

CHAPTER FIVE

STATUTORY DEVELOPMENTS

Background

With the fall of Sokoto in 1903, the entire area of present day Nigeria had come under British domination. As pointed out in the preceding chapters, even prior to the appointment of Sir Frederick Dealtry Lugard as British High Commissioner for the Northern Protectorate in 1900, various forms of taxation had already been in place in Northern Nigeria. As a result, Sir Frederick did not have to introduce taxation to the north as a novel idea. His challenge in this area was to harmonize the various forms of taxes that were already in place. Lugard achieved this through the introduction of statutory enactments in the regulation of taxation. Consequently, the *Stamp Duties Proclamation 1903* was promulgated. This was followed in 1906 by the *Native Revenue Proclamation No. 2 1906*, which, for all intents and purposes, laid the foundation for the regulation of income tax in Nigeria. In the years to follow, political imperatives led to the expansion of income taxation based on this new model into first, the western territories and eventually into the eastern provinces. At the time, there was no clear cut distinction between personal taxation and business taxation in terms of statutory frameworks; rather, the income tax ordinances passed up to 1939 applied equally to both personal and business taxation. This chapter focuses on the statutory instruments that, at different times, shaped the development of the various tax types.

Introduction of Income Tax Laws in Nigeria

The first income tax law in Nigeria was the *Native Revenue Proclamation No. 2 1906* issued by then Governor of Northern Nigeria, Sir Frederick. As the title suggests, the document was not legislation in the strict modern sense. However, to the extent that the Proclamation was a legal instrument that imposed and levied tax, it qualified as a law for all intents and purposes. The preamble to the Proclamation described it as ‘relating to the levying and collection of revenue from native sources’ and went on to state that prior to the issuance of the Proclamation ‘tributes, rents, taxes and other dues have been levied and collected according to Native Custom by certain chiefs’ and that it was:

considered advisable to legalise and regulate the levying and collection of such taxes and dues aforesaid, and to promote such uniformity of taxation as may be possible in the Protectorate.¹

Consequently, and subject to the approval of the Governor, the Resident of each province was empowered to fix and assess tributes on any community or unsettled district² within his province and to impose tax on natives residing within his province who were previously subject to *kurdin sarauta*, *gaisua* and *jangali*.³ Assessment was based on the estimate of annual value of lands and produce in each community or the annual value of the produce or goods of any trade, goods or implements of the taxpayer or on the value of livestock of herdsmen or such other incomes as were liable to tax under native custom.⁴ Every community or unsettled district was required to be notified of the amount assessed against it as well as the time the assessed amount was to be collected.⁵

The Resident was empowered to appoint chiefs or other suitable persons as district headmen and village headmen (in the case of settled districts) and elders or chiefs (in the case of unsettled districts) to assist in the supervision and collection of taxes and tributes.⁶ The duties of a district headman included the supervision and collection of tribute in his district; the receipt of all sums collected by village headmen and delivery of same to a recognised chief⁷ as directed by the Resident; the collection of taxes from persons in his district, where so directed by the Resident; and the rendering of accounts of all tributes and taxes collected to the Resident.⁸ A district headman was entitled to remuneration at an amount not exceeding one fourth of the tribute or taxes received by him.

The duties of village headmen included the collection from each member of the community to which he was appointed, such proportion of the amount at which the community was assessed for tax or tribute; remittance of tribute or tax proceeds to the appropriate district headman or such other person as directed by the Resident; and communication to the district headman the names of persons who either refused or persistently neglected to pay their proportion of tax or tribute.⁹ A village headman was also entitled to remuneration from the proceeds of tax or tribute collected by him at an amount not exceeding one fifth of the total sum collected.

A right of appeal existed in favour of a person who felt aggrieved concerning the proportion of tax imposed on him by the village headman (or in the case of an unsettled district, the

elders or chiefs). Such an aggrieved person could appeal to the district headman from whom a further right of appeal lied to the Resident whose decision was final.¹⁰

Revenue due to a recognised chief from tribute and taxes was divided twofold. One moiety (i.e. half) of the proceeds realised from tribute, *kurdin sarauta* and *jangali* were remitted to the Resident to form the general revenue of the protectorate, while the remaining moiety formed part of the revenue of the native authority. A certain proportion of *gaisua* (i.e. suzerainty tax) as determined by the Governor was set aside and remitted to the Sultan of Sokoto for the furtherance of religious or other similar purpose, while the balance was remitted to the Resident as revenue for the protectorate.¹¹ The Governor had a right to exempt a particular property, income or profit from tax or to assign any tribute or tax or a portion thereof to the benefit of any person designated by him or for the furtherance of charitable, educational or religious objectives.¹² It was equally lawful for the Governor to exempt any province or district from the scope of the proclamation.¹³

Five categories of offences were created by the Proclamation. First, it was an offence punishable with a fine not exceeding 50 pounds or imprisonment not exceeding three years or both for any district headman or village headman to:

- a. demand from any community, unsettled district or person an amount in excess of the authorised assessment of tribute or tax;
- b. withhold for his own use or otherwise any portion of the amount collected;
- c. render false returns of the amount collected by him;
- d. willfully misrepresent the taxable capacity of the community, unsettled district or person from which or from whom he was authorised to collect tax or tribute; and
- e. defraud, embezzle or otherwise use his position to deal wrongfully with the government, individual or community.¹⁴

Secondly, it was an offence punishable with a fine not exceeding 500 pounds or imprisonment not exceeding five years or both for a chief to refuse to give information when so required, to a Resident regarding the taxable capacity of a community paying tax or tribute hitherto, under native custom or to willfully mislead the Resident with reference to the same matter.¹⁵ Thirdly, it was an offence punishable with a fine not exceeding 500 pounds or imprisonment not exceeding five years for a recognised chief to refuse or persistently neglect to remit tax or tribute to a Resident as required by section 15 of the Proclamation.¹⁶ Fourthly, it was

unlawful for a person, who not being authorised to collect tax or tribute to attempt to do so; or being authorised, for such person to collect tax or tribute not approved under the Proclamation or any other instrument. In either case, the penalty was a fine not exceeding 500 pounds or imprisonment not exceeding five years.¹⁷ Lastly, it was an offence for any person to refuse or persistently neglect to pay his portion of tax or tribute or incite another person to refuse to pay. The penalty for this offence was a fine not exceeding 50 pounds or imprisonment not exceeding two years.¹⁸ Proceedings to enforce payment of tax, tribute or penalties were vested in provincial courts¹⁹ while the Governor was empowered to make regulations to give better effect to the provisions of the Proclamation.²⁰

In 1917, the first income tax ordinance, strictly so called, was passed. This was the *Native Revenue Ordinance No. 1 1917* and it was more or less a re-codification of the 1906 Native Revenue Proclamation and just like the Proclamation, the area of application of the ordinance was the northern provinces.²¹ The differences between the two instruments were not substantial. For example, under the 1917 Ordinance, the Resident was to fix and assess tribute to be paid by a community within the province and taxes to be paid by natives residing in the province.²² This was a deviation from the position under the 1906 Proclamation where taxable persons were specifically listed as those who had been liable to the various Islamic taxes. Second, the 1917 Ordinance extended the meaning of *village headman* to include the head of nomadic herdsmen.²³ Third, the upper limit of the remuneration of a village headman was raised to a maximum amount of one tenth of tribute or taxes collected by him.²⁴ Furthermore, while the proportion of revenue sharing between the government of the protectorate and the native authority remained the same, the allocation of a portion of *gaisua* tax to the Sultan of Sokoto was removed from the 1917 Ordinance. So was the discretion conferred on the Governor to allocate a portion of the revenue collected to the sole use of a certain chief or person. However, the Governor still retained the power to assign a proportion of tribute or tax to charitable, educational or religious purposes.²⁵ Finally, section 23 of the 1917 Ordinance conferred jurisdiction on the Supreme Court, High Court, magistrate court or native tribunal to enforce payment of tribute or taxes.

The proviso to section 1 of the 1917 Ordinance empowered the Governor to extend the application of the provisions of the Ordinance to the whole or any part of the southern provinces. As a result, the *Native Revenue (Amendment) Ordinance No. 29 1918* was passed and the provisions of the principal Ordinance was extended to south-western provinces.²⁶

Through various Orders-in-Council, the divisions of *Egba*, *Ijebu Ode* and *Ilaro* in Abeokuta Province, *Ibadan*, *Oyo* and *Ife* in Oyo Province, *Benin*, *Kukuruku* and *Ubiaja* in Benin Province and *Ekiti*, *Owo* and *Ondo* in Ondo Province were brought within the statutory framework of the Native Revenue Ordinance.

By 1927, the colonial government decided that the southeast was ready to be brought within the income tax net. Consequently, the *Native Revenue (Amendment) Ordinance No. 17 1927* was passed to extend the application of the Native Revenue Ordinance to the remaining part of the southern provinces, namely, the southeast including the British Cameroons but excluding the colony of Lagos and this was reflected in the amendment accordingly.²⁷ The effective date for the commencement of the amendment was 1st April 1928.

In 1931, a landmark legislation was passed in the nature of the *Non-Natives Taxation (Protectorates) Ordinance No. 21 1931*. The Ordinance imposed income tax on non-natives living outside the colony for the first time. The provisions of the Ordinance were similar to those of the *Income Tax (Colony) Ordinance No. 23 1927*²⁸ in all material respects. Section 1 - which was the citation and application section - made the Ordinance applicable to the protectorate²⁹ 'including the Cameroons under British Mandate.' Assessment and collection of the tax under the Ordinance was vested in the district officers in the various divisions across the protectorate and they were to pay same to the treasurer to form part of the public revenue of Nigeria by virtue of section 3 (1). Section 4 (1) provided, *inter alia*, for the types of income subject to tax under the Ordinance. It provided thus:

- (1) There shall be levied and collected in a manner hereinafter mentioned an income tax (hereinafter called the tax) in accordance with the rates set out in the Schedule for the year of assessment commencing on the 1st April, 1931, and for each subsequent year, assessed on the chargeable income of any male non-native being in Nigeria, who in respect of the year of assessment has not paid income tax under the Income Tax (Colony) Ordinance, 1927, accruing in or derived from Nigeria in respect of:
 - (a) gains or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;

- (b) gains or profits from any employment;
- (c) dividends, interests or discounts;
- (d) any pension, charge or annuity;
- (e) rents, royalties, premiums and any other profits arising from property.

Chargeable income was defined as:

the aggregate amount of the income of any non-native from the sources specified in sub-section (1) after the deduction of all the out-goings and expenses (which, if not actually ascertainable, shall be estimated) wholly and exclusively incurred during the year of assessment or the year immediately preceding the year of assessment, as the case may be, by such person in the production of the income.³⁰

Section 4 (4) defined year of assessment as a 'period of twelve months commencing on the 1st April 1931, and each subsequent period of twelve months'. However, where the commissioner was satisfied that a non-native usually made up the accounts of his business on some day other than that immediately preceding any year of assessment, subsection (5) empowered him to permit the gains or profits of such business to be computed upon the income of the year terminating on that day in the year immediately preceding the year of assessment on which the accounts of the said trade or business were usually made. When a trade was business, profession or vocation carried on jointly, the ordinance deemed the income of any partner to be the share to which he was entitled in the income of the partnership and was to be included in the return to be made by such partner.³¹ Section 5 exempted the official emoluments of the officer administering the government from tax under the Ordinance, while section 6 exempted temporary residents from income tax under the Ordinance, provided they had not resided in Nigeria at one or more times for a period equal to six months in the year preceding the year of assessment.

Where the gains or profits earned by a non-native were, by the nature of the business or trade in which they were engaged not readily ascertainable, section 7 (1) empowered the commissioner to make such investigations as he deemed fit into the average incomes earned by other non-natives engaged in similar trade or business and in accordance with the findings

of his investigations, fix the average income earned by the non-native. By virtue of subsection (2), the commissioner was to compile a list of all such professions, trades, businesses or vocations together with the average incomes as determined by him under subsection (1) and publish same in the gazette. After publication, the average incomes so determined were deemed to be the chargeable incomes upon which non-natives engaged in those businesses were taxed for that particular year.³²

Section 8 (1) placed a duty on every non-native chargeable with tax under the Ordinance to give notice of his chargeability to the commissioner:

- a. on or before 1st of November 1931 or within three months of his arrival in the protectorate whichever was later; and
- b. within three months after the commencement of any year of assessment or within three months of his arrival in the protectorate, which ever was later.

The commissioner was also empowered under section 8 (2) to require any non-native to furnish him with a return of income and such other particulars as he required, within a reasonable time for the purposes of determining the income with which such a non-native was chargeable. Failure to comply with the provisions of section 8 (1) and (2) was made an offence by subsection (3).

Section 9 (1) mandated every employer to deliver to the commissioner, vide a return in the prescribed form, the name and residence of every non-native employed by him together with all payments made to such non-native, on or before 1st October 1931 and on or before 1st April in every succeeding year. The proviso to the section however exempted non-natives whose annual remuneration did not exceed thirty pounds. Under section 10, every employer, head of family or householder was duty-bound, where so required by the commissioner or any of his assistants, to give any information that was necessary for the collection of tax under the Ordinance, and failure to give the information where required, or mislead the commissioner was an offence. Upon receiving the return of income, the commissioner could accept the return and make assessment accordingly or refuse the return and use his judgment, subject to the provisions of section 7, to determine the chargeable income of the person and assess him accordingly. Similarly, where a person failed to deliver a return and the commissioner was of the opinion that such a person was liable to pay tax, he could assess the person in line with the provisions of section 7. Such assessment did not however, affect the liability of the person for failing or neglecting to make a return. Further, where the

commissioner considered the presence of any person necessary for the purpose of assessment, he could call upon the person to attend at his office irrespective of whether such a person made a return of income and failure to attend when called upon was an offence.³³

Where it appeared to the commissioner that any person liable to tax under the ordinance had not been assessed or had been assessed at a less amount than he ought to have been assessed, the commissioner could, within the year of assessment or within two years of the expiration thereof, assess the person at such amount or additional amount as according to his judgment he ought to have been assessed.³⁴

The commissioner was required to prepare lists of persons assessed to tax to be called *assessment lists*. These were to contain the names, addresses, amount of chargeable incomes, amount of tax payable and such other particulars as were required of all persons liable to tax under the ordinance. He was further obliged to notify each person whose name appeared on the assessment lists, the amount of his chargeable income and amount of tax payable by him.³⁵

Section 14 (1) conferred on a non-native the right to apply to court to either cancel or reduce the amount in respect of which he was assessed, if he denied that he was chargeable or objected to the amount of assessment. The petition had to be presented within twenty one days of the notice of assessment being served on the non-native; but where the court was satisfied as to the sufficiency of reason for the delay in petitioning, it could allow a non-native time after the expiration of twenty one days to present the petition. The petitioner bore the onus of proof and where he successfully discharged it, the court could reduce the amount by which he was overcharged. Conversely, where the court was satisfied that the petitioner was undercharged, it could increase the amount of the assessment accordingly. The decision of the court regarding the assessment was final. The right conferred on a non-native in section 14 (1) did not extend to an assessment arrived at by the commissioner acting pursuant to the powers conferred on him under section 7. Petitions arising from the exercise of the commissioners' powers under section 7 were to be considered by a board of three persons, being non-officials, appointed by the Governor on such terms as were described.³⁶

Section 15 specified conducts by tax collectors that amounted to offences. Pursuant to this section, any person who being employed in connection to tax by a commissioner demanded

from any person an amount in excess of the authorised tax, or withheld for his own use or otherwise any portion of the amount collected, or rendered a false return of the amount collected or received by him or defrauded, embezzled or otherwise used his position to deal wrongfully with the commissioner was guilty of an offence. Similarly, any person who not being authorised under the Ordinance to collect tax but who went ahead to collect or attempted to collect tax was guilty of an offence. In either situation, the culprit was liable to a fine of 300 pounds or three years imprisonment or both.³⁷ Also, any person who forged, or fraudulently altered or lent or allowed another person to use receipt or token evidencing payment of tax under the Ordinance was guilty of an offence by virtue of section 16. Furthermore, any person who aided or induced another person to refuse to pay tax or made any false statement or representation for the purpose of obtaining a deduction, rebate, repayment or reduction for himself or another, aided or induced another person to deliver a false statement or false accounts or particulars concerning any income on which tax was payable under the Ordinance was guilty of an offence pursuant to section 17 (1) - (3). Section 18 provided a penalty of one hundred pounds as fine or one year imprisonment or both for any offence under the Ordinance in respect of which no specific penalty was prescribed. Section 19 empowered the commissioner to sue in his official name to enforce and recover payment of tax.

A non-native who proved to the satisfaction of the commissioner by way of deduction or otherwise, that he paid tax in excess of the amount with which he was properly chargeable was entitled to a refund of the excess so claimed, but the claim had to be made within two years from the end of the year of assessment to which it related.³⁸ However, by the provisions of section 20 (2), a person who failed to deliver a return after being served with notice of his assessment was not entitled to refund except if such sums as were repayable on a successful petition or where he proved to the satisfaction of the commissioner that such failure did not proceed from fraud or willful act or omission. Finally, section 21 empowered the Governor-in-Council to make regulations generally for carrying out the purposes and provisions of the ordinance.

The *Non-Natives Income Tax (Protectorate) Ordinance No. 21 1931* underwent series of amendments between 1931 when it was passed and 1940 when it was repealed.³⁹ The amendments were done in 1936, 1937 and 1939. In 1936, the principal Ordinance was

amended twice. Some of the major changes were done by inserting subsections (1) - (6) to section 17A thus:

- (1) Any person who without lawful justification or excuse, the proof whereof shall lie on the person charged, fails, within three months after he shall have been informed by a Commissioner of the amount of the tax at which he has been assessed, to pay such tax, shall be guilty of an offence against this section.
- (2) Where a letter, notice or other document containing a statement of the amount at which a person has been assessed has been sent by post by a registered letter addressed to that person by name at his last known place of abode or business and that letter is not returned through the post office undelivered to the sender at the time at which the registered letter would in the ordinary course be delivered.
- (3) Where the person to whom a registered letter containing a statement of the amount at which he has been assessed for tax is informed of the fact that there is a registered letter awaiting him at a post office and such person refuses or neglects to take delivery of such registered letter he shall be deemed to have had notice of the amount of the tax at which he has been assessed on the date on which he was informed that there was a registered letter awaiting him at a post office.
- (4) Where a person has petitioned the Court against an assessment the period of three months mentioned in subsection (1) shall commence to run from the date on which the petitioner shall be informed by the Commissioner of the amount payable under the assessment as determined by the Court.
- (5) The provisions of this section shall be in addition to and not in derogation of any other provisions of this Ordinance.
- (6) Every person who commits an offence against this section shall be liable to a fine of twenty pounds or to imprisonment for two months or to both.⁴⁰

The 1937 amendment was passed in the form of the *Non-Natives Income Tax (Protectorate) (Amendment) Ordinance No. 5 1937*. This amendment Ordinance repealed the Schedule to the principal Ordinance and substituted a new Schedule thereto. Under the new Schedule, new rates were fixed at a minimum of six shillings on chargeable incomes exceeding thirty pounds but not exceeding fifty pounds and a graduation of ten pounds on incomes exceeding one thousand pounds but not exceeding one thousand one hundred pounds and thereafter, one pound on every additional one hundred pounds or part thereof of chargeable income. In 1939, three amendments were passed to the principal Ordinance. The first was the *Non-Natives Income Tax (Protectorate) (Amendment) Ordinance No. 3 1939* which amended the principal Ordinance in two material respects. First, where ever the term 'non-native' appeared in the law, it was substituted with the phrase 'male non-native' thereby excluding non-native females from the operation of the Ordinance. Second, the Schedule to the principal Ordinance was repealed and a new Schedule was provided under section 6 of the amendment. The Schedule increased the chargeable rates from a bench mark of 30 pounds to 50 pounds and minimum tax burden of 15 shillings. Thus by virtue of the new Schedule, a person whose income exceeded 50 pounds but did not exceed 100 pounds was liable to a tax of 15 shillings. This increase in the bottom rates was reflected at all levels, such that under the new Schedule, a person whose income exceeded 1000 pounds but was less than 1100 pounds was liable to a tax of 15 pounds as opposed to 10 pounds under the principal Ordinance. Lastly, every additional 100 pound in excess of the topmost rate attracted a tax of one pound 10 shillings as opposed to one pound under the principal Ordinance.⁴¹ The second 1939 amendment was the *Non-Natives Income Tax (Protectorate) (Amendment No. 2) Ordinance No.18 1939* which amended the principal Ordinance twofold. First, it did by the inclusion of section 19A immediately after section 19 of the principal Ordinance. The new section read:

Any tax which a company has deducted or is entitled to deduct under section 15 of the Companies Income Tax Ordinance, 1939, from a dividend paid to a shareholder shall, when such dividend is included in the income chargeable of such shareholder chargeable under this Ordinance, be set off for the purposes of collection against the tax charged on that chargeable income.⁴²

Secondly, section 20 was amended by repealing the original subsection (1) thereto and in its place, providing a new subsection (1) which read thus:

- (1) If it is proved to the satisfaction of the Financial Secretary that any person for any year of assessment has paid tax, by deduction at source or otherwise, either under this ordinance or under the Companies Income Tax Ordinance, 1939, or under both ordinances, in excess of the amount with which he is properly chargeable under this Ordinance, such person shall be entitled to have the amount so paid in excess refunded. Every claim for repayment under this section shall be made within two years from the end of the year of assessment to which the claim relates.⁴³

Finally, the *Non-Natives Income Tax (Protectorate) (Amendment No. 3) Ordinance No. 29 1939* amended the principal ordinance by removing districts officers as automatic tax collectors as envisaged under section 3 of the principal Ordinance. In their place, the Governor could appoint such other persons as he deemed fit by notice in the gazette.⁴⁴

In 1940, a law was passed that limited the application of the *Native Revenue Ordinance No. 1917*. This was the *Direct Taxation Ordinance No. 4 1940*. The law applied to natives throughout Nigeria except the township of Lagos⁴⁵ and regarding the eastern provinces and natives resident in the colony, the law specifically repealed the *Native Revenue (Amendment) Ordinance 1927 and the Native Direct Taxation (Colony) Ordinance 1937*.⁴⁶ The power to administer tax under the ordinance was vested in the Resident by section 3. *Resident* was defined in section 2 to mean:

the officer appointed by the Governor to be in administrative charge of the particular province in question and includes any other administrative officer authorised by the Resident to perform any duties imposed upon the Resident by this Ordinance.

By section 2 (2), references to a province were deemed in respect of the colony to be references to the colony (apart from the municipal area of Lagos) and the duties imposed on the Resident in respect of a province under the Ordinance were, in the case of the colony exercisable by the commissioner of the colony. The Resident was required by section 4 (1) to act in cooperation with the chiefs or elders or other persons of influence in each district and to take into cognisance native custom and tradition as far as circumstances permitted,

in determining the estimates of annual profits for assessment purposes. The gains or profits taxable under the Ordinance were listed in section 4(1) (a) to (b) and they included:

- a. annual profits or gains derived from lands by way of rentals or produce by any individual or native community;
- b. annual gains or profits from any trade, manufacture, office or employment engaged by an individual or native community;
- c. annual gains or profits derived from any pension, annuity, dividend or interest by an individual or native community;
- d. the value of all livestock owned by each individual or community.

Community was defined by section 2 to mean ‘any group of individuals residing, carrying on business or being within any town, village or settlement or in any locality therein and includes a band of nomad herdsmen’. Section 4 (2) empowered the Resident to appoint a committee for the purpose of enquiring into the annual profits, gains or value in order to arrive at an estimate as required by subsection (1) and to accept, alter or amend the committee’s estimate or computation and also fix the amount to be paid as tax. The annual profits, gains or value referred to in section 4 were deemed to be those which could be annually obtained from such lands by a native cultivating and using the same in the manner and up to the average standard of cultivation and use prevailing in the neighbourhood.⁴⁷ Subject to the Governor’s approval, section 6 (1) empowered the Resident to determine the amount payable as tax based on the computation arrived at pursuant to section 4. However, where no estimate or computation was made pursuant to section 4 in any particular year of assessment, the proviso to section 6 required that the most recent estimate or computation of that community under section 4 made in any previous year of assessment be used, taking into cognisance any decrease or increase of population in the community to justify either an increase or decrease in the amount of assessment. Section 6 (2) empowered the Governor to amend or alter such assessment as appeared just or expedient to him. In lieu of assessment, the Resident, with the Governor’s approval, could assess the tax payable by a specific class of persons, or community at such sums as were specified by the Resident notwithstanding the provisions of sections 4 - 6.⁴⁸ Section 8 empowered the Resident to cause to be counted all cattle in possession of a person or community and based on the count the Resident could demand tax on the head of such cattle as prescribed by the Governor. Cattle tax was payable in addition to or in lieu of assessments in sections 4 - 7.

After the assessment of persons and communities were approved by the Governor, the Resident was required to make public, in a manner he deemed fit, the amount each person and each community was assessed and the date the tax was payable.⁴⁹ Section 10 empowered the native authority by itself or through a tax collector, to fix and apportion among members of a community such amount of the total tax payable as was just and equitable having regard to each members wealth. Section 11 (1) - (3) prescribed the procedure for appeal where a person objected to the amount of tax with which he was charged. The aggrieved party, except otherwise directed by the Resident, had to appeal first to the district headman or his subordinate to cancel or vary the amount. Further appeal was to the native authority and from there to the Resident whose decision was final.

The Governor was empowered by section 12 to exempt any person or class of persons from the operations of the Ordinance or the profits, gains or value of any property from assessment under section 4, for a specified or unspecified period. The Governor could recognise a native authority as tax collection authority based on tradition or custom of the community. Where no native authority was recognised as such the Resident could appoint any native authority, district headman, village council or other suitable person as the tax collection authority in respect of the specified area. The recognised or appointed tax collection authority could in turn appoint other suitable persons as tax collectors and where he failed to do so, the Resident could appoint such tax collectors.⁵⁰

The duties of a tax collection authority were spelt out by section 14 (1) and (2) to include giving information to the Resident – as required by the latter - as to the numbers and names of taxpayers at the time being within the area under him; supervising the collection of tax in his area; receiving from the tax collectors in his area amounts of tax assessed on, and collected from communities and natives, rendering returns to the Resident of the amounts received by him at such times and in such forms as the Resident directed. Similarly, the duties of tax collectors were defined to include furnishing the native authority with the nominal roll of all taxpayers under his mandate; collecting the amount payable from every taxpayer under him; remitting the amount of tax collected to the appropriate collection authority; and reporting to the appropriate tax collection authority the name of any person who failed to pay tax.⁵¹ By virtue of section 16 of the ordinance, natives residing on lands alienated to or occupied by non-natives were nevertheless liable to tax. Tax collection authorities were required by section 17 (1) to deposit tax revenues received by them into the native treasury

of the area for which the tax was collected. Subsection (2) required the native authority to pay such proportion of the tax revenue as determined by the Governor into the general revenue of Nigeria while the remaining proportion was transferred to, and formed part of the revenue of the native authority.

Sections 18 - 20 created various offences under the ordinance. By section 20, any tax collector, tax collection authority or any person authorised by any of them who failed to deposit tax money collected or received was guilty of an offence and was liable upon conviction to a fine of 200 pounds or imprisonment for two years or both. Under section 19, a tax collector or tax collection authority who demanded from a community or person an amount in excess of the duly assessed tax; withheld for his own use any portion of tax collected; rendered false returns of the amount collected or received by him; wilfully misrepresented the taxable capacity of a taxpayer; defrauded any person or stole or used his position in any way to the prejudice of the government, tax authority or taxpayer; or failed to carry out his duty (other than the duty prescribed in section 18 failure of which penalty was provided therein) was guilty of an offence and was liable upon conviction to a fine of 50 pounds or imprisonment for one year or both. Where a group of persons was appointed collectively as tax collector or tax collection authority, proceedings under section 19 could be instituted against the members either jointly or severally and upon proof of the commission of the offence being established, every member thereof was deemed individually liable to the prescribed penalties unless he could show to the satisfaction of the court that he was in no way responsible for the commission of the offence.⁵² Section 20 made it an offence punishable with a fine of 200 pounds or two years imprisonment or both for any person who collected tax or attempted to do so, not being authorised by the ordinance or any other law.

An employer, head of family, householder or any person whose authority was recognised by a section of the community was obliged, when required by the Resident, tax collection authority or tax collector, to give all such information as was required for the assessment or collection of tax.⁵³ Failure to supply the required information or wilful misinformation to the aforesaid officials was an offence punishable with a fine of 100 pounds or one year imprisonment or both.⁵⁴ By section 24, any person who refused to pay tax at the due date; concealed his taxable property; misrepresented his taxable capacity; or incited any other person to do any of the above was guilty of an offence and was liable upon conviction to a fine of 100 pounds or one year imprisonment or both. Section 25 provided a similar penalty

against any person who forged or fraudulently altered; or lent or allowed to be used by another person, a receipt or token indicating payment of tax. Section 26 prescribed a general penalty of 100 pounds or six months imprisonment for any offence for which no specific penalty was defined; while section 27 empowered a tax collection authority or tax collector to enforce the provisions of the ordinance by proceedings instituted in his name as the case warranted, before a magistrate or native court, to the extent of its jurisdiction. The Resident had discretion under section 28 (1) to remit or refund either wholly or partially, the tax payable by any person on the ground of poverty. Section 28 (2) vested the Governor-in-Council with a similar discretion, to be exercised on equitable ground. Finally, section 29 conferred powers on the Governor-in-Council to make regulations for the effective operation of the ordinance.

Another piece of legislation that was passed in 1940 was the *Direct Taxation Ordinance*.⁵⁵ Apart from a few alterations, the provisions of this Ordinance were substantially similar to the *Direct Taxation Ordinance No. 4 of 1940*. The alterations were found in sections 7 and 20 of the new Ordinance. Section 7 introduced the phrase ‘ascertained annual income’ which was defined to mean the amount of annual gains or profits:

- i. ascertained by the Resident;
- ii. accepted by the resident as correct or fair; or
- iii. varied or amended by the Resident and finally considered by the Resident as correct or fair.

Section 20 provided an alternative to the procedure of sharing tax amounts in the native treasury between the native authorities and the central government as contained under section 19.⁵⁶ The section provided that:

- (1) In lieu of the Governor determining that a proportion of the amounts collected and deposited as tax in the native treasury shall be paid to the credit of the general revenue of Nigeria in accordance with Section 19, the Governor may by order annually require each or any specified native authority to pay, out of the amounts collected as tax under this Ordinance for any area, a specified amount to the credit of the general revenue of Nigeria and all the balance remaining thereafter out of the total amounts collected as tax from any particular area for

the year in respect of which the order is made shall be paid into the native treasury and form part of the revenue of the native authority for the area for which it was collected.

- (2) Where a specific amount is required by the Governor by order in accordance with the provisions of sub-section (1) the Governor, in any case in which he considers it advisable so to do, may state that such amount shall not include any amounts paid as tax in respect of-
- (a) any particular profit or gain;
 - (b) any livestock; or
 - (c) any cattle in respect of which a tax is paid under section 10, and where the Governor has stated that the proceeds of any such tax is not included in the amount specified in the order the proceeds of such tax shall be dealt with in accordance with the provisions of section 19.

It should be noted that the provisions of the aforementioned section 10 is *in pari materia* with section 8, *Direct Taxation Ordinance No. 4 of 1940*. Under the alternative procedure introduced by section 20 (1), the determination of the proportion of amounts to be paid into the general revenue of Nigeria from the native treasury was to be done annually. This was different from the arrangement under section 19 - or section 17 (2) of Ordinance No. 4 of 1940 - where the determination of the amount could be done 'from time to time'. Secondly, section 20 (2) exempted tax proceeds of personal income from forming part of the proportion of the revenue that accrued to the central government, thereby ensuring it was retained by the native authority where it was derived. This provision was not contained anywhere in the *Direct Taxation Ordinance No. 4 of 1940*.

Introduction of Income Tax Laws in the Colony of Lagos

Before 1927, customs duties, excise and tariffs were the major taxes collected in the colony of Lagos. In 1927 the *Income Tax (Colony) Ordinance No. 23 1927* introduced direct taxation in the colony of Lagos for the first time. Section 1 of the Ordinance limited the application of the law to the colony of Lagos. It provided that: 'This Ordinance may be cited as the Income Tax (Colony) Ordinance, 1927, and shall apply to the Colony only'.

Under section 2 thereof, the power to assess and collect taxes in the colony was vested in the administrator of the colony. The administrator was also mandated after collecting the taxes, to 'pay same to the Treasurer to form part of the public revenue of Nigeria.' Section 3 (1) listed the incomes that were taxable under the Ordinance thus:

There shall be levied and collected, in manner hereinafter mentioned an income tax (hereinafter called the Tax) in accordance with the rates set out in the Schedule hereto for the year of assessment commencing on the 1st day of April, 1928, and for each subsequent year, assessed as far as circumstances will permit on the chargeable income of any male person resident in the Colony accruing in or derived from Nigeria in respect of:

- (a) gains or profits from any trade, business, profession, vocation or employment for whatever period of time such trade, business, profession, vocation or employment may have been carried on or exercise;
- (b) dividends, interests or discounts;
- (c) any pension, charge, or annuity;
- (d) rents, royalties, premiums and any other profit arising from property.

Section 3 (2) provided that the tax under the ordinance was to be charged, levied and collected for each year of assessment upon the estimated chargeable income of any person for the year immediately preceding the year of assessment. 'chargeable income' was defined in subsection (5) to mean:

the aggregate amount of the income of any person from the sources specified in subsection (1) after the deduction of all the estimated outgoings and expenses wholly and exclusively incurred during the year immediately preceding the year of assessment by such person in the production of the income.

A person was deemed to be resident in the colony for the purposes of tax under the Ordinance if his ordinary place of residence was in the colony or if he was actually present within the colony for any period of the year totalling more than three months in all and the onus was on the person found within the colony at any time to prove he was not resident in the colony within the meaning of the Ordinance.⁵⁷ Year of assessment was defined in subsection (6) to

mean 'the period of twelve months commencing on the first day of April, 1928, and each subsequent period of twelve months'.

Section 4 exempted the official emoluments of the officer administering the government from tax under the ordinance. Under section 5 (1), the administrator was empowered to make investigations as he deemed fit and determine the average incomes of persons engaged in trades, businesses, professions, vocations or employments in which gains or profits are not by their nature readily ascertainable. Subsection (2) obliged the administrator to publish the list of such trades, businesses, professions or employments in the gazette and under subsection (3), the average incomes as determined and published would become the basis upon which people within the listed sectors would be charged.

Section 6 (1) of the Ordinance made it mandatory for every chargeable person to give notice to the administrator within three months after the commencement of each year of assessment that he was chargeable. Subsection (2) empowered the administrator to make a written request, on a person chargeable, to furnish him with a return of income and such particulars as may be required with respect to the income for which such person was chargeable, within a reasonable time for the purpose of assessment; and subsection (3) made it an offence for a person to fail or neglect to furnish notice of chargeability to the administrator. Section 7 placed a duty on employers to, on or before 1st of April of every year beginning from 1928; deliver to the administrator a return in the prescribed form containing:

- a. the names and places of residence of every person resident in the colony who at the date of the return was employed by him;
- b. the payments made to those persons in respect of that employment during the preceding year

The proviso to section 7 provided however, that it was not necessary to include in the return, a person, living within the municipal area of Lagos whose remuneration did not exceed 30 pounds. Section 8 made it a duty of every employer, head of family, householder and every person so required to give all such information that may assist the administrator or his assistants in the collection of tax and failure to comply constituted an offence.

Under section 9(1), the administrator was required to assess every person chargeable soon after the time allowed such person for the delivery of his return. Subsection (2) empowered the administrator to either accept the return and make an assessment based on it or refuse the return and use his judgment, subject to the provisions of section 5, to determine the amount of the chargeable income of the person and assess him accordingly. Similarly, subsection (3) provided that where a person did not deliver a return, the administrator could, subject to the provisions of section 5, determine his chargeable income and assess him accordingly. Subsection (4) empowered the commissioner to invite any person to attend at his office, whether or not such a person had made a return, if he considered the person's presence necessary for the purpose of assessment and failure to comply with the invitation was an offence.

Section 10 obliged the administrator to compile and publish a list of persons assessed to be taxed. The section contained the following provisions:

- (1) The Administrator shall as soon as possible prepare lists of persons assessed to tax
- (2) Such lists (hereinafter called assessment lists) shall contain the names and addresses of the persons assessed to the tax, the amount of the chargeable income of each person, the amount of tax payable by him and such other particulars as may be required.
- (3) The Administrator shall notify, in such manner as he deems fit, each person whose name appears on the assessment lists of the amount of his chargeable income and the amount of tax payable by him.

Section 11 contained elaborate provisions empowering a person who objected either that he was chargeable or to the amount assessed on him to challenge such chargeability or assessment by way of judicial review. However, by virtue of subsection (8), appeals arising from the exercise of the powers conferred on the administrator under section 5 could only lie to a *board of commissioners* - three in number - appointed by the Governor on such terms as were prescribed.

Section 12 (1) empowered the administrator to delegate his powers to headmen or council of headmen or other responsible persons for the purpose of supervising and collecting taxes in the areas of the colony outside the municipal area of Lagos. Under subsection (2),

such headmen were to receive such fees as the administrator, with the approval of the Governor directed. Any person who being a headman, member of council or assistant employed in connection with the collection of tax, demanded from any person an amount in excess of the authorised assessment of tax, withheld for his own use or otherwise any portion of the amount collected, rendered a false return of the amount collected by him, defrauded, embezzled, or used his position to deal wrongfully with the administrator, an individual or community; or not being authorised under the ordinance to do so collected or attempted to collect tax was guilty of an offence which was punishable with a fine of 300 pounds or three years imprisonment or both.⁵⁸ It was also an offence under section 14 for any person to forge or fraudulently alter or lend or allow to be used by another person any receipt or token evidencing payment of tax under the Ordinance. Finally, any person who aided or induced another person to refuse to pay tax, made a false statement or representation for the purpose of obtaining any deduction, reduction, rebate or repayment for himself or another, aided or induced another person to make or deliver a false return or statement or prepare any false accounts or particulars concerning any income on which tax was payable under the ordinance was guilty of an offence.⁵⁹ Section 16 provided a penalty of 100 pounds as fine or one year imprisonment or both for any offence for which no specific penalty was prescribed under the Ordinance.

Section 17 empowered the administrator to enforce and recover payment of tax in his official name before a court of competent jurisdiction. Section 18 provided for refunds in proved cases of excess charges but not where the claimant neglected or failed to make a return after being served with notice of assessment except he could prove that his failure was not actuated by fraud, or wilful act or omission. Section 19 vested the Governor with powers to make regulations, including, among other things, the classes of persons to be exempted. The Schedule to the Ordinance contained chargeable rates ranging from six shillings to 10 pounds between graduated incomes of 30 pounds to 1100 pounds respectively and thereafter a rate of one pound on every additional 100 pound of chargeable income.

