Conveyances, Exchange, Partition or Division, Marketable Securities, Notarial Acts, Polices of Insurance, Receipts, Settlements, Share Warrants, Warrants for Goods and Capitals of Companies. (***Identify the items Exempted from Stamp Duties***).

b. **Categories of Items Exempted from Stamp Duties**

The items that are exempted from stamp Duties were examined; the items include:

1. Liquidation of Sale/Transactions and where liquidation is under a compulsory winding up order by a court or a creditor's voluntary winding, section 513 of CAMA 2006 provides exemption from stamp duties on any assurance (which includes any deed, conveyance, discharge, assignment or surrender, Mortgage, charge or other encumbrance on any property forming part of the assets of the company to be liquidated, Power of Attorney, or order in respect of the company's property and property sold by a liquidated company is exempted
2. Treaties/Agreement made either between the Federal Government and other Foreign Government or foreign private Corporations/international organizations are exempt from stamp duty.
3. Company Reconstruction and Amalgamation.

Section 104 of this Stamp Duties Act exempts instruments in reconstructions and amalgamations. These include such instruments as a conveyance or transfer of sale assigning debts whether secured

or unsecured. However, the exemption does not cover debts (a part from debts due to banks or trade creditors) incurred less than two years before the proper time for making a claim of exemption. Section 102 provides that a loan capital shall be exempted from stamp duty if paid in respect of a mortgage or marketable security on any trust deed or other document securing such a loan capital iv)Section 70 of SDA exempt instruments providing for penal rent or increased rent in the nature of a penal rent and receipts issued for the payment of any government duties or taxes or of money for government are exempt, a letter of credit granted in Nigeria or amount drafts to be drawn in Nigeria for payment outside Nigeria is also exempted.

1.5 Stamp Duties Commissioner and its duty

A stamp duties commissioner is the commissioner appointed solely for the purpose of administering and controlling issues of stamp duties. Commissioner of stamp duties performs both administrative as well as technical functions. Administratively, his function is basically to ensure the proper functioning of the SDA office by ensuring that:

a) Stamping room where documents are embossed.

b) Cash office where duties are paid and books are balanced on daily basis.

c) The archive where copies of stamp documents are kept for future (Lekan et al: 2006:641).

Among the technical functions of the commissioner for stamp duties are:

a. Assessments and fixing of appropriate duties and rates on document

b. Stamping or embossments which maybe by way of embossment with dies, affixing adhesive stamps, affixing postage stamps in lieu of adhesive stamps and printing on the instrument.

c. The stamp duties commissioner is also charged with the custodian of dies and adhesive stampsuse in stamping instruments in other to guide against its loss or misuse.

d. **S**ometimes a commissioner may be required to express option on the amount of duty to be paid on any executed instrument and where this happens, it will be requiring of the commissioner to endorse a certificate on the instrument under the hand of the commissioner stating whether certain amount is chargeable on the instrument as duty or not. However, no two commissioners can adjudicate on an instrument and anybody who takes an instrument that has been adjudicated upon by one commissioner to another shall be guilty of an offence punishable with a fine (Lekan et al).

1.6 Collection and Assessment of Stamp Duties.

Two banks branches in each state are mostly designated for the collection of the stamp duties. Any payment outside these bank can only be honoured after due confirmation. Not only that, the law expressly gave the right to assess document to the states commissioner of stamp duties. (C.S Ola). The applicable rates are approved by Joint Tax Board, thus monitor the activities of the commissioners by comparing duties charged with the approved rate and any under assessment is returned for reassessment (C.S. Ola).

1.7 Stamp Adjudication

The special nature of stamp duties according to Abdulrasaqis illustrated by the adjudication process which enables the correct amount of duty to be determined – usually conclusively by the commissioners. Any person may require the commissioners to express their opinion on the liability to duty or to amount due. Following such an option the instrument may be stamped with the amount of duty determined and further stamped or with a stamp to show that it is not

chargeable. There is however, no obligation to pay that duty and generally the only consequence is that the document is not adjudicated and duly stamped.

In ***FITHCH LOVELL LTD V IRC (1962) WIR 1325 @ 1363,*** it was held that, apart from satisfying statutory requirements the main advantages in requesting adjudication is that the instrument is if duly stamped under the adjudication process –admissible for all purposes notwithstanding any objection relating to duty, thus it is the most that can be done to convince third parties. The process is also the first step in disputing the stamp Duties offices view of the correct amount of duty. It is important to however note that as was held in ***PRUDENTIAL MUTUAL ASSURANCE INVESTMENT & LOAN ASSOCIATION V CURZO (1852) 8 EX 97***, if an instrument is not duly stamped, subsequently, adjudication cannot retrospectively make it duly stamped. At the same time and as was held in *Marx v State & Gen. Investment Ltd (1976)1WLR 380 at 387* that the process cannot be prejudiced rights that have been asserted and relied upon prior to adjudication. In that case, Brightman J. (as he then was) held that:

> Suppose a vendor of land requires the purchase to accept a title deed which is not properly stamped. The purchaser declines. The vendor serves a notice to complete. The vendor forfeits his deposit. Suppose that this purchaser was right in law in his assessment of the stamp duty liability. It would be absurd to suppose in that case that the purchaser loses this deposit merely because the vendor between recession and trial succeeds in getting the instrument in question erroneously adjudication as not liable to duty.

Any issue arisen from adjudication; it is the High Court that has the jurisdiction to entertain same. And this will be by way of case stated after adjudication and payment of the duty. The appeal must be made within 21 days of assessment. The commissioners of stamp Duties must state a case and deliver it to the appellant who may then within seven days file it at the High Court. According to the court *in* ***HOLIMEIGH (HOLDINGS) LTD V IRC (1958) 46TC, 435****,* oral evidence is admissible to supplement & the case stated. Not only that the court in ***CLARKE CHAPMAN TOLINTHOMPSON LTD V IRC (1976)*** and ***WESTERN UNITED INVESTMENT CO LTD. V IRC (1958 CH 392)*** held that if the appeal is successful overpaid duty can be repaid with such interest as the court determine.

Furthermore, the revenue may not give to recover the excess of any higher duty the court may determine, in such circumstances the instrument is simply not duly stamped unless the excess is paid. Not only that, an application for judicial review is open to a tax payer in appropriate circumstances. ***(What is stamp adjudication?)***

1.8 Legal Status of Instrument not properly stamped.

The failure to stamp a document (unlike a failure to pay income tax) is not an offence and in general, the state cannot sue for duty on an unstamped instrument. Isaacs J in ***DENT V MOORE (1919) CLR316 AT 324*** held that an instrument which is not properly stamp is nevertheless effective. However, the stamp duty Acts provide a number of sanctions against no-stamping.

According to section 22 Stamp Duties Act an instrument which is not duly stamped in accordance with the law in force at the time when it was first executed "shall not except in criminal proceedings, be tendered in evidence or be available for any purpose whatsoever". In other words, the prohibition on admissibility does not extend to criminal proceedings, nor apparently to rent

tribunals, since these are not court of law as was held in ***MASON VS MOTOR TRACTION CO (1905)1 CH 419.*** Through failure to stamp an instrument is not a criminal offence but SDA provides a penalty for late stamping. Not only that going by sec24 SDA, if any person whose office is to enroll register or enter in, or enters any such instrument not being duty stamped, he shall incur a fine.

According to M.T. Abdulrazaq (2002) on penalties for late stamping, the general rule SDA 5.23 (1) is that the person presenting the instrument for stamping after the date of execution must pay the unpaid duty, penalty of ₦20 and a further penalty, if the unpaid duty exceeds ₦20 of interest on such duty at 10% per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty. In the Act, a fine of ₦40 is chargeable if a person executes an instrument in which partial facts affecting the liability to or amount of duty were not disclosed especially if it was with an intention to defraud the state; going by the sec 9 S.D.A 2004.

In conclusion, stamp Duties are also a taxes and its relevance cannot be under estimated. Stamp duties are not a tax on transaction or personal tax, but a tax on document. Issues on stamp duties are governed by the Stamp Duties Act, 2004 as amended. It is the duty of Commissioner to adjudicate on what constitute the stamp duties but any issue that arisen from adjudication strictly lies on the Federal High Court that has the jurisdiction to hear appeal from stamp duties matter, after the Tax Appeal Tribunal. It has also been established in this unit that, though the law required ones to stamp some categories of legal document but failure to stamp them properly still does not makes them ineffective because, failure to stamp a document is not a criminal offence but if any person saddle with the responsibility of enroll, register or enter such instrument do so without stamp, he shall incur a fine.

(Explain the legal position of document/ of Instrument not properly stamped)

1.9 Summary

This unit discussed Stamp Duties is, categories of items that qualify for stamp duties and the ones not qualify how Stamp Duties are levied and the legal effect of a document not properly stamped.

1.10 References/Further Reading

Abdulrazaq M.T. (2002) "*Stamp Duties" in. CITN, Tax Guide Statute,* Lagos Chartered Institute of Taxation of Nigeria

Lekan S. & Sunday O. (2006) *Taxation: Principles and Practice in Nigeria*, Ibadan, Silicon Publishing Company

Ola C.S. (1981) *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria,* Ibadan, Heinemann Educational Books (Nigeria) Ltd

The Finance Act, 2021, omitted in the material introduced over 30 amendments to the existing legal framework on Taxation in Nigeria

M.T. Abdulrazaq (2016) Taxation System in Nigeria, Gravitas Legal & Business Resources, Lagos Nigeria:

Ifueko Omoigui Okauru (2012) Federal Inland Revenue Service and Taxation Reform in Democratic Nigeria Federal Inland Revenue Service, Ibadan: Journal Articles &Internet resources as well.

1.11 Answers to Self-Assessment Exercise 1

i. The Stamp Duties Act has three parts

ii. Administratively, the Commissioner's function is basically to ensure the proper functioning of the SDA office by ensuring that:

a. Stamping room where documents are embossed.

b. Cash office where duties are paid and books are balanced on daily basis.

c. The archive where copies of stamp documents are kept for future

UNIT 2 Other Categories of Duties

CONTENTS

2.1 Introduction

2.2 Unit objectives

2.3 Main contents

2. 3.1 other categories of duties

2.1.1 Customs and Excise Duties

2.1.2 Import and Export Duties

2.5 Summary

2.6 References/ Further Readings/Web Sources

2.1 Introduction

Notwithstanding Stamp Duties that can be legislated upon by both Federal and State legislatures, other duties are exclusive for the federal government and even on the stamp duties, it is only the execution of personal instruments that can be legislated upon by the state government, while federal government legislates on stamp duties executed by Corporate and residence of the federal capital territory, Abuja. Though, not highly pronounced, duties are one of the modest but constant ways of generating revenue to the government coffers, through indirect taxation. The target will

be to examine other categories of duties that government imposes on goods and reasons for imposing them.

2.1 Learning Outcomes

By the end of this unit, you will be able to:

i. Explain other categories of duties imposed by government
ii. Understand the reasons why government imposes duties

2.3 Other Categories of Duties

(Identify and explain other categories of duties than stamp duties)

a. Customs and Excise Duties

Excise duty is defined by the Excise Ordinance No. 64 of 1941 as "any duty other than export duty of customs imposed on any goods manufactured in Nigeria". Excise duty is the money paid to the government by manufacturing concerns on goods produced. It is a production tax. Excise duties are government tax on some goods made, sold or used within a country (Hornby: 2000: 401). A customs and excise duty is the 16th items on the Exclusive Legislative List of the amended 1999 Constitution. Amongst the reasons for the imposition of Excise Duties according to Lekan et al (2006) are;

i. It is a fiscal weapon that can be manipulated to achieve predetermined economic objectives.

ii. It has high capacity for re-allocating income

iii. It can be used to influence exercise of purchasing power by consumers.

iv. It can be used to discourage the proliferation of industrial development along certain lines to the exclusion of others. For example, exercise duty may be increased on certain commodities to deter investors.

v. Exercise Duties also have import substitution effect. Rate of exercise duty are sometimes reduced or eliminated completely in order to give impetus to local production activities.

