

COMPANIES INCOME TAX ACT

(As Amended by the Companies Tax Act (Amendment) Act, 2007)

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COMPANIES INCOME TAX ACT

An Act to consolidate the provisions of the Companies Income Tax Act 1961 and to make other provisions relating thereto.

PART I

(Repealed by 2007 No. 56, s. 2(1).)

PART II

Imposition of tax and profits chargeable

9. Charge of tax

- (1) Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of-
 - (a) any trade or business for whatever period of time such trade or business may have been carried on;
 - (b) rent or any premium arising from a right granted to any other person for the use or occupation of any property; and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits of a company, then, so much of the payment as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last-mentioned period or over the five years beginning with that date, whichever is the shorter;
 - (c) dividends, interests, royalties, discounts, charges or annuities;
 - (d) any source of annual profits or gains not falling within the preceding categories;
 - (e) any amount deemed to be income or profit under a provision of this Act or, with respect to any benefit arising from a pension or provident fund, of the Personal Income Tax Act;
 - (f) fees, dues and allowances (wherever paid) for services rendered;
 - (g) any amount of profits or gains arising from acquisition and disposal of short-term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.
- (2) For the purposes of this section, interest shall be deemed to be derived from Nigeria if-

- (a) 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 is made; or
 - (b) the interest accrues to a foreign company or person from a Nigerian company or a company in Nigeria regardless of whichever way the interest may have accrued.
- (3) In this section, "**dividend**" means-
- (a) in relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholders; and
 - (b) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding up or liquidation.

10. Identification of a company

The incorporation number of a company, to which the provisions of section 8 apply, shall serve as the identification number of the company and shall be displayed by the company on all business transactions with other companies and individuals and on every document, statement, returns, audited account and correspondence with revenue authorities, including the Federal Inland Revenue Service, Ministries and all Government agencies.

11. Charge of tax on interest relating to foreign and agricultural loans, and certain reliefs

- (1) Interest payable on any foreign loan granted on or after 1 April, 1978 shall be exempted from tax as prescribed in Table I in the Third Schedule to this Act.
- (2) Interest on any loan granted by a bank on or after 1 January 1977 to a company engaged in-
 - (a) agricultural trade or business; or
 - (b) the fabrication of any local plant and machinery; or

- (c) providing working capital for any cottage industry established by the company, shall be exempted from tax, provided the moratorium is not less than eighteen months and the rate of interest on the loan is not more than the base lending rate at the time the loan was granted.
- (3) For the purpose of subsection (7) of this section, where a bank grants a loan to a company, it shall disclose to the Board the following information-
 - (a) the amount of the loan;
 - (b) the moratorium;
 - (c) the date repayment is due to commence;
 - (d) the amount of repayment, showing capital and interest; and
 - (e) the full particulars of the recipient of the loan and its permanent address.
- (4) In this section-

"agricultural trade or business" means any trade or business connected with-

- (a) the establishment or management of plantations for the production of rubber, oil palm, cocoa, coffee, tea and similar crops;
- (b) the cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheanuts, beniseed, vegetables, pineapples, bananas and plantains;
- (c) animal husbandry, that is to say, poultry, piggery, cattle rearing, fish farming and deep sea fish-trawling;

"base lending rate" means the weighted average of the cost of fund to any bank;

"cottage industry" means an industry where the creation of products and services is home-based, rather than factory-based;

"foreign company" means any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria;

"foreign loan", in relation to any foreign company, means any loan granted by that company with moneys brought into Nigeria from any territory or country outside Nigeria, or any loan granted by that company in any territory or country outside Nigeria, in a currency other than Nigerian currency.

- (5) Interest payable on any loan granted by a bank on or after 1 April, 1980 for the purpose of manufacturing goods for export, shall be exempted from tax on the presentation of a certificate issued by the Nigerian Export Promotion Council stating that the level of export specified has been achieved by the company. A company shall be deemed to be engaged in manufacturing for export if the Nigerian Export Promotion Council certifies that no less than one half of its manufactured goods disposed of in its year of account is sold outside Nigeria and is not re-exported to Nigeria.

12. Full disclosure or agreement to be made

Any company entering into any agreement (whether oral or written) in respect of any service under paragraph (f) of section 9 (1) of this Act shall forthwith make a full disclosure to the Board in writing of the terms of such agreement.