The *Income Tax (Colony) Ordinance No. 23 1927* was amended in 1933 by the *Income Tax (Colony) (Amendment) Ordinance No. 31 1933*. The amendment affected the principal Ordinance in three major ways. First, the amended sections provided more detailed and comprehensive provisions than was contained in the principal Ordinance. Second, the Commissioner of Income Tax replaced the administrator in the administration of the tax under the Ordinance

and lastly, the commencement of the year for the purposes of assessment was made more flexible by doing away with the 1st April as the commencement date. The 1933 enactment specifically amended sections 3, 4, 6, 7, 9, 11, 14 and 15 of the principal Ordinance. The duty placed on a person chargeable to income tax under section 6 of the principal Ordinance was expanded by requiring him to give notice of his chargeability to the Commissioner of Income Tax within three months of his arrival in the colony *if* he was absent from the colony at the commencement of the assessment year.⁶⁰ Section 7 of the principal Ordinance was amended substituting subsection (1) thereof as follows:

- (1) Every employer shall within three months after the commencement of any year of assessment deliver to the Commissioner of Income Tax a return in the prescribed form showing:
 - (a) the name of every male person resident in the Colony who during the year preceding the year of assessment was receiving from him any remuneration or pension;
 - (b) the last known address of each such person;
 - (c) the amount of such remuneration or pension paid to such person during the year preceding the year of assessment.

Provided always that the returns made under this section need not include any person whose remuneration or pension for the year preceding the year of assessment did not if resident in the municipal area of Lagos exceed £30.⁶¹

The requirement in paragraph (b) was not contained in the principal ordinance; neither was the qualification '*male person*' in paragraph (a) of the amended Ordinance.

Section 9 of the principal Ordinance was amended by repealing subsections (2) and (3) thereto and replacing them with new subsections. Under the new subsection (2), where the Commissioner refused to accept a return, he could assess a person based on the list mentioned in section 5 only *if* the person was engaged in any trade, business, profession, vocation or employment contained in the list mentioned in section 5. If the person was not so engaged in any of the listed vocations, the Commissioner could use his judgment to determine the person's chargeable income and assess him accordingly. A person who did not deliver his return was to be similarly treated under the amendment.⁶² Sections 7 and 9 made minor

amendments to sections 11 and 15 respectively of the principal ordinance. The words ‘on a case being stated’ were added to section 11 (7) while subsection (4) was added to section 15 of the principal Ordinance. Some minor amendments were made to the principal ordinance in 1936 but by the following year, the *Colony Taxation Ordinance No. 4 1937* repealed the *Income Tax (Colony) Ordinance No. 23 1927* together with all amendments thereto.⁶³

The *Colony Taxation Ordinance No. 4 1937* established a threshold in terms of age on chargeable persons by imposing tax on all ‘adult males’ under section 3. ‘Adult males’ was defined in section 2 as ‘any male of or above the age of sixteen’. The authority to assess and collect tax under the new Ordinance was vested in the ‘tax authority’ and the tax collected was to be paid into the ‘Treasury to the credit of the general revenue of Nigeria’.⁶⁴ Tax authority was defined in section 2 as the treasurer, in the case of the municipal area of Lagos and the Commissioner of the colony, in the case of the remainder of the colony.

Tax was imposed by virtue of section 3 and payable on a preceding year basis by virtue of section 4. Section 4 recognised the 1st of April in each assessment year as the due date for payment but the proviso to the section permitted the tax authority to allow a taxpayer to use some other date as due date where he was satisfied that such taxpayer usually made up accounts of his trade or business on a day other than that immediately preceding the assessment year. Where such permission was given, such a date was to be used in subsequent years as the ‘relevant’ due date for assessment and collection, subject to such adjustments as the tax authority considered just and reasonable.

The First Schedule to the Ordinance increased the threshold for chargeability of male adults to persons whose income exceeded 50 pounds per annum, up by 20 pounds under the 1927 Ordinance. By virtue of section 6 however, any male adult being in Nigeria, i.e outside the colony, whose income did not exceed 50 pounds and who was unable to prove to the satisfaction of the tax authority that he had paid tax or tribute under the *Native Revenue Ordinance* was liable to pay five shillings under the *Direct Taxation (Colony) Ordinance*, and in the case of an adult male resident outside the municipal area of Lagos, an amount not exceeding five shillings, as the tax authority, with the approval of the Governor specified from time to time. By section 7, where the tax authority was satisfied that the chargeable income, if any, of a person liable to tax under the Ordinance did not exceed 50 pounds, the person could be assessed accordingly without being called upon to disclose particulars of

his chargeable income. The distinction between section 6 and section 7 was that the former applied to male adults resident outside the colony, to whom this Ordinance ordinarily did not apply, while the latter section applied to adults resident within the colony whose incomes did not exceed 50 pounds which was the threshold of chargeability. Section 8 contained exemptions to sections 6 and 7. Those exempted included:

- a. Students in regular attendance in classes III, IV, V or VI at a middle school approved by the director of education or at any approved training center, college or institution receiving higher education or training as teachers, priests, pastors or evangelists.
- b. Any person who in the opinion of the tax officer, could not reasonably, on account of age, infirmity or other cause whatsoever, be called upon to pay.
- c. Any person who before 1st April 1937 was awarded the Victoria Cross, the Medal of the Order of the British Empire, the Distinguished Conduct Medal, the Military Medal, the Distinguished Service Medal or the Meritorious Service Medal for services rendered during and in connexion with any war.
- d. Any person who in the opinion of the tax authority, had been permanently disabled in government service, incapacitating him from earning adequate livelihood, or who had been wholly or partially disabled by wounds or injury received in active service or by disease due to active service.

Any person assessed under sections 6 or 7 who felt he qualified for the exemptions listed in section 8 could appeal to the tax authority.⁶⁵

Section 10 brought non-natives whose income exceeded 50 pounds within the ambit of liability under the Ordinance by making them chargeable to the rates contained in the First Schedule to the Ordinance if they were found not to have paid tax under the *Non-Natives Income Tax (Protectorate) Ordinance 1931* in the year of assessment. The rates chargeable on the incomes of such persons resident outside the municipal area of Lagos was to be determined by the tax authority with the approval of the Governor, but in any case could not exceed the rates contained in the First Schedule.⁶⁶ The exceptions to section 10 were contained in section 11 of the Ordinance. They included:

- a. The official emoluments of the officer administering the government.
- b. Such income of a Consul in Nigeria in the service of a foreign government that was derived in his office as Consul.
- c. Such income of an official agent, not being a British subject, in the employment of a foreign government in Nigeria, provided such employment was not exercised in connection with any trade, business or other undertaking for the purposes of making profit.
- d. Any income derived from the interest payable on any loan charged on the public revenue of Nigeria.

Where any person charged under section 10 objects to his chargeability or the amount charged, he could petition in the prescribed form to either the appeal board of commissioners established under section 12 or a Judge of the Supreme Court to cancel or reduce the assessment as the case warranted.⁶⁷

Section 14 contained the list of chargeable income. The section provided thus:

Income shall be chargeable income if it shall have been derived from one or more of the following sources:

- (a) salary;
- (b) gains, or profits from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried on or exercised;
- (c) gains or profits from any employment;
- (d) dividends, interests or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums, and any other profits arising from property.

The income of a person in a partnership was deemed to be the share to which he was entitled during the year preceding the year of assessment in the income of the partnership and was to be included in the return to be made by such partner.⁶⁸

Section 16 placed a duty on every chargeable person to give notice of his chargeable income to the tax authority within three months after the commencement of the year of assessment or if he was absent from the colony at the commencement of the year of assessment, within three months after the date of his arrival. Under section 17 (1), the tax authority was

empowered to request from any person a return of income and such particulars, including such books as may be required, for the purposes of ascertaining the chargeable income of such person. By subsection (2), failure to comply with subsection (1) amounted to an offence. Section 18 placed a similar duty on employers regarding their employees. Under the said section, every employer was required within three months after the commencement of any year of assessment to deliver to the tax authority a return in the prescribed form showing the name of every adult male person resident in the colony who was receiving a remuneration or pension from him, his last known address and the amount of such remuneration or pension paid such person during the year preceding the year of assessment. Section 19 made it an offence for any employer, head of family, householder or other person to neglect or refuse to give all such information as may be required by the tax authority or his assistants with a view towards assessment and collection of tax. Any person whose stay in Nigeria was temporary, and whose actual residency in Nigeria at one or more times did not equal a period of six months in the whole in the preceding year of assessment, was exempted from tax under the ordinance.⁶⁹

Upon delivery of a return by a person chargeable, the tax authority was empowered to either accept the return and proceed to make an assessment accordingly or refuse the return and use his judgment to determine the amount of the chargeable income of the person and assess based on his judgment.⁷⁰ Where a person failed to make a return and the tax authority was of the opinion that the person was liable to pay tax, the tax authority could treat the person as if his return had been refused under section 21 (2) (b).⁷¹ By virtue of section 22, where the tax authority was of the opinion that a person liable to pay tax had not been assessed or had been assessed at an amount less than he ought to have been assessed, the tax authority could within the year of assessment or within two years of the expiration thereof assess such a person at such amount or additional amount as according to his judgment he ought to have been assessed.

The tax authority was obliged to prepare assessment list containing names, addresses, amount of chargeable income, amount of tax paid and such other particulars of every chargeable person and notify every person on the list the amount of his chargeable income, the amount of tax payable and the place where payment should be made.⁷² The tax authority was empowered to appoint headmen or council of headmen or other responsible persons for the purposes of supervising and collecting tax in the area of the colony outside the municipal

area of Lagos. Where so appointed, the tax authority was to determine such fees for the headmen as approved by the Governor.⁷³ Pursuant to section 25, claims for excess payments could be honoured by the treasurer provided the claim for refund was made within two years from the year of assessment to which it related. However, no refund could be made to a person in respect of any year in which he failed to deliver a return, unless he showed that such failure was not a result of fraud or wilful omission. Furthermore, the treasurer could, under section 26, remit partly or wholly the tax payable by any person on the ground of poverty or for other good cause(s) and could also for like reason refund the tax or any part thereof.

Legal proceedings to enforce and recover payment of tax could be summarily brought by the Tax Authority suing in his official name under section 27. Sections 28, 29 and 30 contained offences and penalties under the Ordinance. The first category dealt with offences relating to headmen or any person employed by the tax authority to assist in the collection of tax. The offences included where such employees:

- a. demanded from any taxpayer an amount in excess of the authorised assessment or;
- b. withheld for their own use any portion collected;
- c. rendered a false return, written or verbal, of the amounts collected by him;
- d. defrauded any person, embezzled money or otherwise used his position to deal wrongly with either the tax authority or members of a community;
- e. not being authorised under the ordinance collected or attempted to collect tax under the Ordinance.

In any case the offence was punishable with a fine of 300 pounds or three years imprisonment or both.⁷⁴ The second category of offences related to third parties who were not necessarily involved in tax administration. Any person who:

- a. aided or induced another person to refuse to pay tax;
- b. made any false representations with a view of obtaining any deduction, rebate, repayment or reduction for himself or for any other person;
- c. aided or induced another person to make or deliver any false return or statement or aided or induced any person to keep or prepare false accounts or particulars concerning any income on which tax was payable under the ordinance;

- d. forged or fraudulently altered or lent or allowed to be used by another person any receipt or token evidencing payment under the ordinance was guilty of an offence.⁷⁵

The third category of offence was created under section 30. The section made it an offence for any person, who without lawful justification, failed to pay tax within three months after been assessed and informed of his liability. By section 31, where a person was guilty of an offence in respect of which no punishment was prescribed under the Ordinance, such a person was liable to a fine of 100 pounds or imprisonment for one year or both. The Governor-in-Council was empowered by section 32 to make regulations generally for the carrying out of the provisions of the Ordinance. The First Schedule to the Ordinance contained rates of chargeable income ranging from 10 shillings (persons whose income exceeded 50 pounds but did not exceed 100 pounds) to 10 pounds (persons whose income exceeded 1000 pounds but did not exceed 1100 pounds and thereafter one pound on every 100 pounds of chargeable income).

Within the same year that the *Colony Taxation Ordinance No. 4 1937* was passed, the colonial government also passed the *Native Direct Taxation (Colony) Ordinance No. 41 1937*. Ordinance No. 41 removed from the jurisdiction of the *Colony Taxation Ordinance No. 4 1937* all natives in the colony, except those in the municipal area of Lagos. Section 1 of the ordinance provided that:

This Ordinance may be cited as the Native Direct Taxation (Colony) Ordinance, 1937, it shall apply to the Colony, with the exception of the Township of Lagos, and shall come into force on a date to be fixed by the Governor by notice in the Gazette.

Section 3 which imposed the tax to be collected pursuant to the Ordinance provided:

There shall be levied and collected, in manner hereinafter provided, such sums as, in accordance with the provisions of this Ordinance, the Commissioner with the approval of the Governor, shall fix and assess as tax payable by any native community or any native residing or being within the Colony, but not within the Township of Lagos.

‘Commissioner’ was defined under section 2 as the officer appointed by the Governor to be in administrative charge of the colony or any person authorised by the said officer, while community was defined by the same section as a *town, village* or *settlement*. By section 4, the sources of income chargeable to tax under the ordinance were:

- a. annual profits or gain derived from lands and rentals thereof and the amount of annual profits of the produce thereof used, occupied or enjoyed by any native community or any native residing or being within the colony;
- b. annual profits or gains from any trade, manufacture, office or employment in which any native community or any native residing or being within the colony may be engaged.

The annual profits contemplated by section 4 were deemed to be those that could be obtained from lands cultivated by a native and using the same in the manner and average standard of cultivation and use prevailing in the neighbourhood.⁷⁶ The assessment of tax was based on the estimate of the annual profits or gains referred to in section 4 and the amount of tax payable by any native or community was to be fixed by the Commissioner, on the approval of the Governor, taking into account native custom and tradition. The last requirement did not affect the powers of the Governor to alter or amend the rates of assessment in such manner as he deemed expedient or just.⁷⁷

Where a native community was assessed for tax, section 7 of the Ordinance required the native authority in collaboration with the village councils or such other persons as the native authority saw fit, to fix such proportion of the total tax payable by the community on each member of the community as was considered just and equitable having regard to the individual wealth of each member. After the assessment of the tax was approved by the Governor, the Commissioner was required to publicly make known to each community or person assessed for tax the amount and times such tax was to be collected.⁷⁸ Section 9 empowered the Commissioner to appoint native authorities, village councils or other suitable persons, individually or collectively, as tax authorities for the purpose of supervision and collection of tax. Where such tax authorities were appointed, it was their duty to:

- a. give information at such times as the Commissioner required regarding the numbers and names of taxable persons at the time being within its area;
- b. supervise the collection of taxes in its area;

- c. render to the Commissioner returns of such taxes received by it at such times and in such form as the Commissioner directed.

In addition, a native authority appointed to be a tax authority had a further duty to receive from other tax authorities within its area of jurisdiction all sums collected by them.⁷⁹ Section 11 (1) required every tax authority in receipt of taxes to deposit same in the native treasury, unless where the Commissioner directed otherwise. Subsection (2) required the native authority, on the direction of the Commissioner, to pay such portion of the tax revenue deposited in the native treasury into the government treasury to form part of the general revenue of Nigeria. The remainder of the deposit formed part of the revenue of the native authority. Pursuant to section 12, failure by a tax authority to deposit tax proceeds collected by him into the native treasury as required by section 11 (1) was to be punished with a fine of 200 pounds or two years imprisonment or both.

Section 13 conferred a right of appeal on any person who either denied his chargeability or objected to the amount of his assessment. The appeal went to the Commissioner who had the powers to either cancel or reduce the amount assessed as the justice of the case demanded. Section 14 further empowered the Commissioner to remit or refund, either wholly or in part, the tax payable by any person on ground of poverty or other good cause. Section 15 empowered the Governor to exempt any class of persons or community from the operation of the Ordinance for a time specified or unspecified, as he thought fit. Section 16 contained a list of offences regarding certain conduct by tax authorities or persons employed by them. Under the section it was an offence punishable with a fine of 50 pounds or one year imprisonment or both for any tax authority, or a person employed by him to:

- a. demand from any community or person an amount in excess of the authorised assessment.
- b. withhold for his own use or otherwise any portion of the amount collected.
- c. render false returns, orally or written, of the amounts collected or received by him.
- d. wilfully misrepresent the taxable capacity of a community or person from whom he was authorised to collect tax.
- e. defraud, steal or otherwise use his position to deal wrongly with the government, tax authority, individual or community.
- f. fail to carry out any duty imposed upon him, either individually or as a member of a tax authority.

Where an offence, as defined under the preceding section, was proved against a tax authority, the liability of every member of the tax authority was joint and several, except where any member could satisfy the court that he was in no way responsible for or party to the commission of the offence.⁸⁰ Under section 17, any person who collected or attempted to collect tax without authorization from the Ordinance or any other law was guilty of an offence punishable with a fine of 100 pounds or imprisonment for one year or both.

It was the duty of an employer, head of a family, householder or any person whose authority was recognised by a section of a native authority to give all such information as was required of him by the commissioner to enable the assessment or collection of tax. Failure to cooperate was an offence punishable with a fine of one hundred pounds or one year imprisonment or both.⁸¹ Any person who without lawful justification, refused or persistently neglected to pay tax for which he was assessed, or concealed or failed to produce or notify any taxable property or misrepresented his taxable capacity or incited or assisted any other person to do any of the above was guilty of an offence punishable under section 21 with a fine of 100 pounds or one year imprisonment or both. The same punishment was prescribed for any person who forged, altered or fraudulently lent or allowed another person to use a receipt or token indicating payment of tax under the Ordinance.⁸² Finally, section 23 subjected natives who were resident on lands alienated or occupied by non-natives to tax under the Ordinance. The Governor was empowered under section 25 to make rules generally for giving effect to the purposes of the provisions of the ordinance.

The *Colony Taxation Ordinance No. 4 1937* was amended in 1939 by the *Colony Taxation (Amendment) Ordinance No. 2 1939*. The amendments contained in this Ordinance related to sections 2, 3, 6, 10, 16, 18, 20 and the Schedule to the principal Ordinance. Section 2 of the principal Ordinance contained definitions of terms. Pursuant to this amendment, tax authority was redefined as 'the Financial Secretary and includes any other person authorised in writing by the Financial Secretary to perform any duties imposed upon the Tax Authority by this Ordinance'.⁸³ The phrase 'adult male' contained in section 2 of the principal Ordinance was replaced with 'adult' *simpliciter*, and defined as 'any person of or above the age of sixteen years'.⁸⁴ The definition of chargeable income was amended by substituting the phrase 'derived from or received in' together with the preceding comma thereto, with the phrase 'or derived from' in the second and third lines of the definition of chargeable income.⁸⁵ Section 3 of the principal ordinance was repealed and in its place a new section was introduced to read:

There shall be levied and collected in the manner hereafter specified a tax upon:

(a) each adult non-native and

(b) each adult male native

(each of whom is hereinafter referred to as taxpayer) in accordance with the provisions of this Ordinance.⁸⁶

By implication therefore, non-native adult females were no longer exempted from income tax in the colony but native adult females were still exempted. Further, the nomenclature *taxpayer* was introduced to replace *adult male* used in the principal Ordinance.⁸⁷ Section 16 of the principal Ordinance was repealed and in its stead the following section was introduced:

It shall be the duty of every person chargeable with tax to give notice to the Tax Authority within three months after the commencement of any year of assessment that he is so chargeable.⁸⁸

The requirement that if such a person was not in the colony at the commencement of the year of assessment he could give the required notice within three months of his arrival in the colony was made away with. Section 20 of the principal Ordinance was repealed and a new section 20 introduced. The new section read:

Tax shall not be payable in respect of any income arising out of Nigeria and received therein by any person who is in Nigeria for some temporary purpose only and not with any intent to establish his residence therein and who has not actually resided in Nigeria at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.

Under the principal Ordinance the phrase 'in respect of any income arising out of Nigeria and received therein' was not included. In effect therefore, the amendment expanded the scope of the exemption granted temporary residents. Finally, the Schedule to the principal Ordinance (which contained rates of chargeable income) was repealed and new rates introduced by the Schedule to the amendment. Under the new Schedule, persons with incomes exceeding 50 pounds but not exceeding 100 pounds were taxable at 15 shillings up to a graduation of 15 pounds for persons with incomes exceeding 1000 pounds but not exceeding 1100 pounds and thereafter, one pound 10 shillings on every additional 100 pounds of

chargeable income or part thereof. The new Schedule, therefore, brought the tax rates on chargeable income of residents of the colony at par with taxpayers in the protectorate.

In 1939, a major legislation was passed in the form of the *Income Tax (Supplementary) Ordinance No. 28 1939*. This Ordinance was enacted to regulate the income tax regime for the 1939 to 1940 financial year.⁸⁹ Its sphere of application was both the colony and protectorate and as such was the first income tax law ever in Nigeria with nationwide applicability.⁹⁰ Pursuant to this Ordinance, references to '*principal ordinances*' meant references to the *Non-Natives Income Tax (Protectorate) Ordinance 1931* and/or the *Colony Taxation Ordinance 1937*.⁹¹ Tax was defined to mean the supplementary income tax imposed by the instant Ordinance but *tax authority* had the same meaning ascribed to it under section 2 of the *Colony Taxation Ordinance (supra)*. *Taxpayer* meant each adult non-native and each adult male native.⁹² 'This Ordinance', where used in the Ordinance, unless otherwise specified, referred to the *Colony Taxation Ordinance (supra)* as set out and modified in the Second Schedule of the instant Ordinance. Year of assessment meant the year commencing on 1st April 1939 and ending on 31st March 1940.

Tax was imposed under the ordinance by virtue of section 3. The section provided that:

There shall be levied and collected a tax in accordance with the rates set out in the First Schedule for the year of assessment assessed on the chargeable income for the year preceding the year of assessment of any tax-payer whether such tax-payer is in or outside Nigeria:

Provided that there shall be deducted from the chargeable income of any person chargeable under this section any part of such income respect of which it is proved to the satisfaction of the Commissioner that such person has paid tribute or tax under the Native **Revenue Ordinance or the Native Direct Taxation (Colony) Ordinance, 1937**.

Section 4 incorporated certain provisions of the *Colony Taxation Ordinance 1937*⁹³ while modifying⁹⁴ the unincorporated provisions so as to bring their application in tandem with the application of the instant ordinance. The section provided thus:

For the purposes of the levying and collection of the tax imposed by this Ordinance there shall be incorporated with this Ordinance such provisions of the Colony Taxation Ordinance, 1937 as are set out in the first column of the Second Schedule with such verbal alterations and other modifications not affecting the substance as may be necessary to render them applicable and in particular the said provisions as incorporated in this Ordinance shall be modified in the manner set forth in the second column of the said Schedule.

The officers appointed under section 3 of the *Non-Natives Income Tax (Protectorate) Ordinance 1931* to be Commissioners of Income Tax and the tax authority were deemed Commissioners for the purposes of the instant Ordinance.⁹⁵

A major novelty introduced by the Supplementary Ordinance was the introduction of percentages as the basis for charging tax. By virtue of the First Schedule to the Ordinance, chargeable incomes not exceeding 200 pounds were not taxable. Chargeable incomes exceeding 200 pounds but not exceeding 400 pounds were taxable at one percent, chargeable incomes exceeding 400 pounds but not exceeding 700 pounds were taxable at two percent, chargeable incomes exceeding 700 pounds but not exceeding 1000 pounds were taxable at three percent, chargeable incomes exceeding 1000 pounds but not exceeding 3000 pounds were taxable at four percent, chargeable incomes exceeding 3000 pounds but not exceeding 4000 pounds were taxable at 11 percent and chargeable incomes exceeding 4000 pounds were taxable at 12 ½ percent.

One year after its enactment the *Income Tax (Supplementary) Ordinance No. 28 1939* was superseded by the *Income Tax Ordinance No. 3 1940* which repealed the:

- a. Non-Natives Income Tax (Protectorate) Ordinance No. 21 1931 together with all the amendments thereto (1933, 1936, and Nos. 1, 2 and 3 of 1939);
- b. Colony Taxation Ordinance No. 4 1937 together with the all the amendments thereto (Nos. 1 and 2 of 1938, and Nos. 1 and 2 of 1939);
- c. Companies Income Tax Ordinance No. 14 1939;
- d. Income Tax (Supplementary) Ordinance, 1939.⁹⁶

In consequence, not only did the Ordinance revert back to the erstwhile practice of regulating personal and corporate income tax under a single legal instrument, it further brought the

taxation of incomes of all non-natives in Nigeria, as well as residents of the colony of Lagos (natives and non-natives) within one and the same legal regime. Tax under the ordinance was imposed by section 5 on:

- a. gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession, or vocation may have been carried on or exercised;
- b. gains or profits from any employment;
- c. dividends, interest or discounts;
- d. any pension, charge or annuity; and
- e. rents, royalties, premiums and any other profits arising from property.

The powers of assessment and collection were vested in a Commissioner who was to be appointed by the Governor by notice in the gazette.⁹⁷ By the combined provisions of section 3 (2) and (3), the Commissioner could by notice in the gazette or in writing, authorise any person to assist or perform any duty imposed on him by the Ordinance including the receipt of information, returns or documents required to be supplied. Section 4 placed a duty of official secrecy on the Commissioner or his assistants regarding documents in their custody relating to taxation; a breach of which duty amounted to an offence.

The tax imposed by the Ordinance was to be charged, levied and collected for each year of assessment upon the chargeable income of any person for the year immediately preceding the year of assessment.⁹⁸ Section 2 defined chargeable income as 'the aggregate amount of income of any person from the sources specified in section 5 remaining after allowing the appropriate deductions and exemptions under the ordinance' and year of assessment as 'the period of twelve months commencing on the 1st day of April, 1940, and each subsequent period of twelve months'.

Where the Commissioner was satisfied that a person usually made up the accounts of his business or trade on some day other than that immediately preceding any year of assessment, section 7 empowered the Commissioner to permit the gains or profits of such trade or business to be computed upon the income of the year terminating on that day in the year immediately preceding the year of assessment on which the accounts of the said trade or business was usually made up. Section 8 contained incomes that were exempted from tax under the Ordinance. The exemptions included:

- a. official emoluments of the officer administering the government;
- b. emoluments payable to members of consular services of foreign countries or in respect of official services rendered by them or income derived by them from sources outside Nigeria;
- c. emoluments payable from the Imperial Funds to His Majesty's Forces in the permanent service of the Imperial government in Nigeria in respect of their offices under the Imperial government;
- d. income of any person who was subject to tax under the *Direct Taxation Ordinance, 1940* in so far as such income was not derived in the municipal area of Lagos;
- e. income of a non-resident whose chargeable income did not exceed 50 pounds;
- f. subject to section 20 of the Ordinance, the income of a woman whose chargeable income did not exceed 50 pounds;
- g. income of a local or native authority or government institution;
- h. income of a statutory or registered building or friendly society in so far as it was not derived from a trade or business;
- i. income of a cooperative society registered under the *Cooperative Societies Ordinance*;
- j. income of an ecclesiastical, charitable or educational institution of a public character in so far as it was not derived from a trade or business;
- k. income of any body of persons formed for the purpose of promoting social or sporting amenities not involving the acquisition of gain by the group or its individuals, subject to such conditions as the Commissioner imposed;
- l. capital sums received by way of retirement or death gratuities or consolidated compensation for death or injury;
- m. capital sums withdrawn by individuals on retirement from any provident society or fund approved by the Commissioner under section 10 (1) (g) of the Ordinance;
- n. disability pensions granted to members of His Majesty's Forces;
- o. annual value of any place of worship and its premises;
- p. interest paid or credited to any individual by the Nigeria Post Office Savings Bank.

The Governor was further empowered by section 9 to exempt from tax, where he deemed fit, any interest payable on any loan charged on the public revenue of Nigeria, either generally or in respect of interest payable to persons not resident in Nigeria or companies other than as defined in section 2. Section 2 defined a company as:

any company incorporated or registered under any law in force in Nigeria and any company which, though incorporated or registered outside Nigeria, carries on business, or has an office or place of business therein.

Section 10 contained the list of deductions allowed under the Ordinance for the purposes of determining chargeable income. The rules providing for the method of calculating or estimating the deductions were to be made by the Governor-in-Council by virtue of subsection (2). The deductions allowed under subsection (1) were all outgoings and expenses wholly and exclusively incurred by a person in the production of income in the preceding year including:

- a. sums payable by way of interest upon money borrowed, where the Commissioner was satisfied that the interest was payable on capital employed in acquiring the income;
- b. rent paid in respect of land or building occupied for the purpose of acquiring the income;
- c. sums expended in replacing any plant or machinery which was used or employed in such trade, business or profession, deducting the total depreciation which had occurred by reason of exhaustion, wear or tear since the date of purchase of such plant or machinery and any sum realised by the sale thereof;
- d. sums expended in repairing premises, plant or machinery employed in acquiring the income or for the renewal, repair or alteration of any implement, utensil or article so employed;
- e. bad or doubtful debts incurred and proved to the satisfaction of the Commissioner to have become bad during the year immediately preceding the year of assessment. However, sums recovered during the said year previously written off as bad or doubtful debts were to be treated as receipts of the business for that year;
- f. contribution or abatement deducted from the salary or pension of a public officer under the *Widows' and Orphans' Pensions Ordinance* or under any approved scheme within the meaning of that ordinance;
- g. contributions to pensions, provident or other society fund as approved by the Commissioner;
- h. such other deductions as were prescribed by any rule made pursuant to the Ordinance.

In addition, section 11 allowed deduction of 'a reasonable amount' for the exhaustion, wear and tear of property, including plant and machinery, arising out of the use or employment of such property in the business during the year immediately preceding the year of assessment, provided that where such property was leased out subject to the condition that the lessee replaced the property in the event of wear and tear, the lessee was deemed the owner of the property leased. Section 12 outlined a list of expenses for which no deductions were to be allowed under the Ordinance. They included:

- a. domestic or private expenses;
- b. disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- c. capital withdrawn or sum employed as capital;
- d. capital employed in improvements;
- e. sums recoverable under an insurance or contract of indemnity;
- f. rents or cost of repairs incurred in respect of premises not used in production of the income;
- g. amounts payable in respect of the United Kingdom income tax, super tax or Empire income tax as defined in section 49.⁹⁹
- h. payments to any provident, savings, widows' and orphans' or other society or fund, except as allowed under section 10 (1) (f) and (g).

Section 13 allowed trade losses where the amount of loss incurred by a person or partner in the year preceding the year of assessment was such that it could not be wholly set off against his income from other sources for the same year. The amount of such loss not allowed against his income from other sources for the same year was, to the extent to which it was not allowed, carried forward and set off against his chargeable income for five years in succession; provided the amount of any such loss allowed to be set off in computing the chargeable income of any year could not be set off in computing the chargeable income of any other year and no such set off was allowed to an extent where it reduced the tax payable for any year of assessment to less than half of the amount which was payable had the set off not been allowed. Section 14 contained special provisions on certain companies and businesses. Under subsection (1) thereof, the tax payable by insurance companies other than life insurance companies where the gains or profits accrued in part outside Nigeria was ascertainable by taking the gross premiums, interest and other income received in Nigeria. The tax payable was the net arrived at after deductions for:

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- a. premiums returned to the insured or paid on re-insurances;
 - b. unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the year preceding the year of assessment;
 - c. unexpired risks outstanding at the commencement of the year preceding the year of assessment;
 - d. actual losses, agency expenses in Nigeria and 'a fair proportion of the expenses of the head office of the company'.

In the case of life insurance companies, whether proprietary or mutual, the gains or profits on which tax was payable was the investment income less the management expenses. Where the company received premiums outside Nigeria, the gains or profits were considered to be the same proportion of the total investment income of the company's premiums received in Nigeria bore to the total premiums received, less agency expenses in Nigeria and a fair proportion of the expenses of the head office of the company.¹⁰⁰ Subsection (3) related to the business of a ship-owner. Subsection (3) (b) (i) and (ii) required a ship-owner to produce a certificate to the Commissioner issued by the tax authority where the principal place of business of the company was situated stating that:

- i. the company had furnished the tax authority an account of the whole of its business; and
- ii. the ratio of the gains or profits for the relevant accounting year was computed according to the income tax law of that place to the gross earnings of the company's fleet or vessel for that period; less the interest on any money borrowed used in acquiring the gains and profits.

Where the certificate was produced, the gains and profits of the company was deemed by virtue of subsection (3) (a) to be the sum bearing the same ratio to the sums payable in respect of fares or freight for passengers, goods or mails shipped in Nigeria as the company's total profits for the relevant accounting period bore to the gross earnings for that period as shown by the certificate. By paragraph (c) of subsection (3), where the gains or profits of a ship-owning company had been computed on any basis other than the ratio of the gains or profits shown by the certificate referred to, the company could within two years from the end of the year of assessment, produce the certificate and be entitled to such adjustments as were necessary including refund, in case of excess tax paid. Paragraph (d) defined ship-owner as 'an owner or charterer of ships whose principal place of business is situated outside

Nigeria, but in a part of His Majesty's Dominions or in territory under His Majesty's protection'. Section 15 empowered the Governor to exempt from tax under the Ordinance, gains and profits arising from the business of shipping carried on by a company not resident in Nigeria if he was satisfied that an equivalent exemption was granted by the country in which the company was resident to persons resident in Nigeria and the United Kingdom, if the country in question was not the United Kingdom. A company was deemed to be resident in a country in which the central management and control of its business was situated.

Section 15 (1) allowed a deduction of 200 pounds in ascertaining the chargeable income of a person who proved to the satisfaction of the Commissioner that he had a wife in the year preceding the year of assessment. Similarly, subsection (2) allowed deductions for sums paid as alimony to a previous wife in the same proportion as the amount of the alimony so paid but by virtue of subsection (3) the total deductions allowed could not exceed 200 pounds. Section 16 (1) allowed a deduction of 25 pounds in respect of each child¹⁰¹ in ascertaining the chargeable income of a person but the child in question had to be an unmarried child who was less than 16 years at the commencement of that year or who was receiving full time instruction at a university, college, school or other educational establishment. Pursuant to the proviso to the subsection, a deduction equal to the amount expended but not exceeding 100 pounds on the maintenance and education of a child outside Nigeria was allowed. Furthermore, no deduction was allowed in respect of a child whose chargeable income for the year preceding the year of assessment exceeded the amount of the deduction otherwise allowed but no account was taken of any income to which the child was entitled under a scholarship or similar endowment. Deductions were allowed in respect of a maximum of three children.

A person who took insurance on his life or that of his wife was entitled to deductions equivalent to the amount paid as annual premium to the insurance company, in the computation of his chargeable income.¹⁰² The proviso to section 17 limited the maximum deduction allowed under the section to seven percent of the capital sum secured, in the case of any policy securing a capital sum on death. The proviso also limited the deduction allowed under the section to an amount equal to one-sixth of the chargeable income of such a person estimated *before* the deductions allowed under sections 15, 16 and 17. Where an assessment was made in respect of a part only of the year preceding the year of assessment, the amount of deductions allowed under sections 15 to 17 bore the same proportion to the

amount of deduction allowable annually as the number of days in the said part of the year bore to one year.¹⁰³ However, it should be noted that by virtue of section 19, the deductions under sections 15 - 18 were only allowed to residents and non-resident British subjects.

The income of a wife who lived with her husband was chargeable in the husband's name because the Ordinance deemed her income to be that of the husband's.¹⁰⁴ The proviso to section 20 (1) provided that the amount chargeable upon the husband which bore the same proportion to the amount the income of the wife bore to their joint income could be collected from the wife, where necessary, notwithstanding that she had not been assessed. The income contemplated under the Ordinance was that which accrued, derived or was received from Nigerian sources.¹⁰⁵ The minimum tax rate for adult males whose income did not exceed 50 pounds was fixed by section 21 at five shillings. "Adult male" under the Ordinance meant a male above the age of 16 years. The following classes of persons were exempted from tax under the proviso to section 21:

- a. *bona fide* students in full time attendance at any school, college or training centre;
- b. any person who in the opinion of the Commissioner could not reasonably be called upon to pay tax on account of age, infirmity or other disablement;
- c. any person who had paid tax in respect of the year of assessment under the *Direct Taxation Ordinance 1940*;
- d. any person who, before 1 April 1937 was awarded the Victoria Cross, the Medal of the Order of the British Empire, the Distinguished Conduct Medal, the Military Medal, the Distinguished Service Medal or the Meritorious Service Medal.

The proviso also enabled any person who objected to his assessment on the ground that he fell into category ii above to, within forty two days of the service of assessment, appeal to the Commissioner whose decision was final. Section 21 (2) empowered the Commissioner to assess any person without calling such a person to render a return of his chargeable income; if he was satisfied that such a person was liable to pay tax. Subsection (3) made it an offence punishable with a fine of 10 pounds or one month imprisonment or both for failure, without just cause, to pay tax within three months of assessment.

Tax rates in respect of persons whose income exceeded 50 pounds were imposed by section 22 in accordance with the rates contained in the First Schedule. According to the First Schedule, all chargeable incomes exceeding 50 pounds were taxable at three pence of every

pound of the first 200 pounds; six pence of every pound of the second 200 pounds; nine pence of every pound of the third 200 pounds; one shilling of every pound of the fourth 200 pounds; one shilling and three pence of every pound of the fifth 200 pounds; one shilling and six pence of every pound of the next 400 pounds; one shilling and nine pence of every pound of the next 600 pounds; two shillings of every pound of the next 1000 pounds; two shillings and six pence of every pound of the next 2000 pounds; five shillings of every pound of the next 5000 pounds and for every pound exceeding 10,000 pounds, 10 shillings thereof. The proviso to section 22 was to the effect that where the tax levied for any year of assessment on a person amounted to less than three pence of every pound of his chargeable income *before* the deductions allowed under sections 15 to 18 were made, that person was liable to a rate of three pence of every pound of his chargeable income *before* the said deductions were made.

Rate of tax payable by companies was two shillings and six pence of every pound of its chargeable income.¹⁰⁶ Subject to the conditions listed in the proviso thereunder, section 24 (1) allowed deductions in like sum in respect of dividends paid to shareholders where such companies were registered in Nigeria. The conditions were that where tax not paid on the whole income out of which the dividend was paid, the deduction was equally limited to the portion of the dividend which was paid out of the income on which tax was paid by the company. Secondly, through a written notice, the Commissioner could require a company registered in Nigeria to deduct tax from dividends payable to a particular shareholder at rate greater than the rate payable by the company and in such a case, the excess tax so deducted became a debt due from the company to the government and was recoverable as such or in the alternative, assessed and charged upon the company in addition to any other tax it was liable to pay.

Upon payment of a dividend as envisaged by section 24 (1), a company was required to furnish each shareholder with a certificate setting forth the amount of dividend paid to the shareholder and the amount deducted or deductible by the company in respect of that dividend.¹⁰⁷ Section 25 provided relief from double taxation to shareholders. Under the section, where any tax deducted by a company by virtue of section 24 from a dividend paid to a shareholder was included in the chargeable income of such person, the said tax was set off on the tax charged against that chargeable income. Section 26 exempted from tax, incomes of persons who were temporary residents, who had no intention of establishing their residence

in Nigeria and whose actual residence in Nigeria at one or more times did not equal in the whole to a period of six months in the year preceding the year of assessment.

A trustee, guardian, curator, committee or receiver appointed by court, having management and control of property or concern on behalf of an incapacitated person was chargeable to tax in like manner and in like amount as such person would have been had he not been incapacitated.¹⁰⁸ A non-resident was assessable and chargeable either directly or through his agent, attorney, manager, branch or representative (howsoever described) and where such a non-resident was not a British subject, no deductions were allowed in respect of wife, child or life insurance.¹⁰⁹ A non-resident was also chargeable in his name in respect of income arising either directly or indirectly from agency, attorneyship or management - however described.