The rate of tax for most excisable goods ranges from 5% to 10%. However, the goods that are considered harmful to the wellbeing of the members of the society attract rates up 40 %. Such harmful goods include beer, tobacco cigarettes, and liquor. The objective is to discourage massive production of such goods. Excise duty is the 16th items on the Exclusive Legislative List of the 1999 Constitution as amended.

Self-Assessment Exercises 1

1. Explain the term 'Excise duty'
2. Identify any two reasons for imposition of Excise duty

b. Export Duties

This is a tax on goods coming and going out of the country. Though a product tax, it is one of the effective indirect ways of generating fund for government. Just like the excise duties, import and export duties are levied in order to check the production and distribution of certain classes of goods. To check importation and to correct imbalance of trade between one country and another, a higher percentage of rates can be fixed on importations, while a lower percentage of importation

rates will encourage the flowing in of such goods. An export duty is the 25th items on the Exclusive Legislative List of the 1999 Constitution.

2.4 Summary

Here, we have been exposed to other duties that government imposed on goods apart from stamp duties. All in all, the most important things to note is that the levying of all these duties are basically for raising of funds as an indirect ways of taxation. This unit discussed other categories of duties levied by government, the reasons for the imposition of Excise duties and the importance of levying the duties.

2.5 References/Further Readings/Web Sources

Abdulrazaq M.T. (2002) "*Stamp Duties*" in CITN, Tax Guide Statute, Lagos Chartered Institute of Taxation of Nigeria

Lekan S. & Sunday O. (2006) Taxation: Principles and Practice in Nigeria, Ibadan, Silicon Publishing Company

Ola C.S. (1981) Income Tax Law for Corporate and Unincorporated Bodies in Nigeria, Ibadan, Heinemann Educational Books (Nigeria) Ltd

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M.T. Abdulrazaq (2016) Taxation System in Nigeria, Gravitas Legal & Business Resources, Lagos Nigeria:

Ifueko Omoigui Okauru (2012) Federal Inland Revenue Service and Taxation Reform in Democratic Nigeria Federal Inland Revenue Service, Ibadan:

2.6 Answers to Self-Assessment Exercise 1

i. Excise Duty refers to 'any duty other than export duty of customs imposed on any goods manufactured in Nigeria'. It means the money paid to the government by manufacturing concerns on goods produced.

ii. a. Because it is used as a fiscal or economic weapon

b. It has a high capacity of re-allocation of income

c. It is used to regulate consumers' purchasing power

MODULE 4: COMPANY TAXATION AND EXEMPTIONS

Unit 1 Administration of and Chargeability to Company Income Tax

1.1 Introduction

Companies are also chargeable to tax. The law requires that companies should endeavor to make yearly return to the tax authority. It is therefore important to know that, a company is a different entity from its shareholders, we will be exposed to the administration of company taxation and ways by which companies are chargeable to tax.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Discuss the administration of company income tax in Nigeria
ii. Explain the chargeability of companies to tax in Nigeria

1.3 Administration of and Chargeability to Company Tax in Nigeria

a. Administration of Companies Income Tax

The administration of Company Income Tax Act and the tax is under the care and management of the Federal Board of Inland Revenue Service Act, 2007. By the provision of Section 1(1) of CITA, 2004 which states that: '... *there shall continue to be a board of which the official name shall be the Federal Board of Inland Revenue (in this act referred to as the "Board") whose operational arm shall be called and known as the Federal Inland Revenue service (in this Act referred to as "the service"*

Self-Assessment Exercises 1

1. Which body administers the Company Income Tax Act?
2. A company and its shareholders are the same. Do you agree? What is your authority?

b. Composition of the Board

Different categories of people, stakeholders and interest group serve as the board of Inland Revenue. While the president shall appoint the chairman of the board, other members according to section 2(a),(b),(c),(d),(e),(f)(g),(h),(i) are; Directors and head of departments of service; Director with responsibility for planning, research and statistics in the Federal Ministry of Finance, a member of the national Revenue Mobilisation Allocation and Fiscal Commission; a member from the Nigerian national Petroleum Corporation not lower in rank than an executive director; a Director from National Planning Commission; a Director from Nigerian customs Service; the Registrar general of the Corporate Affairs Commission; the legal adviser to the service he quorum and powers of the Board are stated in section 2(3) and section 3(1),(2),(3),(4),(a),(b),(5),(6) of the Act.

c. Chargeability to tax

A company is a different entity from its shareholders (Salomon v Salomon), therefore, just like any other individual, a company is also chargeable to tax. Though "the principal officer or manager in Nigeria of every company shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this act for the assessment of the company and payment of tax"(section 37 CITA 2004), section 36 CITA, 2004 clearly states that "A Company shall be

chargeable to tax" in its own name, in the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria, in like manner and to like amount as such company would have been chargeable in the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable if no receiver or liquidator had been appointed. Take note that, while (a) and (b) above relate to a going concern company while (c) is in respect of any company in receivership or in liquidation,

(Describe the chargeability of companies to tax)

1.4 Summary

From the discussion in this unit, it could be gleaned that even though tax is compulsory but it is not an exercise to put unnecessary burden on both individual and cooperate organization. Tax is just a social responsibility of both individual and cooperate organization towards the welfare of the society. In Nigeria, the administration of Company income tax is basically under the jurisdiction, care and management of the Federal board of Inland Revenue. Under this unit, we discussed the administration of company taxation in Nigeria and Company's chargeability to tax,

1.5 References/Further Readings/Web Sources

Ariwodola J.A (2000), *Companies Taxation in Nigeria*, (3rd edition), Lagos: JAA Nigeria Limited

Ariwodola J.A (2001), *Personal Taxation in Nigeria,* (4th edition), Lagos: JAA Nigeria Limited

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

Lekan S. & Sunday O. (2006), *Taxation: Principles and Practice in Nigeria*, Ibadan, Silicon Publishing Company

Orojo J.O (1979), *Company Tax law in Nigeria*, London: Sweet and Maxwell

1.7 Answers to Self-Assessment Exercise 1

i. . Company Income Tax Act is under the care and administration of the Federal Board of Inland Revenue Service.

ii. . No. The case of *Salomon v Salomon*

Unit 2 Company Tax Exemption and Reliefs

Contents

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2.3.1 Company Tax Exemption and Reliefs

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c. Pioneer industries Relief

d. Exemption and Relief of Chargeable Gains

e. Import Duties and long term Fiscal System Relief

f. Common Wealth Income Tax Relief

g. Double Taxation Relief

2.4 Summary

2.5 References / Further Readings/Web Sources

2.1 Introduction

It is trite law that tax is a compulsory payment imposed by government on the citizenry in a country. However, in order to reduce the burden of taxation on both individual and corporate

entity and in a bid to encourage prompt and proper tax payment, government allows certain categories of people at a certain time not to pay tax; this is known as tax exemption or tax holiday. During this time, any individual or corporate organization enjoying it will pay less amount of money that are supposed to be paid as a tax. In this unit, the constituent of Tax exemption will be examined, not only that, reasons and benefits of tax exemption and different categories of tax exemption will also be discussed.

2.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Explains what Tax exemption is
ii. Analyse the different categories of tax exemptions in Nigeria
iii. Discusses the benefit of tax exemption to both to the state and individual.

2.3 Company Tax Exemptions and Reliefs

a. Definition of tax exemption

Tax exemption otherwise known as "tax holiday" is the most widespread tax incentive. Tax exemption simply means a period of exemption from the payment of taxes imposed by the government and this exemption may be complete or partial. (Ayua I.A:1996:306). Tax exemption may also relate to industry, regions or type of investment (F.M Andie 1968). Tax exemption is that which is not taxed while tax Relief is a reduction in the amount of tax you have to pay, especially when you are using the money for a particular purpose, such as buying property (Hornby A.S: 2000:1227) From the foregoing what we can describe tax exemption to be is an incentive inform of nonpayment of tax for a specific period of time. (***What is tax exemption and how can you differentiate it from tax relief?***). The nonpayment may be total or partial; and it is done in order to encourage investment and guaranteed some level of relief to the tax payers. Tax

exemption begins with the day of initial production or the day of first commercial sale, because tax exemption has been generally regarded as an industrial investment device. (F.M Andie).

Self-Assessment Exercises 1

1.State the major reason for tax holiday

2.Which law provides for profits exempted from tax?

b. Categories of company tax exemptions

i. **Pioneer Industries Tax Exemption**

The major reason for tax holiday is to encourage and stimulate private investment in the country economy. Exempting them from payment of tax for some years is also a booster for stability and growth of such business. In Nigeria, the pioneer companies relief was first introduced by the Aid to Pioneer Industries Ordinance, 1952, which was superseded by the industrial Development (Income Tax Relief) Act 1958. The 1958 Act liberalized and extended the former aid to pioneer industries and provided that the establishment and development of industrial and commercial enterprises might be encouraged by way of income tax relief (Ayua: 1996: 316). The 1958 Act was repealed by the industrial Development (Income Tax Relief) Act 1971 and the law has now been consolidated in the industrial Development (Income Tax Relief) Act cap 179 LFN 1990. In this CAP, tax relief grant is 3 to 5 years and it is available to both foreign and indigenous industries with the required initial investments for the foreign company at #150,000 and indigenous company at #50,000. According to section 12 of the Act, a pioneer company is forbidden from carrying on a trade or business other than its pioneer enterprise. Where this occurred section 6

provides that such company will be liable to tax in respect of those profits otherwise the profits of a pioneer company are exempted from tax.

What we are saying here is that, cognizance is taken of the newness and relevance of the products by the companies and the tax holiday period is subject to a maximum of 5 years. During this time, there is total exemption from tax of the company's profit during the pioneer period. (Ariwodola: 2000:15). Not only that a pioneer company is entitled to claim the benefit of capital allowances at the end of its tax relief period thereby extending a tax free period of five years by another period during which a pioneer company pays no tax (Ayua: 317). For a company to be granted a pioneer status under the Act, the following conditions must be satisfied:

i. Federal Executive Council must be satisfied that any industry is not being carried or in Nigeria on a scale suitable to the economic requirement of Nigeria or is not being carried on at all.

ii. There are favourable prospects of further development in Nigeria of such industries in Nigeria, and

iii. It is expedient in the public interest to encourage the development or establishment of such industries in Nigeria. (Lekan et al: 2006: 413).

d. Exemption and Relief of Chargeable Gains

In Nigeria, going by CITA, 2004, section. 8 provides that profit or gain derived from business are subjected to tax, once the profit of such company accruing in, derived from, brought into or received in Nigeria, but some categories of profit are also exempted from tax. The profits exempted from Tax according to section 19 (1) to CITA and as outlined in (Ariwodola: 2001: 244-251) are as follows: -

1. Gain accruing to –

    a) An ecclesiastical, charitable or educational institution of a public character.

    b) Any statutory or registered friendly society;

    c) Any co-operative society registered under the Co-operative Societies Law of any State.

    d) Any trade union registered under the Trade Unions Act;

According to section 27(1), CITA 2004, the accruing gain of the above listed institutions must not be derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society, not only that, the gain must applied purely for the purpose of the institution or society as the case may be.

2. Gains accruing to any Local Government Council S. 28 (1).
3. Gains accruing to any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria; or

4. Gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria in so far as the gains are not derived from the disposal or any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some person or authority. S 28 (2).

5. Grains accruing on disposal of investments held as part of any superannuation fund and other statutory retirement benefit scheme to the same extent as income derived from the assets would be exempt under S.20 of PITD (S.20.1). Disposal of a right to, or any part of any sum payable out of any superannuation fund shall also not be chargeable. (S.29.2).

   "Superannuation Fund" means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under Section 21 (1) (g) of PITD.