- (1) The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria.
- (2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria
 - a) if that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base;
 - b) if it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;
 - c) if that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract; and
 - d) where the trade or business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in

their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit adjusted by the Board to reflect arm's length transaction.

- (3) For the purpose of subsection (2) (a) of this section a fixed base shall not include facilities used solely for the-
 - (a) storage or display of goods or merchandise;
 - (b) collection of information.

14. Companies engaged in shipping or air transport

- (1) Where a company other than a Nigerian company carries on the business of transport by sea or air, and any ship or aircraft owned or chartered by it calls at any port or airport in Nigeria, its profits or loss to be deemed to be derived from Nigeria shall be the full profits or loss arising from the carriage of passengers, mails, livestock or goods shipped, or loaded into an aircraft, in Nigeria:

Provided that this subsection shall not apply to passengers, mails, livestock or goods which are brought to Nigeria solely for trans-shipment or for transfer from one aircraft to another or in either direction between an aircraft and a ship.

- (2) For the purposes of the preceding subsection, where the Board is satisfied that the taxation authority of any other country computes and assesses on a basis not materially different from that prescribed by this Act the profits of a company which operates ships or aircraft, and that authority certifies:
 - a) the ratio of profits or loss, before any allowance by way of depreciation, of an accounting period to the total sums receivable in respect of the carriage of passengers, mails, livestock or goods; and
 - (b) the ratio of allowances by way of depreciation for that period to that same total, then the full profits or loss of that period shall be taken to be that proportion of the total sums receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded in Nigeria which is produced by applying the first-mentioned ratio to that total, and in place of any allowances to be given under the provisions of the Second Schedule there shall be allowed the amount produced by applying the second-mentioned ratio to that same total.
- (3) Where at the time of assessment, the provisions of subsection (2) of this section cannot for any reason be satisfactorily applied, the profits to be deemed to be derived from Nigeria may be computed on a fair

percentage on the full sum receivable in respect of the carriage of passengers, mails, livestock and goods shipped or loaded in Nigeria:

Provided that where any company has been assessed for any year by reference to such percentage, it shall be entitled to claim at any time within six years after the end of such year that its liability for that year be re-computed on the basis provided by subsection (2) of this section; and where such claim has been made and a certificate has been produced to the satisfaction of the Board as provided in that subsection, such repayment of tax shall be made as may be necessary to give effect to this proviso, save that, if the company fails to agree with the Board as to the amount of the tax to be so re-computed and re-paid, the Board shall give notice to the company of refusal to admit the claim and the provisions of this Act with respect to objections and appeals shall apply accordingly with any necessary modifications.

- (4) For the purposes of this section, the tax payable by any company for any year of assessment shall not be less than two per cent of the full sum receivable in respect of the carriage of passengers, mails, livestock or goods shipped or loaded into an aircraft in Nigeria.

15. Cable undertakings

Where a company other than a Nigerian company carries on the business of transmission of messages by cable or by any form of wireless apparatus, it shall be assessable to tax as though it operates ships or aircraft, and the provisions of the preceding section shall apply mutatis mutandis to the computation of its profits deemed to be derived from Nigeria as though the transmission of messages to places outside Nigeria were equivalent to the shipping or loading of passengers, mails, livestock or goods in Nigeria.

16. Insurance companies

- (1) Notwithstanding anything to the contrary contained in this Act, insurance business shall be taxed as-
- (a) an insurance company, whether proprietary or mutual, other than a life insurance company; or
- (b) a Nigerian company whose profit accrued in part outside Nigeria, the profit on which tax may be imposed, shall be ascertained by taking the gross premium interest and other income receivable in Nigeria less reinsurance and deducting from the balance so arrived at, a reserve fund for unexpired risks at the percentage consistently adopted by the company in relation to its operation as a whole for such risks at the end of the period for which the profits are being ascertained, subject to the limitation imposed in subsection (8) (a) of this section.