Where a non-resident person or firm, not being a British subject, carried on business with a resident and it appeared to the Commissioner that owing to the close ties between the parties, the resident acquired no profits or less profits than was ordinarily expected of such business, the non-resident was assessed and charged as if he was the principal and the resident was his agent.¹¹⁰ Subsection (3) provided that where the gains or profits of a non-resident chargeable in the name of a resident was not readily ascertainable, the Commissioner or judge sitting over an appeal could assess and charge the person on a fair and reasonable percentage of the turnover of the business. A non-resident was not chargeable under the provisions of subsections (2) and (3) above where the resident in whose name he would have been chargeable was a broker, general commission agent or other agent not authorised to carry on the regular agency of a non-resident.¹¹¹ Similarly, by subsection (5) a non-resident was not chargeable in respect of gains or profits earned in transactions with other non-residents. Subsection (6) allowed an agent, manager, branch, attorney or factor in whose name a non-resident manufacturer or producer was chargeable to apply to the Commissioner or in case of appeal, to a judge to have the assessment made or amended on the basis of profits which might reasonably had been earned by a merchant or, where the goods were retailed having been bought directly from the manufacturer, on the basis of profits reasonably expected to have been earned by the retailer and upon proof of the amount of the profits made in either case, the assessment could be made or amended accordingly.

A person in whose name an incapacitated person or non-resident was chargeable was answerable for all matters required by the Ordinance for the assessment of the income of the person for whom he acted.¹¹² Section 31 placed a similar responsibility on the manager or principal officer in respect of things required to be done by corporate bodies under the Ordinance. Section 30 required a person who was in receipt of money, in whatever capacity, being taxable income accruing to another person who was chargeable, whether resident or non-resident, to prepare and deliver to the Commissioner, on the latter's request, a list in the prescribed form signed by him containing a true and correct statement of all such income and the name and address of the person to whom the income belonged. Section 32 empowered a person answerable for payment of tax on behalf of another person to retain such part of monies coming into his hand on behalf of the other person as was sufficient to pay tax. The section further indemnified such a representative for payments made by him in compliance thereof. Under section 33 the personal representative of a deceased person was liable to tax to the extent the deceased himself would have been and therefore, answerable to all things the deceased would have been where the deceased died either during the year of assessment or two years from the expiration thereof if no assessment had been made on him. Where the deceased had died during the year preceding the year of assessment and the personal representative had distributed the estate before the commencement of the assessment year, the proviso to the section imposed tax on the representative at the rates in force at the date of distribution of the estate, if the rate for the year of assessment had not been varied at that date. A person representing a dissolved company was placed in a similar position by virtue of section 34.

A person who paid a mortgage or debenture interest to a non-resident was entitled, after claiming the deductions allowed under section 10 (1) (a) to deduct tax from the interest at the rate of two shillings and six pence of every pound of such interest or such greater rate as the Commissioner directed and the tax so deducted was recoverable by government as debt owed it by such person.¹¹³ Where the person referred to in section 35 was a company, subsection (2) required the account to be rendered by the manager or other principal officer of the company. Where it was due to be rendered, subsection (3) made failure to render the account envisaged by the section an offence. Where the chargeable income of a person included a sum from which tax was deducted in accordance with subsection (1), subsection (4) entitled him to a set off against the tax paid by him of the amount of tax so deducted.

Section 36 (1) made it a duty for every person chargeable to tax to give notice of his chargeability to the Commissioner within three months after the commencement of any year of assessment. Under subsection (2) the Commissioner could also require any person to furnish him with a return of income and other particulars within reasonable time for the purposes of assessment and chargeability of such person under the Ordinance. A person who failed to either give such notice or furnish such return or particulars was guilty of an offence under subsection (3). The Commissioner could also require any officer in the public service, by virtue of section 37 (1) to supply him with such particulars as was required for the purposes of the Ordinance. Where so required, it was the duty of such officer under subsection (2) to prepare and deliver to the Commissioner a return containing the names and places of residence of all persons employed by him and payments and allowances made to those persons. Subsection (3) deemed the manager or principal officer as the employer, where the employer was a body of persons, and a director or person engaged in the management of a company as an employee. Subsection (4) further empowered the Commissioner to make a request for such information as he required from a head of family or householder and such head of family or householder was obliged to comply.

The income of a person doing business as a partner or jointly with other persons was deemed to be the share to which he was entitled during the year of assessment in the income of the partnership and was to be included in the return of income made by such partner.¹¹⁴ Under section 38 (2), the precedent partner was responsible for making a return in respect of the income of the partnership, which return had to include the names and addresses of other partners and the income of the partnership to which each of them was entitled. The subsection defined a precedent partner as:

- a. the partner among other resident partners first named in the partnership agreement;
or
- b. the partner named either singly or with precedence to the other partners in the usual name of the firm where there was no partnership agreement; or
- c. the precedent acting partner, if the partner named with precedence was not an acting partner.

If none of the partners was resident, subsection (2) (b) required the return to be made and delivered by the attorney, agent, manager or factor of the firm resident in Nigeria.

Every notice required to be given by the Commissioner under the Ordinance had to be signed by him or some other person authorised by him and any signature purporting to be that of the Commissioner or such other person authorised by him was presumed as regular.¹¹⁵ Section 40 (1) required notices to be served by registered post or any other lawful means to the registered office of a company registered in Nigeria; or in the case of companies registered outside Nigeria, on the person authorised to accept service at the address filed with the Registrar of Companies under the Companies Ordinance and in the case of an individual to his last known business or private address. The notice was deemed to have been received on the day succeeding the day on which it would have been received by post in the ordinary course of things. Evidence that the letter containing the notice was properly addressed and posted was sufficient proof of service. By subsection (2), where a person was informed that a registered letter was waiting for him at the post office and he neglected or refused to take delivery, he was deemed to have had notice of the amount assessed against him on the date he was informed of the letter.

The Commissioner was obliged by section 41 (1) to assess every person chargeable with tax soon after the time allowed for delivery of return in section 36. Under subsection (2) the commissioner could accept a return delivered to him and proceed to make an assessment accordingly or refuse the return and use his judgment to determine the amount of chargeable income of the person and assess him accordingly. The Commissioner was also empowered by subsection (3) to use his judgment to assess the chargeable income of any person who failed to deliver a return but who in the Commissioner's opinion was liable to tax. The Commissioner's discretion provided in the subsection was without prejudice to any liability incurred by such a person for failure to deliver a return. The Commissioner could also make an assessment or additional assessment as the case demanded, where in his opinion a person liable to tax was not assessed or assessed at an amount less than he ought to have been assessed.¹¹⁶ The Commissioner was required by section 43 to prepare lists of persons assessed to tax. The assessment lists were to contain the name, address, amount of chargeable income and amount of tax payable and such other particulars as were necessary of every person assessed to tax.

In order to facilitate the assessment of incomes of persons residing in the United Kingdom, the Governor was empowered by section 44 to appoint agents in the United Kingdom to make enquiries to ascertain the chargeable income of such persons and forward their report

together with the accounts and computations upon which the report was based to the Commissioner. The Commissioner had discretion to send the report back to the agents for further consideration if it appeared to him that an error had occurred in the accounts or computation prepared by the agents.

The Commissioner was obliged by section 45 (1) to serve or cause to be served personally or by post, notice to every person whose name appeared on the assessment list. The notice was required to state the amount of each person's chargeable income, tax payable and his rights under subsection (2). Subsection (2) conferred a right on a person, other than one assessed under section 21, who disputed the amount with which he was assessed to apply to the Commissioner within forty two days from the date of service of assessment notice on him (or such longer period as the Commissioner upon reasonable grounds allowed), stating the grounds for his objection. On receipt of the objection, the Commissioner could request for further particulars in respect of the person assessed including documents in his custody and also summon any person other than a clerk or other person confidentially in the employ of the person assessed, to attend and give information before him.¹¹⁷ By subsection (4), where the person objecting reaches an agreement with the Commissioner regarding the amount at which he was liable to be assessed, the assessment was to be amended accordingly and notice of the tax payable served on the person. The proviso to the subsection entitled the person objecting to a right of appeal in accordance with the provisions of section 46, in the event that the said person and the Commissioner failed to agree on the amount to which he was liable to be assessed. Such appeal was to be made to the Supreme Court within fifteen days from the day of the refusal of the Commissioner to amend the assessment as desired or such longer period as the court, on just cause, allowed. The appellant was required to attend court personally or if upon just cause shown, through an agent, clerk or servant. The appellant was required to give notice of seven clear days of the hearing of the appeal to the Commissioner. The onus of proving excess assessment was on the appellant and where the court was convinced that the appellant was overcharged or undercharged, he could reduce or increase the amount of assessment accordingly and notice of the assessment as determined by the court was to be served on the appellant by the Commissioner.

The judge could order an appellant to furnish a specified security for payment of tax, upon application made by the Commissioner that tax may not be recovered from the appellant, and if such security was not given within the required time, the tax assessed against the

appellant became recoverable forthwith. Except upon the application of the applicant to the contrary, appeals were required to be heard in camera. The Chief Justice was empowered to make rules regulating procedure on appeals.¹¹⁸ In lieu of an appeal to the court as provided under section 46 (1), a person aggrieved could appeal against his assessment to a board of commissioners consisting of three persons (being non officials) appointed by the Governor for such period and remunerated as he deemed. The Governor was further empowered to make rules to govern the procedure to be adopted by the board. An aggrieved person could appeal against his assessment within 15 days of the refusal of the Commissioner to amend the assessment, or such longer period as the board - upon just cause - granted and the decision of the board regarding the amount of assessment was final.¹¹⁹

No assessment, warrant or proceeding made in accordance with the Ordinance was to be voided for want of form or mistake provided it conformed to the intent and purpose of the Ordinance. Precisely, no assessment could be impeached by reason of mistake therein as to name, description of income, or the amount of tax charged or by reason of any variance between the assessment and the notice of assessment provided the notice contained in substance and effect, the particulars upon which the assessment was made and was duly served on the person intended to be charged.¹²⁰

A person who by deduction or otherwise, paid or was liable to pay tax in the United Kingdom on the same part of his income for which he was also liable under the Ordinance for any year of assessment was entitled to relief under section 48. The rate of relief to which such a person was entitled was the amount by which the rate of tax appropriate to him under the Ordinance exceeded half the appropriate rate of United Kingdom income tax. If however, the appropriate rate to his case under the Ordinance exceeded the appropriate rate of the United Kingdom income tax, he was entitled to relief at a rate equal to half the appropriate rate of United Kingdom income tax. Section 49 granted similar relief in respect of Empire income tax. Empire income tax meant income tax charged under any law in force in any part of His Majesty's Dominions other than the United Kingdom or Nigeria.¹²¹ The rate of relief granted in the case of Empire income tax was the amount paid as Empire tax where the Empire rate did not exceed the rate under the Ordinance by half. In any other case, the relief was half the rate appropriate to his case under the Ordinance. A person who in any year of assessment was resident both in Nigeria and another place where Empire income tax was charged was deemed to be resident in the place where during that year he resided for

the longer period. According to section 50, a claim for relief under sections 48 and 49 had to be made within two years from the end of the year of assessment to which it related. By the proviso to section 50 however, such a claim could be made within six years from the end of the assessment year to which it related and within six months from the date upon which the relevant amount of United Kingdom income tax or Empire income tax, whichever was applicable, was ascertained. The official secrecy imposed by section 4 of the Ordinance did not operate to prevent the disclosure to an authorised officer, information that was required of him in the discharge of his duties to determine a relief claimed in respect of income tax paid in Nigeria or any part of His Majesty's Dominions.¹²²

Collection of tax was to remain in abeyance where there was notice of an objection or appeal until the dispute was determined. The Commissioner could however enforce the payment of that portion of tax, if any, that was not in dispute.¹²³ Under section 53, companies and persons whose incomes exceeded 50 pounds were entitled to pay tax in two instalments; the first instalment was payable within 42 days after service of notice of assessment and the second instalment within six months after the service of notice of assessment. This was without prejudice to section 65 (1) (b) which provided for at-source deductions of tax in respect of emoluments and pensions paid out of the revenue of Nigeria. Where a person died after payment of the first instalment, the second instalment, by virtue of section 53 (c) was recoverable from the personal representative of the deceased. Notwithstanding the provisions of section 53, if the Commissioner had reason to believe that a person assessed was likely to leave the country, he could serve a notice on such person specifying time within which such person was to pay tax and except where the person furnished sufficient security, the tax became recoverable forthwith at the expiration of the time so specified.¹²⁴ Similarly, if the Commissioner had reason to believe either that tax upon any chargeable income or income chargeable to tax may not be recovered, he could by written notice require any person to make a return and furnish particulars of his income within the time specified. The Commissioner could either make an assessment on the basis of the return or in default of or dissatisfaction with a return, make such assessment as he thought reasonable or require that the person furnish security for payment.¹²⁵ While a person who paid tax in accordance with the provisions of section 54 had a right of objection and appeal conferred by sections 45 and 46, the right of the commissioner to make additional assessments under section 42 was equally preserved by section 54 (6).

According to section 55, a person who failed to pay tax within the periods prescribed therein was liable to an additional five percent of the tax payable. In addition, the Commissioner was required to serve a demand note on him and if within one month after the service of the demand note he still defaulted, he was guilty of an offence and also liable to a suit for the purpose of enforcing payment at the instance of the Commissioner.¹²⁶ Where the tax was outstanding as a result of an appeal or objection, the amount determined upon objection or appeal was payable within one month after notice of the determined amount was served and where there was a default, the provisions of section 55 applied. Section 58 entitled a person who paid tax in excess of what was lawfully chargeable to repayment; provided the claim for repayment was made within two years from the end of the year of assessment to which it related. This right did not extend to a person who having been served with notice in any year of assessment failed or refused to deliver a return except he could show that his failure or neglect did not proceed from fraud, wilful act or omission.

Section 60 made it an offence for any person to make false returns or forgery or aid in the making of same to either gain an advantage for himself or another. Section 59 provided a penalty of 100 pounds as fine or upon default thereto, six months imprisonment for any offence under the Ordinance for which no specific offence was prescribed. Section 61 made it an offence for a person who, being appointed as an assistant in the assessment and collection of tax demanded, from any person an amount in excess of the authorised tax; withheld for his use any portion of tax collected; rendered a false return of amounts collected by him; defrauded any person or otherwise used his position to deal wrongfully with the Commissioner or any individual; or not being authorised under the ordinance, collected or attempted to collect tax. The penalty for any of the offences so listed was a fine of 300 pounds or three years imprisonment or both.

The Commissioner could remit or refund wholly or in part, tax payable by a person on ground of poverty. Similarly, the Governor could also remit the tax payable, as well as the five percent penalty prescribed under section 55 (1) (a) if he was convinced that it was equitable to do so.¹²⁷ The power to alter the tax rates contained in the First Schedule to the Ordinance was vested in the Legislative Council in so far as the alteration affected the colony or southern provinces; and the Governor, in so far as the alteration affected the Northern provinces.¹²⁸ Section 65 empowered the Governor-in-Council to make rules generally for carrying out the provisions of the Ordinance.

There was one amendment to the *Income Tax Ordinance No. 3 1940*. Section 23 thereof was amended by substituting the words 'four shillings' for the words 'two shillings and six pence'¹²⁹ thereby making four shillings the minimum taxable rates under the Ordinance. The minimum taxable rates related to persons whose income did not exceed 50 pound per annum.

In the area of tax administration, a major milestone was recorded with the passage, in 1958, of the *Income Tax Administration Ordinance No. 39 1958*. The ordinance provided for the establishment of the three bodies to be involved in the administration of income tax. These were the Federal Board of Inland Revenue, the Scrutineer Committees and the Body of Appeal Commissioners. Earlier in 1958, all income tax Ordinances and amendments thereto passed between 1943 and 1955 which were still in force were consolidated as the *Income Tax Ordinance Cap 85*.¹³⁰ The *Income Tax Administration Ordinance No. 39 1958* further provided some amendments to the *Income Tax Ordinance Cap 85* and both Ordinances were to be construed as one. The Board was established under section 3 to consist of a maximum of six members including the chairman and the deputy chairman to be appointed by the Governor-General. The Governor-General was also required to appoint a secretary for the Board who was not a member of the Board but was responsible for maintaining minutes and records of the Board. The Board was vested with the power to administer the *Income Tax Ordinance* and all the powers and duties previously exercised by the Commissioner of Income Tax were now vested in the Board.¹³¹ Consequently, the Inland Revenue Department and its offices were re-designated the Federal Inland Revenue Department and Federal Inland Revenue Offices respectively.

Scrutineer Committees were provided for under section 11 (1) for the purpose of making recommendations in relation to the assessment of profits and claims for losses incurred in such cases as may be referred to them. The minister was empowered to establish one or more Scrutineer Committees for such areas as he thought fit consisting of not more than six members with experience in the management of substantial trade or business; none of whom could be a public officer. The Board was required to instruct an officer of the Federal Inland Revenue Department to act as secretary to the Committee. The Third Schedule to the ordinance amended the *Income Tax Ordinance* in areas where it was necessary to bring it into conformity with the provisions of the *Income Tax Administration Ordinance*. One of such amendments established the Body of Appeal Commissioners, the constitution of which was to be done by the minister in such areas of the country as he deemed fit. Each Body of

Appeal Commissioners was to have a maximum number of six members and a secretary none of whom could be a public officer.

Although the Ordinance was passed on October 24 1958 its provisions did not come into effect immediately. The minister was empowered to appoint a day on which the provisions of the ordinance would become operational.¹³²

Companies Income Tax

A paradigm shift in the statutory framework for the regulation of companies' income tax regime was introduced in 1939 through the instrumentality of the *Companies Income Tax Ordinance No. 14 1939*. Before this law came into effect, the regulation of both personal and business taxation was vested in one and the same legal regime. The ordinance imposed a tax of two shillings and sixpence on every pound of a company's chargeable income.¹³³ The administration of the tax was vested in a commissioner to be appointed for that purpose by the Governor and the proceeds from the tax were to be remitted to the government treasury to form part of the general revenue of Nigeria.¹³⁴ A person involved in the administration of tax under the Ordinance was obligated to subscribe to an oath of secrecy.¹³⁵ The Ordinance imposed tax on a preceding year basis on the following four sources of a company's income:

- a. gains or profits from any trade or business, for whatever period of time such trade or business had been carried on;
- b. dividends, interest or discounts;
- c. any charge or annuity;
- d. rents, royalties, premiums and any other profits arising from property.¹³⁶

The incomes of statutory or registered building or friendly societies; as well as that of ecclesiastical, charitable or educational institutions of public nature were exempted from tax in so far as such incomes were not derived from a trade or business carried on by any such institution. Other incomes exempted from tax under the Ordinance were those of a company formed purely for the purpose of promoting social or sporting amenities and income derived from the interest payable on any loan charged on the public revenue of Nigeria in respect of interest payable to any company other than a company as defined by section 2 of the ordinance. A company was defined under the said section as:

Any company incorporated or registered under any law in force in Nigeria; any company which, though incorporated or registered outside Nigeria, carries on business, or has an office or place of business therein.¹³⁷

Outgoings and expenses wholly and exclusively incurred by a company in a year of assessment were allowed as deductions in ascertaining the company's chargeable income for that year. Specifically, the following deductions were allowed:

- a. sums payable by the company as interest upon money borrowed and employed in the acquisition of income;
- b. rent paid by the company in respect of land or buildings occupied for the purpose of acquiring income;
- c. expenses incurred by the company in the replacement of plant or machinery less the value of depreciation and the sum realised by the sale of such plant or machinery;
- d. sums expended on the repair of premises, plant and machinery or the renewal, repair or alteration of implements employed in the acquisition of income;
- e. bad and doubtful debts proved to have become as such during the year immediately preceding the year of assessment; provided that sums recovered during the year on accounts of amounts previously allowed as bad or doubtful debts were considered as income or receipts for that year;
- f. such other deductions prescribed by any rule made pursuant to the ordinance.¹³⁸

In addition to the above deductions, section 10 further allowed as deduction a reasonable amount for exhaustion, wear and tear of property (including plant and machinery) arising out of the use of such property in the year immediately preceding the year of assessment in the acquisition of income; provided that where property was leased on the condition that wear and tear be replaced by the lessee, then the lessee company was considered the owner of such leased property and to that extent, entitled to the deduction under section 10. Similarly, trade losses incurred by a company could be carried forward and allowed as deductions against what ought to have been the company's chargeable income for the next five years where the losses were such that they could not be adequately set off against its income for the year of assessment. However, such set off was not allowed to such an extent where it would reduce the tax payable by the company in any assessment year by more than 50 percent of the company's liability.¹³⁹ Deductions not allowed in computing companies' income tax under the Ordinance were contained in section 11 and included:

- a. disbursements or expenses not wholly and exclusively incurred in the acquisition of income;
- b. capital withdrawn or sums employed or intended to be employed as capital;
- c. any capital employed in improvements;
- d. sums recoverable under a contract of insurance or indemnity;
- e. rent or cost of repairs to any premises not used for the purpose of producing income;
- f. any amount paid or payable in respect of the United Kingdom income tax or super tax or Empire income tax.

The Ordinance contained special provisions regarding the ascertainment of chargeable income of insurance companies, life insurance companies and ship owners.¹⁴⁰ In the case of an insurance company other than a life insurance company whose gains and profits accrued partly outside Nigeria, its chargeable income was ascertained by:

- a. taking the gross premiums, interest and other income receivable in Nigeria, less any premiums paid to the insured or on re-insurances;
- b. deducting from the above a reserve for unexpired risks at the percentage adopted by the company for such risks at the year preceding the year of assessment;
- c. adding to the above a reserve similarly calculated for unexpired risks outstanding at the commencement of the year preceding the year of assessment;
- d. deducting the actual losses (less the amount recovered in respect thereof under re-insurance), agency expenses in Nigeria and a fair proportion of the expenses of the head office of the company.

The gains or profits of life insurance companies chargeable to tax were the investment income less of management expenses and commission. The gains or profits of a ship owning company was the sum bearing the same ratio to the sums payable in respect of fares of freight for passengers, goods or mails shipped in Nigeria as the company's total profits for the relevant period. The company was required to obtain a certificate from the tax authority of the place where the company's principal place of business was located stating that the company had satisfactorily furnished an account of its whole business and also stating the ratio of the gains or profits for the relevant accounting period (less of money borrowed and employed in the acquisition of gain) to the gross earnings of the company's fleet or vessel for that period, computed in accordance with the income tax law of the place of principal

business. The profits of a non-resident company engaged in the business of shipping were exempted from tax provided the Governor was satisfied that the company's country of origin extended an equivalent exemption to persons resident in Nigeria and if the country was a country other than the United Kingdom, to persons resident in the United Kingdom.¹⁴¹

Every company was obliged to deduct tax from any dividend paid to a share holder at the rate paid or payable by the company as reduced, where applicable, by double taxation or Empire income tax reliefs granted under sections 33 and 34. The company was further obliged to furnish each shareholder with a certificate setting forth the amount paid to the shareholder as and the amount deducted or deductible by the company as tax.¹⁴² Equally, a company that paid a mortgage or debenture interest to a non-resident was obliged to deduct tax at the minimum rate chargeable under the *Colony Taxation Ordinance 1937* and the *Non-Natives Income Tax (Protectorate) Ordinance 1931* and the amount so deducted was a debt owed by the company to the government.¹⁴³ The minimum rate under the two Ordinances was five shillings. A company that failed to account for the tax so deducted was guilty of an offence under the Ordinance.

Section 16 contained provisions regarding the chargeability of a non-resident company. A non-resident company was assessable and chargeable to tax in respect of any income arising (directly or indirectly) from any attorneyship, factorship, agency, receivership, branch or management. Such a company was chargeable in the name of the attorney, factor, agent, receiver, branch manager and the person in whose name the company was chargeable was obliged by section 17 to be answerable for all matters required to be done under the ordinance for the assessment of the company. A resident person was deemed to be an agent of a non-resident company and, therefore, chargeable on behalf of the company, where owing to the close connection between the non-resident company and the resident person, the latter pursued the course of business on behalf of the former in such a manner that produced either no profits or less profits to the resident than was ordinarily associated with that business. However, the company was not chargeable in the name of a broker or general commission agent not authorised to carry on the business of the company on a regular agency. Where it appeared to a Commissioner making an assessment or a judge hearing an appeal that the true profits of a non-resident company could not be readily ascertained, the Commissioner or judge could assess the company on a fair and reasonable percentage of the turnover of the company's business done through the resident agent and in such an event,

the agent was obliged to comply with the provisions of the Ordinance relating to returns or particulars and the assessment as determined was subject to appeal to the Supreme Court. The Commissioner could require any person in receipt of money in whatever capacity, being income arising from chargeable sources of a company, whether resident or not, to prepare and deliver to him within the period prescribed in the notice a true and correct statement of all such income and the name and address of every person or company to whom the same belonged.¹⁴⁴ All acts, matters and things required to be done by a company to facilitate assessment and payment of tax were to be done by the manager or other principal manager of the company in Nigeria.¹⁴⁵ Section 20 entitled a person answerable on behalf of the company to retain out of money coming into his custody on behalf of the company, so much thereof as was sufficient to pay any tax due and the section further indemnified such a person for any payments made for the foregoing purpose.

A company liable to tax under the Ordinance was obliged to give notice of its chargeability to the Commissioner within three months after the commencement of each assessment year. This obligation was without prejudice to the right of the Commissioner to require the company to furnish him within reasonable time, with a return of income and such further particulars as were necessary with respect to income for which the company was chargeable. A company that failed to give notice of its chargeability or furnish such returns as required by the Commissioner was guilty of an offence under the Act.¹⁴⁶ Notice was to be served by post to the company's registered office in the case of a resident company and to the person authorised to accept service of process in the case of a non-resident company and to the last known address, in the case of a person. Notice was deemed to have been served on the day succeeding the day the notice would ordinarily have been received by post and in proving service, it was sufficient to prove that the notice was properly addressed and posted.¹⁴⁷ As soon as the period allowed for the delivery of return or notice of chargeability elapsed, the Commissioner was required to proceed to assess every company chargeable to tax based either on the return as delivered by the company or the Commissioner's best of judgment. Best of judgment was used where either the return as delivered by the company was rejected by the Commissioner or where the company failed to deliver a return altogether but the Commissioner was of the opinion that the company was chargeable.¹⁴⁸ Also, where the Commissioner was of the opinion that a company was either not assessed or assessed at an amount less than it ought to have been, he could within two years from the expiration of the relevant year of assessment make such assessment or additional assessment as, in his

judgment ought to have been made on the company. The Commissioner was further obliged by section 28 to prepare lists of assessment containing the names and addresses in Nigeria of companies assessed to tax; the amount of chargeable income of each company; the amount of tax payable and such other particulars as prescribed.¹⁴⁹

Provisions relating to objection and appeals were contained in sections 30 and 31. The Commissioner was required to serve a notice of assessment by registered post to every company whose name appeared on the assessment lists. The notice was to contain the amount of the company's chargeable income, its tax liability and its right of objection if it disagreed with the amount of tax liability assessed on it. Within forty two days from service of notice of assessment (or such longer period as the Commissioner, upon good cause allowed) a company disputing the amount of tax assessed on it was required to apply for a review stating the precise grounds of its objection. The Commissioner was allowed to call for such further particulars (including evidence from persons other than those confidentially employed in the affairs of the company to be charged) and where the company and the Commissioner agreed as to the assessable amount, the assessment was amended accordingly and notice thereof served on the company. A company that failed to agree with the Commissioner had a further right of appeal to the Supreme Court within 15 days from the date of the refusal of the Commissioner to amend the assessment. At the hearing of the appeal, the court could either reduce or increase the amount with which the appellant was assessed depending on the merit or otherwise of the case. The Ordinance further empowered the Chief Justice to make rules of procedure relating to appeals.

An assessment, warrant or any other proceedings issued pursuant to the provisions of the Ordinance was not voidable for reason of mere mistake, defect in form or omission provided the same substantially conformed to the intendment of the Ordinance.¹⁵⁰ Section 33 provided relief to companies in cases of double taxation. The reliefs were available to companies that paid tax on the same income within an assessment year either in the United Kingdom or under the Empire income tax.¹⁵¹ A claim for relief in either case had to be made within two years from the end of the relevant assessment year. The claim could however be made within six years from the end of the relevant assessment year and within six months from the date upon which the relevant amount as United Kingdom income tax or Empire income tax was ascertained.¹⁵²

Under the Ordinance, a company had a timeline of 30 days from the date of service of notice of assessment upon it within which to pay the assessed tax. The foregoing was the position under the Ordinance, even in a situation where the notice followed either a notice of objection or an appeal procedure.¹⁵³ Failure to pay tax within the prescribed period attracted a penalty of a sum equal to five percent of the tax liability and the Commissioner was required to serve a demand note upon the company. If within 30 days of service of the demand note, the tax (and penalty) remained unpaid, the Commissioner had the power to sue in his official name to recover the tax with full costs as a debt due to the government.¹⁵⁴ Section 42 allowed tax repayment to be made to a company that paid tax in excess of the amount properly chargeable provided the application was made within two years from the end of the relevant year of assessment. However, no repayment was allowed to a company where either the company neglected to deliver a return or the excess sum was based on the return as delivered by the company, unless the company could show that the failure to deliver a true and correct return was not as a result of fraud or wilful act. A company guilty of an offence under the Ordinance was liable on summary conviction to a fine not exceeding 100 pounds, while a person guilty of an offence was liable on summary conviction to a fine of 100 pounds and in default thereof to imprisonment for a maximum term of six months, with or without labour.¹⁵⁵ These penalties were without prejudice to any criminal proceedings arising against the company or person under any other law.¹⁵⁶ Section 46 empowered the Governor-in-Council to make rules from time to time for the effective administration of the provisions of the ordinance. The *Companies Income Tax Ordinance No. 14 1939* was repealed a year after its passage by the *Income Tax Ordinance No. 3 1940*. The practice of one law regulating both personal and business taxation was re-introduced and carried on for another 21 years when the second separate enactment on companies income tax was again enacted.

The second time a law was passed aimed at the exclusive taxation of companies income was in 1961. This was the *Companies Income Tax Act No. 22 1961* which was a landmark legislation, first, because from the date it came into force, the provisions of the *Income Tax Ordinance Cap 85* and the *Income Tax Administration Ordinance No. 39 1958* together with all rules made thereunder ceased to have effect with respect to companies income tax.¹⁵⁷ Second, the Act established the Federal Board of Inland Revenue as a statutory body and vested it with the power to administer companies' income tax¹⁵⁸ - as well as all federal taxes. Tax on the income of companies was imposed by section 17 in respect of profits accruing in, received from, brought into or received in Nigeria from:

- a. any trade or business;
- b. rent or any premium arising from a right granted to any other person for the use or occupation of any property;
- c. dividends, interest, discounts, charges or annuities;

any other amount not falling within the above categories but qualifying as annual profits or gains or any amount deemed to be income or profits under the Act or arising from a pension or provident fund under the *Income Tax Management Act 1961*.

In the case of Nigerian companies, profits were deemed to accrue in Nigeria irrespective of the fact that such profits were made outside Nigeria's territory or whether or not they were brought into Nigeria. In the case of a non-Nigerian company, only such portion of its profits as were attributable to operations in Nigeria were deemed to be derived from Nigeria.¹⁵⁹ A company was defined as a corporation other than a corporation sole established by law in Nigeria or elsewhere and a Nigerian company referred to a company whose management and control was exercised in Nigeria.¹⁶⁰ Certain profits were exempted from companies income tax under section 26 (1) of the Act. The exempted profits included:

- a. the profits of a statutory company or registered society insofar as such profits were not derived from a trade or business carried on by such society;
- b. the profits of a co-operative society registered under the *Co-operatives Societies Ordinance*;
- c. the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character provided such profits were not derived from a trade or business carried on by such company;
- d. the profits of a company formed for the purpose of promoting sporting activities where such profits were wholly expendable for such purposes;
- e. the profits of a trade union registered under the *Trade Unions Ordinance* provided such profits were not derived from a trade or business carried on by such union;
- f. interest received by a company from the Nigerian Post Office Savings Bank;
- g. profits from aircraft or shipping business carried on by a foreign company insofar as in the case of ships, the business was not carried on in inland waters only and provided that an equivalent exemption from tax was granted to Nigerian companies in which the company in question resided;¹⁶¹
- i. the profits of a company being a body corporate established by a native authority law or local government law;

- j. the profits of a company being a purchasing authority established by the legislature of a region and empowered to acquire any commodity in that region for export;
- k. the profits of a company being a corporation established by the legislature of a region for the purpose of fostering the economic development of that region insofar as they were not derived from any share or other interest possessed by that corporation;
- l. the profits of a foreign company which would have been chargeable to tax solely by reason of their being brought into Nigeria.

In addition, the finance minister was empowered to exempt any company or class of companies or profits earned by any company or class of companies from tax. The powers included the power to amend, add or repeal any exemption as it affected any company. The profit - or loss - of a company for the purpose of ascertaining its tax liability in an accounting period was arrived at after the deductions allowed in section 27. The deductions included:

- a. sums payable as interest on any money borrowed and employed as capital in acquiring the profits;
- b. rents and premiums incurred in respect of land or buildings occupied for the purpose of acquiring the profits;
- c. expenses incurred for the repair of premises, plant, machinery or fixtures employed in acquiring the profits or for the renewal, repair or alteration of any implement, utensil or article so employed;
- d. bad or doubtful debts estimated to have become bad or doubtful within the period were allowed on three conditions. First, deduction for such debts had not already been allowed under the *Income Tax Ordinance*; second, sums recovered within the period in respect of bad or doubtful debts for which allowance had been made were treated as profits; and third, the debts were included as a receipts of the business in the profits of the year within which they were incurred;
- e. contributions made to pension, provident or retirement benefits fund approved by the Joint Tax Board, but excluding penalties paid under the provisions of any Act establishing a provident or retirement benefits scheme;
- f. expenses incurred wholly and exclusively for the purpose of the business during the period but which could not either be referable to any other period; or be referable to the period in question;

- g. such other deductions as the minister prescribed under any rules made pursuant to the powers conferred upon him by the Act.

However, the following deductions were not allowed under the Act:

- a. expenditure of a capital nature including capital repaid or withdrawn;
- b. sums recoverable under an insurance or contract of indemnity;
- c. sums paid as taxes on income or profits either in Nigeria or elsewhere, except in the case of taxes levied outside Nigeria on profits which were also chargeable to tax in Nigeria where relief for double taxation of those profits was not given;
- d. payments made to savings, widows and orphans, pension, provident or other retirement benefits fund except as permitted under section 27;
- e. depreciation of assets;
- f. sums reserved out of profits except as permitted by section 27 (d).

The difference between a company's income and the deductions allowed it during an accounting period was its assessable profits which were computed on a preceding year basis.¹⁶² The total profits of a company were calculated on the basis of its assessable profits. A company's total profits were its assessable profits from all sources in any accounting year together with the additions allowed by the Third Schedule, less the deductions allowed by the Act.¹⁶³ The deductions allowed included:

- a. the amount incurred by the company as loss during the year provided the claim is made within twelve months after the end of the assessment year;
- b. the amount incurred by the company as loss during any year preceding the year of assessment which had not been allowed either under the Act or the provisions of the income tax ordinance; provided that the aggregate deduction from the assessable profits or income in respect of such loss did not exceed the amount of such loss and that a deduction made pursuant to the provision above did not exceed the amount, if any, of assessable profits included in the total profits for that year.

Companies were liable to income tax at eight shillings on every pound¹⁶⁴ except small companies which were granted relief by section 33 (1) and (2) for the first six years of operations. Complete exemption from tax was granted small companies for the first two years of assessment while exemption was granted at the rate of two-thirds of the tax liability

due for the third and fourth year and one-third of the rate for the fifth and sixth year respectively. Section 33 (3)-(6) contained limitations to the extent to which small companies could be entitled to the reliefs granted in subsections (1) and (2). First, relief at the specified rates could be granted on the total profits assessed for the appropriate years of assessment but not exceeding the first one thousand pounds of such profits. Consequently, where the total profits exceeded one thousand pounds, the amount in excess of one thousand pounds was liable to tax. Further, where the Board was of the opinion that any remuneration charged in the company's accounts as director's fee was excessive in relation to the service rendered or extent of business carried on, it could direct part or the whole of such remuneration to be treated as forming part of the total profits of the company for the purpose of determining the amount by which the profits of the company to be relieved of tax could be reduced. Second, no relief was granted under the foregoing provisions to a company formed to acquire the whole or part of a trade or business previously carried on by another company. Third, the Board could in its discretion, make such assessments to tax on a company to counteract the benefit of relief granted where the company applied any profits in respect of which relief had been given in the payment of dividend (other than a dividend in the form of shares arising from the capitalization of profits); or in the reduction of paid-up share capital or in making any loan to a director of the company. Lastly, such assessments as would counteract the benefit of relief given was to be made upon a liquidator or receiver where the Board was convinced that the benefit of the relief granted was transferred to shareholders of the company in the process of liquidation or winding up.

Section 36 provided relief to a company which had paid or was liable to pay commonwealth income tax. In the case of a Nigerian company, the relief granted was the equivalent of the amount paid or payable as commonwealth tax where the commonwealth tax was only half or less than half of the tax payable under the Act but where the commonwealth tax was more than half of the rate payable under the Act, then the rate of relief was half the amount of tax payable under the Act. In the case of a non-Nigerian company, where the rate of commonwealth tax did not exceed the rate of tax under the Act, the relief granted was the equivalent of fifty percent of the commonwealth tax but where the commonwealth tax exceeded the rate of tax under the Act, the relief granted was the equivalent of the amount by which the rate under the Act was higher than half of the commonwealth rate. Commonwealth income tax was defined to mean tax on income of companies charged under a law in force in any commonwealth country or the Republic of Ireland, which provided

relief from tax at home and in Nigeria in a manner corresponding to the foregoing provisions. The power to make double taxation arrangements was vested in the finance minister by section 37.

A company liable to tax could be charged in its own name or the name of any principal, attorney, factor, agent or representative in Nigeria or in the name of a receiver or liquidator.¹⁶⁵ The principal officer or manager of a company in Nigeria was responsible for doing all such things as were required to be done in furtherance to assessment and payment of tax by the company. The Board could also, where it deemed necessary, appoint any person to be the agent of a company for the purpose of giving effect to the provisions of the Act and the agent or any other person answerable for payment of tax under the Act on behalf of the company was empowered and indemnified, to retain out of any money coming into his hands on behalf of the company so much as was sufficient to pay tax for which the company was liable.¹⁶⁶ By section 43, payment of tax took priority over obligations owed to shareholders during winding up to the extent that the liquidator was required not to distribute any assets of the company to the shareholders unless provision had been made for full payment of whatever tax the company owed.