   Grains accruing on disposal by any person of a decoration awarded for velour or gallant conduct which he acquires otherwise than for consideration in money or money's worth (S.30).

6. Grains accruing from a disposal of Nigerian Government Securities (S.31). Nigerian Government Securities include Nigeria treasury bonds, savings certificates and premium bonds issued under the savings Bonds and certificates Act.

7. Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers (S.9).

8. Gains accruing in connection with the disposal of an interest in or the right under any policy of assurance or contract for a deferred annuity on the life of any person (S.33).

e. On some of the other exemptions and relief provisions in the Act, Ariwodola 2001 stated further:

i) S.35 exempts sums obtained by way of compensation or damages for any wrong or injury suffered by an individual to his person or his profession or vocation. This includes wrong

or injury or enticement. Sums obtained by way of compensation for loss of office exceeding N10,000 in any year of assessment is however chargeable.

ii) S.36 exempts gain accruing on disposal of a dwelling house (with a maximum land area up of one acre or such larger area as the board may determine) which has been the individual's only or main residence throughout the period of ownership up to the time of disposal or up to the last twelve months before the date of disposal. So far as it is necessary for the purposes of this section to determine which of two or more residences is an individual residence for any period.

   a) The individual may conclude that question by notice I writing to the Board given within two years from the beginning of that period. This can be varied by a further notice in writing to the Board as respects any period beginning not earlier than two years before the given of the further notice.

   b) The question shall be concluded by the determination of the Board. The individual may appeal Commissioners against that determination within thirty days of service of the notice by the Board.

iii) A gain accruing on disposal of tangible and movable assets shall not be chargeable gain if the total value of the consideration does not exceed N1,000. iv)A motor vehicle the carriage of passengers is an exempt's asset for CGT purposes unless it is of a type not commonly used as private vehicle and is unsuitable to be so used (S.38).

iv. S.39 exempts assets acquired by way of gift and disposed of in a similar manner.

v) S.40 exempts capital gains accruing to a diplomatic body.

vii) Double taxation relief is applicable to Capital Gains Tax (CGT) with the substitution of the words capital gains for income and profit and CGT for income tax.

The following exemptions have been included from 1990:

a) Gains arisen from takeover absorption or merger provided that no cash payment is made in respect of the shares disposed or acquired. (S.32A).

b. Grains arisen in respect of disposals of securities Unit Trust provided the proceeds are reinvested (S.32B). Not only that, from 1st January 1998, Stock and shares of every description are also exempted. (Ariwodola: 2001:247). Furthermore, going by section 19 (2) CITA, 1990, the federal executive council may exempt by order:

a) Any company or class of companies from all or any of the provisions of the Act, or.

b) From tax or all or any profits of any company or class of companies from any source on ground which appear to be sufficient.

Not only that, section 19 (3) stated that the Federal Executive Council (FEC) may order amend, add to or repeal any exemption made by notice or order, in so far as it affects a company.

f. Important Duties and Long Terms Fiscal System Relief

Relief from custom duties on imports of equipment and construction materials lowers the cost of firm's capital equipments whilst relief from duties on imports of raw materials and semi-processed materials enhances the competitiveness of the firm in establishing a domestic or foreign market. Thus relief from import duties may also take the form of differentiation between types of industries and between the destination of the products produced by these industries, namely, as to

whether for internal use or for export markets. (Ayua: 1996: 312). On the long-term fiscal system, according to Ayua, is geared towards the stabilization of tax charges, and this tax holiday usually entitles the approved enterprise to the following benefit:

i. Stabilisation of all tax rates at the level prevailing when the enterprise was approved and for an extended period of say 25 years.

ii. Exemptions from any modification in tax assessment and collection procedure during this period, and iii. Exemption from new taxes introduced during this period.

g. Commonwealth Income Tax Relief

If a company which has paid or is liable to pay tax under the Companies Income Tax Act 1961 for any year of assessment on its profits satisfies the Board that it has paid or is liable to pay commonwealth income tax for that year in respect of the same part of its profits, it will be entitled to tax relief under the Act. On this if the Company is a Nigerian company, rate of tax if it does not exceed one-half of the rates of tax in Nigeria, and in any other case, half of the rate of tax in Nigeria. (Orojo: 1979: 160).

h. Double Taxation Relief

Double taxation is the levying of tax on the same items by different tax authorities. In double taxation, the same income received is being taxed twice. To lessen the burden imposed by double taxation on the recipient, various countries have therefore made provisions for double taxation relief. Not only that, in order to aid the actualization of relief from double taxation, many countries including Nigeria had entered into Double Taxation Agreement. The taxes that are subject to this agreement in Nigeria include Personal Income tax, Companies Income Tax, Capital Gain Tax and

Petroleum Profit Tax (Lekan et al: 2005:449). Amongst the items exempted from double taxation are

i) The remuneration of a professor or a teacher who is resident for not more than years in the other country for teaching purpose.

ii) Government persons except the recipient is ordinarily resident in Nigeria iii) Air craft and shipping profits

iv) Dividends paid by a UK company to a Nigeria resident who has no permanent establishment in the UK

v) Payments to a students or apprentice during his full time education or training in Nigeria.

vi) The income is derived by a resident in UK provided he is not in Nigeria for at least 183 days and the services are rendered for a UK employer (Lekanetal:451).

In double taxation, arrangement for any allowance by way of credit must be made not later than 2 years after the end of the year of assessment. Amongst the countries that has entered into double taxation agreements DTA with Nigeria are; Kingdom of Belgium, French Republic, Government of Canada, Government of Romania and Kingdom of Netherlands.

(List and explain the categories of company tax exemptions you know)

2.4 Summary

In order to alleviate the burden of taxation on corporate organization, the law gives room for nonpayment of tax at a certain period of time, and this is known as tax exemption or tax holiday. This exemption may be partial or total. That is, such company may be exempted from the payment of the total amount or certain percentage of tax may be exempted from payment for certain period

of time. One of the major reasons for company tax holiday is to lessen the burden of tax on the company in order to allow for stability and growth of a company. Not only that, it is also a weapon to attract foreign investment and re-investment in the economy. In nut shell, tax exemption can be a very useful tool in the hands of the developing countries to attract foreign capital as the foreign firm may be reluctant in the first instance to come because of poor investment climate in some countries. Tax exemption therefore reassures them that their presence is needed. Conclusively, it is pertinent to note that, tax exemption is a global phenomenon and not peculiar to Nigeria. All the countries of the world normally look for avenue to lessen the burden of tax on their citizenry. Therefore, the issue of tax exemption is both intra and international in nature, and that's why countries all over the world try to avoid higher tax boarding by entering into Double Taxation Agreement (DTA). We have in this unit, discussed what tax exemption is and the Companies tax exemptions and reliefs

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2.6 Answers to Self-Assessment Exercise 1

i. The major reason for tax holiday is to encourage and stimulate private investment in the national economy.

ii. Section 19 (1) to CITA

Module 5 TAXATION AND CHARGEABILITY OF CAPITAL GAINS IN NIGERIA

Unit 1: The Administration and Chargeability to Capital Gains Tax (Cgt)

1.1 Introduction

1.2 Unit Objectives

1.3 Main Contents

1.3.1 Meaning and Nature of Capital Gains ta

1.3.2 The administration of Capital Gains Tax

1.4 Summary

1.6 References/Further Readings/Web Sources

1.7 Possible Answers to SAEs

1.1 Introduction

Capital Gains Tax was first introduced in Nigeria by Decree No. 44 of 1967 and applies only in the then Federal Capital Lagos. However, by the Finance (Miscellaneous Taxation Provisions) Decree, No. 15 of 1976, it applies to the whole of Nigeria. In 1990 it was consolidated and re-enacted into what is now known as the Capital Gains Tax Act, 2004 and remains the current law on the subject despite some amendments by the Finance (Miscellaneous Taxation Provisions) Decree of 1`993, 1996 and 1998 respectively. It is administered by the Federal Inland Revenue.Service Act, 2007.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Explain the meaning and nature of Capital Gains Tax (CGT).

ii. Discuss the assets that are subject to CGT

iii. Explain its enforcement and general administration in Nigeria.

1.3 The Meaning and Nature of Capital Gains Tax

It is the gains arising from the disposal of Capital assets to a person who does not frequently offer them for sale and in whose hand they are not stock in trade despite increase in the market value of the assets. Such gains may be *'Paper gains' or 'realised gains.'* It is paper gains where the assets appreciate in value while the owner still holds it. However, where the asset is disposed off it becomes realized gains. The Capital Gains Tax Act, 2004 provides that a capital gains tax of 20% shall be imposed on the total chargeable gains accruing to any person including a company during the year of assessment. Tax is computed on the gains realised from the disposal of assets. (***What conditions must be met before capital gains can be chargeable to income tax?***)

Usually, three conditions must be satisfied before capital gains can be chargeable to income tax. First, there must be a Chargeable person to tax, secondly, there must be a chargeable asset giving rise to a chargeable gain on disposal and thirdly, here must be a disposal of the asset by the person chargeable to tax. The persons chargeable to capital gains tax are Companies throughout Nigeria and persons to whom the Income Tax (Armed Forces and other persons) special provision Act, 2004 applies. The assets that are specifically mentioned under the Miscellaneous Taxation Decree, Provisions Decree, No. 47 of 1990 as chargeable asset includes; options, debts and incorporeal property generally, non-Nigerian Currency; any form of property created by the person disposing of it or otherwise coming to be owned without being acquired, stocks and shares of every

description. The capital Gains Tax Act does not tax all forms of property situated in Nigeria as there are exemptions and reliefs.

Self-Assessment Exercises 1

1. What is capital gain tax?
2. Define the term 'consideration' and state any two situations under which it can be determined

1.3.1 The administration of Capital Gains Tax

Capital Gains tax is administered under different nomenclature as provided below:

a. Chargeable Gains

According to Section 6 of CGTA, 2004 states that the gains chargeable to tax are as follows:

(1) Capital sums derived by way of compensation for any loss of office or employment;

(2) Capital sums received under a policy of Insurance for the risk of any kind of damage or injury or the loss or depreciation of assets. The compensation must be in respect of destruction of the profit making apparatus of the recipient company.

(3) Capital sums received in return for forfeiture or surrender of rights or restraining from exercising rights. An example is where shareholders are rewarded for non-exercise of rights conferred by their shares.

(4) Capital sums received as consideration for use or exploitation of any asset, and

(5) Capital Gains received in connection with or arising by virtue of any trade, business, profession or vocation. The Capital Sum must relate to trading profit of the company as arising from the use of its trading stock.

b. Consideration

Consideration is the money's worth given in exchange by the buyer of an asset to the seller. Section 7 CGTA 2004 provides for the determination of consideration for acquisition and disposal under certain situations, namely;

(1) **Bargain at arm's Length**

Consideration for acquisition and disposal made at arms length is the market value of the asset at the time of acquisition or disposal whichever the case.