- (2) The profits on which tax may be imposed in an insurance company is a life insurance company, whether proprietary or mutual, other than a Nigerian company which carries on business through a permanent establishment in Nigeria shall-
 - (a) be the investment income less the management expenses, including commission, subject to the limitation imposed in subsection (8) (b) of this section; and
 - (b) where the profits of the company accrue in part outside Nigeria, be that proportion of the total investment income of the company as the premium earned whether received or receivable, less the agency expenses of the head office of the company but where the insurance company has its head office outside Nigeria the Board may substitute some basis other than that prescribed in this paragraph for ascertaining the required proportion or the total investment income.
- (3) Any amount distributed in any form as dividend from an actuarial revaluation of unexpired risks or from any other revaluation shall be deemed to be part of the total profits of the company for tax purposes.
- (4) Not more than three months after an actuarial revaluation of unexpired risks or from any other revaluation shall be deemed to be part of the total profits of the company for tax purposes.
- (5) The profits on which tax may be imposed-
 - (a) in a general Nigerian insurance company, shall be ascertained in accordance with the provisions of subsection (1) of this section as though the whole premium and investment incomes of the company were derived from Nigeria.
 - (b) in a Nigerian life insurance company, shall be ascertained in accordance with the provisions of subsections (2), (3) and (4) of this section as though the whole investment and other incomes were received in Nigeria and all the expenses and other outgoings of the company were incurred in Nigeria.
- (6) Where an insurance company carries on a life class and a general class insurance business, the funds and books of accounts of one class shall be kept separate from the other as though one class does not relate to the other class, and the annual tax returns of the two classes of insurance businesses shall be made separately.
- (7) Each class of insurance shall be assessed separately as "life insurance assessment" and "non-life (other) insurance assessment" and in respect of each class of insurance business where there are more than one type of insurance and in the same class, they form one type of business and shall not be allowed against the income from another type of insurance business but the loss shall be available to be carried forward against profits

from the same class of insurance business and, in all cases, the period of carrying forward of a loss shall be limited to four years of assessment.

- (8) An insurance company, other than a life insurance company, shall be allowed as deductions from its premium the following reserves for tax purposes-
 - (a) for unexpired risks, 45 percent of the total premium in case of general insurance business other than marine insurance business and 25 percent of the total premium in the case of marine cargo insurance;
 - (b) for other reserves, claims and outgoings of the company an amount equal to 25 percent of the total premium, so that, after allowance under the Second Schedule to this Act as may be restricted, has been allowed for in any year of assessment, not less than an amount equal to 15 percent of the total profit of the company for tax purposes.
- (9) An insurance company, in respect of its life insurance business shall be allowed the following deductions from its investment incomes and other incomes-
 - (a) an amount which makes a general reserve and fund equal to the net liabilities on policies in force at the time of an actuarial valuation;
 - (b) an amount which is equal to 1 percent of gross premium or 10 percent of profits (whichever is greater) to a special reserve fund and accommodation until it becomes the amount of the statutory minimum paid-up capital;
 - (c) all normal allowable business outgoing, except that after allowing for all the outgoing and allowance under the Second Schedule to this Act as may be restricted under the provisions of this Act for any year of assessment, not less than an amount equal to 20 percent of the gross incomes shall be available as 'total profit' of the company for tax purposes.
- (10) A reinsurance company shall be allowed the following deductions from its gross profit to be credited to a general reserve fund-
 - (a) an amount not more than 50 percent of the gross profits of the reinsurer for the year where the general reserve fund is less than the initial statutory minimum authorised share capital; or
 - (b) an amount not more than 25 percent of the gross profits of the reinsurer for the year, where the fund is equal to or exceeds the initial statutory minimum authorised share capital.

- (11) An insurance company that engages the services of an insurance agent, a loss adjuster and an insurance broker shall include in its annual tax returns, a schedule showing the name and address of that agent, loss adjuster and insurance broker, the date their services were employed and terminated, as applicable, and payments made to each such agent, loss adjuster and insurance broker for the period covered by the tax returns.

17. Authorised unit trust scheme

- (1) Where under any of the provisions of the Investments and Securities Act, a unit trust scheme is established for the purpose of providing facilities for the participation of the public, as beneficiaries under a trust, in profits or income arising from acquisition, holding, management or disposal of securities or any other property whatsoever, this Act shall, in respect of the income arising to the trustees of an authorised unit trust, have effect-
- (a) as if the trustees were a company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom;
 - (b) as if the rights of the unit holders were shares in the company; and
 - (c) as if so much of the income accruing to the trustees as is available for payment to the unit holders were dividends on such shares, and reference in this Act to a company shall be construed in accordance with this subsection.
- (2) For the purpose of section 32 of this Act, the profits of an authorised unit scheme, on which tax may be imposed, shall be ascertained by taking the income accruing to the trustees from all sources of the investment of the unit trust and deducting therefrom sums disbursed as management expenses, including remuneration for the managers.
- (3) Where the trustees of a unit trust receive a payment on which the unit trust suffers tax by deduction (not being franked investment income), the tax thereon shall be set-off against any income on the trustees by an assessment made for the year of assessment in which the receipt, on which the tax deduction was made, falls to be taken into account in ascertaining the tax payable by the unit trust for the year of assessment.
- (4) The provisions of section 53 of this Act shall apply to a dividend accruing to the trustees of a unit trust.
- (5) So much of the profit accruing to the trustees of a unit trust as is available for payment to unit holders or for investment shall be deemed to be dividends paid or payable by the trustees to the unit holders in proportion to