Every company was obliged, whenever so required by the Board, to prepare and deliver to the Board a true and correct statement in writing in such form and containing such particulars as the Board required including the amount of its profits from every source for the period(s) indicated. Whenever so required, a company was obliged to comply whether it was chargeable to tax or not. Furthermore, a company was obliged to give notice of its chargeability to the Board within three months after the commencement of an assessment year where no request to deliver returns had been made by the Board and where a company commenced business during a year of assessment, such notice had to be given within one month from the date of commencement of business.¹⁶⁷ The Board could call for further returns or particulars where it deemed it necessary from a company and could also request any person to attend before an officer of the Federal Inland Revenue Department regarding information contained in the returns. The Board was empowered to direct any company to keep adequate books of account in such form and language as it deemed appropriate, where it was convinced that the books of account of a company were inadequate. Any such direction issued by the Board could be a subject of appeal to the appeal Commissioners who could confirm or modify it as the case warranted.¹⁶⁸

Upon the expiration of the time allowed for delivery of returns, the Board could proceed to assess every company chargeable to tax. Where a company delivered returns, the Board could either accept the return and base its assessment on such return or reject it and proceed to use its judgment to determine the total profits of the company and assess it accordingly. Similarly, where a company failed to deliver a return, the Board could use its best judgment to determine the amount of total profits of the company and base its assessment on the amount determined. The board's discretion to use its best judgment to assess a company which failed to make a return was without prejudice to whatever liability such company incurred for reason of its default.¹⁶⁹ The Board could also make additional assessment on a company - any time within six years from the expiration of the year in respect to which the assessment relates - if it was convinced that the company was assessed at a lesser amount than it ought to have been assessed.¹⁷⁰ The Board was obliged to prepare assessment lists of all companies assessed. Such lists were to contain the names and addresses of the companies, the names and addresses of the persons in whose names the companies were chargeable, the amount of total profits of each company, the amount paid by each company as tax and such other particulars as the Board deemed appropriate. Notices of assessment and amendments thereto were deemed to constitute assessment lists if they were complete in every detail.¹⁷¹

Notice of assessment was required to be served on every company whose name appeared on the assessment lists. The notice was to contain the company's total profits, tax payable, place at which the tax was to be paid and the company's right of objection.¹⁷² A company that disputed the assessment could serve a notice of objection on the Board within forty eight days of receipt of the assessment notice (or such longer period as the Board, upon good cause, allowed) stating the grounds of objection. In considering the notice of objection, the Board could require the company to furnish it with such particulars as it deemed necessary and in addition call for oral evidence from any officer of the company. The Board was obliged to give notice of refusal to amend if no agreement was arrived at; and notice of the amended assessment where the company arrived at an agreement with the Board.¹⁷³ No notice of assessment could be impeached on the ground of an error or defect in form provided it was substantially in conformity with the intent and meaning of the Act.¹⁷⁴

Section 55 (1) provided that the minister could establish, by notice in the gazette, a Body of Appeal Commissioners, to consist of a maximum of six persons none of whom could be a

public officer. However, the secretary to the Body of Appeal Commissioners was required to be a public officer. Appeal Commissioners were appointed from among persons with experience and capacity in the management of a substantial trade or the exercise of a profession and held office for duration of three years. A Commissioner could be removed by the minister where (i) he had been absent from two consecutive meetings of the body; (ii) he had become incapacitated by physical or mental illness; (iii) he failed to declare his interest to the Board regarding an appeal pending before the Body of Commissioners as required by section 57 (2) and (iv) he had been convicted of a felony or an offence under any income tax law in Nigeria. The Body of Appeal Commissioners was empowered to consider appeals from a company aggrieved by the notice of refusal to amend assessment. An aggrieved company was required to serve notice of appeal on the Board and the Body of Appeal Commissioners within 30 days (or 60 days, where an extension of time had been granted) from the date of receipt of notice of refusal to amend. The notice of appeal was required to contain:

- a. official number of the assessment and the year of assessment;
- b. the amount of tax assessed;
- c. the amount of total profits upon which the assessment was based;
- d. the date upon which the appellant was served with notice of refusal by the board;
- e. the precise grounds of appeal; and
- f. an address for service.¹⁷⁵

A pending appeal did not preclude the company and the Board from reaching an agreement on the assessed amount and where this happened, the Board could serve notice of agreement on the Body of Appeal Commissioners and the appeal would be treated as discontinued. The company could also serve notice of discontinuance on the Body of Appeal Commissioners. If no agreement was reached, the Body of Appeal Commissioners was required to fix a date for the hearing of the appeal and give notice of twenty one clear days to the parties. Upon determination of the appeal, the Commissioners could confirm, reduce, increase or annul the assessment as the facts demanded. Notice of the amount as determined by the Commissioners was served on the company which was obliged to pay within one month of receipt of the notice, notwithstanding a further appeal to the court. Failure of the company to pay made it liable to an action for recovery at the instance of the Board.¹⁷⁶ Section 59 provided that a company not satisfied with the decision of the Commissioners had a further right of appeal to the High Court of Lagos. This was because all offences

under the Act were deemed to have occurred in Lagos.¹⁷⁷ Where the amount involved did not exceed 200 pounds, the company had to obtain consent of the Board before exercising the further right of appeal.¹⁷⁸

Where there was no objection or pending appeal as to the assessed amount, the tax assessed was payable within two months from date of receipt of assessment notice but the Board could, in its discretion, extend time within which payment was to be made. Where an objection or appeal was pending, the Board could enforce such portion of the tax, if any, that was not in dispute while the balance remained in abeyance to be paid within one month from the date of determination of the objection or appeal.¹⁷⁹ A company that defaulted in the periods prescribed for payment of tax incurred a liability of 10 percent thereon. The sum due (inclusive of the 10 percent addition) was to be served on the company by way of a demand note and if one month thereafter, the company still defaulted, the Board could bring an action in any court of competent jurisdiction, including a magistrate court, to recover the tax as a debt due to the government of the federation. Such a company was in addition, guilty of an offence under the Act and upon conviction was liable to a fine of 100 pounds.¹⁸⁰ The Governor-General-in-Council could remit wholly or partly the tax payable by any company where he was satisfied as to the equity of the case.¹⁸¹ A company which paid tax in excess of what it ought to have paid for reason of error in the return or statement of account could within six years from the end of the relevant assessment year apply for relief to the Board and upon being satisfied as to the merit of the application, the Board could give a certificate of the amount to be repaid and the accountant general of the federation upon receipt of the certificate would cause the repayment to be made.¹⁸²

The offences created by the Act could be classified under three categories. Offences against the requirements of the Act, offences by authorised persons and offences by unauthorised persons. Offences against the requirements of the Act included:

- a. failure to pay tax within the periods required by sections 61 and 62;
- b. failure to comply with the requirements of a notice;
- c. failure to attend in answer to a notice or summons or having attended, failure to answer questions lawfully put forward;¹⁸³
- d. making an incorrect return by omitting or understating taxable profits or giving incorrect information in relation to any matter affecting tax liability;¹⁸⁴

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- e. aiding or abetting the falsification of a return, account or statement in return for reward. The penalty for this offence was a fine of five hundred pounds or imprisonment for five years or both.¹⁸⁵

Section 67 (1) prescribed a fine of 100 pounds for any offence in respect of which no specific penalty was provided and if the offence related to failure to keep records or furnish return, statement or information, a further penalty of 20 pounds for each day the failure continued and in default of payment, imprisonment for a period of six months. If the offence related to understating profits, then in addition to the fine of 100 pounds, the company was liable to pay a sum twice the amount understated.¹⁸⁶

The penalty for a person who not being authorised by the Act, collected or attempted to collect tax was 300 pounds or imprisonment for three years or both. Similar penalties were provided for a person who being authorised to administer the Act:

- a. demanded from a company an amount in excess of the authorised assessment; or
- b. withheld a portion of tax collected for his own use; or
- c. rendered a false return of the amounts of tax collected by him; or
- d. defrauded any person or embezzled any money or otherwise used his position to deal wrongfully with the Board.¹⁸⁷

The penalties provided by the foregoing sections did not preclude the company's liability to tax due or its culpability for criminal proceedings under any other law.

The *Companies Income Tax Act 1961* was in force until 1979 when it was repealed by the *Companies Income Tax Act No. 28 1979*. During its eighteen year tenure, it underwent series of amendments. For example, in 1967, a new section 30A was introduced which empowered the Federal Board of Inland Revenue to assess and charge a company on a fair and reasonable percentage of the turnover of its business within or outside Nigeria in the case of resident companies, and its turnover of business carried on within Nigeria in the case of a non-Nigerian company, where in the opinion of the Board, the assessable profits of the company were not readily ascertainable.¹⁸⁸ In 1974, the *Companies Income Tax Act 1961* was further amended. First, a new source of chargeable income which included 'fees, dues and allowances (wherever paid) for services rendered' was earmarked by section 17 (f).¹⁸⁹ Second, a company entering into an agreement in respect of any service under paragraph (f) was required to

make full written disclosure to the Board of the terms of such agreement.¹⁹⁰ Third, tax relief was granted to every company which had suffered damage in respect of its trade or operations during the civil war but no deduction was allowable to such a company in respect of assets damaged or destroyed during the same period.¹⁹¹ Fourthly, a company paying another company any sum of money by way of interest, management fee or royalty was required to deduct tax at the rate of one shilling per every pound as prescribed by section 32 of the principal Act and pay the amount so deducted to the Board.¹⁹² Finally, a new expense item was listed as a non-allowable deduction and included as section 28 (g).¹⁹³

The *Companies Income Tax Act 1979* originally promulgated as decree No. 28 of 1979 repealed the *Companies Income Tax Act 1961* and all the amendments thereto¹⁹⁴ and is the current law providing a legal framework for the taxation of companies' income in Nigeria. The administration of the tax was vested in the then Federal Board of Inland Revenue which was established under section 1 of the decree.¹⁹⁵ The duties and powers of the Board included the assessment, collection and accounting for all taxes under the Act, the power to hold and dispose property, the power to delegate some of its powers to another person to exercise on its behalf and the power to sue or be sued in its official name.¹⁹⁶

In addition to the sources of chargeable profits under the CITA 1961, income accruing or derived from the use in Nigeria of the asset of any foreign company has been added as one more source of income chargeable to tax. For the purposes of taxing dividends, interest, discounts, charges and annuities, interest is deemed to be derived from Nigeria if there is a liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment was made; or the interest accrues to a foreign company or person from a Nigerian company or a company in Nigeria regardless of how the interest accrued.¹⁹⁷ As under CITA 1961, the profits of a Nigerian company are deemed to accrue in Nigeria where ever they have arisen irrespective of whether they have been brought into Nigeria or not. The treatment of profits of a non-Nigerian company and companies engaged in shipping, air transport, cable undertakings and insurance under the CITA 1979 are equally similar to that under the CITA 1961.

A point of divergence between CITA 1961 and CITA 1979 is that one of the deductions taken into cognisance in the course of ascertaining total profits under the latter statute which was not provided for in the former is the amount of loss incurred by a company

engaged in an agricultural trade or business in the first year of assessment after which the loss is incurred and to the extent to which such deduction cannot be practicably made, then it should be carried forward into the next year of assessment until such a time when the loss has been completely set off against the company's assessable profits.¹⁹⁸

The rate of tax under the CITA 1979 was originally 50 kobo of each naira for the 1978-1979 assessment year and thereafter 45 kobo of each naira for subsequent years.¹⁹⁹ In the case of companies engaged in building or construction however, tax use to be levied at the rate of two and half percent of the business turn over or 45 kobo of each naira whichever was higher.²⁰⁰ Further, in the case of banks, there was in addition to the chargeable rate of tax a *special* levy of 10 percent imposed on *excess profits*. Excess profit was defined as the difference between total profits and *normal* profits.²⁰¹ For the purpose of this provision, normal profit was determined by adding up the amounts arrived at after applying to the paid up capital, capital (or statutory reserve), general reserve and long term loans percentages of 40, 20, 20, 20 respectively.²⁰² The excess profit provision has been done away with and in 1996, Decree No. 32 increased the rate of companies' income tax to 30 kobo of every one naira (or 30 percent) of total profit and this is the current rate. The Body of Appeal Commissioners was established under section 50 to consist of a maximum number of 12 members one of whom was to be designated as chairman and none of whom could be a public officer.²⁰³

The *Companies Income Tax Act 1979* has been amended severally by various *Finance (Miscellaneous Taxation Provisions) Decrees*.²⁰⁴ In 2007, CITA 1979 was further amended by the *Companies Income Tax (Amendment) Act No. 11 2007* to reflect some of the recommendations of the 2002 Study Group.²⁰⁵ The following changes were introduced in the 2007 amendment:

- a. Sections 1 to 8 of the principal Act relating to the establishment, powers and proceedings of the Federal Board of Inland Revenue have been repealed by Section 2 (1) of the 2007 amendment Act. This repeal is consistent with the establishment of the Federal Inland Revenue Service as the successor to the defunct FBIR.
- b. Section 4 of the 2007 amendment Act requires an insurance company that engages the services of an insurance agent, loss adjuster or broker to include a schedule in

- its annual returns showing details of name, address, duration of employment and payments made to such agent, adjuster or broker.
- c. Section 5 of the amendment Act exempts profits of companies operating in Export Processing Zones (EPZ) or Free Trade Zones from tax under the Act, provided 100 percent of the company's production is for export otherwise proportionate tax is payable on local sales.
 - d. The 2007 amendment provides greater incentives for donations to tertiary and research institutions by making such donations tax deductible expenses. The provision of CITA 1979 allowed a limit of 10 percent of total profit for such donations but excluded capital donations. Section 7 of the amendment allows both capital and revenue donations and further increases the allowable ceiling for such donations to either 15 percent of total profits or 25 percent of payable tax, whichever is higher.
 - e. Under Section 31 (2) (a) (iii) of the principal Act, a company could not carry forward losses incurred in an assessment year beyond four years from the assessment year the said loss was incurred. The 2007 amendment repealed sub-paragraph (iii) which means there is no limit now as to how long a company may carry losses forward.
 - f. Section 38 of the principal Act was also repealed by Section 10 of the amendment Act. Subsection (1) of the repealed section allowed 25 percent investment tax credit on the qualifying capital expenditure of a company engaged wholly in the fabrication of spare parts, tools and equipment for local consumption and export while subsection (2) allowed 15 percent investment tax credit on fixed asset of any company which purchased locally made plant, machinery or equipment for use in its business.
 - g. Section 11 of the amendment increased the pre operation levy payable by a new company requiring a Tax Clearance Certificate to 20,000 naira in the first year and 25,000 naira in every subsequent year. Under the old provision, pre operation levy was 500 naira in the first year a company remained out of business and 400 naira for every subsequent year.

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- h. Section 14 of the amendment repealed Section 56 of the principal Act which provided for one percent bonus of payable tax to a company that filed its return within the stipulated time.
 - i. Sections 71 to 75 of the principal Act which contained provisions relating to the establishment and proceedings of the Body of Appeal Commissioners was repealed by Section 18 (1) of the amendment Act. This is consistent with the establishment of the Tax Appeal Tribunal by the FIRS establishment Act. The TAT takes over the mandate of the BAC as well as the Value Added Tax Tribunal.
 - j. Section 21 (a) (i) and (ii) of the amendment increased the penalties contained in Section 92 of the Act. The fine payable as general penalty has been increased from 200 naira to 20,000 naira while the fine payable for failure to furnish statement or keep records has been increased from 40 naira to 2000 naira.
 - k. Finally, the power to vary or revoke the rate of companies' income tax earlier vested in the President by Section 100 is now vested in the National Assembly, on the President's proposal.²⁰⁶

Personal Income Tax

The *Income Tax Management Act 1961*²⁰⁷ was the first enactment that was promulgated with a view to regulate the taxation of personal incomes exclusively and also provide a uniform system of personal income taxation across the federation. The Act had application throughout the federation although the application of its provisions to a particular region could be deferred where the Governor-General (with the consent of the regional government) by an order so determined. The Act did not repeal earlier laws such as the *Direct Taxation Ordinance No. 4 1940* and the *Income Tax Ordinance Cap 85*. Rather, pursuant to an order granted by the Governor-General in line with section 1 of ITMA, upon the application of a region as aforesaid, the provisions of the *Direct Taxation Ordinance No. 4 1940* and the *Income Tax Ordinance Cap 85* continued to apply to the region in question with such modifications as would:

- (a) prevent the taxation of income by more than one tax authority;
- (b) be necessary for the assessment or collection of tax or the continuation of any revenue allocation arrangements previously subsisting in relation to income tax

between the government of the federation and the government of that region and such other modifications as the government of that region requested with respect to personal reliefs and rates of tax.²⁰⁸

In the absence of a deferment order as provided above, the provisions of the *Income Tax Ordinance*, the *Income Tax Administration Ordinance* and *Direct Taxation Ordinance* together with all rules, regulations and subsidiary legislation passed under them no longer applied in any part of Nigeria in the administration of personal income tax.²⁰⁹

The subjects upon whom the Act imposed tax were individuals, itinerant workers, communities, families, trustees and executors whose incomes were taxable under a regional law.²¹⁰ As the Act applied throughout the country, the question as to which tax authority could impose tax on any of the subjects listed above was determined in the case of an individual, by his place of residence. Place of residence was determined as provided by the First Schedule to the Act. The relevant determinant was the location of the employee as at 1st April. In the case of an itinerant worker, the basis for determining which tax authority had jurisdiction over his income depended on where he was found during the year. An itinerant worker was entitled to credit to the extent, if any, of tax already paid by him to any other tax authority for the same year. Tax by an indigenous community under the Act was to be imposed by, and payable to the government of the region in which the community was found. Community tax was charged on the estimated total income of community members or the estimated total income of those members whose income was, in the opinion of the relevant tax authority, impracticable to either assess individually or apportion with certainty among community members. In the case of family income where the several interests of the members were indeterminate or uncertain, tax was imposed only by the tax authority in the territory where the member of the family who customarily received that income in the first place ordinarily resided. Finally, the relevant tax authority in respect to income accruing to a trustee or executor was that of the territory where the trust or estate was situated.²¹¹

Section 4 (1) contained the sources of chargeable income for the purposes of the Act. According to the section, tax was chargeable upon income accruing in, derived from, brought into, or received in Nigeria in respect of:

- a. gains or profits from any trade, business, profession or vocation;

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- b. salary, wages, fees, allowances or other gains from an employment paid or payable in money by the employer to the employee other than reimbursements paid to the employee of expenses incurred by him in the performance of his duties; or medical and dental expenses incurred by the employee; or cost of passage to or from Nigeria incurred by the employee; or the cost of child maintenance or education (provided such costs were deductible under the tax law of the region where the tax authority responsible for imposing the tax was located) gains or profits (including premiums) from a right granted to another person for the use or occupation of property;
 - c. dividends, interest or discounts;
 - d. pension, charge or annuity;
 - e. any profits or gains not falling within the above mentioned categories.

The gains or profits of a taxable person whose business was partly carried out in Nigeria and partly outside Nigeria was determined by taking into account the extent of the operations of the business which were carried out in Nigeria and tax was imposed only to the extent to which the gains and profits of the business were derived from Nigeria.²¹² The gains and profits of a partner were any remuneration, interest on capital or cost of passage to or from Nigeria mainly undertaken for the purposes of leave or recreation which was charged in the partnership account in respect of that partner and his share in the income of the partnership computed after the deduction of the cost of recreation referred to but before other private or domestic expenditure.²¹³ The gains of a person deriving income from agricultural land was deemed to be the gains or profits which ordinarily would accrue to him up to the average cultivation or use prevalent in the neighbourhood.²¹⁴

Gains or profits from an employment were deemed to have been derived from Nigeria if they were derived in any of two scenarios. First, if duties of employment were wholly or partly performed in Nigeria then the gains therefrom were deemed to be derived from Nigeria. The exception was where the duties were performed on behalf of an employer who was in a foreign country, and the employee resided in Nigeria during the year of assessment for a period that was less than 183 days in all, and the remuneration of the employee was liable to tax in the country where the employer resided. Second, gains were deemed to be derived from Nigeria if the employer was in Nigeria except where the duties of the employment were wholly performed, and the remuneration paid in a foreign country.²¹⁵ Income from a dividend distributed by a Nigerian company was deemed to be derived from Nigeria while

income from a dividend distributed by a foreign company was deemed gains derived in Nigeria only to the extent to which the amount of income was brought into or received in Nigeria.²¹⁶ Dividends distributed by a Nigerian company were taxable at source but were to be treated as a set off against the individual taxpayer's liability for the relevant assessment year and where the tax deducted upon the dividend exceeded his tax liability as arrived at upon the basis of his assessable income, he was entitled to be refunded the excess.²¹⁷ Income from interest on money lent by a person outside Nigeria to another person in Nigeria was deemed to be derived from Nigeria if the interest was payable in Nigeria; or the interest was by deed, will or charged upon the estate, real or personal, of the person paying or as a debt by virtue of a contract entered in Nigeria; or in the case of money lent to a Nigerian company, the loan was evidenced by a mortgage, debenture, loan or other stock issued by the company in recognition of its debt.²¹⁸

A tax authority was empowered to counteract the liability of tax where such liability was reduced by virtue of a fictitious or artificial transaction. The Joint Tax Board was similarly empowered where the interest of more than one taxpayer was involved.²¹⁹ The incomes exempted from tax under the Act were as contained in the Third Schedule to the Act.²²⁰ The exempted incomes were similar to those exempted under the *Income Tax Ordinance No. 3 1940* but newer categories of exemption were included under ITMA 1961. The new categories of exempted income included:

- a. Gains or profits from the business of operating ships or aircraft carried on by an individual not resident in Nigeria in so far as in the case of shipping, the business was not carried on in inland waters only and provided that the country of resident of the person accorded a similar exemption to persons resident in Nigeria. A person was deemed resident in the country where the central management and control of the business was exercised.
- b. Interest accruing on any loan charged on the public revenue of the federation and raised in the United Kingdom; or interest on any bond issued by the government of the federation to secure repayment of the loan raised from the International Bank for Reconstruction and Development; or interest on any money borrowed by either the government of the federation or of a region upon such terms which included the exemption of such interest from tax in the hands of a non resident person; or interest on money borrowed outside Nigeria by a corporation established by law in

Nigeria upon terms which included the exemption of such interest from tax in the hands of a non resident, subject to the consent of the finance minister.

- c. The income of any national of the United States from employment by the International Co-operation Administration or its agents (including the University of Athens, Ohio in connection with the training of teachers in Nigeria) or an agency formed and directed by the United States Government.
- d. Any income in respect of which tax was remitted under the *Consular Conventions Ordinance, Diplomatic Immunities and Privileges (Commonwealth Countries and Republic of Ireland) Ordinance* and the *Diplomatic Privileges Extension Ordinance*.
- e. The income of any registered trade union in so far as it was not derived from any trade or business carried on by the union.
- f. Gratuities payable to a public officer by either the government of the federation or any region in respect of services rendered by him under a contract of service and specifically described as gratuities by the contract or some other document issued in connection with the contract provided that where the period of service did not amount to five years and the total gratuities exceeded a sum calculated at one hundred and fifty pounds per annum, the excess was not exempt.
- g. Gratuities paid to a staff or former staff of the Nigerian College of Arts, Science and Technology, West African Institute for Trypanosomiasis, West African Institute for Oil Palm Research and West African Council for Medical Research in circumstances similar to paragraph f above.
- h. Any income of an individual chargeable solely by reason of it being brought into or received in Nigeria if the individual was not in Nigeria in the year of assessment for a total period amounting to at least one hundred and eighty three days.

To ascertain the income or loss of a person for an assessment year, similar deductions as allowed under the *Companies Income Tax Act* were allowed *mutatis mutandis* under ITMA 1961.²²¹

The following deductions were not allowed:

- a. domestic or private expenses;
- b. capital withdrawn from a trade, business, profession or vocation and any expenditure of a capital nature;
- c. any loss or expense recoverable under an insurance policy or contract of indemnity;
- d. rent or cost of repairs to any premises or part thereof not incurred for the purpose of producing income;

- e. taxes on income or profits levied in Nigeria or elsewhere except as provided under the Act;
- f. any payment to a pension, provident, savings or widows' and orphans' society, fund or scheme except as provided under the Act;
- g. depreciation of asset;
- h. any sum reserved out of profits, except as permitted under the Act or estimated by the relevant tax authority.²²²

In addition to the above where a deduction had earlier been allowed in respect of an expense or liability and such liability was subsequently waived or released or the expense refunded, the amount waived, released or refunded was treated as an income on the date it was made.²²³ Section 20 provided the basis for computing assessable income. A person's assessable income for each year of assessment was the amount from each source of his income in the year immediately preceding the year of assessment in respect of each such income, even if at the time of assessment, he ceased to possess such income or the source had ceased producing income. Assessable income in respect of a new trade was determined at three levels. In the case of a person in the first year of business, it was the amount of income for that year; in the case of a person in the second year of business it was the amount from the date of commencement of business and in the case of a person in the third year of business the assessable income was computed on a preceding year basis. The assessable income of a person who permanently ceased to carry on trade, business, profession or vocation in Nigeria was as regards the year in which the cessation occurred, the amount of income for that year and as regards the year of assessment preceding that in which the cessation occurred, the amount of the income as computed on the basis of the foregoing provisions or the amount of income for that year, whichever was greater but he was not deemed to have derived any income from the said trade, business, profession or vocation in the assessment year following that in which the cessation occurred. Assessable income with regard to employment or pension was the amount of income from such employment or pension of the year of assessment. Income from an employment was deemed to arise day by day except where it was derived by way of a bonus, commission, allowance or at intervals exceeding one month in any of which case it was deemed to have arisen on the day it was paid. If the income was paid after the cessation of income, it was deemed to have arisen on the last day of employment.

Income respecting settlements, trusts and estates was deemed to be the income of the settlor or person creating the trust if:

- a. the person creating it retained or acquired an immediately exercisable general power of appointment over the capital assets of the settlement or trust or over the income derived from it; or
- b. he made use directly or indirectly of any part of the income arising under the settlement or trust;
- c. the settlement or trust was revocable in circumstances whereby the settlor or the spouse could resume control over any part of the income or assets comprised therein. However a settlement or trust was not considered revocable solely by the reason that the income or assets comprised therein could revert to the settlor or the spouse in the event of the beneficiary pre - deceasing the settlor or by the happening of an uncertain event upon which the settlement or trust was limited.

The income of any settlement or trust other than as described above was so much of that income as was derived whether in Nigeria or elsewhere, provided in the latter case it was brought into or received in Nigeria. The assessable income of an itinerant worker was to be determined either on the basis of the foregoing provisions or on the basis of the year ending 31 December within the year of assessment, if the income tax law of the taxing territory so prescribed.

The procedure for determining a person's total income was defined in section 21. Subsection (1) thereof provided that a person's total income was the amount of his total assessable income from all sources for that year together with additions to be made thereto in accordance with the Fifth Schedule less the deductions allowed in the said Schedule as well as section 21 (2). The deductions allowed under subsection (2) were losses claimed within one year after the end of the assessment year as been incurred in the assessment year and losses which the relevant tax authority was satisfied were incurred in any year preceding the year of assessment which had not been allowed against his assessable income of a preceding year.

The Act granted relief to any person who had paid or was liable to commonwealth income tax, defined as any income tax charged under a law in force within the commonwealth or the

Republic of Ireland.²²⁴ Section 24 empowered the finance minister to make arrangements for the avoidance of double taxation.

Another salient feature of the ITMA was the establishment of the Joint Tax Board.²²⁵ The Board consisted of one member each representing each territory nominated by the regional finance minister and a secretary nominated by the federal Public Service Commission. The Board was mandated to exercise such powers and duties as conferred upon it by the Act, or as agreed by the governments of the respective territories, or as conferred on it by a federal law or finance minister. In addition to the foregoing general powers, the Board was specifically mandated to:

- a. advise the government of the federation, on request, in respect of double taxation arrangements concluded or under consideration with other countries, and in respect of rates of capital allowances and other taxation matters having any effect throughout Nigeria and in respect of any amendment to the Act;
- b. use its best endeavours to promote uniformity both in the application of the Act and in the incidence of tax on individuals throughout Nigeria.²²⁶

The ITMA 1961 imposed official secrecy on the Board and its employees regarding taxpayer information in their custody. However, this duty of official secrecy did not apply where legal proceedings required it or where it was in the interest of public revenue to share information between or among tax authorities.²²⁷

To enhance uniformity and ease of administration, returns, statement or information affecting a person's liability to tax made to one tax authority could be treated by another tax authority where the person was deemed to be resident for all purposes as if the information was made to the second tax authority in the first instance.²²⁸ Further, any matter which had continuing effect in determining the assessable income of a person beyond the relevant year of assessment was given effect by the relevant tax authority in subsequent years notwithstanding any change in the person's place of residence.²²⁹

In the light of sections 1 and 3 of ITMA 1961, regions of the federation (and the states that were eventually created out of them) passed their respective personal income tax laws. The federal territory of Lagos also passed the *Personal Income Tax (Lagos) Act No. 23 1961* which applied to residents of the federal territory of Lagos alongside the provisions of the ITMA

1961.²³⁰ Between 1961 and 1993, several amendments were made to the ITMA 1961. Some of the major amendments included the *Income Tax (Amendment) Decree No. 58 1968*, *Income Tax Management (Amendment) Decree No. 35 1968*, *Income Tax Management (Amendment) Decree No. 24 1971*, *Income Tax Management (Amendment) Decree No. 41 1973*, *Income Tax Management (Uniform Taxation Provisions, etc.) Decree No. 7 1975*, *Income Tax (Armed Forces and Other Persons) (Special Provisions) Decree No. 51 1972*.

The *Income Tax (Amendment) Decree No. 58 1968* amended the ITMA 1961 by taking into cognisance the profit or gains of businesses that were partly carried out in Nigeria by inserting immediately after section 5 a new section 5A which read thus:

- (1) where, in respect of any business carried on by any person it appears to the relevant tax authority that for any year of assessment, the business produces either no assessable income or an assessable income which in the opinion of the relevant tax authority is less than might be expected to arise from that business or, as the case may be, the true amount of the assessable income of that person from the business cannot be readily ascertained, the relevant tax authority may for that year of assessment, in respect of that business, and notwithstanding:
 - (a) if the whole of the operations of the business are carried on in Nigeria, assess and charge the person carrying on the business on such fair and reasonable percentage of the turnover of the business, as the relevant tax authority may determine;
 - (b) if only part of the operations of the business are carried on in Nigeria, assess and charge the person carrying on the business on such fair and reasonable percentage of that part of the turnover of the business on such fair and reasonable percentage of that part of the turnover of the business attributable to the operations carried on in Nigeria, as the relevant tax authority may determine;
- (2) as to notices of assessment, appeal and other proceedings shall apply to an assessment or additional assessment made under this section as they apply to assessment or additional assessment made under the Act.

- (3) In this section:
“business” includes any trade, profession or vocation;
“person” in relation to the carrying on of a business has the meaning assigned by section 2 of this Act but does not include a company”.

The main purpose of the *Income Tax Management (Amendment) Decree No. 35 1968* was to alter the composition and functions of the Joint Tax Board by substituting section 27 (2) of the ITMA 1961 as follows:

- (2) The Board shall consist of the following members
- a. one member, who shall be a member of the Federal Board of Inland Revenue as constituted under section 3 of the Companies Income Tax Act 1961 nominated either by name or office from time to time by the Federal Commissioner for Finance; and
 - b. one member for each state, being a person experienced in income tax matters nominated either by name or office from time to time by the Commissioner of the State in question charged with responsibilities for matters relating to income tax,
- and any nomination made pursuant to the foregoing provisions shall be evidenced by notice thereof in writing delivered to the secretary of the Board.

The *Income Tax Management (Amendment) Decree No. 24 1971* excluded individuals who were employed in the Nigerian armed forces in civilian capacity from the provisions of paragraph 3 (2) of the first schedule to the ITMA 1961. The paragraph provided as follows:

in the case of an individual other than an itinerant worker, tax for any year of assessment may be imposed only by the territory in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act.

The paragraph deemed persons employed in the armed forces to be resident in Lagos. By the amendment however, non-combatant employees of the armed forces became liable to income tax in the state in which they were actually resident as at the 1st day of April.

The *Income Tax Management (Amendment) Decree No. 41 1973* clarified the composition of the Joint Tax Board and appointed the chairman of the Federal Board of Inland Revenue as its permanent chairman. This amendment was achieved by the substitution of section 27 (2) with a new subsection which provided that:

- (a) the Chairman of the Federal Board of Inland Revenue appointed pursuant to section 3 of the Companies Income Tax Act 1961 and was required to be the Chairman of the Board; and
- (b) a representative from each state being a person experienced in income tax matters, and any nomination was required to be evidenced by a notice in writing delivered to the secretary of the Board.

Section 27 (7) was also amended and it provided that the chairman or any authorised representative was required to preside at all meetings of the Board and whenever there was no consensus in arriving at a decision by a majority vote of the members present, the chairman had a casting vote apart from his deliberative vote when there was a deadlock. The legal adviser of the Federal Board of Inland Revenue was required to be in attendance at Board meetings and was to serve as adviser to the Board by virtue of section 7A.

The *Income Tax Management (Uniform Taxation Provisions, etc) Decree No. 7 1975* amended both the ITMA 1961 and the *Income Tax (Armed Forces and Other Persons) (Special Provisions) Decree No. 51 1972* to provide uniformity in the taxation of the income of individuals throughout the country. Uniform income rates were also prescribed but state governments were empowered to retain any existing capitation, community development education, poll or other general tax or levy, and to vary them.

The *Income Tax Management (Uniform Taxation Provisions, etc) Decree No. 7 1975* amended the ITMA 1961 by the insertion of a new section 20A immediately after section 20. The new section provided that where under the income tax law of a territory, income tax was payable on the chargeable income of an individual, the amount of the chargeable income was to be the amount of the total income of that individual as ascertained under the ITMA 1961 after

the allowable deductions and exemptions have been taken into cognisance.²³¹ Section 20A (2) provided that every such individual was allowed a deduction of 600 naira. However, an individual who ordinarily resided in Nigeria or exercised any employment -the whole gain or profits of which were deemed to be derived from Nigeria -or is a person liable to tax under the *Income Tax (Armed Forces and Other Persons) Decree No. 51 1972* not being a person mentioned in section 1(1) (d) was allowed:

- a. a deduction of three hundred naira for a married man who in the preceding year had a wife, or a deduction of any alimony not exceeding three hundred naira paid to a former spouse under an order of a court of competent jurisdiction where the marriage has been dissolved;
- b. a deduction of two hundred and fifty naira in respect of each unmarried child, who on the first day of the preceding year had not attained sixteen years of age or was receiving full time instruction in a recognised educational establishment or was under articles or indentures in a trade or profession provided a husband or wife which were not formally separated were treated as one individual and the deduction was allowed for only four children. More so, where the maintenance of a child was shared by two or more persons, the relevant tax authority was required to apportion the deduction allowed.
- c. a deduction of cost incurred in maintaining a close relative , spouse or widowed mother who was either incapacitated by old age or infirmity , provided that:
 - i. no deduction was allowed in respect of any relative whose income of the year preceding the year of assessment exceeded six hundred naira;
 - ii. the aggregate of all deductions to be allowed to two or more individuals in a given year did not exceed four hundred naira in respect of one relative and where the cost incurred exceeded the sum, the amount of deduction allowed was the same proportion of the sum as the cost so incurred bears to the total of the cost incurred;

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- iii. the aggregate deductions for any one individual was not expected to exceed four hundred naira;
 - d. annual premium paid to an insurance company in the year preceding the year of assessment in respect of an insurance for life or spouse or contract for a deferred annuity provided that:
 - i. deductions were not allowed to insurance companies save premiums payable on policies securing a capital sum on death which was not to exceed ten per cent of the capital sum exclusive of any additional benefits;
 - ii. the aggregate amount of the deductions allowed under the provisions of:
 - a. this paragraph
 - b. paragraph (e) of subsection (1) of section 17 of this Act; and
 - c. in the case of an employee in paragraph (f) of subsection (1) of section 17 of this Act;did not exceed two thousand naira in the case of an individual for any year of assessment;
 - iii. under the provision of this paragraph, the aggregate deductions allowed was not required to exceed an amount equal to one-fifth part of the total income of the individual for that year ; and
 - iv. the restrictions provided in sub-paragraphs (ii) and (iii) applied in the case of a husband and his wife or wives not formally separated as though they were one and the same individual whose total income for any one year of assessment was equal to the aggregate total income for that year of such husband and his wife or wives.

Subsection (4) provided that deductions allowed to an individual other than paragraph (a) of sub-section 3 (iii) was allowed an individual or any spouse of the individual not formally separated, but the aggregate of such deductions was not to be allowed such as would exceed the amount if they were treated individually. Where a deduction claimed in respect of a child or dependant for a given year of assessment, by both husband and wife exceeded the deductible amount allowed, the relevant tax authority was required to apportion the amount claimed as it deemed fit for deduction between the spouses in the course of ascertaining their separate chargeable income. Where a deduction was allowed to either a husband or

wife and was not claimed, it was required to be apportioned between them as decided by the relevant tax authority. The ITMA 1961 was further amended by the insertion of new sections 21A and 21B. Section 21A imposed tax on every person subject to tax under the law of any territory as provided for in the Seventh Schedule to the ITMA 1961.²³² The proviso to section 21A (1) provided that where the amount of the total income of a person exceeded the minimum amount specified in Table 1 in respect of a particular range of income, such a person was only liable to pay the income rate prescribed in respect of the next lower range of income plus not more than one half of the amount by which his income exceeded the minimum income of that range, subject to the maximum amount of applicable income rate. Subsection (2) provided that a territory was allowed to prescribe a general tax or levy instead of the income tax rates as specified in Table 1 of the Seventh Schedule to the ITMA 1961. The rates under Table 1 of the Seventh Schedule as provided in the amendment were four naira on total income not exceeding 1000 naira; eight naira on total income exceeding 1000 naira but not exceeding 2000 naira; and 20 naira on total income exceeding 2000 naira.

Section 21B provided that where income tax payable under the law of each territory on the chargeable income of an individual were to be ascertained in accordance with the provisions of the ITMA 1961, the rates were to be as specified in Table 2 of the Seventh Schedule. The rates in Table 2 were as follows:

<i>Income to be taxed</i>		<i>Rate of Tax</i>
For every naira of the first	₦2,000	10k per ₦.....10 percent
For every naira of the next	₦2,000	15k per ₦.....15 percent
For every naira of the next	₦2,000	20k per ₦.....20 percent
For every naira of the next	₦2,000	25k per ₦.....25 percent
For every naira of the next	₦2,000	30k per ₦.....30 percent
For every naira of the next	₦5,000	35k per ₦.....35 percent
For every naira of the next	₦5,000	40k per ₦.....40 percent
For every naira of the next	₦10,000	45k per ₦.....45 percent
For every naira of the next	₦30,000	50k per ₦.....50 percent

Several other amendments were made to ITMA through the instrumentality of sundry enactments up to 1993²³³ when the Personal Income Tax Decree was enacted to replace ITMA.

The *Personal Income Tax Decree No. 104 1993* is the current law regulating the administration of personal income tax in Nigeria and is retained as *Cap P8 Laws of the Federation of Nigeria 2004*.²³⁴ PITA is similar to previous income tax laws in all material respects. But in addition, it contains other provisions that are completely novel in the administration of personal income tax in Nigeria. The provisions on persons and incomes chargeable, deductions allowed, incomes exempted, assessment, returns, offences and double taxation arrangements are similar in substance to that under the ITMA and other erstwhile income tax legislations. The novel provisions under PITA relate to the establishment of tax authorities,²³⁵ the introduction of the Tax Clearance Certificate and the *Pay-As-You-Earn* scheme. A Tax Clearance Certificate (TCC) is required to be issued to a person who, in the last three years preceding the current year of assessment, has paid his tax in full, or is not liable to tax or on whose income no tax is due.²³⁶ Section 85 (2) empowers government ministries, departments or agencies (MDAs) or commercial banks to demand TCC from any person with whom they are involved in transaction(s) that come under the ambit of subsection (4). These transactions include:

- a. application for government loan for industry or business;
- b. registration of motor vehicle;
- c. application for firearms licence;
- d. application for foreign exchange or exchange control permission to remit funds outside Nigeria;
- e. application for certificate of occupancy;
- f. application for award of contracts by government or its agencies and registered companies;
- g. application for approval of buildings;
- h. application for trade licence;
- i. application for transfer of real property;
- j. application for import or export licence;
- k. application for agent licence;
- l. application for pools or gaming licence;

- m. application for registration as a contractor;
- n. application for distributorship;
- o. confirmation of appointment by government as chairman or member of a public board, institution, commission, company or to any other similar position made by government;
- p. stamping of guarantor's form for a Nigerian passport;
- q. application for registration of a limited liability company or of a business name;
- r. application for the allocation of market stalls;
- s. appointment or election into public office.