(ii) Deemed Consideration

Consideration for an asset shall be deemed to be equal to the market value at the time of acquisition or disposal of:

(a) The asset is acquired otherwise than by way of a bargain made at arms length; or

(b) The consideration cannot be valued or the consideration is for loss of office; or

(c) The asset is acquired by the trustee for creditors of the person making the disposal.

c. Computation of Capital Gains

This is governed by Section 12 CGTA 2004. It provides that in the computation of Capital Gains, the gains are realised by the difference between the net consideration accruing to a person on the disposal of assets and the net of the total consideration and expenses for acquiring the asset. So the

capital gain is arrived at by deducting from the proceeds accruing to any person on a disposal of assets from the following:

1. The amount incurred by him or on his behalf in acquiring or providing the asset.
2. The amount incurred by him or on his behalf for the purpose of enhancing the value of the asset as shown at the time of disposal.
3. Legal, and other expenses incurred by him on his behalf in establishing, preserving or defending his title to or right over asset;
4. The incidental cost to him of making the disposal including professional fees, commission cost of advertisement and stamp duties. Any amounts chargeable to income tax are excluded for the computation of capital gains under S. 14 of the Act.

d. Deductions Not Allowed

In section any expenditure allowable as a deduction in computing the profits or gains or losses of a trade, business, profession, or vocation for the purposes of income tax is not allowable deduction for the purpose of computing capital gains chargeable to capital gains tax.

e. Exclusion of Losses

Section 5 C.G.T.A. provides that in the computation of chargeable gains, the amount of any loss shall not be deductible from the gains accruing to any person on the disposal of such asset.

f. Bodies Exempted from Capital Gains Tax

The Capital Gains Tax Act exempts certain bodies from Capital Gains Tax in the event of disposal of Capital Assets. Such bodies are:

(a) Charitable Institutions

(b) Statutory or Registered friendly societies;

(c) Co-operative societies

(d) Trade Unions.

In respect to (a) above, it is provided under Section 27(2) (b) that where a property to which the above provisions applies was held on trust, the trustee will be regarded as having disposed of and immediately re-acquired the property for a consideration equal to its market value. And where gain results on disposal, it will be treated as not accruing to the Institution or society. In that a back assessment to capital gains will then be made within 3 years on such a gain. Capital gains accruing to any local or native authority or to any company being a purchasing authority established under any law in Nigeria to acquire any commodity for the purposes of export or to any corporations established under any law in Nigeria for the purpose of fostering the economic development of any part of Nigeria are not chargeable to capital gains tax.

(e) Capital Gains accruing to Diplomats or diplomatic bodies are also exempted form income.

Self-Assessment Exercises 2

1. Name any three items exempted from capital gains
2. What does the Nigerian tax law say about artificial or fictitious transactions?

g. Exempted Capital Gains

The following are exempted from capital gains, namely:

(1) Disposed of decorations awarded for valour, or gallant conduct (s. 30 of the Act) acquired otherwise than for considerations in money or moneys worth.

(2) The main or private residence of an individual.

(3) Life Insurance Policies.

(4) Chattels disposed of for not mere than N1,000 in any year of assessment;

(5) Motor cars suitable for private use (s.38 of the Act)

Assets disposed of by way of gifts. But the position under the capital transfer tax, gifts are now taxed thus closing the door against possible tax avoidance where gift may be given to relations to conceal capital Gains;

Apart from the foregoing, other exemptions relate to capital gains which accrue on disposal to the following transactions or investments. They are:

(6) Retirement benefits schemes;

(7) Government securities etc.

h. Reliefs

The Act Provides Reliefs in respect of replacement of business assets, compensations for assets cost or destroyed and in respect of delayed remittances from abroad.

i. Replacement of Business Assets

Where an asset (i.e an old asset) has been used for the purpose of a trade or business and the asset is disposed off and the amount realised from the disposal is used to acquire another asset (Re a new asset) for the purpose of the business, the company carrying on the trade, on making a claim shall be treated as:

(a) if the consideration for the disposal of or of the interest in the old assets were neither a loss nor a gain to him.

(b) If the amount or value of the consideration for the acquisition of or of the interest in the new assets was reduced by the excess of the actual consideration arising from the disposal of the old assets over the consideration deemed under the first paragraph. (s.32 of the Act)

The above relief will be lost if only part of the consideration for the disposal of the old asset was re-imposed in acquiring the new assets. But where part of the consideration that is not re-invested is less than the gain accruing on the disposal, then the company will be entitled to the relief. But proportionately to the amount it has re-invested.

(How is capital gains tax administered?)

The purpose of this provision is to prevent the abuse of tax relief. Business assets entitled relief consists of the following: -

1) Building and lands occupied and used solely for the purpose of the trade, excluding those owed by developers or dealers.
2) Fixed plant or machinery:
3) Ships;
4) Aircrafts and
5) Good will.

j. ***Compensation for Asset lost or destroyed***.

Section 19 C.G.T.A. provides that where a capital sum is received in compensation for an asset lost or destroyed whether under a policy of Insurance or not and the compensation was applied within three years of receipt in acquiring another asset in replacement of the lost or destroyed asset the owner company will be similarly entitled to a replacement of business assets relief.

k. Delay in remitting Capital gain from abroad

A Nigerian company which derive gains from properties based outside Nigeria and disposed off will only be charged to tax in Nigeria as and when remittance to Nigeria of such gains becomes possible. But before such capital gains deferment will be allowed, the following conditions must be fulfilled.

(1) There must exist evident inability to transfer the gains to Nigeria.

(2) The inability must have arisen from the fact that the laws of the country where the income arose makes it difficult; or due to executive action of its government; or due to the impossibility of obtaining foreign currency in that territory and

(3) The inability was not due to any unreasonable delay on the part of the tax paying company.

l. Artificial or Fictitious Transactions

By the provision of Section 21 CGTA, the federal Board of Inland Revenue has wide power to disregard artificial or fictitious transaction engaged for the purposes of Capital Gains Tax. The Board can exercise the powers where he is of the opinion that any disposition is artificial or fictitious or where any capital gains tax is artificial or fictitious. The Board can overlook such disposition and ensure that correct tax is paid.

m. Exchange of Landed Property

Where a landed property is given in exchange for another landed property of lesser value with the aim of avoiding the payment of appropriate tax, the transaction will be deemed to have been at the market value on the day of the exchange, and tax will be paid on the chargeable gains. The person or company with whom the exchange was made would also be deemed to have disposed of his

own landed property at the market value at the date of exchange and will also be required to paid the appropriate capital Gains Tax.

n. *Selling of Property to Connected Persons*

Section 23 and 24 of the Act, deals with disposals of assets to connected persons.

Section 24 defines a "connected person" in the following manner.

(a) A company is connected with another – if the same person has control of both companies or a person has control of one and persons connected with it have control of the other or.

(b) If a group of two or more person has control of each company and the group either consist of the same persons by treating a member of either group as replaced by a person with whom he is connected.

(c) A company is connected with another person if that person has control of it or if that person and persons connected with him together have control of it;

(c) Any two or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the direction of any of them to secure or exercise control of the company;

(e) A person is connected with an individual if that person is individual's spouse or a relative or spouse of a relative etc.

(f) A trustee of a settlement is connected with any individual who in relation to the settlement is a settler and with any person who is connected with such individual's spouse.

(g) A person is connected with any person whom he is in partnership and with the spouse or relative of any individual with whom he is in partnership.

Thus where, a company tax payer sells its property out at under value to a person connected, such a sale will be disregarded and the chargeable gains will be calculated on the market value of the property at the date of transfer. Such transactions between connected persons is regarded as a transaction otherwise than by way of bargain made at arm's length.

o. *Tax Rate Vis-a- is Investment.*

It is the view of Professor Wheat Craft (***1964, Problems of Capital Gain Tax, in British Tax Report, p.406) said*** that if capital gains are to be taxed at substantially lower rates than income, the legal and accountancy professions will doubtlessly also devote much time and thought to devising methods of turning income gains into capital gains. This weakens investment.

In this vain, Professor Ayua, ***(1999: 67)*** submitted that Capital gain tax rate is too low 20% in Nigeria, in spite of huge profits that companies are making especially in real estates. He therefore suggests that capital gains should be given preferential treatment (i.e. increase the rate of capital gains) so as to create incentive to shift investments from the activities which yield ordinary income which attracts higher rate of tax such as dividends, interest, allowances etc to those which create Capital gains since it will be taxed at a lower rate.

Low rate of Capital gains will make shareholders prefer profits to be retained in their companies. This also reduces funds for further investment opportunities in especially that our capital market is too young. It is arguable that low rate of capital gains might make company to plough back excess profits into new ventures, which will likely increase their efficiency-although risky. Conversely, it is inimical to increase the tax rate of Capital gains because, it will negatively affect

the easy movement of securities in the Capital gains. This will be detrimental to industrial growth and development.

(Briefly explain the relationship between tax rate and investment).

It appears from the above argument that it is better to embark on the policy of low tax rate on Capital gains so as to encourage investment as noted above. It is most respectfully submitted that Capital gains tax rate should not be increased from 20% to 35% as suggested by Professor Ayua. ***(1999: 337)*** This is because, it will make shareholders and prospective investors not have any desire to invest their securities in new ventures due to the unpredictable natural trends of Nigerian economy. What is more, most government policies on the economy is geared towards encouraging private investment opportunity and commercialization of public enterprises to generate more revenue and employment in Nigeria. It will therefore be very suicidal to increase the rate of capital gains at this point in time. The time is not yet ripe for the government to increase the rate of capital gains at this juncture.

p. Tax Rate Vis – a – Vis inflationary Trend

Inflation increases the nominal value of assets but there is no equal increase in their real value. Thus, under inflationary period, any increase in value of assets should not be subjected to capital gains tax because there is no any gain. But sometimes during inflation, the money value of assets may appreciate higher thus giving rise to some capital gains which may be taxable e.g. holders of corporate shares and urban real estate who sell or transfers them with beneficial gains. This does not apply to holders of bonds and fixed assets who will loss. Hence, it will be appropriate to tax capital gains on holders of Corporate Shares and real estates during inflation with the exemption of those holding bonds and fixed assets to ensure equitability in taxation. To drive home this point,

inflation allowance should be granted to companies who acquire additional assets or replace old assets during inflationary period so as to cover loses arisen from the cost of acquiring new assets against the old, replaced assets.

Professor Ayua (**1999: 234)** opined that 'indexation' of Capital gains should be introduced to allow for price inflation. But he further admitted that it is a difficult subject to tackle in developing country like Nigeria. He submitted that even Britain could not attempt the indexation. However, I share his view that graduated tax rate will create administrative bottleneck for tax authorities to handle and very expensive Granting temporary tax relief in times of inflation for companies on capital gains is the best option as well as maintaining one form of tax rate for the country for the time being.

There are few Nigerian Cases on Capital gains tax. Hence, we shall make reference to one or two foreign cases bordering on English courts decisions dealing with trustees' liability to tax on 'advanced' assets.

In Messrs Hoare Trustees v. Gardner. (***1977, T.LR 24)*** The appellant appealed on the trustee of a settlement against the respondent (inspector of taxes). Pursuant to a power of advancement contained in that settlement, executing a deed declaring trusts of the advanced assets, so taking such assets out of the original settlement and subjecting them to new trusts. There is deemed disposal of those assets for the purposes of the capital gains tax legislation. Justice Brightman so held in dismissing the appeal by the trustees in favour of the tax inspector/respondent.

In M. Corguodale & Co. Ltd. v. F.B.I.R. (A.C, 139) it was held that CITA 1961 & Capital Gains Tax Decree 1967, assessment arising there under whether surplus arising from stirling devaluation constituted an income under CITA. Even unrealized surplus could constitute a taxable profit. ***In***

Chinn & Anor. V. Inspector of Taxes*. *(1977, L.R 26) the court said it is prepared to look at chain of transactions as a whole to ascertain capital gains.

In Brown v. National Provident Institution. (1921, 2 A.C 222) It was held that section 30 CITA 1961 that the profits for the year of assessment were to be calculated on the basis of the proceeds of the preceeding year basis. The same decision was reached in the ***Whelan Heming (1926 A.C 293)*** and ***Landis Bros. V. Symson (19 T.C 62***) where it was stated that any profit that was not credited under the profit and loss account was chargeable under S. 17A CITA 1961.

1.4 Summary

Capital Gains tax are taxes levied on assets that are brought out for disposal which could be paper gain or realized gains at a given point in time. It is administered in different forms and substance. Capital gains affects tax rate, investments and inflation in the economy as is seen in the tax laws and few judicial decisions. Under this unit, we were able to discuss the history and meaning of capital gains tax. We also examine which assets are subject to the tax as well as chargeable gains. The administration of capital gains was discussed along with its effects on tax rate, investment and inflation.