their rights, and the provisions of section 21 of the Personal Income Tax Act shall apply to a dividend paid or payable to any member of an authorised unit trust.

(6) In this section-

"authorised unit trust" means, as respect a year of assessment, a unit trust scheme that is authorised by the Commission under section 125 of the Investment and Securities Act to carry on the business of dealing in a unit trust scheme;

"unit trust scheme" means any arrangement made for the purpose of providing facilities for the participation of the public as beneficiaries under a trust in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever;

"unit holder" means any investor, beneficiary or person who acquired units in a unit trust scheme and who is entitled to a share of the investments subject to the trusts of a unit trust scheme;

"trustee" under a unit trust means the person in whom the property for the time being subject to any trust created in pursuance of the scheme is or may be invested in accordance with the terms of the trust.

18. Profits of a company from certain dividends

The profits of a company from a dividend received from any other company shall be-

- (a) if that other company is resident in a country to which section 44 of this Act applies, the amount of that dividend increased by the amount of any tax imposed in that country relative to that dividend; and
- (b) if that other company is resident in a country to which section 45 of this Act applies, the amount of that dividend as computed under the provisions of subsection (5) of section 46 of this Act:

Provided that a dividend distributed-

- (i) by a Nigerian company and satisfied by the issue of shares of the company paying the dividend; or
- (ii) if the company is a Nigerian company, out of any profits exempted from tax by any provision of this Act, or of the Industrial Development (Income Tax Relief) Act; or

- (iii) if the company is chargeable to tax under the provisions of the Petroleum Profits Tax Act, out of any profits to which section 60 of that Act applies, shall be excluded from the profits of any other company which is a shareholder in such company.

19. Payment of dividend by a Nigerian company

Where a dividend is paid out as profit on which no tax is payable due to-

- (a) no total profits; or
- (b) total profits which are less than the amount of dividend which is paid, whether or not the recipient of the dividend is a Nigerian company, is paid by a Nigerian company, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (1) of section 40 of this Act as if the dividend is the total profits of the company for the year of assessment to which the accounts, out of which the dividend is declared, relates.

20. Nigerian dividends received by companies other than Nigerian companies

In the case of a company which is neither a Nigerian company nor engaged in a trade or business in Nigeria at any time during a year of assessment-

- (a) no tax shall be charged on it for that year in respect of any dividend received by it from a Nigerian company apart from tax withheld under section 80 of this Act;
- (b) where any dividend is paid out of profits on which no tax is payable due to no total profits or total profits which are less than the amount of dividend which is paid, whether the recipient of the dividend is a Nigerian company or not, the company paying the dividend shall be charged to tax at the rate prescribed in subsection (1) of section 40 of this Act as if such dividend is the total profits of the company for the year of assessment which relates to accounts out of which the dividend is declared;
- (c) nothing in this Act shall confer on such company or on the company paying the dividend, a right to repayment of tax paid by reason of the provisions of this section.

21. Certain undistributed profits may be treated as distributed

- (1) Where it appears to the Board that a Nigerian company controlled by not more than five persons, with a view to reducing the aggregate of the tax chargeable in Nigeria on the profits or income of the company and those

persons, has not distributed to its shareholders as dividend, profits made in any period for which accounts have been made up by such company, which profits could have been distributed without detriment to the company's business as it existed at the end of that period, it may direct that any such undistributed profits of such period be treated as distributed.