A Tax Clearance Certificate (TCC) must disclose in respect of the last three years the chargeable income; tax payable; tax paid and outstanding tax or in the alternative, a statement to the effect that no tax is due.²³⁷

The foundation on which the Pay-As-You-Earn (PAYE) system of tax administration is premised is the provisions of section 81 of the PITA. Under the provision, income tax chargeable on an employee by an assessment, whether or not the assessment has been made, shall, if the relevant tax authority so directs, be recoverable from any emolument paid, or from any payment made on account of the emolument, by the employer to the employee. Rate of tax under the Act is contained in the Sixth Schedule to the Act. The Schedule, which was revised by the *Personal Income Tax (Amendment) Decree No 19 of 1998*, is as follows:

For every naira of the first N20,000.....	5 kobo per naira (5 percent)
For every naira of the next N20,000.....	10 kobo per naira (10 percent)
For every naira of the next N40,000.....	15 kobo per naira (15 percent)
For every naira of the next N40,000.....	20 kobo per naira (20 percent)
For every income above N120,000.....	25 kobo per naira (25 percent)

The *Personal Income Tax Act* was also subject to series of amendments by virtue of various *Finance (Miscellaneous Taxation Provisions) Decrees*.²³⁸ The latest amendments are contained in the Personal Income Tax (Amendment) Act 2011 which was one of the nine tax reform bills submitted to the National Assembly by the President in November 2005. The Personal Income Tax (Amendment) Act 2011 amends/deletes 36 sections of the principal Act and also modifies the First, Second and Third Schedules to the Act. The major amendments introduced in 2011 are as follows:

- a. Sections 3 and 33 of the principal Act relating respectively to chargeable income and personal relief have been amended. In respect to chargeable income, pension has been removed as taxable income in line with the provisions of the Pension Reform Act.²³⁹ The amendment further clarifies that temporary employees are also taxable subjects under the Act.²⁴⁰ Regarding personal reliefs, Section 5 of the amendment replaces the personal relief of 5000 naira plus 20 percent of earned income that was available under Section 33 (1) of the principal Act with the Consolidated Relief Allowance, CRA. The CRA is to be computed at the rate of 200,000 naira or one percent of gross income, whichever is higher, plus 20 percent of gross income.
- b. Section 4 of the amendment Act modifies the conditions under which gains or profits derived from employment duties in Nigeria will be exempt from personal income tax as contained in Section 10 (1) (a) (i) to (iii). First, in addition to performing the duties on behalf of a non resident employer, the Act now requires that remuneration of the employee must not be *“borne by a fixed base of the employer in Nigeria.”* Second, the number of days spent on annual leave or temporary leave of absence is now to be factored in the computation of days spent by a non resident in determining if the overall period of stay in Nigeria amounts to 183 days. Third, the country in which the employee is liable to tax must now be one that operates an avoidance of double taxation agreement with Nigeria, for such an employee to be exempt from tax under the Act. Furthermore, paragraph (b) of subsection (1) of Section 10 of the principal Act has been replaced with a new paragraph which deems income or gain of employment to be derived from Nigeria if *“the employer is in Nigeria, or has a fixed base in Nigeria.”* This new paragraph therefore, expands the definition of an employer to include a non resident with a fixed base in Nigeria.

In the light of the foregoing amendments, subsection (5) of Section 10 of the principal Act became redundant and has been deleted from the statute. The deleted subsection read that *“subject to the foregoing provisions of this section, the gain or profit from any employment, the duties of which are mainly performed outside Nigeria, shall be deemed to be derived from Nigeria to the extent that those duties are performed in Nigeria.”*

- c. A new subsection (6) has been added to Section 36 of the principal Act empowering the Finance Minister under a “presumptive tax regime” to issue regulations for the purposes of assessing the income of taxpayers who either fail to keep records or whose records are inadequate to enable a proper assessment of income.²⁴¹

- d. The rate of minimum tax under Section 37 of the principal Act has been increased from 0.5 percent to one percent of gross income.²⁴²
- e. A new subsection (1) has been introduced by the amendment Act to replace subsection (1) of Section 38 of the principal Act. Under the old subsection, once the Finance Minister issued an order to the effect that “arrangements” were concluded with the government of a named country in relation to offering relief from double taxation, specifying that it was expedient for the said “arrangements” to have effect, the “arrangements” became effective notwithstanding anything contained in any enactment. However, by Section 8 (ii) of the 2011 amendment Act, the power to enter into avoidance of double taxation agreements with foreign countries is now vested in the Government of the Federal Republic of Nigeria and the agreement shall have effect only after ratification of same by the National Assembly. Further, “agreement” now replaces “arrangements” wherever the word appears in the section.
- f. Penalties for failure to keep proper books of accounts have been included in the body of Section 52 of the principal Act to apply to taxpayers other than those in salary employment. The penalty is 50,000 naira for individuals and 500,000 naira for corporations.²⁴³
- g. Service of notice of assessment can, in addition to registered post as contained in Section 57 of the principal Act, be made by either courier or electronic mail.²⁴⁴
- h. Resolution of disputes arising from the operation of the Personal Income Tax Act is now vested in the Tax Appeal Tribunal rather than the erstwhile Body of Appeal Commissioners established under Section 60 of the principal Act.²⁴⁵ In consequence, Sections 61 to 67 of the principal Act relating to the procedure of the Body of Appeal Commissioners have also been repealed by Section 15 of the amendment Act.
- i. Section 74 of the principal Act which relates to penalties for failure to deduct and remit withholding tax has been replaced with a new provision that introduces amendments in three respects. First, a person who fails to deduct withholding tax on a qualifying transaction is still liable to 10 percent of the tax not deducted or remitted but this liability is no longer tied to the prior conviction of the taxpayer. Second, interest for non remittance or late remittance of withholding tax is now based on the prevailing Central Bank of Nigeria monetary policy rate. This is more easily determinable than the “prevailing commercial rate” under the old section. Third, the Accountant General of the Federation is now empowered to recover at source unremitted taxes owed by

- Ministries, Departments and Agencies (MDAs) from the budgetary allocation due to such MDAs.²⁴⁶
- j. Interest for late payment of personal income tax will now be computed on annual basis as opposed to the simple interest basis that previously applied.²⁴⁷
 - k. Section 20 of the amendment Act has introduced three new subsections (2) to (4) to Section 81 of the principal Act, and renumbered the old subsections (2) to (6) as subsections (5) to (9) accordingly. The substance of the three new subsections is that every employer is required to file a return with the relevant tax authority not later than 31st January of every year, all emoluments paid to its employees in the preceding year. Penalty for non compliance is 500,000 naira in cases of corporate employers and 50,000 naira in cases of individual employers.
 - l. Section 21 of the amendment has introduced new requirements in respect of Tax Clearance Certificate, TCC. First, in addition to the information required by Section 85 (3) taxpayer identification number is now also to be stated on the TCC. Second, in addition to the transactions listed under subsection (4) of Section 85, a TCC is also now required for change of ownership of vehicle by the vendor; application for plot of land; and any other transaction as may be determined from time to time. Third, the penalty for obtaining a TCC through misrepresentation or fraud has been increased from 500 naira to 500,000 naira. Finally, a new subsection (9) has been added to Section 85. The new subsection provides that any MDA or corporation which being obligated by the provisions of Section 85 (2) to demand a TCC in respect of any of the transactions listed in subsection (4) fail to so demand is guilty of an offence and punishable on conviction to a fine of 5000,000 naira or three years imprisonment or both.
 - m. The appointment of Secretary to the Joint Tax Board, hitherto vested in the Federal Civil Service Commission by Section 86 (3) of the principal Act is now, by virtue of Section 22 (c), vested in the Joint Tax Board itself.
 - n. Any director outside the State Service can be appointed as a member of a State Board of Internal Revenue established under Section 87 of the Act. Hitherto, only directors within the State Service could be appointed. Also, the “three other persons” to be nominated on personal merit is now the prerogative of the State Governor and no longer the Finance Commissioner; and the three must be selected to represent each senatorial district in the State.²⁴⁸

- o. Section 24 of the amendment Act introduces a proviso to Section 88 (1) (b) which requires that States Boards of Internal Revenue shall now be funded by cost of collection mechanism of not less than five percent.
- p. The threshold for penalties has been increased throughout the Act. The general penalty in Section 94 (1) has been increased from 200 naira to 5000 naira; and in the case of failure to keep records or furnish required returns or information, the penalty has been increased from 40 naira to 100 naira for each day the failure subsists. Second, the penalty for making an incorrect return is now 20,000 naira fine instead of 10 percent of the correct tax as was originally provided under Section 95 of the Act. Third, the penalty for an offender under Section 96 has been increased from 5000 naira to 50,000 naira in the case of an individual or 500,000 naira in the case of a corporation. The Section relates to an offender who for the purpose of obtaining a set-off or relief makes a false representation in a return, statement or account as well as an abettor who aids in the above offence. Finally, the penalty for offences against an official who misuses his position or an unauthorised person who impersonates a tax official under Section 97 of the principal Act has been increased from 1000 naira to 10,000 naira.²⁴⁹
- q. Section 29 of the amendment Act provides for a new Section 104 to replace the previous section under the principal Act. The section relates to powers conferred on tax authorities to distrain the property of a taxpayer who refuses to pay tax, after the assessment has become final and conclusive and a demand notice has been served but the taxpayer still defaults. The new section introduces three new dimensions to the power to distrain that were not contained under the old provision. First, the power to levy distress is now exercisable only after an *ex parte* application has been made and granted by a Judge of the High Court sitting in chambers. Second, the tax authority is now obliged to refund to the taxpayer any excess monies realised from the sale of distressed property after the tax owed and incidental costs are recovered. This refund, where applicable, is to be made 30 days after the sale and where the taxpayer cannot be traced, the excess is to be refunded to the court that granted the order to distrain. Under the old provision, refund of excess money was based on demand made by the taxpayer within one year from the date of sale of the distrained property. Finally, the new provision specifically confers powers on the tax authority to levy the property of a recalcitrant taxpayer wherever it may be found in Nigeria.
- r. A new Section 106A has been introduced immediately after Section 106 of the principal Act. The new section empowers the Finance Minister, on the recommendation of the

Joint Tax Board, to make regulations for giving effect to the provisions of the Personal Income Tax Act. Second, it empowers the National Assembly, on the proposal by the President, to impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable under the Act.²⁵⁰

- s. The meaning of “itinerant worker” under Section 108 of the principal Act has been redefined.²⁵¹ The old definition referred to “an individual who works at any time during a year of assessment (other than as a member of the armed forces) for a daily wage or customarily earns his livelihood in more than one place in Nigeria and whose total income does not exceed N600.” The new provision makes away with the 600 naira threshold but introduces another threshold that the person must have worked in more than one State for a minimum of 20 days in at least three months of every assessment year.
- t. Paragraph 1 of the First Schedule to the Act which has to do with determination of residence has been amended by the addition of a new subparagraph which states that “in the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situate: Provided that operational site shall include Oil Terminals, Oil Platforms, Flow Stations, Factories, Quarries, Construction Site with minimum of 50 workers, etc.”²⁵²
- u. Paragraphs 2 and 3 of the Third Schedule to the principal Act which had to do with incomes exempted have been deleted. The implication is that the official emoluments of the President, Vice President, Governors and Deputy Governors which were exempted under those paragraphs are now taxable. Furthermore, Paragraph 7 of the principal Act has been replaced with a new paragraph. The old paragraph exempted interest on loans granted after 1st January 1997 to a person engaged in agricultural trade or business; fabrication of any local plant or machinery; or as working capital for cottage industry established under the Family Economic Advancement Programme; provided the moratorium was not less than 18 months and the rate of interest was not more than base lending rate at the time the loan was granted. The new provision now exempts income earned from bonds issued by any tier of government and corporations as well as interest earned by holders bonds and short term securities.²⁵³
- v. Finally, the amendment Act has provided for a new income tax table to replace the old table contained in the Sixth Schedule to the principal Act. Under the new table, the first 300,000 naira is taxable at seven percent; the next 300,000 naira at 11 percent; the next

500,000 naira at 15 percent; the next 500,000 naira at 19 percent; the next 1,600,000 naira at 21 percent and above 3,200,000 naira at 24 percent. The new Schedule specifies the National Housing Fund contribution; the National Health Insurance Scheme contribution; Life Assurance Premium; the National Pension Scheme; and gratuities are tax exempt deductions.

The amendment Act was passed by the House of Representatives on 25 May 2011; the Senate on 1 June 2011 and came into force on 14 June 2011 which was the date Presidential Assent was given.

Petroleum Profits Tax

The discovery of crude oil in commercial quantities at Oloibiri²⁵⁴ in 1956 and the eventual commencement of operations by Shell Petroleum made it pertinent to impose tax on profits derived from petroleum operations. This led to the enactment of the first petroleum profits tax legislation in Nigeria in 1959 in the form of the *Petroleum Profits Tax Ordinance No. 15 1959*. The long title of the Ordinance is *'An Ordinance to impose a tax upon profits from the winning of petroleum in Nigeria, to provide for the assessment and collection thereof and for purposes connected therewith.'* The ordinance, which is deemed to be an Act of the National Assembly, came into force on the 1st day of January 1958 and its application is throughout the federation. It is now Cap P13 Laws of the Federation of Nigeria 2004.

Section 3 vests the administration of the ordinance and the management of tax collected under it in the *Board*, which is defined by section 2 as the *Federal Board of Inland Revenue*.²⁵⁵ The section further lists the powers and duties of the Board. By virtue of section 4, an act required to be done by the Board in relation to its powers and duties can be signified under the hand of the chairman of the Board or any officer of the Board authorised by the Board. Section 5 imposes a duty of official secrecy on any person involved in the administration of the Act. The duty of secrecy relates to documents involved in tax administration and can only be waived with authorization by the minister or for the purpose of the Act or other law relating to income in force in Nigeria. Subsection (3) further excludes any such document or information from being tendered or communicated in court in any proceedings other than for the purpose of carrying out the provisions of the Act, or to institute prosecution. The Board can however permit the Auditor - General for the federation (as the successor to the director of federal audit, who had the original power under the principal Ordinance) or an officer authorised by him access to any records or documents as may be necessary in the

performance of his duties. The power to make rules generally for the carrying out of the provisions of the Act is vested in the minister while the Board is empowered to specify the form of returns, claims, statements and notices to be used under the Act.²⁵⁶ Service of notices is to be effected at the registered office of the company to be served in the case of companies registered in Nigeria; and on the individual authorised to accept service in the address filed with the Registrar-General of the Corporate Affairs Commission,²⁵⁷ or the registered office of the company wherever it may be in the case of a company registered outside Nigeria.

Taxation of petroleum profits is imposed by section 8 of the ordinance in the following terms:

There shall be levied upon the profits of each accounting period of any company engaged in petroleum operations during that period, a tax to be charged, assessed and payable in accordance with the provisions of this Act.

Petroleum operations pursuant to the Act amount to:

the winning or obtaining and transportation of petroleum or chargeable oil in Nigeria by or on behalf of a company for its own account by any drilling, mining, extracting or any other like operations or process, not including refining at a refinery, in the course of a business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or disposal of chargeable oil by or on behalf of the company.²⁵⁸

In ascertaining the profits of a company involved in petroleum operations, section 9 distinguishes profits, adjusted profits, assessable profits and chargeable profits. By section 9 (1) *profits* of a company within any accounting period shall be taken to be the aggregate of:

- a. the proceeds of sale of all chargeable oil sold by the company in that period;²⁵⁹
- b. the value of all chargeable oil disposed of by the company in that period; and
- c. all income of the company of that period incidental to and arising from any one or more of its petroleum operations.

Subsection (2) defines 'the value of all chargeable oil so disposed' to mean the aggregate of:

- a. 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 arrangement between the Federal Government of Nigeria and the company;²⁶⁰
- b. any cost of extraction of that oil deducted in determining its value; and
- c. any cost incurred by the company in transportation and storage of that oil between the field of production and the place of its disposal.

The *adjusted profits* of a company in an accounting period are defined as ‘the profits of that period after deductions allowed by subsection (1) of section 10 of this Act and any adjustments to be made in accordance with the provisions of section 14 of this Act’.²⁶¹ The deductions allowed under section 10 (1) of the original decree were:

- a. any rents (other than rents included in the definition of royalties) incurred by the company for that period in respect of land or buildings occupied for its petroleum operations or compensation incurred for disturbance of surface rights or any like disturbance under an oil prospecting licence or oil mining lease;
- b. sums incurred by way of interest upon money borrowed by the company where the interest was payable on capital employed in carrying out petroleum operations; (however, such sums would not be allowed as deductions if either company has interest in the other company; or both companies have interests in a third company directly or by proxy; or both companies are subsidiaries of one mother company)
- c. any expense incurred for the repair of premises, plant, machinery, or fixtures employed for the purpose of carrying on petroleum operations or for the renewal, repair or alteration of any implement, utensils or articles so employed;
- d. debts directly incurred to the company and proved to the satisfaction of the Board to have become bad or doubtful within the accounting period in question notwithstanding that the said debts were due prior to the commencement of the accounting period; provided the deduction allowable as doubtful debt shall neither exceed the portion of debt proved to have become doubtful within that accounting period nor include any amount deducted in determining the adjusted profit of a previous accounting period. Further to the proviso above, all sums recovered by the company within a particular accounting period respecting which deductions were previously allowed shall be treated as income of the company *incidental* to its operations; and finally, the debts for which deductions are claimed must have been included as profits resulting from operations during the accounting period in which

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- such debts were incurred or advances made in the normal course of petroleum operations;
- e. any expenditure directly incurred in connection with drilling an appraisal well but does not include qualifying plant or building expenditure for the purpose of the Second Schedule to the ordinance; or sums deductible under sections 10 and 17;
 - f. any contribution to a pension, provident or other society, scheme or fund as the Board may approve; provided that any sum received by or the value of any benefit obtained by the company from any approved pension, provident, scheme or fund in an accounting period shall be treated as income of the company *incidental* to its operations;
 - g. such other deductions as may be allowed under any rule made pursuant to the ordinance.

By the combined effect, mostly of the *Finance (Miscellaneous Taxation Provisions) Decrees Nos. 30 1996, 31 1996 and 30 1999* the following deductions also became allowable under section 10:

- a. rents incurred by the company for that period in respect of land or buildings occupied under an oil prospecting licence or an oil mining lease for disturbance of surface rights or for any other like disturbance;
- b. all non-productive rents, the liability for which was incurred by the company during that period;²⁶²
- c. all royalties, the liability for which was incurred by the company during that period in respect of natural gas sold and actually delivered to the Nigerian National Petroleum Corporation, or sold to any other buyer or customer or disposed of in any commercial manner;
- d. all royalties the liability for which was incurred by the company during that period in respect of crude oil or of casinghead petroleum spirit won in Nigeria;
- e. all sums the liability for which was incurred by the company to the Federal Government of Nigeria during that period by way of customs or excise duty or other like charges levied in respect of machineries, equipment and goods used in the company's petroleum operation
- f. all sums incurred by way of interest on any inter-company loans obtained under terms prevailing in the open market, that is the London Inter-Bank Offer Rate, by companies that engage in crude oil production operations in the Nigerian oil industry;

- g. any other expenditure, including tangible drilling costs directly incurred in connection with drilling and appraisal of a development well, but excluding an expenditure which is a qualifying expenditure for the purpose of the Second Schedule to this Act, and any expense or deduction in respect of a liability incurred which is deductible under any other provision of this section-
- (i) any expenditure (tangible or intangible) directly incurred in connection with the drilling of an exploration well and the next two appraisal wells in the same field whether the wells are productive or not;
 - (ii) where a deduction may be given under this section in respect of such expenditure that expenditure shall not be treated as qualifying expenditure for the purpose of the Second Schedule;
- h. all sums, the liability of which was incurred by the company during that period to the federal government, or state government or local government by way of duty, customs and excise duties, stamp duties, education tax or any other tax imposed other than by the PPTA or any rate, fee or charge.²⁶³

In addition, where a company engaged in petroleum operations is engaged in the transport of chargeable oil by ocean going oil tankers operated by or on behalf of the company from Nigeria to another territory, such adjustments shall be made in computing an adjusted profit or loss as shall effectively exclude therefrom any profit or loss attributable to such transportation.²⁶⁴

By section 2, accounting period is defined as:

- (a) a period of one year commencing on 1 January and ending on 31 December of the same year; or
- (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 31 December of the same year; or
- (c) any period of less than a year being a period commencing on 1 January of any year and ending on the date in the same year when the company ceases to be engaged in petroleum operations.

The foregoing definition of accounting period was introduced by the *Petroleum Profits Tax (Amendment) Decree No. 15 1973* to replace the original definition of accounting period under the principal ordinance. Under the principal ordinance, accounting period meant:

- (a) a period of twelve months commencing on the date of the first sale or bulk disposal of chargeable oil by or on behalf of the company, whichever shall be earlier, or commencing on such date within the calendar month in which such event occurs as may be selected by the company with the approval of the Board; or
- (b) such shorter period commencing as aforesaid and ending either on a date selected by the company with the approval of the Board or on the date when the company ceases to be engaged in petroleum operations; or
- (c) each subsequent period of twelve months during which the company is engaged in petroleum operations; or
- (d) any period of less than twelve months, being a period commencing on the day following the end of any such period of twelve months and ending on the date when the company ceases to be engaged in petroleum operations as the case may be and in the event of any dispute with respect to the date of the first bulk disposal of chargeable oil the Chief Inspector of Mines of the Federation shall determine the same and no appeal shall lie therefrom.²⁶⁵

Section 9 (4) defines *assessable profits* of an accounting period as ‘the adjusted profit of that period after any deduction allowed by section 20 of this Act’. Section 9 (5) defines *chargeable profits* of an accounting period as ‘the assessable profits of that period after the deduction allowed by section 20 of this Act’. Similarly, section 20 (1) defines the *chargeable profits* of an accounting period of a company as ‘the amount of assessable profits of that period after the deduction of any amount to be allowed in accordance with the provisions of this section’. The deductions allowed under section 20 are contained in subsections (2) and (4). Under subsection (2) the deductions allowed are the aggregate amount of all allowances due to the company for the accounting year under the provisions of the Second Schedule. The allowances allowed under the provisions of the Second Schedule are:

- a. *Petroleum Investment Allowance*: qualifying expenditures allowed a company in an accounting period in respect of an asset used wholly and exclusively by the company in petroleum operations. The deduction allowable is in respect of the accounting year in which the asset is first used.

- b. *Annual Allowances*: qualifying expenditure allowed a company in an accounting period in respect of an asset used wholly and exclusively for petroleum operations, whether or not an initial allowance may be due to it. If the accounting period is less than a year, the allowance for the period shall be proportionately reduced.
- c. *Balancing Allowances*: qualifying expenditure allowed a company in an accounting period in respect of an asset, which immediately prior to its *disposal*, was wholly and exclusively used for petroleum operations. The allowable deduction is the excess of the residue of that expenditure over the value of the asset, at the date of its disposal.

The deduction allowed under subsection (4) is a sum equal to 85 percent of the assessable profits of the accounting period, less 170 percent of the total amount of the deductions allowed under section 17 of the Act for that period. The limitation imposed by subsection (4) shall be applied to ensure that the amount of tax chargeable on the company for the accounting period shall not be less than 15 percent of the tax which would be chargeable on the company for the period, were no deductions allowed under section 20 for that period.²⁶⁶ Subsection (5) requires that where the total amount of the allowances computed pursuant to subsection (2) cannot be deducted for reasons of insufficiency of assessable profits; or no assessable profits; or the limitation imposed by subsection (4), the total amount or part thereof that has not been deducted shall be added to the aggregate amount of allowances due to the company under the Second Schedule for the subsequent accounting period and shall be deemed to be allowances due to the company for the said subsequent accounting period.

In determining the *adjusted profits* of a company in any accounting period, no deductions shall be allowed in respect of:

- a. disbursements or expenses not wholly and exclusively incurred in regard to petroleum operations;
- b. capital withdrawn or any sum employed or intended to be employed as capital;
- c. capital employed in improvements distinct from repairs;
- d. sums recoverable under an insurance or contract of indemnity;

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- e. rent or cost of repairs to any premises not engaged for the purposes of petroleum operations;
 - f. amounts incurred in respect of any income tax, profits tax or other similar tax whether charged within Nigeria or elsewhere;
 - g. depreciation of any premises, buildings, structures, works of a permanent nature, plant, machinery or fixtures;
 - h. payments to any provident fund, savings, widows' and orphans' society, scheme or fund except as allowed under section 10 (1) (k);
 - i. any customs duty on goods (including articles or any other thing) imported by the company either for resale or personal consumption of employees of the company; or where goods of the same quality to those so imported are produced in Nigeria and are available, at the time the imported goods were ordered by the company for sale to the public at prices less or equivalent to the cost to the company of the imported goods;
 - j. any expenditure for the purchase of information relating to the existence and extent of petroleum deposits.

Paragraphs (i) and (j) above were inserted respectively by the *Finance (Miscellaneous Taxation Provisions) Decree No. 31 1996* and the *Petroleum Profits Tax (Amendment) Decree No. 15 1973*. The two paragraphs were not in the principal ordinance rather, another deduction that was not allowed under the principal ordinance but which was repealed by the 1996 decree was royalty or other sums deductible in ascertaining chargeable tax payable under section 17 of the said ordinance.

Assessable Tax and Chargeable Tax

The Act further distinguishes between *assessable tax* and *chargeable tax*. *Assessable tax* for an accounting period is defined by section 21 (1) as “*an amount equal to 85% of its chargeable profits of that period.*” This is a modification of section 16 of the principal Ordinance which originally defined *assessable tax* to be an amount equal to 50 percent of the company's *chargeable profits* for that period. The 85 percent rate was introduced in 1977 by the *Petroleum Profits Tax (Amendment) Decree No. 55 1977*. Similarly, while under section 17 (1) of the original provisions of the principal Ordinance, a company's *chargeable tax* was “*the amount of its*

assessable tax for that period after the deductions allowed by this section.” The deductions allowed were:

- a. all royalties, the liability for which was incurred by the company during that period in respect of chargeable oil won during that period;
- b. all sums, the liability for which was incurred by the company during that period to any government, provincial or local authority in Nigeria by way of duty, tax (other than the tax imposed under this Ordinance) or any rate, impost, fee or other charge.

The *Finance (Miscellaneous Taxation Provisions) Decree No. 30 1999* however repealed the above provisions and in its place makes the following provisions on *chargeable tax*:

- (1) A crude oil producing company which executed a Production Sharing Contract with the Nigerian National Petroleum Corporation in 1993 shall, throughout the duration of the Production Sharing Contract, be entitled to claim an investment tax credit allowance²⁶⁷ as an offset against tax in accordance with the provision of the production Sharing Contract.
- (2) The investment tax credit rate applicable to the contract area shall be 50% flat rate of chargeable profit for the duration of the Production Sharing Contract.
- (3) In computing the tax payable, the investment tax credit shall be applicable in full to petroleum operations in the contract area such that the chargeable tax is the amount of the assessable tax less the investment tax credit.
- (4) The chargeable tax computed under subsection (3) of this section shall be split between the Nigerian National Petroleum Corporation and the crude oil producing company in accordance with the proportion of the percentage of profit of oil split.

Only companies are chargeable to tax under the Act because the law does not envisage that individuals or partnerships may engage in petroleum operations. Indeed, it is unlawful for individuals and partnerships to engage in petroleum operations, going by the provisions of section 24 (1). Subsection (2) empowers the minister to make rules governing the tax liabilities of companies engaged in petroleum operations as partners including the ascertainment of their assessable tax but by subsection (6) no such rules may impose a greater tax on a company in partnership than, but for the partnership, it ordinarily would have been liable to pay under the Act. The *Petroleum Profits Tax (Amendment) Decree No.1 1967* introduced certain circumstances under which a company may be liable to additional

chargeable tax. The circumstances, now codified as section 23, provide that an additional chargeable tax shall be payable where the amount of chargeable tax payable by a company for an accounting period, calculated in accordance with the provisions of the Act, is less than the amount mentioned in subsection (2) of section 23. The amount referred to is the amount which the chargeable tax of a company within an accounting period would have come to, if in the case of crude oil exported from Nigeria, the reference in section 9 (1) (a) to the proceeds of the sale thereof were a reference to the amount obtained by multiplying the number of barrels of that crude oil by the relevant sum per barrel. The relevant sum per barrel of crude oil exported by a company is the posted price applicable to that crude oil reduced by such allowances, if any, as may from time to time be agreed in writing between the federal government and the company.²⁶⁸

A non-resident company carrying on petroleum operations in Nigeria is liable to tax either directly or in the name of its manager or other person employed in the management of the company's operations and such a person is liable to do all matters required for the assessment and payment of tax under the Act.²⁶⁹ Section 26 imposes a similar obligation on the manager or principal officer of a resident company. Where a company is being wound up or is under a receivership, the company shall be assessed and charged in the name of the liquidator, who shall be answerable for doing all acts required for the assessment of tax under the Act.²⁷⁰ The tax liability of such a company shall take precedence over claims by creditors and shareholders.²⁷¹ Where a company transfers a substantial portion of its assets for the purpose of avoiding tax for an accounting period ending prior to such transfer, section 28 provides that the Board may sue the purchaser for recovery of the tax assessed and charged on the company. Section 29 indemnifies any person who being answerable to tax on behalf of a company retains money in his possession or under his *de facto* control as shall be sufficient to pay tax as assessed and charged on the company.

Section 30 (1) obliges every company engaged in petroleum operations to prepare particulars of profits and loss accounts for each accounting period. The particulars of the accounts shall include:

- a. its estimated adjusted profits or loss and its estimated assessable profits of that period;

- b. the residues of its assets for the period, all qualifying petroleum expenditure, the values of disposed assets within the period and allowances due to the company pursuant to the provisions of the Schedule;
- c. its estimated chargeable profits for the period;
- d. a statement of all royalties and other sums deductible under section 22, the liabilities for which were incurred for that period;
- e. a statement of all amounts refunded, repaid, waived or released to it within that period in line with section 20 (5);
- f. its estimated tax for that period

The Board is empowered to call for books, documents or further particulars after a notice of twenty one days on the company, for the purposes of examining such books where the Board requires such examination in order to obtain full information in respect of the company's operations. The Board may further give directions to a company which either keeps no books or keeps inadequate books requiring it to keep such books and accounts in such form and language as the Board may decide.²⁷² A company is required by section 33 to make a return of its estimated tax within two months after the commencement of an accounting period. Subsection (2) allows a company to submit a further return where after complying with subsection (1), the company becomes aware of a need to revise the return already submitted.²⁷³

The Board may accept the returns as delivered by the company and proceed to assess the company on the basis of its returns or refuse the returns and proceed to assess the company on its own estimation in line with section 35 (3), as if the company failed to deliver returns. Furthermore, by section 36 where the Board is of the opinion that a company liable to tax under the Act did not pay tax or paid less tax than it ought to have paid, the Board may within six years from the date of the end of that accounting period assess the company at such amount or additional amount as in the opinion of the Board ought to have been charged. An assessment shall be in a form and manner as the Board may authorise but in any event, shall contain the name, address, the relevant accounting period and the amounts of chargeable profits, assessable tax and chargeable tax for the period. An amended assessment shall contain all the above information including the amended or revised amounts and every assessment or amendment thereto shall be filed in a list to be known as an *Assessment List*.²⁷⁴

Notices of assessment are required to be served either personally or by post to all companies whose names are contained on the assessment list. The notice of assessment is required to state the relevant accounting period, the amounts of the company's chargeable profits, assessable tax and chargeable tax, the place at which the tax should be paid and the right of the company to object to the amount assessed. A company that disputes the assessed amount shall within twenty one days from receipt from the notice of assessment (or such longer period as the Board may for good reason grant) apply to the Board for review, stating the amount of chargeable profits of the company within the accounting period as well as its assessable tax and the amount which in its opinion should have been stated in the notice. Upon receipt of the objection, the Board may request for further particulars including evidence on oath. Where the company and the Board agree on the amount of tax liable to be assessed, the assessment shall be made amended accordingly and notice of the tax payable served on the company. However, where the parties fail to agree, the Board may revise the amount as it deems and shall serve on the company the revised amendment together with notice of refusal to amend the assessment as desired by the company.²⁷⁵ An assessment shall not be deemed void or incompetent for reason of a mistake, defect or omission so long as the company assessed is designated therein according to common intent and understanding.²⁷⁶

The procedure for appeals under the Act is contained in section 41. A company that receives a notice of refusal to amend may within 30 days (or such longer period not exceeding 60 days, as the Board may for good reason allow) appeal by notice to the Secretary of the Appeal Commissioners. The notice of appeal shall contain:

- a. the official number of the assessment and the relevant accounting period
- b. the amount of tax charged under the assessment
- c. the date on which the appellant was served with notice of refusal to amend
- d. the precise grounds of appeal
- e. an address for service of any notices

All appeals are required by subsection (6) to be conducted *in camera* and subsection (7) empowers the minister to make rules governing the appeal procedure. Further appeal by any aggrieved party from the decision of the Body of Appeal Commissioners lies to the Federal High Court.²⁷⁷

Where there is a dispute as to the amount of tax to be paid, collection of tax or the part thereof that is in dispute shall be in abeyance until the determination of the dispute.²⁷⁸ In the absence of a dispute however, tax for an accounting period of 12 months shall be payable in 12 instalments. The first instalment shall be payable not later than the third month of the accounting period and shall be an amount equal to one-twelfth of the estimated tax as envisaged by section 33 (1). The remainder of the monthly payments shall be payable not later than the last day of the month in question and shall be an amount equal to the amount of tax estimated to be chargeable for such period by reference to the latest returns submitted in accordance with section 33 (2) less so much as has already been paid divided by the number of such monthly payments as are outstanding in the accounting year. The final instalment shall be payable within 21 days after the service of the notice of assessment of tax for such accounting period and shall be the amount assessed for the period less so much as has been paid in the initial instalments.²⁷⁹ This position differs from the original position under the principal Ordinance where petroleum profits tax was payable in four instalments with the first payment accruing not later than the last day of the ninth month, the second instalment not later than the last day of the accounting period and the third instalment not later than last day of the third month following the expiry of the accounting period. The last instalment was payable within 21 days after the service of the notice of assessment of tax for such accounting period, and the amount payable was such amount as assessed less so much as had been paid in the first three instalments.²⁸⁰ This change in the mode of payment was made by the *Petroleum Profits Tax (Amendment) Decree No. 15 1973*.

By the provisions of section 46 (1) and (2), failure to pay an instalment of tax at the time it is due makes the company liable to pay in addition to the due amount, a further amount equal to five percent of the instalmental amount due. Under the principal ordinance, this penalty was at the discretion of the Board but the *Petroleum Profits Tax (Amendment) Decree No. 15 1973* introduced the word *shall* in paragraph (a) of subsection (1) to section 46 thereby making it mandatory for the Board to impose the 5 percent penalty in the event of default in payment of tax by a company. The Board shall further serve a demand notice on such a company and if within one month after the service of the notice the company fails to pay, the said company shall be guilty of an offence and the Board shall in addition to the penalty prescribed sue to enforce payment. Section 48 empowers the Board to sue for recovery of tax in its name in a court of competent jurisdiction (including magistrate court, if the amount to be recovered is not in excess of its jurisdiction) and the amount recovered is a

debt due to the federal government. Section 49 provides for relief to be given to a company in respect of an excessive assessment owing to an error in the accounts or particulars supplied to the Board. Similarly, section 50 (1) provides for repayment (refund) of tax but in both cases the application must be made within six years from the expiry of the accounting period to which the application relates. Further, while the decision of the Board in respect of an application for relief is final and conclusive, the Board's decision in case of repayment is subject to the appeal procedure prescribed in sections 41 and 42.

Sections 51-55 create different offences under the Act and spell various penalties. The offences include failure to comply with the requirements of a notice, willful making of incorrect accounts, wilful making of false statements and returns, misconduct by tax officials and unauthorised administration of tax. The *Finance (Miscellaneous Taxation Provisions) Decree No. 31 1996* added another category of offence to include failure to deduct withholding tax where same ought to have been deducted under section 56 or where having been deducted, the company fails to make remittance to the Board.²⁸¹ Section 56 complements the provisions of section 54 by requiring a company to whom the Act applies to withhold tax (i.e. at-source deduction) when making payment to any company, partnership or person that provides services to it whether or not such company, partnership or person is resident.

Sections 60 - 63 contain miscellaneous provisions. Section 60 precludes the Personal Income Tax Act or any other Act in respect of any income or dividends from taxing income or dividends paid out of profits, which are taken into account under the provisions of the Act.²⁸² Section 61 vests in the minister the power to make rules for carrying out the provisions of any arrangements on double taxation that may be entered into with another country.²⁸³ Section 62 contains provisions on the method of calculating relief to be allowed under a double taxation arrangement. Section 63 vests the minister with the power to amend the First Schedule to the Act. The First Schedule contains powers and duties to be exercised exclusively by the Board and under the principal Ordinance the power to amend the Schedule was vested in the Governor-General. Finally, the Second Schedule contains capital allowances, including rates of qualifying expenditure, petroleum investment allowance, annual allowances and balancing allowance.

The foregoing analysis of the *Petroleum Profits Tax Act* takes into consideration the amendments passed since the enactment of the principal Ordinance. Most of the amendments currently

in force were done by virtue of various Finance (Miscellaneous Taxation Provisions) decrees passed between 1991 and 1999 some of which have already been highlighted. One major amendment which deserves an independent analysis is the *Petroleum Profits Tax (Amendment) (No. 3) Decree No. 95 1979*. This decree is fundamental for the reason that it brought natural gas operations within the purview of petroleum operations and amended the principal ordinance in certain areas to reflect this development. A new provision was inserted requiring 'the value of all chargeable natural gas' to be included as part of the aggregate factors to be taken into account in determining the profits of a company in an accounting period.²⁸⁴ Decree No. 19 of 1998 even introduced incentives for the utilisation of associated gas which incentives, together with the conditions for their application, are now contained in subsections (1) and (2) respectively of section 11.

In 2005, the *Petroleum Profits Tax (Amendment) Bill* was sent to the National Assembly as an executive bill along with eight other tax related bills. About the same time, the organised private sector was lobbying the National Assembly for the passage of the *Petroleum Industry Bill* which seeks to bring all oil and gas related legislation within the ambit of a single enactment. It was felt that the proposed PPT amendment bill could be aligned with the Petroleum Industry Bill and this was carried out. When passed therefore, the Petroleum Industry Bill will harmonize all oil and gas laws including the PPTA under a single enabling legislation.