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1.6 Answers to Self-Assessment Exercise 1

i. It is the gains arising from the disposal of Capital assets to a person who does not frequently offer them for sale and in whose hand they are not stock in trade despite increase in the market value of the assets.

ii. Consideration is the money's worth given in exchange by the buyer of an asset to the seller. It can be determined under certain conditions including; **Bargain at arm's Length and Deemed consideration.**

Answers to Self-Assessment Exercise 2

2 The following items are exempted from capital gains, namely:

j. Disposed of decorations awarded for velour, or gallant conduct (s. 30 of the Act) acquired otherwise than for considerations in money or money's worth.
ii. The main or private residence of an individual.
iii. Life Insurance Policies.
iv. Chattels disposed of for not mere than N1,000 in any year of assessment;
v. Motor cars suitable for private use (s.38 of the Act)

2.1 Section 21 CGTA, provides that the federal Board of Inland Revenue has wide power to disregard artificial or fictitious transaction engaged for the purposes of Capital Gains Tax.

MODULE 6 TAXATION OF PETROLEUM PROFIT TAX (PPT)

UNIT 1.

CONTENTS

1.1 Introduction

1.2 Learning Objectives

1.3 Taxation of petroleum profit Tax

1.3.1 Meaning and Nature of Petroleum Profit Tax

1.3.2 Administration of Petroleum Profit Tax

1.4 Summary

1.5 Reference/ Further Readings/Web Sources

1.6 Possible Answers to SAEs

1.1 Introduction

Petroleum is the major source of Nigerian revenue. Several legislations were enacted to govern the taxation of revenue arising from petroleum. It has also undergone series of amendments. For instance, the Petroleum Profits Tax Act of 1959 which was the principal Act was amended by the Income Tax (Amendment) Act No. 65 of 1966; Petroleum Profits Tax (Amendment) ACT No. 1 of 1967, Oil Terminal Dues Act No. 9 of 1969; Petroleum Profits Tax (Amendment) Act No. 15 of 1973; Petroleum Profits Tax (Amendment) Act No. 55, 1977, Petroleum Profits Tax (Amendment) Act No. 4, of 1979, Petroleum Profits Tax (Amendment) (No. 2) Act No. 25 of 1979, Petroleum Profits Tax (Amendment) Act No. 95 of 1979, Petroleum Profits Tax (Amendment), Act No. 22 of 1990. All these Acts have now been consolidated into the Petroleum Profits Act Tax (PPTA) Cap. 354, Laws of the Federation of Nigeria (LFN) 1990 now known as PPTA, CAP P13 LFN, 2004. Even some provisions of the PPTA 2004 have been amended by the

Finance (Miscellaneous) taxation Provision Decrees in 1993, 1996 and 1998 respectively. As of now, 2020, the federal government is about to amend the PPTA since 2008 but, all attempts proved abortive. In this study, our references shall be in relation to PPTA Cap. P.13 LFN, 2004 and the relevant amendments accordingly.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Explain the petroleum profit tax law
ii. Analyse how the federal government derives its revenue from the taxation of petroleum products

1.3 Meaning and Nature of Petroleum Profit Tax

Petroleum companies are taxed separately from other companies because of their peculiar sensitive and difficult nature of the crude oil industry. The three types of companies engaged in the petroleum industries are: The Crude Oil Producing Companies, the Petroleum Products Marketing Companies and the Servicing Petroleum Companies, which deals with seismic survey and prospecting, drilling, logging, interpretation of data etc. It is only the profits of the crude oil producing companies that are subject to PPTA, 2004. All the rest i.e. the Petroleum Marketing companies like Texaco, Nig. Plc., Mobil Plc, Agip, NNPC, Shell Nig. Plc., Chevron Nig. Plc. Etc. including the several independent marketers are subject to Companies Income Tax Act of 2004. The Federal Inland Revenue Service (FIRS) administers PPTA in Nigeria. (***Concisely explain the nature of petroleum profit tax***). As to the nature and manner of charging and ascertainment of Petroleum Profits Tax, it is provided under the Act that tax shall be charged, assessed and payable upon the profits of each accounting period of any company engaged in petroleum operations during

the period. These include production and sale of both crude oil and liquefied natural gas excluding the refining of crude oil in the refineries.

Self-Assessment Exercises 1

1. What is the full meaning of PPT?
2. Which body takes the responsibility for the due administration of the petroleum profits tax in Nigria?

1.3.1 The administration of Petroleum Profit Tax

Below is the manner and form in which PPT is administered in Nigeria:

i. Basis of Assessment

Section 2 PPTA defines an 'accounting period' in relation to a company engaged in petroleum operation as:

a) a period of one year commencing on 1st January and ending on 31st December of the same year.
b) any shorter period commencing on the day the company first makes a sale or bulk disposal of chargeable oil under a programme of continuous production and sales, domestic export or both, and ending on 31st December of the same year, or
c) any period of less than a year being a period commencing on 1st January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations.

The accounting period of any petroleum company can be any of the periods stipulated above.

A notable difference between petroleum companies and other companies is that petroleum companies are assessed with reference to accounting period and not with reference to any year of assessment. In the event of any dispute arising as to the date of first sale of chargeable oil or the date the company ceases to be engaged in petroleum operations, the director of Petroleum Resources shall determine such dispute and no appeal shall lie therefrom. (s. 9 PPTA, 2004).

ii. Ascertainment of Profits

The profits of an accounting period of a company engaged in petroleum operations is the aggregate of:

1) The proceeds of sale of all chargeable oil sold by the company in that period;
2) The value of chargeable oil disposed of by the company during that period;
3) All income of the company of the period incidental to and arising form only one or more of its petroleum operation.

iii. Administration of the Tax

The Federal Board of Inland Revenue is responsible for the due administration of the petroleum profits tax. The Board while exercising its function must take cognizance of;

1) the proceeds of sale of all chargeable oil disposed off by the company during that period;
2) the value of chargeable oil disposed of by the company during that; and
3) all income of the company of that period incidental to an arising from only one or more of its petroleum operations.

iv. **Meaning of Chargeable Oil disposed off**

For the purpose of ascertaining the profits of a period, the value of chargeable oil so disposed of is the aggregate of:

1) the value of that oil as determined, for the purpose of royalty in accordance with the provisions of any enactment applicable thereto and any financial agreement or between the Federal Government of Nigeria and that Company;
2) any cost of extraction of that oil deducted in determining its value;
3) any cost incurred by the company on transportation and storage of that oil between the field of production and place be disposal.

(Briefly explain the manner and form in which PPT is administered in Nigeria).

Self-Assessment Exercises 1

1. What do you understand by the terms 'Disposal and Disposed Off'
2. State any two types of capital allowances you know

v. Meaning of Disposal and Disposed Off

Disposal and Disposed off, in relation to chargeable oil owed by a company engaged in petroleum operations mean:

1) delivery, without sale, of chargeable oil to, and

2) chargeable oil delivered without sale to active or to an adjacent storage tank for refining by the company. (s. 1PPTA, 2004)

vi. Adjusted Profits

To determine the appropriate tax payable in any accounting period from petroleum all outgoings and expenses, wholly, exclusively necessarily and reasonably incurred in producing the profit shall be deducted. Such expenses include money spent in respect of the following allowable deductions:

i) any rent incurred by the company for that period in respect of land and building occupied for its petroleum operations or compensations incurred under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance e.g. crops houses and right of loan.

ii) All royalties the liability of which was incurred in the company during that period in respect of crude oil exported from Nigeria as of casing lead petroleum spirit so exported after injection into crude oil;

iii) Interest upon money borrowed (i.e. loans) where the board is satisfied that the interest was payable on capital employed in carrying on the company's petroleum operations;

iv) Expenses incurred for the repair of premises, plants, machinery, or fixtures employed for the purposes of carrying on petroleum operations or the renewable repair, or alteration of any implements utensils or articles so employed.

v) Bad and doubtful debts proved to have been bad or doubtful during the periods.

vi) Expenditure including intangible drilling act directly incurred in connection with drilling on an exploration appraisal or development well;

vii) Contributions to a pension provident scheme fund approved by the Joint Tax Board;

viii) All sums the liability for which was incurred by the company during that period to the federal government of Nigeria by way of duty (Excluding Customs and Excise Duties). Stamp Duty Tax (other than tax imposed by PPTA 1990) or any rate, or other like charge. (S. 10(1) PPTA, 2004)

Such other deductions as may be prescribed by any rule made under the act.

However, there are deductions not allowed which include:

a) Disbursement not wholly and exclusively lay out for the purpose of the operations.

b) Withdrawal of capital

c) Improvements of a capital nature

d) Sums recoverable under an insurance or contract of indemnity.

e) Rent and repair not for the purpose of the operations

f) Amount incurred in respect of income tax profits or other similar tax whether charged within Nigeria or elsewhere

g) The depreciation of any premises, building of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;

h) Payment for pension or retirement benefit not approved.

i) Royalty or other sum deductible in ascertaining chargeable tax

j) Expenditure for the purpose of information in relation to the existence and extent of petroleum deposit.

The above tabulations aside, other deductions not allowed is interest or borrowed money where such money was borrowed from a second company if:

i) either company has an interest in the other company or

ii) both interest in another company either directly or through other companies or;

iii) both are subsidiaries of another

It is stipulated under section 12 PPTA that where a company engaged in petroleum operations is also engaged in the transportation of chargeable oil by ocean-going tankers from Nigeria to another territory, the profits attributable for such transportation shall be excluded from the adjusted profits of the company. Also, under Section 14 P.P.T.A. 2004, regulates losses incurred by Petroleum Operations. The section provides that losses incurred by petroleum operations during any previous account period shall be deducted from its assessable profits for any account period. Such deduction is made from the adjusted profits of the accounting period coming after the accounting period in which the loss occurred.

In section 14 (3) of the Act, where the aggregate loss of an accounting period cannot be wholly or completely relieved against the adjusted profits, of the period, any amount of loss remaining unrelieved shall be carried forward to succeeding accounting period until the full amount of loss is completely helped out. Even where the petroleum company has enough profits in the current accounting period to relief such losses, it can by way of election decide to carry forward such losses to subsequent accounting periods.

(What is adjusted profits?)

vii. Chargeable Profits and Capital allowances

According to section 18 PPTA, the chargeable profits of any petroleum company of any accounting period is the amount of assessable profits of that period after deduction of capital allowance as may be given under the provision of the Act such as:

a) **Restriction of Capital Allowance deductible:** The amount of capital allowances that may be deducted from the assessable profits of an accounting period shall be

restricted to such an amount that the chargeable profits of the period shall not be less than 15% of the assessable profits of the period before the deduction of the capital allowances

In order that the chargeable profit of a period is not less than 15% of the assessable profit of the period, the aggregate capital allowances of the period that may be deducted from the assessable profits of the period is:

i) the amount of the computed capital allowances of the period or

ii) a sum equal to 85% of the assessable profits of the accounting period less 17% of the total amount allowed as deduction in computing the chargeable tax for the period whichever is less.

b) **Carry forward of capital Allowances:** Where the full amount of capital allowances cannot be deducted because of inadequacy of assessable profits or due to the restriction indicated above the excess shall be carried forward to be set off in the succeeding accounting period until the full amount of capital allowance entitled is wiped out.

c) **Qualifying Capital Expenditure:** This refers to a qualified list of items which is capital expenditure is incurred will entitle the company to capital allowances.

They have been classified into four categories:

1) Qualifying plant expenditure i.e. capital expenditure incurred on plant, machinery or fixtures qualifying pipeline and storage.