- (2) Any amount of profits treated as distributed under the provisions of the foregoing subsection shall, for the purposes of this Act and any enactment in Nigeria imposing tax on the incomes of persons other than companies, be deemed to be profits or income from a dividend accruing to those persons who are shareholders in the company in proportion to their shares in the ordinary capital thereof on such day, and the amount of such profits or income to be taken for assessment in the hands of each such person shall be his due proportion thereof increased by such amount in respect of tax deemed to be deducted at source, as the Board may determine.
- (3) Any direction by the Board under this section shall be made in writing and be served upon the company, and shall specify-
 - (a) the day to be taken for the purposes of the preceding subsection;
 - (b) the net amount of those profits so deemed to be distributed;
 - (c) the rate of tax deemed to be deducted, being the rate prescribed in subsection (2) of section 80 of this Act;
 - (d) the gross amount which, after deduction of tax at the said rate, leaves such net amount of those profits; and
 - (e) the net Nigerian rate of tax applicable to those profits, being such rate as would have been computed or agreed by the Board under the provisions of subsection (2) of section 43 of this Act if those profits had been distributed by the company as a dividend.
- (4) For the purposes of this section, the Board may give notice to any company which it has reason to believe is controlled by not more than five persons requiring it to supply, within such reasonable time limited in such notice, full particulars of its shareholders on any day.
- (5) Any direction by the Board under this section with respect to the profits of any accounting period of a company, shall be made not later than two years after the receipt by the Board of the duly audited accounts of the company for that period.

- (6) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act, such direction were an assessment.

22. Artificial transactions, etc.

- (1) Where the Board is of opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, it may disregard any such disposition or direct that such adjustments shall be made as respects liability to tax as it considers appropriate so as to counteract the reduction of liability to tax affected, or reduction which would otherwise be affected, by the transaction and any company concerned shall be assessable accordingly.
- (2) For the purpose of this section:
- a) **"disposition"** includes any trust, grant, covenant, agreement or arrangement;
- (b) transactions between persons one of whom either has control over the other or, in the case of individuals, who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious if in the opinion of the Board those transactions have not been made on terms which might fairly have been expected to have been made by persons engaged in the same or similar activities dealing with one another at arm's length.
- (3) A company in respect of which any direction is made under this section, shall have a right of appeal in like manner as though for the purposes of Part X of this Act such direction were an assessment.

23. Profits exempted

- (1) There shall be exempt from the tax-
- (a) the profits of any company being a statutory or registered friendly society, in so far as such profits are not derived from a trade or business carried on by such society;
- (b) the profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, not being profits from any trade or business carried on by that company other than co-operative activities solely carried out with its members or from any share or other interest possessed by that company in a trade or business in Nigeria carried on by some other persons or authority;

- (c) the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in so far as such profits are not derived from a trade or business carried on by such company;
- (d) the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose, subject to such conditions as the Board may prescribe;
- (e) the profits of any company being a trade union registered under the Trade Unions Act in so far as such profits are not derived from a trade or business carried on by such trade union;
- (f) dividend distributed by Unit Trust;
- (g) the profits of any company being a body corporate established by or under any Local Government Law or Edict in force in any State in Nigeria;
- (h) the profits of any body corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria from the purchase and sale (whether for the purposes of export or otherwise) of that commodity;
- (i) the profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State, not being profits derived from any trade or business carried on by that corporation or from any share or other interest possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority;
- (j) any profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria;
- (k) dividend, interest, rent, or royalty derived by a company from a country outside Nigeria and brought into Nigeria through Government approved channels. For the purpose of this subsection,

"Government approved channels", means the Central Bank of Nigeria, any bank or other corporate body appointed by the Minister as authorised dealer under the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act or any enactment replacing that Act;

- (1) the interest on deposit accounts of a foreign non-resident company:

Provided that the deposits into the account are transfers wholly of foreign currencies to Nigeria on or after 1 January 1990 through Government approved channels;

- (m) the interest on foreign currency domiciliary account in Nigeria accruing on or after 1 January 1990;
- (n) nothing in this section shall be construed to exempt from deduction at source, the tax which a company making payments is to deduct under sections 78, 79 or 80 of this Act, such that the provisions of sections 78, 79 and 80 of this Act, shall apply to a dividend, interest, rent or royalty which is a part of the profits or income referred to in subsections (1) (a) to (f) and (h) to (1) of this section;
- (O) dividend received from small companies in the manufacturing sector in the first five years of their operation;
 - (p) dividend received from investments in wholly export-oriented businesses;
- (q) the profits of any Nigerian company in respect of goods exported from Nigeria, provided that the proceeds from such export are repatriated to Nigeria and are used exclusively for the purchase of raw materials, plant, equipment and spare parts;
- (r) the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export, provided that the exporter shall give a certificate of purchase of the inputs of the exportable goods to the seller of the supplies.
- (S) the profit of a company established within an export processing Zone or free trade zone;
Provided that 100 percent production of such company is for export otherwise tax shall accrue proportionately on the profits of the company.