Capital Gains Tax

Taxation of capital gains was first introduced in Nigeria in 1967 by virtue of the *Capital Gains Tax Decree No. 44 1967* which came into force on 1 April 1967. The long title to the decree²⁸⁵ says the Act is meant to 'provide for the taxation of capital gains accruing on disposal of assets'. Section 2 of the Act fixes the rate of capital gains tax at 10 percent of chargeable gains accruing to a person in an assessment year less of such deductions as may be allowed under section 13 of the Act while section 3 provides that all forms of property shall be assets for the purposes of the Act, whether such property is situated in Nigeria or not and includes:

- a. options, debts and incorporeal property generally;
- b. any currency other than Nigerian currency; and

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- c. any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired and includes assets in respect of which qualifying expenditure had been incurred under the *Personal Income Tax Act*, *Companies Income Tax Act* or *Petroleum Profits Tax Act*.

Under the principal decree, the rate was 20 percent of chargeable gains. The current rate of 10 percent was introduced by the provisions of section 22 (1) *Finance (Miscellaneous Taxation Provisions) Decree No. 18 1998*.

An asset disposed outside Nigeria is chargeable if, in the case of a non-resident individual, the total number of days he resided in Nigeria in the year of assessment exceeds 182 and the amount or part thereof of the disposed asset is received by him in Nigeria; and in the case of a non-resident company, the amount or part thereof of the disposed asset received in Nigeria shall be chargeable.²⁸⁶ The gains chargeable under the Act are contained in section 6 (1). They include any capital sum received upon the disposal of an asset by way of sale, lease, transfer, assignment or compulsory acquisition and in particular, capital sums received by way of:

- a. compensation for loss of office or employment;
- b. insurance policy and risk of any kind of damage or injury to, or loss or depreciation of assets;
- c. forfeiture or surrender of rights;
- d. consideration for use or exploitation of any asset

Without prejudice to paragraph (a) above, capital sums received in connection with, or arising by virtue of a trade, vocation, business or profession are also liable to tax under the Act. *Capital sum* means money or money's worth and *disposal of assets* include part disposal of the asset.²⁸⁷

The Act envisages that all disposals of assets should ordinarily be by way of bargains made at arms length; i. e bargains struck without unusual concessions between the parties. The Act, therefore introduced the *market value* determinant in situations where it appears either improbable or impracticable to strike the bargain at arms length. Section 7, therefore, provides that where a person's acquisition of an asset is not by way of bargain made at arm's length; or where he acquired it wholly or partly for a consideration that cannot be valued; or where

he acquired it as trustee for creditors of the person making the disposal, the consideration for his acquisition shall be deemed to be equal to the market value of the asset. Where a person acquired an asset by way of gift or otherwise, and he disposes it by way of gift, the value of the asset shall be deemed to be the amount for which the asset was last disposed of in a bargain made at arm's length where such amount is ascertainable and where it is not ascertainable, the value shall be deemed to be equal to the market value at the time of the disposal.²⁸⁸ *Market value* is defined by section 21 (1) to mean the price the asset might reasonably be expected to fetch on a sale in the open market; and subsection (3) thereof provides that in re-estimating the market value of an acquired asset, if the market value exceeds the consideration actually paid by the acquirer, the asset shall be deemed to have been acquired for the amount actually paid by the acquirer.

Section 8 (1) provides that on the death of an individual, any assets of which he was competent to dispose shall be deemed to have been disposed by him at the time of his death and acquired by his personal representatives at a consideration equal to the amount for which the asset was last disposed of in a bargain made at arm's length and where such amount is not ascertainable, at the market value of the asset at that date but gains accruing in consequence of section 8 (1) are exempted from capital gains tax by virtue of subsection (2) of section 8. Personal representatives administering property forming part of a deceased person's estate are treated as a single and continuous body of persons and deemed as possessing the domicile and residence of the deceased at the time of his death.²⁸⁹ By section 8 (4), where a person acquires asset as a legatee, no chargeable gain shall accrue to the personal representatives and the personal representatives' acquisition of the asset shall be treated as the acquisition by the legatee.

Section 9 (1) exempts a person from capital gains tax whose disposal of land is to an authority having and exercising compulsory powers of acquisition; provided that the person had neither knowledge of the impending compulsory acquisition at the time he acquired the land nor had, prior to the compulsory acquisition, indicated an intention to dispose of the land. Under the principal decree, section 10 (1) thereof imposed tax liability on a person who disposed land *indirectly* (even if he was a legatee) and by paragraphs (a) and (b) thereto, a person was deemed to dispose land *indirectly* where he disposed shares in a land-owning company that was under the control of not more than five persons in which he had substantial interest; or along with persons with whom he was connected, they had control of a company

which had control of a land-owning company that was controlled by not more than five persons. A land-owning company meant a company entitled to land whose market value was equal or in excess of one-fifth of the company's net assets. These provisions are no longer part of the Act, with the repeal of the provisions of section 10 of the principal decree by section 2 of the *Finance (Miscellaneous Taxation Provisions) Decree No. 19 1998*. The current section 10 (section 11 under the principal decree) makes provisions as to the relevant date in determining the acquisition or disposal of an asset chargeable to capital gains tax. The relevant date is deemed to be the date when the contract of acquisition or disposal as the case may be, is made or the date when an enforceable right to acquire or dispose of the asset arises. Where the contract is subject to a condition or an option exists under the contract, then the relevant date shall be the date when the condition is satisfied or the option is exercised as the case may be; provided that where a consideration of such contract does not depend mainly on the value of the asset at the time the condition is satisfied, the acquisition or disposal shall be treated as if the contract had never been conditional, in which case the relevant date shall still be the date of the contract.

The gain chargeable to tax under the Act is the difference between the sum accruing upon disposal of the chargeable asset and the deductions allowable upon the accruable sum.²⁹⁰ Under section 12 (1) any sum or part sum from the disposal of asset which has already been taken into account in the computation of income tax under the *Personal Income Tax Act*, *Companies' Income Tax Act* or *Petroleum Profits Tax Act* shall be excluded from the computation of capital gains accruing upon the disposal of the asset. Section 13 provides further deductions allowable in the computation of capital gains. By subsection (1) thereof the deductions allowed include:

- a. the cost incurred in acquiring the asset, together with the cost incidental to its acquisition, or where the asset was not acquired any cost necessarily and exclusively incurred in providing for the asset;
- b. any expenditure wholly, exclusively and necessarily incurred for the purpose of enhancing the value of the asset, the said expenditure being reflected in the nature or state of the asset at the time of its disposal;
- c. any expenditure wholly, exclusively and necessarily incurred in establishing, preserving or defending title or right over the asset; and
- d. any costs incidental to the disposal of the asset.

Incidental costs are defined by subsection (2) to consist of expenditure incurred wholly, exclusively and necessarily by way of fees, commission, or remuneration paid for the professional services of a surveyor, valuer, auctioneer, accountant, agent or legal adviser; together with cost arising from conveyance such as stamp duties and marketing costs such as cost of advertisement and valuation. Section 25 (1) provides that no deduction shall be allowable more than once in respect of any sum. Sections 14 and 15 provide for deductions not allowed in the computation of capital gains. Section 14 excludes any expenditure allowable as deduction in computing profits or gains under the *Personal Income Tax Act*, *Companies' Income Tax Act* and *Petroleum Income Tax Act*; while section 15 excludes any expenditure incurred in respect of an asset by way of premium or policy of insurance against risks of any kind or depreciation of asset.

Where there is a part disposal of assets, computation of the gain accruable shall be determined by apportionment between the cost of acquisition of the asset (including the cost of its enhancement) and the value of the asset which remains undisposed. The apportionment shall be made by reference to the consideration accruing upon the part disposal of the asset and the market value of the undisposed part of the asset. According to section 17 (1), where payment upon the disposal of an asset is payable by instalments over a period exceeding eighteen months, the chargeable gains accruable shall be considered as accruing in proportion to each instalment in the year of assessment the said instalment is payable. A capital sum received by way of compensation for a lost or destroyed asset under an insurance or other policy would not be treated as a gain (or loss), not minding that the capital sum is of a greater amount, provided the person receiving the sum applies it in acquiring another asset in replacement of the lost or destroyed asset. A claim in respect of the foregoing cannot be made if only part of the capital sum is applied in acquiring the new asset.²⁹¹

A bargain comprising of two or more transactions where assets are disposed of shall be treated as one disposal for the purposes of computing the capital gains accruable. Similarly, separate considerations agreed upon for two or more transactions comprised in one bargain shall be treated as constituting an entire consideration for the transactions altogether and apportioned among them accordingly.²⁹²

Section 20 (1) empowers the Board²⁹³ to disregard any fictitious or artificial disposition and direct that necessary adjustments be made with respect to the capital gains tax liability of a person as it deems appropriate to counteract the reduction in liability occasioned by such

fiction or artificiality. Transactions between connected persons (within the meaning of section 23) shall be deemed artificial or fictitious if the Board is of the opinion that the transactions have been made on terms which do not appear fair in relation to same or similar activities among persons dealing at arm's length. By virtue of section 22, where the person disposing an asset and the person acquiring it are connected, the parties shall be treated as making a bargain *otherwise* than at arm's length and the amount of consideration for the bargain shall be deemed to be the market value of the asset; and where the asset is subject to a right or restriction enforceable by the person making the disposal or a person connected with him, the deemed market value shall be what the market value would ordinarily be, less the market value of the right/restriction or the amount by which the extinction of the right/asset would enhance the value of the asset, whichever is less. By section 23(2) - (4) persons are *connected* if:

- a. they are spouses, relatives or in-laws;
- b. in relation to a settlement, one is a trustee and the other a settlor or connected with the settlor;
- c. they are partners or related to a partner.

In the case of companies, subsection (5) provides that a company is connected to another company if:

- a. both are controlled by the same person or one is controlled by persons who are connected with the person who controls the other;
- b. the group controlling one consists of the same individuals controlling the other.

Subsection (6) provides that a company is connected to a person if that person singly or along with persons connected with him have, control of the company.

Provisions relating to location or situation of assets and rights accruing therefrom are contained in section 24. By virtue of paragraphs (a) and (b) of the section, the question as to *where* a right or interest over real assets and chattels arises (otherwise than by way of security) is dependent on the location of such real asset or chattel. Shares and securities are ordinarily situated in the country of the issuing authority; however, registered securities are situated where they are registered and if such registration occurs in multiple places, then the place where the principal register is situated. A ship or aircraft is situated in a country

where the owner is resident and an interest or right over such craft or ship is situated where the owner is resident. Goodwill of a trade or professional asset is situated where the trade or profession is carried out. Patents, trademarks and designs are situated where they are registered and if registered in more than one place, then where each register is situated; while franchise, copyrights or license to use any patent or trademark is situated in the place they are exercisable. Subject to the foregoing provisions, a debt is situated where the creditor is resident.

Exemptions and reliefs from capital gains tax are provided for under sections 26 - 41 of the Act. Gains accruing to ecclesiastical, charitable or educational institutions of a public nature; or registered friendly societies; or registered trade unions are not chargeable to tax provided they are not derived from disposal of assets acquired in connection with trade or business carried on by the organisation and they are applied strictly for the purpose of the organisation.²⁹⁴ If any property held by any of the above societies ceases to be held on trust, the trustees shall be treated as if they had disposed and immediately re-acquired the property for a consideration equal to its market value and the gain therefrom shall be deemed not to accrue to the society. Assessment on the trustees in respect of such accrued gain may be done any time within three years after the end of the year of assessment in which the property ceases to be held in trust.²⁹⁵

Statutory bodies are also exempt from capital gains tax under section 27. Specifically, gains are exempt from tax where they accrue to a local government council; a company being a purchasing authority established by law to acquire any commodity for export from Nigeria; or a corporation established by law for the purpose of fostering the economic development of any part of Nigeria provided the gain is not derived from the disposal of an asset acquired by the corporation in connection with any trade or business carried on by it. Section 28 provides for two scenarios. First, a gain accruing to a person from the disposal of an investment held by him as part of any superannuation fund is exempt from capital gains tax to the same extent the assets under the fund would be exempted under the *Personal Income Tax Act* payable to him out of such fund. Second, a gain from the disposal of investment held by a person as part of any national provident fund or other retirement benefit scheme is exempt from capital gains tax in the same manner as similar funds or schemes are exempt from income tax under the Third Schedule to the *Personal Income Tax Act*. Section 29 exempts from capital gains tax any gain accruing upon the disposal of a decoration acquired other

than for monetary consideration for valour or gallant conduct. Section 30 (1) exempts stocks, shares, or Nigerian government securities from tax under the Act and subsection (2) defines *Nigerian government securities* to include Nigerian treasury bonds, savings certificates and premium bonds issued under the *Savings Bonds and Certificates Act Cap S1 Laws of the Federation of Nigeria 2004*.

The exemption provided under section 31 (1) is similar to the provisions of section 18 (1) but while section 18 deals with sums received by way of compensation of lost or destroyed assets, section 31 deals with sums received by way of disposal of assets or interest in assets which are used solely for the purposes of trade or business. According to section 31 (1) where assets that were solely used for a trade or business are disposed and the gain acquired therefrom is applied exclusively to the acquisition of assets within the same class, the person carrying on the trade shall be treated as if he made neither a gain nor loss. This exemption shall not apply to a partner in a business except he can be treated as having a share in the disposal of the old asset and acquisition of the new one. It shall also not apply where only part of the proceeds from the disposal is applied to acquire the new asset. There are four classes of assets to which this exemption apply. Under class 1, there are two further classifications: Heads A and B. Head A includes any land, building or part thereof, as well as any permanent or semi-permanent structure in the nature of a building occupied and used for the purposes of trade. Head B includes any fixed plant or machinery which does not form part of a building or permanent or semi-permanent structure. Class 2 includes ships; class 3 includes aircrafts while class 4 includes goodwill.

Sums accruing upon the disposal of, or an interest in rights obtained under a policy of assurance or contract are exempt from tax by virtue of section 34 except where the person making the disposal is not the original beneficial owner and had acquired the right or interest for money or money's worth. Other gains exempted from capital gains tax include:

- a. a sum received by way of compensation or damages for any personal or professional wrong or injury;
- b. a sum received by way of compensation for loss of office except where such a sum exceeds 10,000 naira in a year of assessment;²⁹⁶
- c. a sum received upon the disposal of a sole or main dwelling house;

- d. a sum received upon the disposal of chattel whose total consideration is 1000 naira or less;²⁹⁷
- e. a sum acquired upon the disposal of mechanically propelled road vehicle used for the carriage of passengers, except if the vehicle is a type that is neither suitable nor commonly used for carriage of passengers;
- f. an asset disposed by way of gift, where it was acquired otherwise than by on a devolution of death;
- g. gains accruing to diplomatic bodies.

The *Finance (Miscellaneous Taxation Provisions) Decree No. 3 1993* included two more exemptions to capital gains tax which are contained in the Act as sections 32 and 33. These include:

- a. gains arising from the acquisition of the shares of a company either taken over, or absorbed or merged by another company as a result of which the acquired company loses identity; provided that no cash payment is made in respect of the shares acquired;
- b. gains accruing to unit holders of a unit trust in respect of disposal of securities; provided the proceeds are re-invested.

Where a person chargeable to capital gains tax in respect of gains accruing outside Nigeria applies and shows that he was unable to transfer the gains accruing to him to Nigeria and the inability was not for want of endeavour on his part but rather due to the laws of the country where the income arose or the action of the government of that country or inability to obtain foreign currency, he shall be entitled to deduction from the amount assessed in the amount equivalent to that affected in the foregoing conditions. The claim must however be made within six years from the end of the year of assessment in which the gain accrued. Furthermore, the deducted amount shall become chargeable upon the person or his personal representatives in any subsequent year of assessment in which the conditions described above cease to exist.²⁹⁸

Section 43 (1) vests the administration of capital gains tax in the Federal Board of Inland Revenue and subsection (2) provides that appeals against assessment to capital gains tax shall be made to the Body of Appeal Commissioners.²⁹⁹

Stamp Duties

The first law passed with a view of regulating the stamping of documents was the *Stamp Duties Proclamation No. 8 1903*. The Proclamation was intended to regulate the 'charging of stamp duties in respect of certain instruments'.³⁰⁰ The duties imposed were to be collected on behalf of His Majesty, his heirs and successors, for the use of the government of the Protectorate of Northern Nigeria upon the several instruments specified in the schedule to the proclamation.³⁰¹ The instruments specified in the Schedule were:

- a. admission as a barrister or solicitor;
- b. agreement or memorandum of agreement including agreement for a lease, but excluding an agreement of which the subject matter had a value of less than five pounds or an agreement for the hire of a seaman or an agreement for the sale of goods, wares or merchandise;
- c. appointment of a trustee or any appointment by an instrument other than a will in execution of property, share or interest;
- d. instrument of apprenticeship;
- e. adjudicatory award;
- f. bill of exchange except trade cheques or good notes;
- g. bill of lading for any goods, merchandise or effects except the master's copy;
- h. charter party or any agreement relating to the freight or conveyance of any goods or effects on board a ship;
- i. conveyances of whatever kind;
- j. copy or extract of an instrument chargeable with any duty, or an original or probate copy of a will, testament or codicil or letters of administration;
- k. declaration of any use or trust of any property by writing not being a deed or will or any instrument chargeable with *ad valorem* duty as a settlement;
- l. deeds of whatever kind;
- m. duplicate or counterpart of any instrument chargeable with duty;
- n. lease;
- o. letter or power of attorney except appointment of a proxy to vote at a meeting or authority given to a person to receive from the Treasury any money due to a person as a public officer from the government of the Protectorate;
- p. transfer of licences for exclusive prospecting or mining as well as licences for acting temporarily as a solicitor of the Supreme Court, or for a private warehouse or for firearms and ammunition or to re-sell gunpowder;

- q. mortgages, including bonds, debentures or covenants but excluding a bond given by a public officer for the due execution of his duty or bond on which a fee is chargeable under the provisions of the Supreme Court Proclamation or bond given in pursuance of any Proclamation relating to the receiving of any drawback, customs duty or wares exported from the Protectorate;
- r. permit granted to non-natives to import liquor;
- s. receipt given for payment of money amounting to two pounds or more but excluding receipt given:
 - i. for the payment of any duties, taxes or money for the use of government of the protectorate;
 - ii. by any person for any money due to such person as a public officer from the government of the protectorate;
 - iii. as acknowledgement of money consideration in respect of any instrument liable to stamp duty;
 - iv. for drawback or bounty upon the exportation of any goods or merchandise from the protectorate;
 - v. for the return of any duties of customs upon certificates of over-entry;
 - vi. by the payee of a money order;
 - vii. for a gift of money paid by the government of the protectorate to a native king or chief.

In addition to the specific exceptions discussed above, paragraph 2 of the Schedule listed general exemptions to stamp duties. These included:

- a. transfers of shares in the Government or Parliamentary stocks or funds of Great Britain;
- b. instruments for the sale, transfer or other disposition of any ship or vessel or interest thereof;
- c. all instruments on which the duty where required would be payable by a government department;
- d. all instruments of any kind which were made by or to an officer of the government of the protectorate, where but for this exception, such stamp duty would have been payable by an officer of the government in his official capacity provided that the exception was not construed to extend to any instrument made by or to a government

officer acting as *ex officio* administrator or receiver under a court order; or any instrument made by or to a government officer in relation to a sale made for the recovery of an arrear of revenue or rent or in satisfaction of any order or judgment of court.

In 1916, the *Stamp Ordinance No. 42 1916* was passed and made to apply to the protectorate of Nigeria as well as the colony of Lagos. The Ordinance drew substantially from the *Stamp Duties Proclamation 1903* with some modifications. For example, under the proclamation only the Attorney General and Treasurer were appointed as commissioners of stamp duties. Under the Ordinance however, a new category of officials were also appointed in addition to the Attorney General and Treasurer. These new officials included the Solicitor-General, the crown counsel, the assistant treasurer at the headquarters of the government in the northern provinces, the station magistrates, registrars and deputy registrars.³⁰² Also, the nominal share capital of a company was included as an instrument to be stamped with an *ad valorem* duty of five shillings for every 100 pounds.³⁰³ There were other minor amendments to the ordinance in 1922,³⁰⁴ 1928³⁰⁵ and 1931.³⁰⁶ The 1931 amendment, among other minor changes, repealed the powers vested in the assistant treasurer, station magistrates, registrars and deputy registrars as Commissioners of Stamp Duties and in their stead appointed the deputy treasurer in addition to the Attorney General and the Treasurer.

In 1939, the *Stamp Duties Ordinance No. 5 1939* was passed to repeal the *Stamp Ordinance 1916* together with all amendments thereto.³⁰⁷ This Ordinance, now Cap S8 Laws of the Federation of Nigeria 2004, is deemed to be an Act of the National Assembly and is the current legislation regulating the administration of stamp duties in Nigeria. The instruments in respect of which stamp duties are chargeable (as well as the exemptions thereto) are contained in the Schedule to the Act and include (but not limited to) those instruments that were chargeable under the *Stamp Ordinance No. 42 1916* with such necessary modifications as have been occasioned by the change in Nigeria's political status. The Act vests the federal government with the exclusive competence to impose, charge and collect stamp duties relating to instruments executed between companies *inter se* or between a company and an individual. The state governments are vested with competence to administer stamp duties relating to instruments executed between individuals.³⁰⁸ While state tax authorities administer the duties in the second category on behalf of their respective governments; the Federal Inland Revenue Service (as the successor to the Federal Board of Inland Revenue) administers

the duties in the first category on behalf of the federal government. In addition, the Service administers stamp duties in relation to instruments executed between individuals in the Federal Capital Territory.

The Act, like its predecessor, recognises two types of duties, *ad valorem* duties and fixed duties. *Ad valorem* duties are duties whose sum increases with an increase in the value of the document evidencing the transaction. E.g a company's share capital is subject to *ad valorem* duty of one naira for every 200 naira.³⁰⁹ Fixed duties are flat and do not change irrespective of the value of the transaction. E.g. duty on admission as a barrister or notary public is fixed. The instruments subject to stamp duties are, upon the duty being paid, denoted by impressed stamps. Adhesive stamps may however be used and where adhesive stamps are allowed, postage stamps may be used for the same purpose.³¹⁰ Some instances where the use of adhesive stamps is allowed include the execution of agreements,³¹¹ and bills of exchange and notes.³¹²

Section 6 (1) vests the management of stamp duties in the Commissioners of stamp duties³¹³ to be appointed either by the President or the Governor of a State, as the case may be, from the relevant Civil Service Commission. Similarly, only the minister or governor may approve the design of a new die to be used as impressed revenue stamp, and unless such powers are exercised, the dies in use under the principal Ordinance may still be used for impression. Section 8 provides two instances where a single instrument may be charged as if it were separate instruments. The first instance is where an instrument contains or relates to several distinct matters. Paragraph (a) of the section requires duties to be charged in respect of each of those matters as if they were contained in separate instruments. For example, under section 38, where an instrument under hand only (i.e. a document not sealed) contains both a promissory note by a principal debtor and a guarantee by a surety, such an instrument shall be charged as both a promissory note and as a guarantee. Similarly, any other matter contained in a promissory note which would be liable to duty if contained in a separate document shall be charged separately. The second instance is where an instrument which is liable to *ad valorem* duty is in addition, executed for any other valuable consideration, then paragraph (b) requires that the *ad valorem* consideration and the other consideration be separately and distinctly charged as if they were contained in separate instruments. Section 9 makes it an obligation on every person who either executes an instrument or is employed to execute one in respect of which a duty is chargeable, to set forth all facts and circumstances affecting

the duty in the instrument. Any person who contravenes this requirement is liable to a fine of 40 naira.³¹⁴

An instrument chargeable with *ad valorem* duty in respect of money in foreign currency or any stock or marketable security shall be calculated on the value, on the day of the instrument, of the money in United States dollars according to the current rate of exchange, or of the stock or security according to the average price thereof.³¹⁵ Under the principal Ordinance, the calculation was based on the British pound since that was also the currency of Nigeria as a British colony. Nigeria's present status as an independent nation, as well as the status of the American dollar as the international trading currency appears to be the rationale for the current position under the Act.

Any instrument, the duty upon which is permitted by law to be denoted by adhesive stamp, shall not be deemed stamped until the person legally required to cancel the stamp to prevent its subsequent use on another instrument does so. Cancellation is done when the person so authorised, writes his name or initials or the name of his firm or its initials together with the date of endorsement across the stamp. If the person is an illiterate, he shall cancel by appending his mark and the date across the stamp. As many of such stamps as are used to denote the duty must be cancelled and a person who, being legally required to cancel an adhesive stamp as provided and neglects or refuses to do so shall incur a fine of twenty naira.³¹⁶ The proper time for stamping an instrument required to be stamped with an adhesive stamp shall be either before or upon the first execution of such instrument, and cancellation shall be made by the person by whom the instrument is first executed at the time of such execution. But where an instrument is prepared, attested or executed before a commissioner of oaths, justice of peace or notary public or such officer as the case may be, the officer shall cancel the stamp at the time of first execution.³¹⁷ By section 12, it is unlawful for any person to remove an adhesive stamp which has been used with an intention to either re-use or sell it. For the purposes of section 12, an instrument is defined to include a telegram or any postal article within the meaning of the *Nigerian Postal Services Act*. A fine of 100 naira is imposed for contravention of the provisions of section 12 without prejudice to any other liability that may be incurred by the offender.

An appropriated stamp may only be used for the instrument of the particular description to which it is appropriated. Equally, an instrument for which an appropriated stamp is required shall not be deemed stamped unless it is stamped with such appropriated stamp. A stamp is

an appropriated stamp if there is a word or words on its face appropriating it to an instrument of a particular description.³¹⁸ Section 15 provides that where the duty with which an instrument is chargeable depends upon the duty paid on another instrument, then the Commissioner shall denote such instrument by certifying on it, but only after the duty upon which it depends has been paid and the two instruments are produced before the Commissioner. In addition, the sum of 26 kobo shall be payable as fee. Any person may require the Commissioner to express his opinion as to the amount, if any, payable on an executed instrument and subject to such regulations as the minister or governor may make, the Commissioner may endorse his certification on the instrument stating the amount of duty, if any, chargeable upon the instrument. This section does not apply to an instrument which is chargeable with *ad valorem* duty and made as security for money or stock without limit. The section also does not authorise the Commissioner to stamp an instrument that had already been executed, if by law, such an instrument ought not to have been stamped before execution.³¹⁹ The Commissioner may call for further evidence where an application has been made to him in respect of an instrument, requesting that all facts and circumstances affecting the liability of the instrument to duty be set forth therein and where such further evidence is not forthcoming, the Commissioner may refuse to proceed with the application.³²⁰

Once a duty is paid in accordance with the assessment as done by the Commissioner, the instrument in respect of which the duty is paid shall be admissible in evidence for all purposes.³²¹ Pursuant to section 20, it is unlawful to submit an instrument that has already been assessed by one Commissioner to another Commissioner to adjudicate and a person found guilty of the offence shall incur a fine of 20 naira. Section 21 provides the procedure for appeal where a person is dissatisfied with the assessment of duty as adjudicated by the Commissioner. The aggrieved party may within 21 days from the date of assessment and on payment of the duty, with which he is dissatisfied, appeal against the assessment to the High Court of the State in which the assessment was made. The appeal shall require the Commissioner to state and sign a case setting forth the question upon which his opinion was based and the assessment made by him. The appellant shall, upon receipt of the case stated and signed by the Commissioner, file same with the court within seven days. The court shall determine the amount of duty, if any, chargeable on the instrument and where the amount as assessed by the Commissioner and paid by the person is greater or less than it ought to, the court may direct for refund or payment of the difference as the case may warrant, in addition to costs or penalties, as may be appropriate.

Section 22 provides instances where an unstamped instrument may be received in evidence. According to subsection (1) thereof, where an instrument that may be legally stamped *after* execution is tendered in a civil proceeding and the presiding magistrate, judge, arbitrator or referee notices an omission or insufficiency of the stamps on the instrument, he shall require the person responsible for the instrument to pay the duty or the insufficient part thereof as well as a further sum of 20 naira and such other penalty that may be due. The payment shall be made to the officer of the court whose duty it is to read the instrument and thereafter, the presiding officer shall issue a receipt for the payment, record it accordingly and pay the sum over to the Accountant-General. He shall also communicate to a Commissioner the name of the party from whom payment was received, the type of instrument, date of payment and title of proceedings in which the payment was received. The party from whom payment was received shall produce both the instrument and receipt before a Commissioner whereof the instrument shall be duly denoted. Apart from this exception no instrument may be given in evidence in a civil proceeding unless it is duly stamped in accordance with the law at the time when it was first executed.

Although instruments are generally required to be stamped at the time they are first executed, section 23 (1) provides a grace period of 40 days generally within which an unstamped instrument or insufficiently stamped instrument may be stamped after execution. However, after the expiration of 40 days, the instrument may only be stamped upon payment of a penalty of 20 naira in addition to the unpaid duty or part thereof; and where the unpaid duty exceeds 20 naira, then by way of additional penalty, interest on such duty at the rate of 10 percent per annum from the day the instrument was first executed up to the time the amount of interest is equal to the unpaid duty. The stamps representing the amount of unpaid duty together with the penalty shall be impressed on the instruments (or in the case of adhesive stamp, affixed thereon and cancelled accordingly).

Subsection (3) deals with specific instruments in respect of which *ad valorem* duty is chargeable. These instruments include bond, covenant, conveyance on sale or conveyances on transfers operating as voluntary dispositions *inter vivos*, lease, mortgage bond, debenture, warrant of attorney to confess and enter up judgment and settlement. Except where any of these instruments is written upon duly stamped material, they shall be stamped with the proper *ad valorem* duty within 30 days after first execution if they were executed in Nigeria and within 30 days from the day they were received in Nigeria if they were executed outside

Nigeria. Failure to comply with the foregoing requirement shall attract the penalties prescribed in subsection (1) and in addition, a further penalty equivalent to the unpaid duty shall be imposed on the defaulter unless a reasonable excuse for the delay is shown to the satisfaction of the commissioner or court. The grace periods in subsections (1) and (3) may be substituted with such shorter or longer periods as the minister or governor may on the basis of the circumstances determine.

Section 24 places an obligation on a person having custody of any rolls, books, records, papers, documents or proceedings to permit at all reasonable times any person authorised by a Commissioner to inspect or make notes or extracts of such documents without fee or reward for the purpose of either securing a duty or indicating fraud or omission in relation to a duty. The Commissioner shall first make the inspection himself unaccompanied (except where he requires the assistance of another party) where the said documents are in the custody of a bank. Failure to allow the inspection when so required would attract a fine of 20 naira. The same penalty is prescribed against a person whose office being responsible for the enrolment or registration of any instrument enrolls, registers or enters an instrument that is not duly stamped.³²²

A document that has been left at the office of a Commissioner in connection with any provisions of the Act and has not been claimed within six months may be destroyed if upon a notice published in the federal gazette for its claim, the document still remains unclaimed for two months thereafter.³²³

Part II of the Act provides general regulations regarding particular instruments required to be stamped. These instruments include:

- a. admission (as barrister or notary public)
- b. agreements (including mortgages and hire purchase)
- c. appraisements (that is, valuations)
- d. instruments of apprenticeship
- e. bank notes, bills of exchange and promissory notes
- f. bills of lading
- g. bills of sale
- h. charter party
- i. contract notes³²⁴

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- j. conveyances on sale
 - k. conveyances on any occasion except sale of mortgage³²⁵
 - l. duplicates and counterparts
 - m. exchange and partition or division
 - n. leases
 - o. letter of allotment or renunciation, scrip certificates and scrip
 - p. letters or powers of attorney and voting papers
 - q. marketable securities
 - r. mortgages
 - s. notarial acts
 - t. policies of insurance
 - u. receipts
 - v. settlements
 - w. share warrants
 - x. stock certificates to bearer
 - y. warrant for goods
 - z. capital of companies³²⁶

A person who suffers a fine, penalty or forfeiture for producing an unstamped or insufficiently stamped instrument, but who can prove that the original responsibility for stamping was not his, may upon application to a court be entitled to obtain judgment against the person whose responsibility it was to stamp the instrument in a sum equal to the fine incurred by him and shall also be entitled to costs.³²⁷

The power to make regulations under the Act is vested in the President and the Governor, as the case may be, by section 115. Specifically, any of these officers may make regulations as to:

- a. the custody of the dies to be used under the Act;
- b. the circumstances in which allowances shall be made for spoiled stamps;
- c. the accounting for the revenue derived from stamp duties;
- d. the substitution of adhesive stamps for impressed stamps and vice versa or of revenue stamps for postage stamps;

- e. the manner in which and the persons by whom impressed stamps shall be affixed to documents; and
- f. the further and better carrying into effect of the objects and purpose of the Act.³²⁸

Either the National Assembly or the House of Assembly of a Region may by resolution increase, add, vary, diminish or repeal a duty under any of the heads in respect of which either of them is exclusively competent to make laws.³²⁹

The regulations contained in Part II of the Act specify exceptions to stamping as regards specific instruments. In addition to those specific exemptions, the Schedule further contains exemptions of a general nature to all stamp duties. These include:

- a. transfers of shares in the government or legislative stocks or funds Nigeria;
- b. instruments for the sale, transfer or other disposition of any ship or vessel or part thereof;
- c. all instruments on which the duty would be payable by either the government or any of its departments;
- d. agreements made with the Nigerian Railway Corporation for the receipt and carriage of passengers, goods or animals;
- e. indemnity bonds given to the Nigerian Railway Corporation by consignees, when the railway receipt is not produced, in respect of the delivery of consignments of perishable nature;
- f. an instrument of apprenticeship to which government is a party;
- g. bond given by a public officer for the execution of his duties;
- h. instruments on which the payment of the duty would be payable by a consular officer in his official duties where the foreign government he represents grants a similar exemption to Nigerian consular officers;
- i. instruments relating to the alienation of land or any interest approved by local authorities of the southern states of Nigeria in accordance with rules made by them under local government laws;
- j. instruments regarding which the government of the federation is competent to make laws executed by any co-operative society registered under any Act or law or by any officer or member of such a society relating to the business of such society.
- k. All documents relating to the transfer of stocks and shares

Finally, the following receipts are exempted from stamp duties:

- a. Receipt given by a person or his representative on account of any salary, pay or wages or any other like payment made for the benefit of an employee or holder of an office in respect of his employment or on account of money paid in respect of any pension, superannuation allowance, compassionate allowance or any other like allowance.
- b. Receipt endorsed or contained in any instrument liable to stamp duty and duly stamped, acknowledging the receipt of the consideration money expressed in the instrument or other interest thereby secured.
- c. Acknowledgement by a banker of the receipt of any bill of exchange or promissory note for the purpose of being presented for acceptance or payment.
- d. Receipt given for money deposited or withdrawn from a bank.
- e. Receipt given by the payee of a money order.
- f. Receipt given upon the payment of any government duties or taxes or money for the use of the government.
- g. The duplicate of any receipt required to be given in duplicate, the original receipt being duly stamped.
- h. Receipt given by an officer of a public department of the government of Nigeria or a state for money paid by way of imprest, advance or adjustment of account, where he derives no personal benefit therefrom, or for the refund of out of pocket expenses due from government.
- i. Receipt given for drawback or bounty upon the exportation of any goods or merchandise.
- j. Receipt given for the return of any duties of customs upon certificates of over-entry or upon re-importation certificates.
- k. Receipt given for the refund of any sums deposited with the treasury under the provisions of the Minerals Act.
- l. Receipt given for the return of monies over collected by government.
- m. Receipt given by a prisoner on discharge, having being placed on deposit in the treasury or otherwise retained during the term of his imprisonment.
- n. Receipt given by an accused person for money or other property taken from him on his arrest.
- o. Receipt given for money given or subscribed to the Nigerian Red Cross Society

Although the principal Ordinance has been amended several times since it came into force on 1 April 1939,³³⁰ the tenor of its provisions has not changed over the more than seven decades of the law's existence. Basically, the nomenclature as was contained in the principal Ordinance regarding officers of government has changed to reflect modern realities. Similarly, the naira has replaced the British currency in conformity with Nigeria's independent status.

Sales Tax

Sales tax was introduced in Nigeria by the provisions of the *Sale of Produce (Taxation) Ordinance No. 12 1953*.³³¹ The Ordinance imposed tax on agricultural products purchased by the produce marketing boards which were established under various Marketing Ordinances.³³² The tax rates were contained in the Schedule to the Ordinance. Section 1 as usual, was the short title while section 2 dealt with definition of terms and phrases. The tax was imposed by section 3 (1) which provided as follows:

The Governor in Council may, by order, direct that a tax, to be called a produce sales tax, shall be charged in any Region specified in the order, subject to and in accordance with this Ordinance, on all sales in the Region made to a Marketing Board or to a licensed buying agent of a Marketing Board of such produce, being produce mentioned in the Schedule to this Ordinance, and at such rates, not exceeding those set out in that Schedule, as may be specified in the order; and upon the coming into force of such order the tax shall be charged as provided therein.

The Governor could only make the order following a resolution by the legislature of the region concerned praying for the imposition of tax on the produce. Furthermore, the Governor's order could neither extend to any produce not mentioned in the resolution nor exceed the rate specified in the resolution.³³³ By section 3 (3), where a sale had been made to a licensed buying agent of produce who resold it to a marketing board, the resale was not subject to tax. The tax became due from the seller upon payment to him of the purchase price.³³⁴ Section 5 empowered the Governor-in-Council to, after due consultation with the Lieutenant Governor of a region, direct that a tax shall cease to be charged in respect of any produce or that the rate at which it was charged be reduced.

Sale of produce tax was deductible at source by the marketing board or its licensed buying agent making the purchase. While the licensed buying agent was accountable to the marketing

board for tax deducted, the board was in turn accountable to the revenue authority and the tax due from the board was treated as a debt accruing to the government.³³⁵ A licensed buying agent, who failed to comply with the lawfully made requirement of a board, was liable to a penalty of 50 pounds. Jurisdiction to determine and enforce the said penalty was vested in the magistrate court.³³⁶ Furthermore, any person who furnished false information to a marketing board or with intent to deceive the board produced or made use of any document which was false in a material particular, was liable to imprisonment for six months or a fine of 50 pounds or both.³³⁷ The Governor-in-Council could make regulations:

- a. requiring market boards to make returns of the amounts of tax for which they were accountable, in respect of such period, in such form and containing particulars with respect to such matters as prescribed by him;
- b. requiring market boards to pay the amounts of tax appearing by the return to be due from them at such times as prescribed by him;
- c. prescribing the public officers in whose name proceedings could be taken for the recovery of tax.³³⁸

Finally, the Schedule to the Ordinance contained maximum rates per ton of the sales of produce tax.³³⁹

In 1986, the *Sales Tax Decree No. 7 1986* was promulgated and it came into force on 30 June 1986. With the passage of the decree, it meant states could no longer regulate sales tax in a manner that would be inconsistent with the decree as a federal law. The decree imposed a sales tax on such goods and services as were set out in Column A of Schedule 1 to the decree at the rate specified in Column B of the same Schedule. Taxable services included sales and services registered in hotels, motels, catering, catering establishments, restaurants and other personal service establishments (excluding drinks). Taxable goods included beer, wine liquor and spirits, soft drinks (including mineral water), cigarettes and tobacco, jewels and jewellery, perfumes and cosmetics (excluding toiletries), electrical and electronics equipment (video recorders, stereo sets, radio and television sets, video cassettes, cameras, air conditioners, fans, deep freezers), carpets and rugs (excluding linoleum) and bottled natural water (excluding mineral water). Except for wine liquor and spirits which was taxable at 10 percent, all the other goods (and services) were taxable at 5 percent.