2) Expenditure incurred on pipelines and storage tanks;

3) Qualifying building expenditure i.e. capital structures or works of a permanent nature; and

4) Qualifying drilling expenditure which covers capital expenditure incurred in connection with, or with petroleum operations because of:

i. Acquisition of rights in or over petroleum deposits;

ii. Searching for or discovering and testing petroleum deposits or wining access thereto, or

iii. The construction of any works or building which are likely to be of little or no value when the petroleum operations for which they were constructed cease to be carried on.

d) **Types of Capital Allowances**

i. **Investment Tax Credit:** This is given once and for all in respect of an asset to the company that has incurred expenditure to bring the asset into being. It is given for the accounting period in which the expenditure is incurred. The investment tax credit is required to be deducted from the assessable tax for the purpose of ascertaining chargeable tax.

ii. **Annual Allowances:** Annual Allowance of 20% is given per annum in respect of any qualifying asset. This is required to be deducted from assessable profit in order to arrive at chargeable profit.

No allowance unless asset is in use at the end of the basis period. According to Paragraph 7 of Schedule 2 to PPTA an Investment Tax Credit or annual Allowance in respect of an asset shall not be given to a company unless the company is the owner of the asset and the asset is in use at the end of the company's basis period. A company is entitled to Balancing Allowance or charge once it disposes an asset during its basis period. The principle governing that treatment and computation has already been examined and should be referred to.

The rates of Allowances are specified in table I and II of the schedule 2 to PPTA 2004; they are as follows:

1. Investment Tax Credit Rate

   i. Expenditure in respect of on-shore operations. - 5%

   ii. Operations in territorial waters and continental shelf areas up to and including metres of water depth. - 10%

   iii. Operations in territorial waters and continental shelf areas in water depth between 10 metres and 200 metres. - 15%

   iv. Operations in territorial waters and continental shelf areas beyond 200 metres water depth. - 20%

2. **Annual Allowance**

   a) 1st year - 20%

   b) 2nd year - 20%

   c) 3rd year - 20%

   d) 4th year - 20%

   e) 5th year - 19%

Assessable tax is levied on the chargeable profit of petroleum companies at the rate of 85% in respect of the accounting period of the company.

viii. Accounts and Particulars

According to section 28 (2) PPTA every petroleum company is required every accounting period to make up accounts of its profits or losses arising from its petroleum operations stating some

required particulars and delivering its audited accounts to the federal Board of Inland Revenue. Such copy must be signed by a duly authorised officer of the company or by its liquidator or receiver that the same is true and complete. Where such copies are estimates, each copy shall contain a declaration similarly signed that such estimates were made to the best of the ability of the person signing same. Each petroleum company must submit a return of its estimated tax to the Board not later than two months after the commencement of each accounting period.

(Identify and explain the types of capital allowances you know)

ix. Assessment

A petroleum company is mandated under section 28 of the PPTA to deliver its accounts and particulars. Where the company fails an assessment will be raised on the petroleum company by the federal Board of Inland Revenue to indicate the tax liability of such company for the relevant accounting period.

But where the Federal Board of Inland Revenue received the accounts and particulars of the petroleum company within the time limit, the Board may:

1) accept the same and make an assessment accordingly.
2) Refuse to accept the same and proceed to estimate the amount of tax payable and assess accordingly.

Section 34 permits the Board to raise an assessment in a company where the company fails to do so. It also has the additional power to raise additional assessment where the company has been assessed at a lesser amount. A petroleum company may dispute an assessment, where it so disputes, it may apply to the Board by notice of objection in writing to review and revise the assessment in accordance with section 36 (2) of the Act.

The application for review and revision must be made within 21 days from the date of service of the notice of assessment. In making the application, the company must state in the notice of assessments.

a) The amount chargeable profit of the company.
b) The accounting period in which the assessment was made.
c) The amount of assessable tax made by the Board
d) The appropriate tax aimed by the company.

The 21 days period within which to file the notice of assessment may be extended of good reason are adduced for not filing the notice within the time frame. But where the company fails to agree with the Board as to the amount of tax payable, the Board may give a notice to refusal to amend the assessment as desired by the company and give the company notice of the tax payable together with the notice of refusal to amend and revise the assessment. (S.36© PPTA, 2004). No assessment shall be quashed or voided because the assessment did not comply with the required notice, or because of mistake defect or omission, if the notice substantially conforms to the intent and meaning of the Act. But such notice must have been served on the company intended to be served. Again, such notice must contain substantially all the relevant particulars on the notice. (s.38(2) PPTA, 2004)

Any company that is dissatisfied with an assessment and has failed to reach an agreement with the Board as to the correct tax payable, it may appeal against the assessment to the Body of Appeal commissioner within 30 days after the date of service of notice of refusal to amend by the Board. The notice of Appeal against the assessment must contained the following particulars:

a) the official number of the assessment and the accounting period for which it was made;

b) the amount of the tax charged by the assessment;

c) the date upon which the appellant was served with notice of refusal of the Board to amend the assessment as desires.

d) The grounds of appeal against the assessment and

e) The address for service of any notices, or other documents to be given by the secretary to the body Appeal of Commissioner, to the appellant

All appeals are heard in camera. (s.36(60, PPTA,2004). Any appellant company who is aggrieved by the decision of Appeal Commissioner has the right of Appeal to the Federal High court. The right of Appeal must be exercised within 30 days after the date the decision was given. The Board also has a right of appeal, which it may exercise against the decision of the Appeal Commissioners. The burden lies on the appellant company to prove that a particular assessment is excessive. (S.37, PPTA, 2004) The court may conform, reduce, increase or annul a particular assessment. Where no valid objection of appeal had been lodged within the time limit against an assessment or where the amount of tax has been agreed to or where it has been determined on objection or revision or on appeal the assessment shall be regarded as final and conclusive. (S.40(1), PPTA, 2004)

(What option is left for a company that is dissatisfied with an assessment and has not been able to reach an agreement with the Board?).

x. Offences and Penalties

Under section 48 (1) of the P.P.T.A. 2004, certain offences and penalties are spelt out. They are:

1. Failure to comply with the requirement of a notice served on a company under the Act or to prepare and deliver returns usually a penalty if N10,000 and a further N2,000 for each and every day during such offences or failure continues.

   Failure to pay such fine will subject the person responsible on behalf of such company shall be liable to 6 months' imprisonment.

2. Making of false accounts, statement or information without reasonable excise. The person liable will be liable to a fine of N1,000 apart from paying double the amount of tax which the company undercharged as a result of the false or incorrect information. Liability under this head is only possible if the offence is discovered and caution taken six years after the end of the accounting period in which it was committed.
3. Making of false statements and returns for the purpose of getting undeserved deductions, relates, repayment in respect of tax. The aiding and abetting the same will also attract a fine of N1,000 in addition to paying three times the amount of tax for which the Company is liable under the Act, failure to comply with the above by the person responsible will expose him to 6 months imprisonment or both.
4. Corruption and dishonesty on the part of the staff of the Board of Inland Revenue makes them liable to a fine of N600 or to imprisonment for 3 years or both.
5. The penalty for non-payment of tax within the prescribed period equal to 5% of the amount of the tax which is added to the tax.

Thus, the income, the adjusted profits, the assessable profits, the chargeable profits, the assessable tax and the chargeable tax payable are all taken into account in the ascertainment of petroleum profits tax of crude oil companies in Nigeria.

In SHELL B.P. Co. Nig. Ltd) Vs. F.B.I.R. (1975) A.C 225, the respondent (F.B.I.R) in computing the chargeable profits of the appellant (shell B.P. Nig. ltd), disallowed the amount of £75,998 or N151,996 representing the demurrage or dead freight charges incurred by the appellant in connection with the sale of crude oil for export. The dispute between the two sides therefore is as to whether this amount should or not be deducted in computing the appellants tax. It was held that both the respondents and appellants have not properly adhered to the provisions of the Act. To compute the chargeable income solely on the basis of section 17A CITA 1961 is wrong. The act requires that the profits of the appellant's trade or business be ascertained primarily under section 9 CITA 1961 and that a second account be prepared. It is only when the chargeable tax arrived under the first method is less than the amount got under the second method that additional assessment equal to the chargeable tax under the second method becomes relevant and mandatory. The appeal fails because the respondents are solely concerned with the issue of the deductibility of demurrage or dead freight charges. The assessment appealed against are confirmed.

(What is the fact and decision in the case of SHELL B.P. Co. Nig. Ltd) Vs. F.B.I.R. (1975) A.C 225?).

1.4 Summary

Having seen the meaning and actual nature of petroleum profit tax, we can appreciate its difficulty and crass technicality involve in its assessment, chargeability and the administration of this type of tax. However, it is clear that the tax authority administering this tax- FIRS have to be prudent

in its enforcement as it is the major source of revenue to the government. This unit amplified the meaning and nature of petroleum profit tax in Nigeria. It also highlighted the importance of this tax to the Nigerian economy. By the nature of this tax, even though technical, it becomes necessary to know the chargeability of income derived from this special tax.

1.5 Reference/ Further Researches

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1.6 Answers to Self-Assessment Exercise 1

i. PPT means Petroleum Profit Tax

ii. The Federal Board of Inland Revenue is responsible for the due administration of the petroleum profits tax.

Answers to Self-Assessment Exercise 2

A. Disposal and Disposed off, in relation to chargeable oil owed by a company engaged in petroleum operations mean:

i. delivery, without sale, of chargeable oil to, and

ii. chargeable oil delivered without sale to active or to an adjacent storage tank for refining by the company. (s. 1PPTA, 2004)

B. Types of allowances are:

i. Investment credit

ii. Annual allowance

MODULE 7: VALUE ADDED TAX IN NIGERIA

Unit 1: The Administration of Value Added Tax in Nigeria

1.1 Introduction

Learning outcome

1.2 Administration of value added tax in Nigeria

1.3.1 Meaning and nature of VAT

1.3.2 The administration of VAT

1.4 Summary

1.5 References/Further Readings/Web Sources

1.6 Answers to Self-Assessment Exercise 1

1.1 Introduction

This unit is devoted, exclusively, to the discourse of Value Added Tax (VAT). Value Added Tax Act (VATA) CAP VI, LFN, 2004 is a tax on goods and services which is imposed at each stage of the process of production. This tax was introduced in Nigeria by the Value Added Tax Act of 1993, which came into force on the 1st day of December 1993. Section 1 of the Act imposes the payment of the tax, while Section 8(1) requires that, every taxable person shall, within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier, register with the Board for the purpose of the tax. Section 8(2) of the VAT Act stipulates punishment for failure to register with the Board of Internal Revenue, for purposes of payment of VAT.

1.2 Learning Outcomes

By the end of this unit, you will be able to:

i. Explain what VAT is all about
ii. Understand the goods and services that are subject to VAT
iii. Acquainted with the increase in tax rate in Nigeria

1.3 Meaning and Nature of Vat

By virtue of the provisions of sections 8, 9 and 10 of the VAT Act, every taxable person (including resident and non-resident persons carrying on business in Nigeria) is required to register with the Federal Board of Inland Revenue. (***Identify the items that is, goods and services exempted from the payment of VAT***). Taxable goods and services are also defined by Section 46 of the VAT Act to mean *"the goods and services not listed in the first schedule to this Act."* The first schedule to the VAT Act lists goods and services which are exempted from the imposition of Value Added

Tax. Part 1 of the first schedule lists the following goods as exempted from the payment of Value Added Tax:

1. All medical and pharmaceutical products.
2. Basic food items.
3. Books and educational materials.
4. Baby products.
5. Fertilizers, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exports.
7. Plant and machinery imported for use in the Export Processing Zone.
8. Plant, machinery and equipment purchased for utilization of gas in the down-stream operations.
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes."

Self-Assessment Exercises 1

1. Enumerate the services which are exempted from the imposition of VAT
2. Which body administers VAT in Nigeria?

Part II of the first schedule lists services which are exempted from the imposition of Value Added Tax. It lists as follows:

1. Medical services.

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

VAT is a tax on spending. The tax is borne by the final consumer of goods and services because it is included in the price paid, although the VAT element is to be separately indicated in the tax invoice. The rate of tax is presently at a flat rate of 5% on the value of all taxable goods and services as determined under sections 5 and 6 of the VAT Act.