Power to exempt

- (2) The President may exempt by order-
 - (a) any company or class of companies from all or any of the provisions of this Act; or
 - (b) from tax all or any profits of any company or class of companies from any source, on any ground which appears to it sufficient.
- (3) The President may by order amend, add to or repeal any exemption made by notice or order under the provisions of subsection (2) or (4) of section 9 of the Personal Income Tax Act in so far as it affects a company, and, subject to the foregoing, the following notices and order shall continue in force for all purposes of this Act-
 - (a) the Income Tax Exemption (Interest on Nigerian Public Loans) Notice;

- (b) the Income Tax (Exemption) (Nigerian Broadcasting Corporation) Order;
- (c) the Railway Loan (International Bank) (Exemption of Interest) Notice.

PART III

Ascertainment of profits

24. Deductions allowed

Save where the provisions of subsection (2) or (3) of section 14 or 16 of this Act apply, for the purpose of ascertaining the profits or loss of any company of any period from any source chargeable with tax under this Act, there shall be deducted all expenses for that period by that company wholly, exclusively, necessarily and reasonably incurred in the production of those profits including, but without otherwise expanding or limiting the generality of the foregoing-

- (a) any sum payable by way of interest on any money borrowed and employed as capital in acquiring the profits;
- (b) rent for that period, and premiums, the liability for which was incurred during that period, in respect of land or building occupied for the purposes of acquiring the profits, subject, in the case of residential accommodation occupied by employees of the company, to a maximum of 100% of the basic salary of employees;
- (c) *(deleted by 2007 No. 56, s. 6 (a));*
- (d) any outlay or expenses incurred during the year in respect of-
 - (i) salary, wages or other remuneration paid to the senior staff and executives;
 - (ii) cost to the company of any benefit or allowance provided for the senior staff and executives, which shall not exceed the limit of the amount prescribed by the collective agreement between the company and the employees and approved by the Federal Ministry of Employment, Labour and Productivity, and the Productivity, Prices and Income Board, as the case may be;
- (e) any expenses incurred for repair of premises, plant, machinery or fixtures employed in acquiring the profits, or for the renewals, repair or alteration of any implement, utensil or articles so employed;
- (f) bad debts incurred in the course of a trade or business proved to have become bad during the period for which the profits are being ascertained, and doubtful debts to the extent that they are respectively estimated to the

satisfaction of the Board to have become bad during the said period notwithstanding that such bad or doubtful debts were due and payable before the commencement of the said period:

Provided that

- i) where in any period a deduction under this paragraph is to be made as respects any particular debt, and a deduction has in any previous period been allowed either under the Companies Income Tax Act 1961 or this Act in respect of the same debt, the appropriate reduction shall be made in the deduction to be made for the period in question;
- (ii) all sums recovered during the said period on account of amounts previously written off or allowed either under the Companies Income Tax Act 1961 or this Act in respect of bad or doubtful debts shall for the purposes of this Act be deemed to be profits of the trade or business of that period;
- (iii) it is proved to the satisfaction of the Board that the debts in respect of which a deduction is claimed either were included as a receipt of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of the trade or business in the profits of the year within which they were incurred, or were advances not falling within the provisions of paragraph (e) of section 23 (1) of this Act made in the course of normal trading or business operations;
- (g) any contribution to a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under the powers conferred upon it by paragraph (g) of section 85 of the Personal Income Tax Act, subject to the provisions of the Fourth Schedule to the Act and to any conditions imposed by that Board; and any contribution other than a penalty made under the provisions of any enactment establishing a national provident fund or other retirement benefits scheme for employees throughout Nigeria;
- (h) in the case of the Nigerian Railway Corporation such deductions as are allowed under the provisions of the Authorised Deductions (Nigerian Railway Corporation) Rules, which Rules shall continue in force for all purposes of this Act;
- (i) in the case of profits from a trade or business, any expenses or part thereof-
- (i) the liability for which was incurred during that period wholly, exclusively, necessarily and reasonably for the purposes of such trade or business and which is not specifically referable to any other period or periods; or

- (ii) the liability for which was incurred during any previous period wholly, exclusively, necessarily and reasonably for the purpose of such trade or business and which is specifically referable to the period of which the profits are being ascertained; and
- (iii) the expenses proved to the satisfaction of the Board to have been incurred by the company on research and development for the period including the amount of levy paid by it to the National Science and Technology Fund which is not deductible under any other provision of this section;
- (j) such other deduction as may be prescribed by the Minister by any rule.