Sales tax was chargeable on the supply by a manufacturer or of taxable goods to its accredited distributors or agents; or on the supply of taxable services in the course of business of the supplier.³⁴⁰ The administration of sales tax was vested in the tax authorities of the various states subject to directions as were given by the Joint Tax Board.³⁴¹ Indeed, section 7 (2) vested the Joint Tax Board with powers to co-ordinate the tax to ensure 'administrative tidiness within the existing tax machinery' and to resolve any conflict that arose from the disbursement of revenue from the tax. It appears from the provisions of section 7 (2) therefore, that the reason the federal government took over the regulation of the tax was to provide uniformity and consistency in its practice and administration. The decree was later codified as *Sales Tax Act Cap 399 Laws of the Federation of Nigeria 1990* and remained in force until 1993 when it was repealed and replaced with the Value Added Tax decree.

Super Tax

Super tax was introduced into the polity during the Nigerian civil war to be chargeable on the total profits of a company by the provisions of the *Super Tax Decree No. 46 1967*. The rate of tax was two shillings per every pound on the amount by which the total profits of the company exceeded the standard deduction for each year of assessment.³⁴² Standard deduction meant either of two things. In relation to the first two years in which a company commenced business, standard deduction meant 15 percent of the company's paid up share capital as at the date it commenced business or the sum of 500 pounds, whichever was greater. In any other case, standard deduction meant 15 percent of the company's paid up share capital as at the first day of its accounting period or the sum of 5000 pounds whichever was greater.³⁴³ Subsection (3) empowered the Federal Executive Council to vary the tax rate by an order published in the gazette. The Council could also for sufficient ground and by the same procedure, either exempt a company or class of companies from all or any of the provisions of the super tax decree; or exempt from super tax, all or any profits of a company or class of companies.³⁴⁴

Super tax was assessed on the basis of the return delivered by a company for the purposes of determining its income tax under the *Companies Income Tax Act, 1961*. In arriving at the amount of super tax payable in any year of assessment, the Federal Board of Inland Revenue had to determine the amount by which the total profits of a company for that year exceeded the standard deduction. The Board could, under the provisions of section 49 relating to failure of delivery of returns by a company, make an assessment of super tax on the company

by the same token as it could, where a company failed to file returns for the purposes of income tax. Moreover, the Board, where it considered it necessary for any reason of emergency, could assess a company for super tax before the expiration of the time within which the company was allowed to file returns.³⁴⁵ The Board was required by section 4 of the decree to compile 'super tax assessment lists' consisting of all companies assessed for super tax in each year of assessment. The lists were to contain the names and addresses of the companies; the name and address of any person in whose name a particular company was chargeable; the amount by which the total profits of each company exceeded the standard deduction for the year; the amount assessed as super tax and such other particulars as the Board deemed necessary.

Service of notice was required to be effected by registered post on every company or person in whose name a company was chargeable whose name appeared in the super tax assessment lists. The notice was to contain the amount of total profits of the company concerned for that year; the amount by which the said profits exceeded the standard deduction; the amount of super tax payable by the company for that year; the place at which the tax was payable and the company's right to object under section 53 of the *Companies Income Tax Act 1961* if it disputed the assessment.³⁴⁶ The procedure for appeals under the decree was similar to that under the *Companies Income Tax Act*.³⁴⁷ Other provisions of the super tax in respect of which the *Companies Income Tax Act* apply included the procedure for collection, recovery and repayment;³⁴⁸ double taxation relief;³⁴⁹ and tax administration.³⁵⁰

In 1970, the *Super Tax Decree* was amended by the *Super Tax (Amendment) Decree No. 12 1970*. Under this amendment, the Federal Executive Council exercised its powers under section 1 (3) of the principal decree and varied the rates of super tax effective from the 1969-70 year of assessment. The new rates were specified in the Schedule to the amendment. In consequence, the Schedule to the principal decree was rearranged as Schedule 1 while the new rates provided under the amendment became Schedule 2. All references in the legislation to the Schedule were modified to reflect the amendment.³⁵¹ Under the new rates of super tax as introduced by Schedule, two shillings were chargeable on every pound of the first 5000 pounds of the amount by which the total profits exceeded the standard deduction; three shillings on the next 5000 pounds and five shillings on every pound thereafter. Further, the meaning of standard deduction as contained in section 1 (4) of the principal decree was modified along the categories of whether or not the company liable to super tax was a

Nigerian company. In relation to a Nigerian company, standard deduction carried the same meaning it did under the principal decree but in the case of a non-Nigerian company, standard deduction was expanded to mean 25 percent of the total profits of the company attributable to its operations in Nigeria for the year of assessment or the sum of 5000, whichever was greater.³⁵²

There were two amendments to the *Super Tax Decree* in 1971. The first amendment was the *Super Tax (Amendment) Decree No. 11 1971*. This amendment essentially expanded the provisions of the *Companies Income Tax Act* that applied to super tax. Under the Schedule to the amendment, the following matters relating to super tax were further placed under the regulation of the relevant provisions of the *Companies Income Tax Act*: imposition of tax and profits chargeable; relief for civil war damage; persons chargeable (agents, liquidators etc); double taxation arrangements; and funds, bodies and institutions in Nigeria to which deductible donations could be made. The second amendment was the *Super Tax (Amendment) (No. 2) Decree No. 12 1971*. This amendment modified section 1 (1) by substituting the words 'at the rate specified in Schedule 2 of this Decree' for the words 'at the appropriate rate'.³⁵³ This substitution was necessary, as will soon be obvious, to reflect the other modifications introduced. Section 2 of the amendment introduced a new section 1A immediately after section 1 of the principal decree. Section 1A contained provisions regarding two categories of companies which were entitled to what the section referred to as '*reduced rate*'. In the first category, if a company incorporated in Nigeria after 1st January 1971 made profits of at least 10,000 pounds and within an accounting period and capitalized its profits by increasing its paid up share capital at an amount which was at least 50 percent of the profits, then such a company was liable to super tax at the reduced rate for that year of assessment and for every subsequent year of assessment in which its paid up capital remained at least, at the amount of its increased share capital. In the second category, if a company's paid up share capital within an accounting year was at least 75,000 pounds and the said amount was paid up by shareholders with foreign funds³⁵⁴ and the company was incorporated in Nigeria after 1st January 1971, then the company was liable to super tax at a reduced rate for that year of assessment and for every subsequent year of assessment during which the paid up share capital remained at least 75,000 pounds. Reduced rate meant two shillings on every pound by which the total profits exceeded the standard deduction.³⁵⁵ Schedule 2 to the principal decree³⁵⁶ was also amended by inserting Part A and Part B thereto. Part A

contained normal rates which were applicable to companies liable to super tax and Part B contained the reduced rate for companies that fell within the purview of section 1A.³⁵⁷

The Super Tax Decree No. 46 of 1967 and all the amendments thereto were repealed by Section 3 of the Finance (Miscellaneous Taxation Provisions) Decree No. 47 1972.

Entertainment Tax

The western region was the first to pass a law on entertainment tax at a time when Lagos was part of the region.³⁵⁸ The law continued to apply to Lagos after it became a federal territory until 1966 when, as relates to Lagos, the law was repealed by the *Entertainment Tax Decree No. 66 of 1966*.³⁵⁹ Save for some slight modifications, the decree was substantially similar to the Entertainment Tax Law of the defunct western region. For example, the powers conferred upon the governor under the law of the western region became vested in the permanent secretary under the decree. Second, the powers vested in the legislature of the western region were transferred to the Federal Executive Council under the decree and finally, the powers vested in a magistrate under section 10 of the decree were, under the regional law, exercisable by any justice of the peace.

The entertainment decree applied only to the federal territory (which at the time, was Lagos) and imposed tax on any place of entertainment to which members of the public were admitted by way of a prescribed charge before entry; or contribution after entry; or where payment for entry was waived, refunded or reduced for members. A person liable to tax under the decree was not to be admitted to the entertainment unless he produced a numbered receipt as evidence of payment of the appropriate charge as well as the tax chargeable thereon; and where admission was by a means other than numbered ticket, and the proprietor of the place of entertainment failed to remit tax due, the tax could be recovered as a debt to the state.³⁶⁰ Where admission into a place of entertainment was by way of subscription, donation or contribution; or season ticket; or series of entertainment during a time and the payment for the said admission was made by means of a lump sum, entertainment tax was payable on the lump sum.³⁶¹ Section 3 provided that if the payment of a lump sum or any payment for a ticket represented payment for purposes additional to, or otherwise than for entertainment, tax was chargeable on the amount as appeared to the permanent secretary³⁶² to represent the right of admission to the place of entertainment in respect of which tax should have been payable.

The classes of entertainment to which entertainment tax applied and the rates at which the tax was chargeable were contained in the Schedule to the decree. They included cinematograph exhibitions, night clubs and casinos and horse racing. Section 4 empowered the Federal Executive Council to add to the classes of entertainment to which tax was chargeable; and to increase or reduce rates payable as entertainment tax. Section 5 conferred a right on any person to apply to the permanent secretary to be exempted from entertainment tax on the grounds that:

- a. the net proceeds accruing to the place of entertainment were to be devoted to philanthropic or charitable purposes;
- b. the entertainment was wholly educational in character;
- c. the entertainment was provided for artistic, literary or scientific purposes by a society or institution established for non-profit;
- d. the entertainment was agricultural, horticultural or poultry exhibition held under the auspices of a society approved by the Federal Executive Council; or
- e. the entertainment was provided by or on behalf of an educational institution for the sole purpose of promoting some object or for the benefit of the institution but not for profit.

The permanent secretary could, on receipt of an application, call for a detailed statement of account of the organisation and if the application was based on philanthropic or charitable purposes, challenge any item which in his opinion was inadmissible; and if the application was based on the wholly educational character of the entertainment and the permanent secretary rejected it, the applicant could further appeal to the Federal Executive Council whose decision was final.

A superior police officer or any public servant duly authorised by the permanent secretary could enter a place of entertainment at reasonable times, including during the course of an entertainment, for the purposes of checking due compliance with the requirements of the decree or regulations made under it. Any person who prevented or obstructed a police officer or public servant so authorised from entering or carrying out the purposes for which he was required under the decree was guilty of an offence and upon conviction was liable to a fine of 20 pounds or imprisonment for one month.³⁶³ Section 8 created two offences. The first related to a person who, with intent to defraud forged any stamp or impression; or imported or exported or had in his custody or control any forged stamp or impression used

to denote tax payable and the second related to a person who fraudulently contrived to avoid payment of tax. In the first case, the penalty upon conviction was a minimum term of three years and maximum term of 10 years imprisonment, while in the second case, the penalty upon conviction was a fine of 100 pounds or imprisonment for six months or both. Section 9 made it an offence to be admitted into a place of entertainment without payment of tax. Both the person admitted and the proprietor were jointly and severally guilty of the offence and upon conviction, the person admitted was liable to a fine of five pounds or imprisonment for seven days while the proprietor was liable to a fine of 50 pounds or imprisonment for six months and in addition, was required to pay twice the tax which should have been paid.

A magistrate could, upon application to the effect that there was reasonable suspicion of an unauthorised document, stamp or impression on any premises, capable of being used to gain admission into a place of entertainment, issue a search warrant and any unauthorised document appearing to be material evidence under the decree or any other law could be seized and thereafter, if ordered by the court, destroyed. The onus was on the person in whose custody the documents, stamp or impression was seized to prove that they were not used for unlawful purposes.³⁶⁴ The power to make regulations generally for the purposes of the decree was vested in the Federal Executive Council by section 11 (1) of the decree.

Pool Betting and Casino Taxes

The western region passed its Betting Duty Law in 1954 and the law was aimed at imposing tax on bets of authorised totalisators and contributions or subscriptions towards authorised lotteries or sweepstakes. After Lagos became a federal territory in the same year, the *Betting Duty (Lagos) Law* was passed to reflect the new status of Lagos although the Lagos law remained *in pari materia* with the western law. In 1960, the federal government amended the Lagos law by the instrumentality of the *Betting Duty (Lagos) (Amendment) Ordinance 1960*. The amendment ordinance increased the rates of tax payable on bets made on totalisators and sweepstakes from five percent and 10 percent respectively to 20 percent of the total stake money paid or contributed. The eastern and northern regions had their own betting duty laws passed in 1963 by the federal parliament under a constitutional provision enabling parliament in that behalf.³⁶⁵

In 1969, in a bid to make 'better' provision for the regulation of pool betting and connected matters in the federal territory, the federal legislature passed the *Pool Betting Control Act No. 69 1961*.³⁶⁶ Section 3 made the acquisition of a license a condition precedent to the operation of pool betting business or the distribution, printing or publishing of any papers incidental to pool betting business. A license was deemed to have been granted under the Act if, being granted prior to the coming into effect of the Act, the license still had six months lifespan or more at the time the Act came into effect. The licensee however had to apply for renewal under the Act within one month before the license was due to expire failing which any subsequent application was barred. If a license previously given under another law had less than six months to expire at the time of coming into force of the Act, the licensee was required to apply for renewal under the Act within one month from the commencement of the Act failing which the license previously held was considered revoked. A contravention of any of the foregoing provisions was an offence and upon conviction attracted a fine not exceeding 500 pounds or imprisonment for two years or both.³⁶⁷

An officer of the posts and telegraphs department not below the rank of head postmaster or an officer of the customs and excise department not below the rank of collector could cause goods or articles reasonably suspected by him to contain matters relating to pool betting business not licensed under the Act to be opened and inspected, and if such matter was found therein, the officer in question could adjudge the goods or articles forfeited.³⁶⁸ Section 4 (3) however placed an obligation of confidentiality on an officer carrying out his duty as aforementioned and where such officer, other than in the course of duty, disclosed information obtained in the course of the exercise of the power to inspect, he was guilty of an offence attracting up to, but not exceeding three years.

The discretion to approve and renew licenses was wholly that of the minister and in the exercise of that power, he could impose such general or special conditions as he thought fit. The minister was not required to state his reason for refusal to issue or renew a license and the exercise of his discretion was not a subject of appeal. He could equally revoke any license where he was satisfied that a breach of condition had occurred.³⁶⁹ The power to make regulations for the effectual operation of the Act was equally vested in the minister.³⁷⁰

While the *Pool Betting Control Act 1961* made provisions for the regulation of pool betting, the *Pool Betting Tax Act No. III 1962* was passed in 1962 to impose taxes on pool betting

business. Pool betting business was defined as *'any business involving the receiving and negotiating of bets made by way of pool betting'* and it was immaterial that the person on whose behalf the bet was being negotiated lived outside the federal territory where the Act was applicable.³⁷¹ The rate of pool betting business tax was chargeable on the amount staked with the proprietor at a rate not exceeding 20 percent. Although the power to vary the tax rate was conferred on the House of Representatives, it could not vary the rate such as to make it less than 10 percent of the money staked with the proprietor.

The minister of finance could by notice published in the federal gazette as well as a national newspaper circulating in the federal territory, require any proprietor to make returns of all pool betting business transacted by such proprietor on the basis of which pool betting tax would be calculated and paid.³⁷² The minister could equally address a written notice to any proprietor requiring such proprietor to produce certified copies of accounts of the pool betting business. An officer of the finance ministry authorised as an inspector could enter on premises where pool betting business was carried on at all reasonable times to inspect or take copies of entries made in the business' books of accounts without incurring civil or criminal liability.³⁷³

Offences under the Act were contained in section 3. Under subsection (1) thereof, it was an offence for any person required to give information or produce copies of accounts to refuse or fail to do so. It was equally an offence for anyone to obstruct, wilfully mislead or attempt to mislead an inspector in the performance of his duties. In any of the two scenarios, the Act prescribed as a penalty, a fine of not less than 100 pounds but not more than 200 pounds or imprisonment for a term of 12 months or both. Subsection (2) made it an offence for any proprietor to supply incorrect accounts by omitting or understating the amount placed as stakes or by otherwise giving incorrect information concerning his accounts. A person convicted under the subsection was liable to similar penalties under subsection (1) and in addition thereto, he was required to pay twice the amount of tax which had been or would have been undercharged as a result of the understatement or omission. An offence under subsection (2) was compoundable at the instance of the minister and to attract the penalties prescribed under the two subsections, a complaint to that effect had to be made within 12 months from the date the offence was committed.³⁷⁴ Section 3 (5) conferred a right of appeal to the High Court on any party aggrieved by a decision of the magistrate court. The appeal had to be filed within 14 days of the decision of the magistrate court.

Further appeal could, on leave of court, lie to the Supreme Court but only on question of law, not of fact or sentence. Section 4 empowered the minister to make regulations for the operation of the Act.

In 1963 and 1965 the federal legislature passed the *Pool Betting Tax Act No. 16 1963* and the *Pool Betting Tax Act No. 11 1965* respectively. These legislations were passed pursuant to the *Pool Betting (Parliamentary Authority) Law 1963* and the *Pool Betting Control (Enabling) Law 1962* enacted by the legislatures of the northern and eastern regions respectively. In furtherance of the provisions of section 67 of the 1960 Constitution, these two laws each conferred jurisdiction on the federal parliament to pass a law on pool betting tax in the regions concerned. The jurisdiction conferred on the federal parliament included the power to regulate and tax pool betting business in the regions. In the exercise of this jurisdiction, the federal parliament passed two pool betting tax Acts in 1963 and 1965 as Act Number 16 and 11 respectively. The 1963 Act essentially amended the *Pool Betting Control Act 1961* by extending its application to the northern and eastern regions. The 1965 Act amended the *Pool Betting Tax Act 1962* in two major regards. First, it extended the application of the Act to the northern and eastern regions and second, the rate of pool tax was increased such that the House of Representatives could by resolution, fix the tax at any rate provided such rate was not less than 20 percent of the money staked with the proprietor.³⁷⁵ Other amendments were aimed at bringing the 1962 Act into conformity with its new extent of application.

The rate of pool betting tax was fixed at 20 percent of the money staked with the proprietor under the provisions of a 1966 enactment, the *Pool Betting Tax (Increase of Rate) Decree No. 82 1966*. This was a deviation from both the 1962 and 1965 Acts which respectively fixed the rate at a minimum of 10 and 20 percent. Rather than maintain a certain minimum rate, the 1966 introduced tidiness into the administration of pool betting tax by fixing a definite rate of 20 percent.³⁷⁶ However, two years after the increase, the *Betting Duties (Amendment) Decree No. 26. 1968* restored the rate of betting duty to 10 percent as was previously obtained under the *Betting Duties (Lagos) Ordinance*. Second, it repealed the *Betting Duties (Lagos) (Amendment) Act 1960* which had increased the rate to 20 percent. The decree applied only to those parts of Lagos that formerly comprised the federal territory, the reason being that Lagos became one of the twelve states the federal military government created in 1967.

Casino Tax

In 1965, the federal parliament passed the *Casino Taxation Act* as *No. 26 1965*. The long title to this legislation describes it as ‘an Act to impose tax on the net gaming revenue of casinos in the Lagos territory, and for related purposes’.³⁷⁷ Every casino licensed under the Act is liable to casino revenue tax at 12 ½ percent of its net gaming revenue. The rate may however be varied by the National Assembly through a resolution passed and gazetted to that effect. A casino’s net gaming revenue means daily takings of the casino, whether continuous or intermittent, of up to 15 out of 24 hours from the time play at the casino is first opened, less of winnings paid by the casino to patrons in the course of play. Casino revenue tax ranks in priority over all costs, charges and other taxes including companies’ income tax.³⁷⁸ The administration of casino revenue tax is vested in the Federal Inland Revenue Service as the successor to the Federal Board of Inland Revenue. Section 2 empowers the chairman of the Service to authorise, by warrant, any person to enter the premises of a casino during play time or at reasonable hours outside play time to do such things as may be required to give effect to the provisions of the Act, including inspection of statements and returns and where necessary, certification of same.

The licensee³⁷⁹ is required to deliver in the afternoon of the day when play closes in the casino or as soon as practicable, a return to the Service showing the net gaming revenue received during the course of play. The return has to be certified as correct by a person authorised by the Service. In addition, the licensee is further required to submit weekly and monthly returns as the Service may prescribe, consisting of consolidated net gaming revenues for the period covered. Casino revenue tax shall be calculated on the consolidated returns and where the consolidation is for a period of one week, the tax shall be payable not later than three days after the delivery of the return. Where the consolidation is for one month, the return must be certified by a chartered accountant, irrespective of whether returns for lesser periods were delivered for the duration and any amount of tax outstanding from such lesser periods shall be paid forthwith by the licensee without further assessment.³⁸⁰ Section 3 (5) indemnifies and empowers a person answerable to casino revenue tax to retain monies coming into his hands on behalf of the licensee as may be sufficient to pay tax to which the licensee is liable. Persons answerable to tax under the Act include the managing director or director of the licensee, receiver, liquidator, attorney, agent or representative of the licensee. By virtue of section 4, a licensee is liable to tax in its own name or in the name of any of the above mentioned persons. The Service may direct a licensee to keep books or accounts in

such form as it considers adequate, and the licensee may appeal against the direction of the Service to the Tax Appeal Tribunal (as successor to the Body of Appeal Commissioners) who may confirm or modify the direction and whose decision is final. Failure by a licensee to comply with the direction of the Service or the tribunal is an offence.³⁸¹

Notwithstanding the provisions of section 3 (1) and (2) relating to the periods within which a licensee may deliver returns, either the Service or a licensee may require that an assessment be raised in respect of any year of assessment, which for the purposes of this Act means a period of twelve months commencing from 1st January of every year (as opposed to 1st April under the principal Act). An assessment raised pursuant to this provision may include earlier periods if the Service is satisfied that an assessment for such earlier period was not raised or was incorrect; provided no such assessment may be raised in respect of a period that is earlier than six years in point of time. Further, a licensee shall forfeit its right of appeal where the assessment is raised on figures returned by it but in any other case, the provisions of the *Companies Income Tax Act 1979* as to objections, revisions and appeals shall have effect *mutatis mutandis*.³⁸² Where there is a pending objection or appeal by a licensee, collection of tax shall be suspended in respect of the tax or part of it that is disputed but the undisputed portion may be enforced by the Service and after the determination of the objection or appeal, the Service shall serve a notice of the tax as determined on the licensee. Any tax or portion of tax outstanding after an objection or appeal has been disposed of shall be payable within two months from the date the objection or appeal has been disposed of or within two months after notice to that effect is served on the licensee whichever is earlier but the Service in its discretion may extend time within which payment may be made. Failure by a licensee to comply with payment of tax as prescribed above is an offence and in addition to the penalty that may be imposed, the right of distraint shall become exercisable.³⁸³ Section 8 precludes assessments, notices, warrants or other proceedings made pursuant to the Act from being impeached or voided for want of form, mistake, defect or omission provided the proceedings in question substantially conforms to the intent of the Act. In particular, no assessment can be impeached by reason of mistake as to name of licensee, description of profits or amount of tax charged; or by reason of any variance between the assessment and the notice thereof, provided that the notice substantially contains the particulars upon which the assessment is made and it is duly served on the licensee or the person in whose name the licensee is chargeable.

A licensee who discovers that it was excessively assessed and taxed in respect of any year of assessment as a result of an error or mistake in the return, statement or account made by or on its behalf may make an application for refund. The application must be made not later than one year from the end of the assessment year to which the application relates. The Service shall upon receipt of the application investigate and where appropriate, grant relief to the licensee by way of relief in such sum as it considers reasonable. The Service shall take into account all relevant circumstances, including assessments made upon the licensee in previous years and also consider whether granting the relief would result in the exclusion from tax of any part of the net gaming revenue of the licensee. The decision of the Service on the application shall be final and conclusive.³⁸⁴ Any application for refund, except expressly provided otherwise, must be made in writing within one year from the end of the assessment year to which it relates. The Accountant General of the federation shall pay to a person entitled to refund the amount certified by the Service or ordered pursuant to a judgment of court.³⁸⁵

Offences are contained in sections 11, 12 and 14. Offences under section 11 include refusal or failure to pay tax, making false returns or representations for the purpose of obtaining an advantage and aiding the making of false returns or accounts. Section 12 provides that a licensee or any person in its employ, who without reasonable excuse makes or certifies a return in respect of net gaming revenue so as to omit or understate the licensee's liability to tax; or gives any incorrect information in relation to any matter affecting the licensee's tax liability shall, in addition to whatever penalty prescribed by reason of the offence created by section 11, pay double the amount which has been undercharged or would have been undercharged in consequence of the incorrect return or information. Any complaint regarding the above offences must be made either during the year of assessment in respect of which the offence relates or within six years of the expiration of the said year of assessment but no more. Further, the Service may, with the leave of court, compound an offence committed under the foregoing provisions. The offences coming under the purview of section 14 relate to tax collection and administration. Under the section, it is an offence for any person not being authorised to collect tax under the Act, to collect or attempt to collect tax under the Act; or being authorised, withholds tax or portion of tax for his own use; or demands from a licensee an amount in excess of the authorised assessment; or renders a false return of the amount of tax collected by him or defrauds any person or otherwise uses his position so as

to deal wrongfully with the Service. An offence under the Act is deemed to occur either at the place it actually occurred or in the federal territory.³⁸⁶

Casino revenue tax takes precedence over the rights of judgment debtors, assignees or any person having a lawful and legitimate claim over the property of a licensee and unless the judgment debtor, assignee or other person legally entitled to the property of a licensee pays to the Service any outstanding tax owed by the licensee, the Service may distrain goods or chattels of the licensee notwithstanding the rights of the third party, and proceed to sell same for the purpose of obtaining payment of the outstanding tax as well as other costs and charges of a reasonable nature arising from the distress and sale.³⁸⁷ Section 15 (2) further indemnifies any person acting under the authority of the Service in the execution of the foregoing provisions. The Service's right of distraint in respect of a licensee's property is exercisable by a principal inspector of taxes after demand has been made on the licensee and it fails or refuses to pay. The sum included in the demand notice is deemed to be a debt due to the Service as judgment creditor from the licensee as judgment debtor payable under the judgment of a High Court. An inspector of taxes armed with a warrant authorizing him to levy distress on a licensee's property may acquire the assistance of a police constable who shall assist the inspector to break into the licensee's premises to levy the distress. The distressed property may be kept for five days at the expense of the licensee and at the expiration of five days, if the licensee fails to pay the debt due along with costs, the property shall be valued and sold by public auction. The tax due shall be deducted together with costs and charges arising from the distress and sale and any surplus thereafter shall be restored to the licensee. Once issued, a distress warrant is perpetual such that if no property is found upon the licensee's premises to be levied, the inspector may, under the powers granted by the warrant, enter the premises at a future date when there is property and execute the warrant as if there had been no lapse of time.³⁸⁸

Section 18 empowers the Service to delegate to any person a special duty or power exercisable by the Service under the *Casino Taxation Act 1965* or the *Companies Income Tax Act 1979* upon such terms and conditions as the Service may decide. Such delegation is to be conferred by notice in the federal gazette or in writing to the person so delegated and where the person delegated is below the rank of principal inspector of taxes, the written approval of the minister must be obtained. Further, certain functions of the Service can not be delegated. These include the administration of any of the said Acts; the power to initiate prosecution

under the Act; the power to appeal against a decision of a magistrate, judge or the Tribunal and finally, the delegation cannot be construed as prohibiting the Service from exercising any of the powers so delegated. Anything required to be done by the Service is to be signified under the hand of the Chairman or any person duly authorised by him.³⁸⁹

Returns and all other documents relating to the operation of casino revenue tax are classified documents and all persons engaged in the administration of the Act are obliged to deal with the said documents as official secret.³⁹⁰ Consequently, it is an offence for any person to disclose information contained in the documents without the authority of the Service. The written authority of the minister must be obtained before such information can be divulged even in the prosecution of a person who violated the provisions of official secrecy. Indeed, section 21 (2) empowers the minister to treat any particular case so requiring as classified matter under the *Official Secrets Act 1962*.³⁹¹

Penalties for offences committed against the Act are contained in section 24. Where the offence relates to failure to furnish returns or keep prescribed records a first offender shall be liable upon conviction to a fine of one thousand naira or to imprisonment for two years or both and on any subsequent conviction whether for the same offence or not, to a fine of 2000 naira or imprisonment for three years or both and in addition to the subsequent conviction, the offender shall forfeit the casino license. Where the offence involves failure to furnish returns or keep records, the offender shall in addition be liable to a sum of 100 for each day during which the failure continues and in default of payment of this penalty in the case of a natural person, to an additional term of imprisonment for six months commencing from the day following the conviction or as otherwise directed by the court. The penalties prescribed shall not relieve the offender from payment of tax for which it or he is liable. Without prejudice to the powers of the Attorney General of the federation to initiate criminal proceedings, an offender cannot be prosecuted for an offence under the Act without the approval of the Service.³⁹² The power to make regulations under the Act is vested in the finance minister by section 25.

In 1979 the *Pool Betting and Casino Gaming (Prohibition) Decree No. 19 1979* was promulgated by the federal military government. This decree was signed into law on 4th June 1979 but deemed to have come into effect on 16th April 1979.³⁹³ The decree outlawed all forms of

pool betting and casino gaming and further repealed all pool betting and casino gaming legislations in force as at that date. The repealed legislations were:

- a. the Pool Betting Control Act No. 69 1961
- b. the Pool Betting Tax Act No. III 1962
- c. the Pool Betting Control Act No. 16 1963
- d. the Pool Betting Tax Act No. 11 1965
- e. Pool Betting Tax (Increase of Rate) Decree No. 82 1966
- f. Pool Betting Control (Enabling) Law Cap 97 Laws of Eastern Nigeria 1963
- g. Pool Betting (Parliamentary Authority) Law Cap 98 Laws of Northern Nigeria 1963
- h. Pool Betting (Control and Taxation) Law No. 1 Laws of Western Nigeria 1962
- i. Pool Betting and Control Law Cap 98 Laws of Lagos State 1973
- j. Pool Betting Tax Law Cap 99 Laws of Lagos State 1973
- k. Pool Betting (Control and Taxation) Law Cap 121 Laws of Bendel State
- l. Nigerian Pools Company Ltd (Take-Over) Decree No. 20 1972
- m. Casino Licensing Act No. VII 1964
- n. Casino (Licensing and Taxation) Law No. 3 Laws of Western Nigeria 1964
- o. Casino (Licensing and Taxation) Law Cap 22 Laws of Lagos State 1973
- p. Bendel Casino (Management) Law Cap 15 Laws of Bendel State

All licenses earlier granted for the purposes of pool betting or casino gaming were deemed to have expired immediately before the coming into force of the decree. Any person, who thereafter was found guilty of operating pool betting or casino gaming in whatever form, was guilty of an offence. In the case of pool betting, an individual was liable upon conviction to a fine of 200 naira or imprisonment for six months or both while a company was liable to a fine of 5000 naira or more. In the case of casino gaming, an individual was liable to a fine of 2000 naira or imprisonment for six months or both while a company was liable to a fine of at least 10,000 naira. In both cases, the offender would in addition to the penalties forfeit all equipments and materials used to the state. Interestingly, the *Casino Taxation Act No. 26 1965* was not one of the legislation repealed by the decree. Indeed, the Act is still part of Nigerian law and is presently cited as Cap C3 Laws of the Federation of Nigeria 2004.

Capital Transfer Tax

Capital transfer tax was introduced by the *Capital Transfer Tax Decree No. 12 1979*. It was intended as a strategy for curbing incidents of tax evasion and at the same time enhancing

government revenue. Decree No. 12 of 1979 imposed tax on property acquired by way of gifts transferred *inter vivos* and property acquired by way of inheritance upon the demise of the owner.³⁹⁴ The transfers exempted from tax under the decree included:

- a. An outright sale which was not intended to confer a gratuitous benefit on the transferee where the transaction was made at arms length between unconnected people or was such as might have been made at arms length between unconnected people.³⁹⁵
- b. A transfer of property where the value did not exceed N100,000 as at the date of the transfer. However, where within the lifetime of the transferor, he made further transfer of property of which capital tax was payable to the same transferee and taken together, the value of the two properties exceeded N100,000, the total value of both transfers were to be aggregated and capital tax paid at the appropriate rate.³⁹⁶
- c. A family house was defined as any house or part thereof used wholly by a family as the principal place of residence for that family and in respect of which no income accrued to such family or any member thereof.³⁹⁷

Title to transferred property liable to tax was not deemed to pass to the transferee until the tax due was paid and the instrument evidencing such transfer could not be registered unless a discharge certificate was issued by the relevant tax authority to the effect that capital transfer tax had been paid.³⁹⁸

The administration of the tax was vested in states' revenue authorities in cases of properties situated in the states even if the transferor or deceased was not liable to the income tax law of the state in question.³⁹⁹ A transferee was required to, within six months from the date of transfer or demise of the transferor in the case of a deceased, prepare and deliver the capital transfer tax form to the relevant tax authority. The form was to contain, in the case of a deceased person's estate, a true and perfect inventory and account of the estate of the deceased and statement of the value of the estate and in the case of a transfer *inter vivos* a description of the property and its value.⁴⁰⁰ The value of a property under the decree was deemed to be the value which, in the opinion of the relevant tax authority, the property would fetch in the open market at the time of the transfer or death of the deceased.⁴⁰¹ The transferee or person accountable for capital transfer tax in respect of a deceased person's estate was required to deliver the form to the relevant tax authority.

Three allowances were made in respect of transfers arising from death. These were allowances for funeral expenses,⁴⁰² debts and encumbrances. However, allowances were not allowed for:

- a. debts incurred or encumbrances created by the deceased except where they were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit;
- b. any debt in respect whereof there was a right to re-imburement from any other estate or person, unless such re-imburement could not be obtained;
- c. more than once for the same debt or encumbrance charged upon different portions of the estate.⁴⁰³

The decree provided a schedule of reduction in tax liability where capital transfer tax became payable upon the death of the owner and within 10 years from the date of such death capital transfer tax became payable again for reason of death of the transferee. Where the second death occurred within one year of the first, the tax due on the second transfer was reduced by 80 percent and where it occurred within 10 years of the first, there was a 10 percent reduction on the tax liability. In between these two ends, there was a decreasing continuum of reduction in tax liability.⁴⁰⁴

Appeals by an aggrieved party over the decision of the relevant tax authority were made to the High Court and the Chief Judge of a state was empowered to make rules governing the procedure for such appeals.⁴⁰⁵ The power to make regulations for the administration of the decree was however vested in the Federal Executive Council.⁴⁰⁶ In cases of non-payment, the relevant tax authority was vested with power to distrain the land or premises in respect of which the tax was charged or the goods or chattels of the person charged (including money, bills of exchange, bonds or other securities) and recover the tax due by selling anything so distrained.⁴⁰⁷ The capital transfer decree was repealed through a budget speech in 1996 on the grounds that the tax was not only difficult to administer, but it was also incompatible with Nigeria's cultural tradition.⁴⁰⁸

Education Tax

Education tax was introduced by the Education Tax Decree No. 7 of 1993 to impose an education tax on companies registered in Nigeria. The rate of the tax is fixed at two percent of assessable profits while administration is vested in the Federal Inland Revenue Service.

In 1998, Decree No. 40 was passed as amendment to Decree 7 of 1993. The 1998 amendment decree established the Education Fund as a body corporate with perpetual succession and a common seal and also established a Board of Trustees and vested it with the management of the Fund. In the 2004 compilation of the Laws of the Federation of Nigeria, both the principal decree and the amendment thereto were compiled as the *Education Tax Act Cap E4 Laws of the Federation of Nigeria 2004*.

The Education Tax Act was one of the nine tax bills that were submitted to the National Assembly as part of the reforms initiative. As far as education tax is concern, the intention was basically to restructure the machinery for the management of education tax revenue as well as the beneficiaries of the revenue accruable from the tax. As a result, therefore, the Education Tax Act was repealed and in its place, the Tertiary Education Trust Fund (Establishment, etc) Act was passed in 2011. The Tertiary Education Trust Fund (Establishment, etc) Act, as the name implies, creates the Tertiary Education Trust Fund as a body corporate to replace and take over the powers and duties of the defunct Education Fund. Second, the new Act has restructured the application of education tax proceeds by vesting the benefits thereof exclusively in the development of tertiary education in Nigeria. This is a departure from the position under the Education Tax Act which apportioned only 50 percent of the funds to tertiary education; reserving 30 percent for primary education and 20 percent for secondary education. In all other material respects, the Tertiary Education Fund functions much the same as the defunct Education Fund. For example, the rate of the tax is still two percent of assessable profit of a company registered in Nigeria.⁴⁰⁹ The Act imposes education tax on a company's assessable profit as ascertained in the manner provided under either the companies' income tax Act or the petroleum profits tax Act as the case may be.⁴¹⁰ The administration of the tax is still vested in the Federal Inland Revenue Service. Education tax is payable within 60 days of service of assessment notice on the company and the provisions of the CITA or PPTA relating to the collection of tax apply to the collection of education tax.⁴¹¹

The Tertiary Education Trust Fund is created under section 3 as a body corporate with perpetual succession and a common seal with the powers to sue and be sued. The Service is to remit all receipts from education tax into the Fund 'for the rehabilitation, restoration and consolidation of tertiary education in Nigeria'.⁴¹² The Service is also accountable to the Board of Trustees of the Fund established under section 4 of the Act for sums collected

and when making returns, shall submit to the Board of Trustees in an appropriate form the name of the company making the payment, the amount collected, the assessable profit of the company for the accounting period and such other information as may be required by the Board of Trustees. The Board of Trustees of the Fund is composed of a chairman, six persons reflecting the geo-political formation of the country; representatives each of the federal ministries of finance and education not below the rank of director; representatives each from the universities, polytechnics and colleges of education; and the Executive Secretary who shall be the secretary to the Board. Members are appointed by the President on the recommendation of the education minister for a term of four years renewable only once. However, the Executive Secretary of the Fund, as chief executive officer, is appointed to an initial term of five years renewable once for four years upon such terms and conditions of service as may be specified.⁴¹³

The functions of the Board include to:

- a. monitor and ensure collection of tax by the Service and ensure remittance of same to the Fund;
- b. manage and disburse the tax;
- c. liaise with appropriate ministries and bodies responsible for collection or safe keeping of the tax;
- d. receive requests and approve admissible projects after due consideration;
- e. ensure disbursement to public tertiary educational institutions in Nigeria;
- f. monitor and evaluate execution of the projects;
- g. invest funds in appropriate and safe securities;
- h. update the federal government on its activities and progress through annual and audited reports;
- i. review progress and suggest improvements within the provisions of the Act;
- j. do such other things as are necessary or incidental to the objects of the Fund under the Act or as may be assigned by the federal government;
- k. issue guidelines from time to time, to all beneficiaries on disbursement from the Fund on the use of monies received from the Fund; and
- l. generally regulate the administration, application and disbursement of monies from the Fund.⁴¹⁴

In disbursing the tax funds, the Board is obliged to observe the principle of equality among geo-political zones in the case of special intervention and equality among States and Local Governments in the case of regular intervention. The disbursement is specifically aimed at:

- a. essential physical infrastructure for teaching and learning;
- b. instructional material and equipment;
- c. research and publication;
- d. academic staff training and development; and
- e. any other need which, in the opinion of the Board of Trustees, is critical and essential for the improvement of quality and maintenance of standards in higher educational institutions⁴¹⁵

Education tax is shared among universities, polytechnics and colleges of education on a ratio of 2:1:1.⁴¹⁶

The Federal Inland Revenue Service shall serve a demand notice on a company that fails to pay tax within 60 days from date of service of assessment notice. The demand notice shall in addition to the tax due, require the company to pay a penalty in a sum equal to five percent of the tax due and if both the tax and the additional five percent are not paid within two months of the demand, the company is guilty of an offence under the Act. Where an offence under the Act is committed by a corporate body, firm or association of individuals, every director, manager or secretary (in the case of a corporation); or every partner or officer (in the case of a firm); or every person concerned in the management of the affairs of the association (in the case of an association) shall be severally guilty and proceeded against and punished as if he had himself committed the offence unless he can prove that the act or omission constituting the offence took place without his knowledge, consent or connivance.⁴¹⁷ An offence under the Act in the first instance is punishable with imprisonment for six months or a fine of 1000,000 naira or both; while in the second and subsequent instances, the penalty is imprisonment for twelve months or a fine of 2000,000 naira or both.⁴¹⁸ Under Section 11 of the repealed Act the punishment was a mere 10,000 naira for first offenders or imprisonment for three years and 20,000 naira for subsequent offenders or imprisonment for five years or both.