For the purpose of this Act, the value of taxable goods and services shall be determined as follows, that is:

a) If the supply is for a money consideration; its value shall be deemed to be an amount which with the addition of the tax chargeable is equal to the consideration.
b) If the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value under section 5 of the Act

Where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it. In respect of imported goods, the value of imported taxable goods for the purposes of the Act shall be the amount which is equal to the price of the goods so imported and shall include:

(a) All taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by this Act;

(b) All costs by way of commission, packing, transport and insurance up to the port or place of importation.

The impact of the afore going provisions which is contained in Section 6 of the VAT Act is that after payment of taxes and duties in respect of imported goods, the final consumer will still be required to pay Value Added Taxes based upon the computation of the entire value of the goods. While estimating the value, account is taken of the taxes and duties paid for the said goods. Upon registration, the Federal Inland Revenue Service (FIRS), the operational arm of the FBIR, issues the taxable person with a Certificate of Registration and a Registration Number, which serves as an authority to charge and collect VAT on behalf of the FIRS. The VAT registration number must be quoted on all invoices raised to customers. The tax is collected on behalf of the government by registered businesses and organizations which have registered with the FIRS- Local VAT offices for VAT purposes. All businesses and organizations are to register for VAT in the local VAT offices nearest to their offices or operating bases. Branches of such businesses and organizations are to register independently in their own areas of operation.

(VAT is a tax on production. Do you agree?)

A business or organization which has registered for VAT is classified as ***"registered person" (S.7, VATA,2004).*** A registered person will pay *5% (now 7.5% under the Finance Act, 2020)* on goods and services purchased but can claim credit for this tax called input tax when sold. 5% (now 7.5%) VAT called output tax is included in the price of all goods and services supplied by the registered persons. The registered person has to make regular VAT returns and either pays to, or receives from the FIRS (VAT Directorate), the difference of the input and output tax. To claim a credit for input tax, a registered person must hold a *"Tax Invoice"*.

Section 15 of the VAT Act obligates a taxable person to render to FIRS on or before the thirtieth day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him, in such manner as the FIRS may determine from time to time. If, in a particular month, the output VAT exceeds the input VAT, the excess tax is remitted to the FIRS. If, on the other hand, the input VAT exceeds the output VAT, the tax payer is entitled to a refund of the excess tax from the FIRS on the production of such documents as the FIRS may require from time to time. In practice however, the VAT refund mechanism is non-existent despite the enabling provision to that effect. The only practical option that a taxable person, who is in a net refund position, may have will be to recover the excess input tax from any excess output tax of a subsequent period. This is acceptable to the FIRS. However, a taxable person who is in a perpetual refund position will indeed be in an unfortunate situation, since it is unlikely that he will receive any cash refund from the FIRS. Input VAT paid by a taxable person on any overhead, service and general administration of a business, which otherwise can be expanded, and on any capital item or assets, which Is to be capitalized along with the cost of the capital or assets is no longer recoverable from the output under section 17 of VATA, 2004. ***(Abiola SANI (2012) Current Law and Practice of Value*** *Added Tax in Nigeria. (British Journal of Arts & Social Science, Vol. 5, No 2)*

Section 17 of the VAT Act of 2004 has equally limited the Input VAT deductible from the output VAT to the VAT on goods purchased or imported directly for. sale and goods that form the stock-in-trade used for the direct production of any new product on which the output VAT is charged. The rationale behind this may not be farfetched. It has been noted that, prior to the introduction of the limitation; input tax incurred on private consumption can as well be deducted from output tax.

collected from business, provided the item of private consumption is a taxable good and the input tax has been paid by the taxable person. The logic of this scenario is that a taxable person can develop a comprehensive tax evasion scheme by which he will steadily use input tax of his private consumption to offset the output tax collected from his business. The result of this is to pay little or no tax continuously or infinitely. (***Briefly discuss the history of VAT in Nigeria***).

The idea of introducing VAT in Nigeria came from the report of the study group set up by the Federal Government in 1993 to review the entire tax system. VAT was proposed and a committee was set up to carry out feasibility studies on the implementation. In January 1993, government agreed to introduce VAT by the middle of the year. It was later shifted to 1st September 1993, by which time the relevant legislation would have been made and proper ground work done.

VAT is a replacement of the existing Sales Tax which has been in operation under Federal Government Legislation, Decree No.7 of 1986 but operated on the bases of residence. The rationale behind replacing Sales Tax with the Value Added Tax Is Informed by a number of factors and considerations notably: The base of Sales Tax in Nigeria as operated under Decree No.7 of 1986 Is narrow. It taxes only nine categories of goods plus sales and services in registered hotels, motels and similar establishments. The narrow base of the tax negates the fundamental principle of consumption which by nature is expected to cut across all Consumable goods and services. VAT base is broader and includes most professional services and banking transaction which are high profit-generating sectors.

Only locally manufactured goods were targeted by the Sales Tax Decree of 1986, although it might not have been the intention of the law. VAT is neutral in this regard. Under VAT, a

considerable part of the tax to be realized is from imported goods. This means that under the new VAT, locally manufactured goods will not be placed at a disadvantage, relative to imports.

(Ill) Since VAT is based on the general consumption behaviour of the people; the expected high yield from it will boost the fortunes of the state governments with minimum resistance from the payers of the tax.'

By nature, Value Added Tax is a Consumption tax that has been embraced by many Countries worldwide. Because it is a consumption tax, it is relatively easier to administer and difficult to evade. The yield from VAT is a fairly accurate measurement of the growth of an economy since purchasing power of the naira Increases with economic growth. VAT is a self- assessment tax that is paid when returns are rendered. In-built in the new tax is the refund or credit mechanism which eliminates the cascading effects, that is a feature of the retail sales tax. The input-output tax mechanism in VAT also makes it self-policing because, there is need to obtain receipts at each stage of the transaction. In essence, it is the output tax less input tax that constitutes the VAT payable. It is the equivalent of the tax paid by the final consumer of the product that will be collected by the government. Even though VAT is a multiple stage tax, it has a single effect and does not add more than the specified amount on the consumer price no matter the number of stages at which the tax is paid.

A person who is registered under Section 8 of the VAT Act (referred to as *"a registered person")* shall keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act. Failure of a registered person to keep proper records attracts a penalty of ₦ 2000

for every month which this failure continues. ***(S.33, VATA, 2004)*** Where a taxable person fails to render returns or renders an incomplete or inaccurate returns, the Board shall assess, to the ***Best of its Judgment,*** the amount of tax due on the taxable goods and services purchased or supplied by the taxable person (***S. 18, VATA, 2004).***

If a taxable person does not remit the tax within the time specified in Section 16 of VAT Act, a sum equal to 5% per annum (plus interest at the commercial rate) of the amount of tax remittable shall be added to the tax and the 'provisions of this Act relating to the collection and recovery of un-remitted tax, penalty and interest shall apply.

In respect of a person who does not remit tax within the specified time, Section 19(2) of the VAT Act states: '*...the Board should notify the taxable person or his agent of the tax due together with the penalty and interest and If payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in S. 16 of this Act'*

Self-Assessment Exercises 2

1. What is the effect of lack of proper and adequate notice to a taxpayer?
2. Where a taxable person is aggrieved by an assessment made on him, what course of action will he take?

Proper and Adequate Notice

Proper and adequate notice should be given to the tax payer of his tax due, if not, the entire assessment process will be rendered a nullity (***Lanto v. Wowo 1999 NWLR, Pt.610 277)*** Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceedings in the Value Added Tax Tribunal.***(S. 20(1) VATA, 2004)*** A

taxable person who is aggrieved by an assessment made on the person may appeal to the Value Added Tax Tribunal established in the second schedule to this Act. Appeals from the Value Added Tax Tribunal shall be made to the Federal Court of Appeal. ***(S.20(3) VATA 2004)***

Although VAT is a multiple stage tax, it has a single effect and does not add more than the specified rate to the consumer price no matter the number of stages at which the tax is paid. It is the equivalent of the VAT paid by the final consumer of the product that will be collected by the government. For example; if a product moves from Raw Material Producer (A) to Manufacturer (B) at 1,000:00; then to Wholesaler(C) at 1,500:00; then to Retailer(D) at 2,000:00; and finally to the consumer who pays 2,500:00 to the Retailer. VAT is payable to government at 5% now 7.5% rate of VAT on the product is as follows:

VATable person	**Sales Price (Before VAT) ₦**	**VAT Collected (Output tax) ₦**	**VAT on inputs (Input tax) ₦**	**VAT paid to Government ₦**
A	1000	50	-	50
B	1500	75	50	25
C	2000	100	*75*	25
D	2500	125	100	25
TOTAL		**350**	**225**	**125**

But, take note that by virtue of the Finance Act, 2020, VAT rate has been increased from 5% to 7.5%, effective from April, 2020. Thus, the total VAT paid to government in the four transactions

is N125 which is 5% of the final consumer price of 2,500. VAT, as the name Implies, is a tax on value added. However, the Indirect subtractive method of taxing value added tends to obscure this fact because tax liabilities for an accounting period are calculated without ascertaining the underlying value added.

The relationship between tax liabilities and value added is further obscured by:

1. The use of exemptions and valuation reliefs.
2. The fact that changes in stock levels are disregarded and
3. The fact that no distinction is made between capital and revenue expenditure.

The interaction of these can give rise to the curious feature that a trader who has added value during an accounting period may nevertheless receive a repayment of tax. The indirect subtractive method acts as a tax on consumer expenditure which is broadly based, largely neutral as regards businesses, and largely confined to the consumption of goods and services. These principles are discussed below: VAT is a broadly based tax on consumer expenditure. To be more specific, it is a tax on three classes of transactions made in Nigeria such as:

1. Supplies of goods and services: VAT is charged on supplies of goods and services made in Nigeria by traders referred to as *"taxable persons"*. Tax is charged on the taxable person who makes the supply and he periodically pays the amount so charged to the FIRS under section 15(2) of the Act. This tax is known as *"output tax" in section 14(2) of the Act*

2. Imported goods: VAT is charged when goods are moved to Nigeria. The tax due on goods imported is paid direct to the FBIR at the same time as Import duties under sections 15 and 16 of the Act. This is normally the time when goods are entered for home use, either at the time of importation or when they are removed from a warehouse or a free zone.

In its credit mechanism, VAT is largely removed from business costs, and thereby confined to consumer expenditure by providing taxable persons with a credit mechanism. Subject to a number of exceptions, taxable persons are entitled to recover the VAT they have paid from the FIRS. This tax is known as *input* tax and represents:

1. Tax chargeable on goods and services supplied to them by other taxable persons; and
2. Tax paid to the FIRS on goods imported from a third country.

(Why must Proper and Adequate Notice be given to taxpayer?)

VAT is removed from the business costs of overseas traders who are not taxable persons by a system of refunds. VAT is also removed from certain non-business expenditure. For example, certain goods and services supplied to specified persons are charged to tax at zero-rate and refunds of tax are made to specified public bodies. All exported goods are zero-rated, that is, such goods are VAT able, but at zero percent. This means that no VAT Is collected and at the same rate any input is refundable.