The power to make regulations governing the due administration of the Tertiary Education Fund (Establishment) Act is vested in the Education Minister by section 17.

Value Added Tax

Value added tax was introduced in Nigeria by the *Value Added Tax Decree No. 102 1993* and is imposed at a rate of five percent of the value of goods and services other than those exempted under the Schedule to the Act. The decree repealed the *Sales Tax Act 1986* and is retained as Cap V1 Laws of the Federation of Nigeria 2004. The categories of goods exempted under the First Schedule to the Act are:

- a. all medical and pharmaceutical products;
- b. basic food items;
- c. books and educational materials;
- d. baby products;
- e. plant and machinery imported for use in the Export Processing Zone or Free Trade Zone; provided that 100 percent production of such company is for export;
- f. all exports;
- g. plant, machinery and equipment purchased for utilisation of gas in down-stream petroleum operations;
- h. tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.

Four categories of services are exempted and they include medical services; services rendered by community banks, peoples bank and mortgage institutions; plays and performances conducted by educational institutions as part of learning; and all exported services.

Where the supply of taxable goods and services is for money consideration, the taxable value of such goods or service is an amount which with the addition of the tax chargeable is equal to the consideration. If the supply is for a consideration other than money, the value is deemed to be the market value.⁴¹⁹ The value of imported taxable goods is the amount equal to the price of the goods inclusive of all taxes, duties, charges costs by way of commission, parking, transport and insurance up to the port or place of importation but not inclusive of the tax chargeable under the Act.⁴²⁰

A person liable to VAT is required by section 8 to register with the Service within six months of commencement of business that he is so liable, failing which he shall be liable to

a penalty of 10,000 naira for the first month in which the failure occurs and 5,000 naira for each subsequent month in which the failure continues. Section 28 further makes it an offence punishable with a fine of 5,000 naira for failure to register. In addition to the fine, the premises of the business shall be liable to be sealed. Other categories required to be registered with the Service for the purposes of VAT are government ministries and agencies, statutory bodies, contractors doing business with any tier of government or its agency and non-resident companies.⁴²¹ A non-resident company is required to use the address of the person with whom it has a subsisting contract in Nigeria for the purpose of correspondence relating to VAT and include in all its invoices the persons to whom the goods and services are supplied in Nigeria and remit the tax in the currency of transaction. Every registered person is obliged to 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.⁴²²

Every government ministry, agency or statutory body is obliged to remit the tax charged on a contract and deducted at the time of payment to the contractor to the nearest tax office. The remission to the tax office must be accompanied by a schedule showing the name and address of the contractor, invoice number, gross amount of invoice, and amount of tax and month of return.⁴²³ Taxable persons are required to make returns of taxable goods and services on or before the 21st day of the month following that in which the purchase or supply was made. An importer of taxable goods is equally required to render returns on all imported goods to the Service.⁴²⁴ The Service may use its best judgment to assess the amount of tax due on taxable goods and services purchased or supplied by a taxable person who either fails to render a return or render an incomplete or inaccurate return.⁴²⁵ When rendering a return, if the output tax exceeds the input tax, the excess is remitted to the Service and if the input tax exceeds the output tax, the taxable person is entitled to a refund of the excess upon production of evidential documents. Where tax is due to be remitted and the taxable person fails to do so, a sum equal to 5 percent per annum, plus interest at the commercial rate, shall be added to the tax and the total amount shall be notified to the taxable person. A person aggrieved by the assessment may appeal to the Service and a decision on the appeal must be taken by the Service within thirty days of receipt. Under the original decree, an appeal from the decision of the Service went to the Value Added Tax Appeal Tribunal established by the Second Schedule to the decree. Presently however, appeals from the decision of the Service lie to the Tax Appeal Tribunal established by the Fifth Schedule to

the *Federal Inland Revenue Service (Establishment) Act 2007* as a successor to both the Body of Appeal Commissioners and the VAT Tribunal. Further appeals lie to the Federal High Court. The Service is equally empowered to appeal to the Tribunal where after service of notice, the taxable person fails or refuses to remit tax.⁴²⁶

The Act establishes a Value Added Tax Technical Committee consisting of the Chairman of Service as Chairman, all directors of the Service, the legal adviser to the Service, a director in the Nigerian Customs Service and three representatives of the state governments who must be members of the Joint Tax Board.⁴²⁷ The functions of the Committee are to consider all tax matters that require professional and technical expertise and make appropriate recommendations to the Service; advise the Service on the administration of VAT and attend to such other matters as are referred to it.⁴²⁸ Sections 21 to 32 create offences under the Act and provides. The offences include:

- a. furnishing false documents or information;
- b. evasion of tax;
- c. failure to make attribution or notify the Service after the attribution;
- d. failure to notify the Service of a change in address;
- e. failure to issue tax invoice;
- f. resisting, obstructing or hindering an authorised officer;
- g. issuing of tax invoice by an unauthorised person;
- h. failure to register for tax;
- i. failure to keep proper records and accounts;
- j. failure to collect tax;
- k. failure to submit returns; and
- l. aiding and abetting the commission of any of the above offences.

Varying penalties are specified for the offences listed above where any of them is committed by a natural taxable person. Where any of the offences is committed by a corporate body, firm or association of individuals, similar consequences as under section 6 of the Education Tax Act apply.⁴²⁹

The VAT Act empowers the minister of finance to amend the rate of VAT as well as the list of taxable goods and services.⁴³⁰

The Value Added Tax Act was one of the nine bills submitted as part of the reforms process that commenced in 2004. The Value Added Tax (Amendment) Act No. 53 2007 which was one of the four legislations passed by the National Assembly in 2007 retained the existing rate of five percent but introduced a number of other changes in the administration of VAT. The 2007 amendment generally improved on the principal decree by removing ambiguities in the law but also specifically did the following:

- a. A new subsection has been introduced to Section 13 which empowers the Federal Inland Revenue Service to direct companies operating in the oil and gas sector to deduct VAT at source and make remittance to the Service.⁴³¹
- b. Section 6 of the amendment introduces a new Section 13A which obliges a supplier of taxable goods or service to furnish the purchaser with an invoice specifying details of the transactions whether payment has been made at the time of supply or not.
- c. Under Section 15 the principal Act, a taxable person was required to render returns of all taxable goods and services purchased or supplied by him within the preceding month on or before the 30th day of the month following that in which the purchase or supply was made. Section 7 (a) of the amendment now requires the monthly returns to be made on or before the 21st day of the month. Section 7 (b) of the amendment further introduces a new subsection (3) to Section 15 of the principal Act deeming as payment to the Federal Inland Revenue Service, all payments made by an importer of taxable goods to authorised government agents.
- d. The requirement that the Nigerian Customs Service should demand the Value Added Tax Compliance Certificate from an importer before releasing imported taxable goods to the importer under Section 16 (3) of the principal Act has been repealed by Section 8 of the amendment Act.
- e. Section 10 of the amendment introduces changes to reflect the current dispute resolution mechanism. Consequently, rather than the Value Added Tax Tribunal which is now defunct, appeals against VAT assessments lie to the Tax Appeal Tribunal. A new subsection (3) to Section 10 also requires the Service to determine an objection against assessment to VAT within 30 thirty.
- f. Section 40 of the Act specifies the allocation formula of VAT proceeds among the three tiers of government as 15 percent for the Federal Government; 50 percent for the States and 35 percent for the Local Governments. Section 11 of the amendment introduces a new proviso to Section 40 to the effect that the principle of derivation

of not less than 20 percent shall be reflected in the distributable share of States and Local Governments.

- g. Finally, Section 13 (b) of the amendment introduces a Part III to the Second Schedule to the Act. Part III contains the list of zero-rated goods and services which include non oil exports, goods and services purchased by diplomats and donor funded projects. Zero rating means that although the items are not exempted from VAT, the VAT rate payable on them is zero.

Federal Inland Revenue Service (Establishment) Act No. 13 2007

The *Federal Inland Revenue Service (Establishment) Act 2007* does not, strictly speaking, impose or levy any taxes. What it does is to vest the administration of the tax laws contained in the First Schedule to the Act in the Federal Inland Revenue Service. Principally, in the area of tax administration, the Act confers autonomy on the Service as a corporate entity with perpetual succession.⁴³² Further, the Body of Appeal Commissioners and the VAT Tribunal have been abolished and replaced with the Tax Appeal Tribunal.⁴³³

The Service is vested with powers to administer the Companies' Income Tax Act, Petroleum Profits Tax Act, Personal Income Tax Act, Capital Gains Tax Act, Value Added Tax Act, Stamp Duties Act, Taxes and Levies (Approved List for Collection), all Regulations, Notices or Rules issued pursuant to the foregoing provisions, Laws imposing taxes or levies within the Federal Capital Territory, any law for which power to administer is conferred on the Service and any enactment or law imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonuses, pipeline fees, penalties for gas flaring, depot levies, fees for oil exploration licence, oil mining licence, oil production licence, royalties, rents and all fees prevalent in the oil industry not specifically listed. Although the Act does not impose tax, it provides for offences and penalties one of which is the failure to deduct tax in line with the provisions of the enactments listed in the First Schedule, or having deducted, failing to remit same within 30 days to the Service. The penalty prescribed is liability for the tax not deducted or not remitted as the case may be plus penalty of 10 percent of the sum involved per annum at the existing Central Bank of Nigeria re-discount rate and imprisonment for three years.⁴³⁴

Taxes and Levies (Approved List for Collection) Act⁴³⁵

Like the FIRS Establishment Act, this Act which was originally promulgated as decree No. 2 1998 was aimed at reforming tax administration. Essentially, it demarcated spheres of collectible taxes among the three tiers of government as enumerated in chapter three.

References

- 1 Preamble to the Native Revenue Proclamation No. 2 1906
- 2 An unsettled district was defined by section 2 of the Proclamation as a community which did not pay tribute to any chief.
- 3 Section 3 (a) and (b) Native Revenue Proclamation No. 2 1906.
- 4 *Ibid*, section 4 (a) - (d).
- 5 *Ibid*, section 7.
- 6 *Ibid*, section 9 (a) and (b).
- 7 A recognised chief was defined by section 2 as any chief whose position as such was recognised and approved by the Governor.
- 8 *Ibid*, section 10 (a) - (d).
- 9 *Ibid*, section 11 (a) - (c).
- 10 *Ibid*, section 13.
- 11 *Ibid*, sections 15 and 16.
- 12 *Ibid*, section 17.
- 13 *Ibid*, section 18.
- 14 *Ibid*, section 19.
- 15 *Ibid*, section 21.
- 16 *Ibid*, section 22.
- 17 *Ibid*, section 23.
- 18 *Ibid*, section 24.
- 19 *Ibid*, section 25.
- 20 *Ibid*, section 20.
- 21 Section 1, Native Revenue Ordinance No. 1 1917.
- 22 *Ibid*, section 3 (a) and (b).
- 23 *Ibid*, sections 2 and 9 (2).
- 24 *Ibid*, section 14.
- 25 *Ibid*, sections 15 and 16.
- 26 Section 2 *Native Revenue (Amendment) Ordinance* No. 29 1918
- 27 Sections 1 and 2 *Native Revenue (Amendment) Ordinance* No. 17 1927
- 28 This ordinance regulated income taxation in the colony of Lagos and its provisions are discussed ahead.
- 29 References to 'the protectorate' after 1914 are references to the protectorate of Nigeria

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- 30 Section 4 (3), Non-Natives Income Tax (Protectorate) Ordinance No. 21 1931.
- 31 *Ibid*, section 4 (6).
- 32 *Ibid*, section 7 (3).
- 33 *Ibid*, section 11 (1) - (4).
- 34 *Ibid*, section 12.
- 35 *Ibid*, section 13(1) - (3).
- 36 *Ibid*, section 14(8).
- 37 *Ibid*, section 15(1) and (2).
- 38 *Ibid*, section 20(1).
- 39 The Ordinance was repealed by the Income Tax Ordinance No. 3 1940.
- 40 Non-Natives Income Tax (Protectorate)(Amendment No. 2) Ordinance No. 23 1936.
- 41 *Ibid*, section 6.
- 42 Section 2 Non-Natives Income Tax (Protectorate) (Amendment No. 2) Ordinance No.18 1939.
- 43 *Ibid*, section 3.
- 44 Section 2, Non-Natives Income Tax (Protectorate) (Amendment No. 3) Ordinance No. 29 1939.
- 45 Section 1, Direct Taxation Ordinance No. 4 1940.
- 46 *Ibid*, section 30.
- 47 *Ibid*, section 5.
- 48 *Ibid*, section 7.
- 49 *Ibid*, section 98.
- 50 *Ibid*, section 13 (1) - (3).
- 51 *Ibid*, section 15 (a) - (d).
- 52 *Ibid*, section 21.
- 53 *Ibid*, section 22.
- 54 *Ibid* section 23.
- 55 Cap 54 of 1940.
- 56 Section 19 was *in pari materia* with section 17 (2), Direct Taxation Ordinance No. 4 of 1940.
- 57 Section 3(3) and (4), Income Tax (Colony) Ordinance No. 23 1927.
- 58 *Ibid*, section 13(1) and (2).
- 59 *Ibid*, section 15(1) - (3).
- 60 Section 4 (1), Income Tax (Colony) (Amendment) Ordinance No. 31 1933.

- 61 *Ibid*, section 5.
- 62 *Ibid*, section 6.
- 63 Section 33, Colony Taxation Ordinance No. 4 1937.
- 64 *Ibid*,section 5.
- 65 *Ibid*, section 9.
- 66 *Ibid*, proviso to section 10.
- 67 *Ibid*, section 13.
- 68 *Ibid*, section 15.
- 69 *Ibid*, section 20.
- 70 *Ibid*, section 21 (2) (a) - (b).
- 71 *Ibid*, section 21 (3).
- 72 *Ibid*, section 23 (1) - (3).
- 73 Section 24 (1) - (2).
- 74 *Ibid*, section 28 (1) (a) - (d), (2),
- 75 *Ibid*, section 29 (1) - (4).
- 76 Section 5, Native Direct Taxation (Colony) Ordinance No. 41 1937.
- 77 *Ibid*, section 6 (1) and (2).
- 78 *Ibid*, section 8.
- 79 *Ibid*, section 10 (1) - (2).
- 80 *Ibid*, section 18.
- 81 *Ibid*, sections 19 and 20.
- 82 *Ibid*, section 22.
- 83 Section 2(a), Colony Taxation (Amendment) Ordinance No. 2 1939.
- 84 *Ibid*, section 2(b).
- 85 *Ibid*, section 2(c).
- 86 *Ibid*, section 3.
- 87 *Ibid*, sections 4, 5 and 7.
- 88 *Ibid*, section 6.
- 89 The long title of the Ordinance read: *'An Ordinance to regulate the levying and collection of a supplementary tax on incomes for the financial year 1939 - 1940'*.
- 90 Section 1, Income Tax (Supplementary) Ordinance No. 28 1939.
- 91 *Ibid*, section 2.
- 92 Section 3, Colony Taxation (Amendment) Ordinance No. 2 1939.
- 93 The provisions of the Colony Taxation Ordinance 1937

- that were incorporated into the Income Tax (Supplementary) Ordinance 1939 were sections 2, 4, 5, 11, 14, 15, 17, 20, 22, 23 (1) and (2), 24 – 32. See the First Column of the Second Schedule, Income Tax (Supplementary) Ordinance No. 28 1939.
- 94 See Second Column of the Second Schedule, Income Tax (Supplementary) Ordinance No. 28 1939. Modifications were done to the following provisions of the *Colony Taxation Ordinance (supra)*: a. Section 2, by deleting the definition of year of assessment and replacing it with the definition in the Income Tax (Supplementary) Ordinance 1939. b. Sections 5, 17, 22, 23 (1) and (2), 27, 28, 30 (1) and (4) and 30A (3), by substituting the words *tax authority* with *Commissioner*. c. Section 27, by deleting the proviso (2). d. Section 30 (4), by substituting the words *a Judge of the Supreme Court* with *the Court*.
- 95 *Ibid*, section 5.
- 96 Section 66, Income Tax Ordinance No. 3 1940.
- 97 *Ibid*, section 3
- 98 *Ibid*, section 6
- 99 Section 49 defined *Empire income tax* as ‘any tax charged under any law in force in any part of His Majesty’s Dominions or in any place under His Majesty’s protection (other than the United Kingdom or Nigeria)’.
- 100 Section 14 (2), *supra* note 514
- 101 Section 16 (2) defined child to include a step child but not an adopted or illegitimate child.
- 102 *Ibid*, section 17
- 103 *Ibid*, section 18
- 104 *Ibid*, section 20 (1)
- 105 *Ibid*, section 20 (2)
- 106 *Ibid*, section 23.
- 107 *Ibid*, section 24 (2).
- 108 *Ibid*, section 27.
- 109 *Ibid*, section 28 (1) (b).
- 110 *Ibid*, section 28 (2).
- 111 *Ibid*, section 28 (4).
- 112 *Ibid*, section 29.
- 113 *Ibid*, section 35 (1).
- 114 *Ibid*, section 38 (1).

- 115 *Ibid*, section 39 (1) and (2).
- 116 *Ibid*, section 42.
- 117 *Ibid*, section 45 (3).
- 118 *Ibid*, section 46 (1) (a) - (j).
- 119 *Ibid*, section 46 (2).
- 120 *Ibid*, section 47 (1) and (2).
- 121 *Ibid*, section 49 (3).
- 122 *Ibid*, section 51.
- 123 *Ibid*, section 52.
- 124 *Ibid*, section 53.
- 125 *Ibid*, section 54 (1) - (3).
- 126 *Ibid*, sections 57.
- 127 *Ibid*, section 63 (1) and (2).
- 128 *Ibid*, section 64.
- 129 Section 2, Income Tax (Amendment) Ordinance No. 14 1940.
- 130 These were:
Nos. 35 of 1941, 29 of 1943, 36 of 1944, 23 of 1945, 6 of 1946, 16 of 1947, 24 of 1947, 16 of 1948, 16 of 1949, 25 of 1950, 10 of 1952, 11 of 1952, 5 of 1955, 19 of 1955, 31 of 1955, 32 of 1957, 23 of 1958, 47 of 1955 and 55 of 1955.
- 131 Section 4 (4) Income Tax Administration Ordinance No. 39 1958.
- 132 *Ibid*, section 1 (1).
- 133 Section 14, Companies Income Tax Ordinance No. 14 1939.
- 134 *Ibid*, section 3.
- 135 *Ibid*, section 4.
- 136 *Ibid*, sections 5 and 6.
- 137 *Ibid*, section 8
- 138 *Ibid*, section 9 (1)
- 139 *Ibid*, section 12.
- 140 *Ibid*, section 13.
- 141 *Ibid*, section 13 (1) - (4).
- 142 *Ibid*, section 15 (1) and (2).
- 143 *Ibid*, section 21.
- 144 *Ibid*, section 18.
- 145 *Ibid*, section 29.

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- 146 *Ibid*, section 22 (1) - (3).
147 *Ibid*, section 25.
148 *Ibid*, section 26 (1) - (3).
149 *Ibid*, section 28.
150 *Ibid*, section 32 (1) and (2).
151 *Ibid*, sections 33 and 34.
152 *Ibid*, section 35.
153 *Ibid*, section 38 and 40.
154 *Ibid*, section 39 and 41.
155 *Ibid*, section 43 (1) and (2).
156 *Ibid*, section 45.
157 Section 77, Companies Income Tax Act No. 22 1961.
158 *Ibid*, sections 3 (1) and 4 (1).
159 *Ibid*, section 18 (1) and (2).
160 *Ibid*, section 2.
161 *Ibid*, section 26 (g).
162 *Ibid*, section 30 (1).
163 *Ibid*, section 31 (1).
164 *Ibid*, section 32.
165 *Ibid*, section 39.
166 *Ibid*, sections 40 – 42.
167 *Ibid*, section 44 (1) - (4).
168 *Ibid*, section 48 (1) - (3).
169 *Ibid*, section 49 (1)
170 *Ibid*, section 50
171 *Ibid*, section 51 (1)-(3)
172 *Ibid*, section 52
173 *Ibid*, section 53 (1)-(3)
174 *Ibid*, section 54
175 *Ibid*, section 56 (2).
176 *Ibid*, section 58 (3).
177 *Ibid*, section 74.
178 *Ibid*, section 58 (2).
179 *Ibid*, section 61.

- 180 This was the general penalty prescribed by Section 67 (1) for an offence in respect of which no specific penalty was prescribed.
- 181 *Ibid*, section 62 – 64.
- 182 *Ibid*, section 65 and 66.
- 183 *Ibid*, section 67 (2).
- 184 *Ibid*, section 68 (1).
- 185 *Ibid*, section 69.
- 186 *Ibid*, section 68 (1) (b).
- 187 *Ibid*, section 70.
- 188 Section 1 Income Tax (Amendment) Decree No. 45 1967.
- 189 Section 2 (a) Income Tax (Miscellaneous Provisions) Decree No. 28 1974.
- 190 *Ibid*, section 2 (b).
- 191 *Ibid*, section 2 (d).
- 192 *Ibid*, section 2 (e).
- 193 *Ibid*, section 2 (f).
- 194 Section 77, Companies Income Tax Decree No. 28 1979.
- 195 As the successor to the FBIR, the FIRS is now vested with the administration of the Act.
- 196 *Op. cit*, section 2.
- 197 *Ibid*, section 8 (1) (g).
- 198 *Ibid*, section 26 (3)
- 199 *Ibid*, section 28 (1)
- 200 *Ibid*, section 28 (4)
- 201 *Ibid*, section 28 (2)
- 202 *Ibid*, section 28 (3)
- 203 The Body of Appeal Commissioners has been replaced with the Tax Appeal Tribunal established under section 59 of the FIRS (Establishment) Act 2007.
- 204 Some of the decrees include Nos. 21 of 1991, 30, 31 and 32 of 1996, 18 and 19 of 1998 and 30 of 1999.
- 205 See Chapter Three for details on the recommendations of the Study Group.
- 206 Section 23 Companies' Income Tax (Amendment) Act No. 56 2007
- 207 Act No. 21 of 1961, hereafter referred to as ITMA 1961.
- 208 Section 1 (1) - (3), ITMA 1961.
- 209 *Ibid*, section 32.

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- 210 *Ibid*, section 3 (1).
- 211 *Ibid*, section 3 (2) - (5).
- 212 *Ibid*, section 5 (1).
- 213 *Ibid*, section 6 (1).
- 214 *Ibid*, section 7.
- 215 *Ibid*, section 8 (1).
- 216 *Ibid*, sections 9 and 10.
- 217 *Ibid*, section 26.
- 218 *Ibid*, section 11.
- 219 *Ibid*, section 14.
- 220 *Ibid*, section 16 (1).
- 221 *Ibid*, section 17.
- 222 *Ibid*, section 18.
- 223 *Ibid*, section 19.
- 224 *Ibid*, section 22.
- 225 *Ibid*, section 27.
- 226 *Ibid*, section 27 (8) (c) and (d).
- 227 *Ibid*, section 28 (1) and (2).
- 228 *Ibid*, section 30 (1).
- 229 *Ibid*, section 31.
- 230 Section 1 (1) and (2), Personal Income Tax (Lagos) Act No. 23 1961.
- 231 Section 20A (1), Income Tax Management (Uniform Taxation Provisions, etc) Decree No. 7 1975.
- 232 Section 21A (1), Income Tax Management (Uniform Taxation Provisions, etc) Decree No. 7 1975.
- 233 Examples of these include the Finance (Miscellaneous Taxation Provisions) Decrees Nos. 21 and 63 of 1991.
- 234 It is deemed an Act of the National Assembly by virtue of the provisions *section 315 Constitution of the Federal Republic of Nigeria, 1999* and as such is now known as the *Personal Income Tax Act*.
- 235 The tax authorities established by PITA are the Joint Tax Board, States' Boards of Internal Revenue, Local Government Revenue Committees and Joint State Revenue Committees respectively. See Chapter Three for an extensive discourse pertaining to their composition and functions.

- 236 Section 85 (1), Personal Income Tax Act. This codified as Cap. P8 Laws of the Federation of Nigeria 2004.
- 237 *Ibid*, section 85 (3).
- 238 Nos. 30, 31 and 32 of 1996, 18 and 19 of 1998 and 30 of 1999.
- 239 Cap P4 Laws of the Federation of Nigeria 2004
- 240 Section 3 Personal Income Tax (Amendment) Act 2011
- 241 *Ibid* section 6
- 242 *Ibid* Section 7
- 243 *Ibid* Section 12
- 244 *Ibid* Section 13
- 245 *Ibid* Section 14
- 246 *Ibid* Section 18
- 247 *Ibid* section 19
- 248 *Ibid* Section 23
- 249 *Ibid* Sections 25-28
- 250 *Ibid* Section 30
- 251 *Ibid* Section 31
- 252 *Ibid* Section 32
- 253 *Ibid* Section 33
- 254 Present day Bayelsa State.
- 255 These functions are now carried out by the Federal Inland Revenue Service as the successor to the FBIR. All references to the *Board* are therefore construed as references to the *Service*
- 256 Section 6 (1) and (2) Petroleum Profits Tax Act Cap P13 LFN 2004
- 257 *Ibid*, section 7 (3) The Corporate Affairs Commission established under the Companies and Allied Matters Act 1990 is now the successor to the Registrar of Companies who was contemplated under the principal Ordinance.
- 258 *Ibid*, section 2.
- 259 Under the principal ordinance, the term *gross* appeared before proceeds. This was deleted by the Petroleum Profits (Amendment) Decree No. 1 1967.
- 260 This paragraph was inserted by the Petroleum Profits Tax (Amendment) Decree No. 15 1973. Under the provisions of the principal Ordinance, ‘the value of any chargeable oil so disposed of’ was taken to be the value of that oil as determined, for the purpose

- of royalty, in accordance with the provisions of the oil prospecting licence or oil mining lease by virtue of which that oil was recovered or won by the company’.
- 261 *Op. cit*, section 9 (3).
- 262 Non-productive rents, defined by section 2 to mean the amount of any rent as to which there is provision for its deduction from the amount of any royalty under a petroleum prospecting license or oil lease to the extent that such rent is not so deducted, was introduced as an allowable deduction by the Petroleum Profits (Amendment) Decree No.1 1967.
- 263 Paragraph g was introduced by the Petroleum Profits Tax (Amendment) (No. 2) Decree No. 24 1979 while paragraph h was introduced by the Petroleum Profits Tax (Amendment) Decree No. 15 1973.
- 264 *Op. cit*, section 14, under the principal Ordinance, this provision was section 12.
- 265 This power is now vested in the minister in charge of petroleum resources.
- 266 *Op. cit*, section 20 (3).
- 267 Under the principal Ordinance, this allowance was referred to as initial allowance; the phrase ‘investment tax credit’ was introduced to replace initial allowance by the provisions of the Petroleum Profits Tax (Amendment No. 2) Decree No.24 1979.
- 268 For more on how this is done, refer to chapter 4.
- 269 *Op. cit*, section 25 (1) and (2).
- 270 *Ibid*, section 27 (1) and (2).
- 271 *Ibid*, section 27 (3).
- 272 *Ibid*, section 32.
- 273 Under section 27 (1) of the principal Ordinance, the time allowed was five months after the commencement of an accounting period. The period was reduced to two months by virtue of the Petroleum Profits Tax (Amendment) Decree No. 15 1973.
- 274 *Op. cit*, section 37 (1) - (3).
- 275 *Ibid*, section 38 (1) - (6).
- 276 *Ibid*, section 39 (1) - (2).
- 277 At the time of the passage of the principal Ordinance, the Federal High Court had not yet been established so further appeals went to the High Court; again with the establishment of the Tax Appeal Tribunal (TAT), all powers vested in the Body of Appeal Commissioners are now exercisable by the TAT. All references to BAC may therefore be deemed to be references to the TAT.
- 278 *Op. cit*, section 44.

- 279 *Ibid*, section 45 (1) - (4).
- 280 Section 38 (1) - (6), Petroleum Profits Tax Ordinance No. 15 1959.
- 281 *Op. cit*, section 54.
- 282 Section 51 of the principal Ordinance provided similarly in respect of the income tax ordinance, which, from the foregoing analysis, was a predecessor to the Personal Income Tax Act.
- 283 Under section 52 of the principal Ordinance, this power was vested in the Governor - General.
- 284 Section 2 (a), Petroleum Profit Tax (Amendment) (No. 3) Decree 95 1979.
- 285 The decree is now deemed to be an Act of the National Assembly and preserved as Cap C1 LFN 2004.
- 286 Section 4 (a) - (c) Capital Gains Tax Act Cap C1 LFN 2004.
- 287 *Ibid*, section 6 (2) (a) and (b).
- 288 *Ibid*, section 7 (1) and (2).
- 289 *Ibid*, section 8 (3).
- 290 *Ibid*, section 11.
- 291 *Ibid* , section 18 (1) and (2)
- 292 *Ibid*, Section 19 (1) and (2).
- 293 It should be noted that reference to the Board by virtue of the provisions of Federal Inland Revenue Service (Establishment) Act 2007 (FIRSEA) is the FIRS.
- 294 *Op. cit*, section 26 (1).
- 295 *Ibid*, section 26 (2).
- 296 Under the principal decree, the limit was 5000 pounds
- 297 The limit under the principal decree was 500 pounds.
- 298 *Op. cit*, section 42 (1) - (3).
- 299 Currently the FIRS and the TAT respectively.
- 300 Long title to the Stamp Proclamation No. 8 1903.
- 301 *Ibid*, section 3
- 302 ection 6, Stamp Ordinance No. 42 1916.
- 303 *Ibid*, section 52.
- 304 Ordinance No. 41 1922.
- 305 Ordinance No. 43 1928.
- 306 Ordinance No. 23 1931.
- 307 Section 116, Stamp Duties Ordinance No. 5 1939.

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- 308 Section 4 (1) and (2), Stamp Duties Act Cap S8 LFN 2004.
- 309 *Ibid*, section 100 (2). Under section 98 (2) of the principal Ordinance, the rate was ten shillings for every one hundred pounds.
- 310 *Ibid*, section 5(2).
- 311 *Ibid*, section 28.
- 312 *Ibid*, section 39.
- 313 Section 18 further provides that all statutory declarations or affidavits made pursuant to Stamp Duties be done before a Commissioner or any other person authorised by law to administer oaths.
- 314 Twenty pounds was the penalty under the principal Ordinance.
- 315 *Op. cit*, section 10 (1).
- 316 *Ibid*, section 11 (1) - (3) the fine was 10 pounds under the principal Ordinance.
- 317 *Ibid* 197. See “Islamisation of the Natural sciences – Myth or Reality.” A Paper Presented at a Seminar on Islamisation of Knowledge at Bayero University, Kano, Nigeria. , section 12.
- 318 *Ibid*, section 14 (1) and (2).
- 319 *Ibid*, section 16 (1).
- 320 *Ibid*, section 17.
- 321 *Ibid*, section 19.
- 322 *Ibid*, section 25.
- 323 *Ibid*, section 26.
- 324 Defined as ‘the note sent by a broker or agent to his principal, or by any person who, by way of business, deals, or holds himself out as dealing, as a principal in any stock or marketable securities, advising the principal, or the vendor or purchaser, as the case may be, of the sale or purchase of any stock or marketable security, but does not include a note sent by a broker or agent to his principal where the principal is himself acting as broker or agent for a principal’.Section 49 (1), *ibid*.
- 325 Defined as ‘every instrument, and every decree or order of any court, whereby any property on any occasion, except a sale or mortgage, is transferred to or vested in any person’. Section 65, *ibid*.
- 326 *Ibid*, sections 27 - 105.
- 327 *Ibid*, section 106,
- 328 Pursuant to this power which was originally vested by section 113 in the Governor-General, the following regulations were made: Stamp Duties (Custody of Dies)

- Regulations, The Stamp Duties (Adhesive Stamps) Regulations and The Stamp Duties (Customs Bonds) Regulations. The Regulations took care of the matters listed under the enabling section.
- 329 *Op. cit*, section 116 (1) and (2).
- 330 The amendments were done in 1941 (Ordinance No. 28), 1942 (Ordinance No. 17), 1946 (Ordinance No. 26), 1950 (Ordinance No. 38), 1953 (Ordinance No. 2) and 1961 (Act No. 55).
- 331 Following the Ordinance, the Regions also passed their Produce Sales Tax Laws. E.g. the Western Region passed its own law in 1957.
- 332 These were the Nigeria Cocoa Marketing Board Ordinance, Nigeria Groundnut Marketing Ordinance, the Nigeria Oil Palm Produce Marketing Ordinance and the Nigeria Cotton Marketing Ordinance all of 1949.
- 333 Section 3 (2) Sale of Produce (Taxation) Ordinance No. 12 1953
- 334 *Ibid*, section 4
- 335 *Ibid*, sections 6 and 7
- 336 *Ibid*, section 9
- 337 *Ibid*, section 10
- 338 *Ibid*, section 8.
- 339 Groundnuts: one pound, benniseed: ten shillings, soya beans and sunflower: two shillings and six pence, cocoa: five pounds, palm kernel: two pounds and six shillings, palm oil: four pounds and ten shillings. Seed cotton was however measured in lbs and the rate was one tenth of a penny per each lb.
- 340 Section 2, Sales Tax Decree No. 7 1986.
- 341 *Ibid*, section 7 (1).
- 342 Section 1 (1) and (2), Super Tax Decree No. 46 1967.
- 343 *Ibid*, section 1 (4).
- 344 *Ibid*, section 9 (1).
- 345 *Ibid*, section 3 (1) - (3).
- 346 *Ibid*, section 5.
- 347 *Ibid*, sections 6 and 7.
- 348 *Ibid*, section 8.
- 349 *Ibid*, section 10.
- 350 *Ibid*, section 11.
- 351 Section 1 (1) and (2), Super Tax (Amendment) Decree No. 12 1970.

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- 352 *Ibid*, section 2 (1) - (4).
- 353 Section 1, Super Tax (Amendment) (No. 2) Decree No. 12 1971.
- 354 Funds brought into Nigeria from any country or territory outside Nigeria.
- 355 *Ibid*, section 4 (b).
- 356 As introduced by the 1970 amendment.
- 357 *Op. cit*, section 4 (a) and (b).
- 358 Entertainment Tax Western Region Law 3 1953
- 359 Section 13 (3).
- 360 Section 1, *Entertainment Tax Decree No. 66 1966*
- 361 *Ibid*, section 2
- 362 Ministry of Finance
- 363 *Ibid*, section 7 (1) and (2).
- 364 *Ibid*, section 10 (1) and (2).
- 365 Section 67 of the Constitution of Nigeria 1960.
- 366 See long title to the Pool Betting Control Act No. 69 1961.
- 367 *Ibid*, section 3 (1) - (4).
- 368 *Ibid*, section 4 (1).
- 369 *Ibid*, section 5 (1) - (3).
- 370 *Ibid*, section 6 (1) and (2).
- 371 Section 1 (4), Pool Betting Tax Act No. III 1962.
- 372 *Ibid*, section 1 (3).
- 373 *Ibid*, section 2 (1) - (3).
- 374 *Ibid*, section 3 (4).
- 375 Section 3 (1), Pool Betting Tax Act No. 11 1965.
- 376 Section 1, Pool Betting Tax (Increase of Rate) Decree 1966.
- 377 Section 26 (1) extends the application of the Act, in respect of companies liable to tax under the Act, to the entire federation.
- 378 Section 1 (1) - (5), Casino Taxation Act No. 26 1965.
- 379 That is, a company liable to casino revenue tax. See *Ibid*, section 1 (3) (b).
- 380 *Ibid*, section 3 (1) - (4).
- 381 *Ibid*, section 5 (1) - (3).
- 382 *Ibid*, section 6 (1) - (4).
- 383 *Ibid*, section 7 (1) - (3).
- 384 *Ibid*, section 9 (1) and (2).

- 385 *Ibid*, section 22 (1) and (2).
- 386 *Ibid*, section 17.
- 387 *Ibid*, section 15 (1).
- 388 *Ibid*, section 16 (1) - (6).
- 389 *Ibid*, section 19 (1).
- 390 *Ibid*, section 21 (1).
- 391 Disclosure of classified matters under the Official Secrets Act is prohibited if considered prejudicial to the security of Nigeria.
- 392 *Op. cit*, section 23 (1) and (2).
- 393 Sections 1 (4) and 2 (4) Pools Betting and Casino Gaming (Prohibition) Decree No. 19 1979.
- 394 Sections 1 and 4 Capital Transfer Tax Decree No. 12 1979.
- 395 *Ibid*, section 1 (2).
- 396 *Ibid*, section 2 (1) and (2).
- 397 *Ibid*, section 17 (1) and (2).
- 398 *Ibid*, section 3 (1) and (2).
- 399 *Ibid*, section 8 (1) and (2).
- 400 *Ibid*, section 9.
- 401 *Ibid*, section 10.
- 402 These included the cost of embalming and transporting the deceased to the burial ground but in any event the cost was not to exceed N1000 in respect of a tombstone and N3000 for all other expenses.
- 403 See section 13 (1), Capital Transfer Decree 1979.
- 404 *Ibid*, section 19.
- 405 *Ibid*, section 21.
- 406 *Ibid*, section 27.
- 407 *Ibid*, section 24 (1).
- 408 Sanni, A. 'Theft of Tax Policy in UK: Lessons for Nigeria', *The Punch Newspaper* 13 - 14 November 2007, 13 - 14.
- 409 Section 1 (2) Tertiary Education Trust Fund (Establishment, etc) Act, 2011.
- 410 *Ibid*, section 1 (3)
- 411 *Ibid*, section 2 (1) to (3)
- 412 *Ibid*, section 3 (1)
- 413 *Ibid* Section 8 (1)

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- 414 *Ibid*, Section 6
- 415 *Ibid* Section 7 (1) and (2)
- 416 *Ibid* Section 7 (3)
- 417 *Ibid*, section 10 (1) to (5).
- 418 *Ibid*, section 11 (1)
- 419 Section 5, Value Added Tax Act Cap V1 LFN 2004.
- 420 *Ibid*, section 6.
- 421 *Ibid*, section 8A - 8B.
- 422 *Ibid*, section 9.
- 423 *Ibid*, section 10.
- 424 *Ibid*, section 12.
- 425 *Ibid*, section 14.
- 426 *Ibid*, section 16 (1) - (5).
- 427 *Ibid*, section 17.
- 428 *Ibid*, section 18.
- 429 *Ibid* Section 33.
- 430 *Ibid* Section 34.
- 431 Section 5 (a) Value Added Tax (Amendment) Act No.53 2007
- 432 Section 1 Federal Inland Revenue Service (Establishment) Act 2007.
- 433 *Ibid* Section 59 and the Fifth Schedule to the Act.
- 434 *Ibid* Section 40.
- 435 Cap T2 Laws of the Federation 2004.