1.3.1 Administration of VAT

The VAT system in Nigeria is administered by the Federal Inland Revenue Service (FIRS). The VAT Directorate within FIRS is centrally located at the Head Office in Abuja with a network of zonal and local VAT offices throughout the Federation. Although VAT is administered centrally by the Federal Government by using the existing tax machinery of the FIRS in close co-operation with the Nigeria Customs Service (NCS) and the State Internal Revenue Service (SIRS), the net proceeds from the new tax accrue solely to the State Governments after making an allowance of 20% to cover the cost of administration. In effect, the State Government will benefit to the tune of 80% of the entire VAT collection. ***(Abdulrazaq, M.T. (1996 :345)***

The FIRS are given wide powers in carrying out their duty of care and management of VAT under section 7 of the Act. The other powers are largely described in relation to particular provisions provided below:

Firstly, the minister of finance is also empowered to:

(a) amend the rate of tax chargeable and

(b) amend, vary or modify the lists set out in the Schedules to the Act; and

(c) that, the board may, with the approval of the minister, make regulations for giving effect to the provisions of the Act. *(Jude J.O (2022) in A.G Rivers State v FIRS)*

Secondly, the FIRS is empowered to take recovery proceedings in the VAT Tribunal to recover unpaid VAT under section 20 of the Act. It is curious that the legislation made no provisions for an intermediary VAT Appeals Tribunal. Expectedly, dissatisfied Vatable persons would first have recourse to the Federal Tax Appeals Commissioners as in the case of tax law provisions.

Thirdly, the legislation also empowers the FIRS to make directions, impose conditions and specify in a notice the records to be kept by certain traders. The appropriate directions, conditions and records are set out in the notices and leaflets issued by FIRS

The VAT Act establishes a Committee in Sections 21, 22, 23 and 24 to be known as the Value Added Tax Technical Committee (in the Act referred to as the Technical Committee) which shall comprises:

(a) A Chairman who shall be the Chairman of the Federal Board of Inland Revenue;

(b) All Directors in the Federal Inland Revenue Service;

(c) A Director in the Nigerian Customs Service; and

(d) Three representatives of the State Government who shall be members of the Joint Tax Board.

The functions of the Technical Committee shall be to:

(a) consider all the tax matters that require professional expertise and make recommendations to the board;

(b) advise the board on the duties specified in Section 7 of the Act;

(c) attend to such other matters as the board may, from time to time, refer to it.

Subject to such directions as the board may, from time to time, give the Technical Committee, shall determine its quorum and otherwise regulate its own procedure. The Federal Inland Revenue Service may post to the Technical Committee such staff as the Technical Committee may require for the discharge of its functions.

The basic framework of VAT is enacted in VAT Decree. No.102 of 1993, which came into effect on December,1993. This law which is now an Act is now found in Cap Vi, Laws of the Federation 2004. Many of the detailed provisions are set out in sections and parts. The Minister of Finance is given wide powers to make orders, usually of a policy nature and the FBIR are given similarly wide powers to make regu1atiofl5 usually on matters of an administrative nature. The power to make rules of procedure in relation to recovery proceedings in the VAT Tribunal is vested in the Minister of Finance. (***Explain the administration of VAT in Nigeria***).

A taxable person who is aggrieved by an assessment made on the person may appeal to the Value Added Tax Tribunal established in the second schedule to this Act. The Minister may by Federal Gazette establish a Value Added Tax Tribunal in each zone of the Federal Inland Revenue Service. Each of zonal VAT Tribunals shall consist of not more than eight persons none of whom shall be a serving public officer and one of whom shall be designated as Chairman by the Minister.

The Chairman of each of the Zonal VAT Tribunals:

(a) shall be a legal practitioner of not less than fifteen years' experience;

(b) shall preside over the proceedings of the tribunal. Members of each of the Zonal VAT Tribunals:

(a) shall be appointed by notice in the Federal Gazette by the Minister from among persons appearing to him to have wide and adequate practical experience, professional knowledge, skills and integrity in the profession of law, accountancy or taxation in Nigeria, as well as persons that have shown capacity in the management of trade, business and retired senior public servants in tax administration;

(b) shall hold office for a period of three years from the date of appointment and may resign at any time by a notice in writing addressed to the Minister.

(c) shall cease to be a member upon the Minister determining that his office be vacated upon notice of such determination.

When the Minister of Finance is satisfied that a member:

(a) has been absent for two consecutive meetings without the written permission of the chairman of the board; or

(b) is incapacitated by illness; or

(c) has failed to make any declaration and give notice of his direct or indirect financial interest in a case when any appeal by such case is pending before the tribunal; or

(d) has been convicted of any felony or of any offence under any enactment imposing tax on income or profit; the Minister shall make a determination that his office as a member is vacant.

Where, for some reasons, there is insufficient number of members to hear an appeals the Minister may make an *ad hoc* appointment in writing for the purpose of hearing such appeal. The

Minister shall designate a serving public officer to be secretary to a Zonal VAT Tribunal and the official address of the secretary shall be published in the federal gazette.
Any taxable person who being aggrieved by an assessment or demand notice made upon him, may appeal against the assessment and notice to the Zonal VAT Tribunal where the taxable person is resident giving notice in writing through the Secretary to the Zonal VAT Tribunal within fifteen days after the date of service upon such taxable person of the assessment or demand. If the board is aggrieved by the noncompliance of a taxable person to any provision of this Act, it may appeal to the Zonal Tribunal where the taxable person is resident giving notice in writing through the secretary to the Zonal VAT Tribunal.

Where a notice of appeal is not given within the period specified, the assessment or demand notices shall become final and conclusive and the board may recover tax, interest and penalty, which remains unpaid from any taxable person through the proceeding of the Zonal Tribunal. An award or judgment of the VAT Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of the award or judgment in the Registry of the Federal High Court by the party seeking to enforce the award or judgment.

Notice of the appeal against assessment shall contain the following particulars:

(a) the name and address of the taxable person;

(b) the total amount of goods and services chargeable to tax in respect of each month;

(c) any input tax

(d) net amount of tax payable;

(e) the copy of assessment notice.

(f) the precise grounds of appeal against the assessment; and

(g) an address for service of any notice, process or other document to be given to the appellant and the secretary to the Zonal Tribunal.

The board or a taxable person may discontinue an appeal at any time before the hearing of the appeal by giving notice in writing through the Secretary to the Zonal Tribunal. At least five members may hear and determine an appeal. (***paragraph 16 of the Act***)

The Secretary to the Zonal Tribunal shall give seven days' notice to the parties to an appeal of the date and place fixed for the hearing of the appeal. All notices and documents, other than the decisions of the tribunals, may be signed under the hand of the Secretary. Every taxable person so appealing shall be entitled to be represented at the bearing of the appeal by a legal practitioner a qualified chattered accountant or tax consultant. The onus of proving the basis of grievance against an assessment or non-Compliance with the provisions of the law shall be on the appellant.

The Zonal Tribunal may upon hearing the appeal confirm, reduce increase or amend the assessment or make such orders thereon as it deems fit. The Minister of Finance shall make rules regulating the practice and procedure of the VAT Tribunal and until such rules are made, the practice and procedure of the Federal High Court shall apply with such modifications as the circumstances may require. Sequel to the decision of the VAT Tribunal, notice of amount of the tax chargeable under the assessment as determined by the VAT Tribunal shall be served by the board of the company or person in whose name tax is taxable. Notwithstanding that an appeal is pending, tax shall be paid in accordance with the decision of the VAT Tribunal within one month of notification of the amount of the tax payable to the taxpayer.

Any party aggrieved by the decision of the VAT Tribunal may appeal against the decision on a point of law to the Court of Appeal on giving notice in writing to the Secretary to the VAT

Tribunal, within thirty days after the date on which the decision was given setting out the grounds on which the decision is being challenged. On receipt of a notice of appeal, the Secretary to the VAT Tribunal shall compile the record of proceedings and judgment before the VAT Tribunal and shall cause them to be transmitted to the Chief Registrar of the Court of Appeal together with all the exhibits tendered at the hearing before the VAT Tribunal within thirty days after the date on which the decision was made**. *(paragraph 24, schedule 2 of the Act)***

The President of the Court of Appeal may make rules providing for the procedure in respect of appeals made under this Act and until such rules are made, the Court of Appeals Rules shall regulate the hearing and determination of an appeal under this Act. A person who produces, furnishes or sends for the purpose of this Act or otherwise makes use for that purpose of a document which is false in any material particular; or in furnishing an information to the Board, makes a statement which is false in any material particular is guilty of an offence and liable on conviction to a fine of twice the amount undeclared. It is also an offence for a person to participate in, or take steps with a view to making evasion of the tax by him or any other person. Such a person is guilty of an Offence and liable on conviction to a fine of 30,000 or two times the amount of the tax being evaded, whichever is greater or to imprisonment for a term not exceeding three years.

Where a person required making an attribution fails to do so; or having done so fails to notify the board, is liable to pay a penalty of 5,000 under section 27 of the Act. Where a person who fails to notify the board of any change of address within one month of such change, such a person is liable to pay a penalty of N5,000. In the same vein, a person who fails to issue a tax invoice for goods

sold or services rendered, is guilty of an offence and liable on conviction to fine of 50% of the cost of the goods or services for which the invoice was not issued.

Section 30 of the VAT Act, states as follows:

A person who:

(a) resists, hinders, obstruct or attempts to resist or hinder an authorized officer acting under Section 39 of this Act; or

(b) fails to comply fully with any requirement made under Section 39 of this Act; or

(c) makes any statement in response to a requirement made under Section 5 of this Act; which is false or incomplete; or

(d) procures or attempts to procure by any means any other person to act as aforesaid is guilty of an offence and liable on conviction to a fine of 10,000 or imprisonment for a term of six months or to both such fine and imprisonment.

It is an offence for a person other than a person registered under the Act, or a person authorized to do so under this Act to issue an invoice purporting to be attributable to tax. Such a person is guilty of an offence and is liable on conviction to a fine of N10,000 or imprisonment for a term of six months.

(How is the breach of the provisions of VAT Act by a firm or association of individuals treated?)

A taxable person who fails to register under this Act, is guilty of an offence and liable on conviction to a fine of 5,000 and, if after one month, the person is not registered, the premises where the business is carried on shall be liable to be sealed up. A taxable person who fails to keep records and accounts of his business transactions to allow for the correct ascertainment of tax and filing of returns is liable to pay a penalty of 2,000 for every month in which the failure continues.

A taxable person who fails to collect tax under this Act, is liable to pay as penalty 150% of the amount not collected, plus 5% interest above the central Bank of Nigeria rediscount rate. A taxable person who fails to submit returns to the board, is liable to a fine of 5,000 for every month in which the failure continues. It is also an offence to aid and abet the commission of an offence under this Act.

Where an offence under the VAT Act, is committed by a body corporate or firm or other association of individuals:

(a) every director, manager, secretary or other similar officer of the body corporate; or

(b) every partner or officer of the firm; or

(c) every person concerned in the management of the affairs of the association; or

(d) every person who was purporting to act in any capacity as aforesaid, is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed, the offence, unless he proves that the act or omission onstituth1g the offence took place without his knowledge, consent or connivance.

1.4 Summary

Conclusively, VAT is an expenditure tax and is chargeable to all VATABLE in all the goods and services that are subject to the tax. It is administered by the FIRS under the FIRSA ACT 2007. All the offences and penalties are clearly provided under the VATA, 2004 respectively. This unit succeeded in defining the meaning, nature and perimeters of VAT In Nigeria. It started with the background history of VAT, then, the administration of VAT and finally, the offences and penalties under the VATA, 2004.

1.5 References/Further Readings/Web Sources

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1.6 Answers to Self-Assessment Exercise 1

1. The following services are exempted from the imposition of VAT:

i. Medical services.

ii. Services rendered by Community Banks, People's Bank and Mortgage Institution.

iii. Plays and performances conducted by educational Institutions as part learning.

iv. All exported services 2. How is VAT administered in Nigeria?

2. The VAT system in Nigeria is administered by the Federal Inland Revenue Service (FIRS) through the VAT Director

Answers to Self-Assessment Exercise 2

i. According to the court in *Lanto v. Wowo 1999 NWLR, Pt.610 277* proper and adequate notice must be given to the tax payer of his tax due, if not, the entire assessment process will be rendered a nullity.

ii. A taxable person who is aggrieved by an assessment made on the person may appeal to the Value Added Tax Tribunal established in the second schedule to this Act