25. Deductible donations

- (1) Subject to the provisions of this section and notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profits or loss of any company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of any donation made for that period by that company to any fund, body or institution in Nigeria to which this section applies.
- (2) Without prejudice to section 27 of this Act, it is hereby declared for the avoidance of doubt that the provisions of subsection (1) of this section shall have effect if, but only if, the donations are made out of the profits of the company, and are not expenditure of a capital nature.
- (3) Except to such extent (if any) as the President may by order in the Federal Gazette otherwise direct, any deduction to be allowed to any company, under subsection (1) of this section, for any year of assessment, shall not exceed an amount which is equal to ten per cent of the total profits of that company for that year as ascertained before any deduction is made under this section.
- (4) There shall be excluded from the sum allowable as a deduction under this section, any outgoings and expenses which are allowable as deductions under section 24 of this Act.
- (5) This section shall apply to-
 - (a) the public funds;
 - (b) the statutory bodies and institutions;
 - (c) the ecclesiastical, charitable, benevolent, educational and scientific institutions, established in Nigeria, which are specified in the Fifth Schedule to this Act.

- (6) The Minister may by order in the Federal Gazette amend the said Schedule in any manner whatsoever:

Provided that no fund, body or institution shall be added to that Schedule, in exercise of the powers conferred under the foregoing provisions of this subsection, unless the fund is a public fund established in Nigeria, or the body or institution is a statutory body or institution, or is a body or institution of a public character, established in Nigeria.

- (7) In this section references to donations made by a company do not include references to any payments made by the company for valuable consideration.

25A. (1) Notwithstanding the provisions of section 24 of this Act, for the purposes of ascertaining the profit or loss of any company for the period from any source chargeable with tax under this Act, there shall be deducted the amount of donation to a university and any other tertiary or research institutions for research or any developmental purpose or as an endowment out of the profits of the period by the company.

(2) Without prejudice to section 21 (2) and (3) of this Act, any donation made by a company pursuant to subsection (1) of this section shall be allowed as deductible by the company out of the profits of that period notwithstanding that the donation is of a revenue or capital nature.

(3) Except as the minister with the approval of the Federal Executive Council may, by order in the *Federal Gazette* otherwise direct, any deduction to be allowed to any company under section (1) of this section shall not exceed an amount which is equal to 15 percent of the total profits or 25 percent of the tax payable in the year of the donation whichever is higher.

26. Deduction for research and development

(1) Notwithstanding anything contained in section 24 of this Act, for the purpose of ascertaining the profit or loss of any company for any period from any source chargeable with tax under this Act, there shall be deducted the amount of reserve made out of the profits of that period by that company for research and development.

(2) The deduction to be allowed to any company under subsection (1) of this section for any year of assessment shall not exceed an amount which is equal to ten per cent of the total profits of that company for that year as ascertained before any deduction is made under this section and section 25 of this Act.

(3) Companies and other organisations engaged in research and development activities for commercialisation shall be allowed 20% investment tax credit on their qualifying expenditure for that purpose.

27. Deductions not allowed

Notwithstanding any other provision of this Act, no deduction shall be allowed for the purpose of ascertaining the profits of any company in respect of-

- (a) capital repaid or withdrawn and any expenditure of a capital nature;
- (b) any sum recoverable under an insurance or contract of indemnity;
- (c) taxes on income or profits levied in Nigeria or elsewhere, other than tax levied outside Nigeria on profits which are also chargeable to tax in Nigeria where relief for the double taxation of those profits may not be given under any other provision of this Act;
- (d) any payment to a savings, widows and orphans, pension, provident or other retirement benefit fund, society or scheme except as permitted by paragraph (g) of section 24 of this Act;
- (e) the depreciation of any asset;
- (f) any sum reserved out of profits, except as permitted by paragraph (f) of section 24 or 25 of this Act or as may be estimated to the satisfaction of the Board, pending the determination of the amount, to represent the amount of any expense deductible under the provisions of that section, the liability for which was irrevocably incurred during the period for which the income is being ascertained;
- (g) any expense of any description incurred within or outside Nigeria for the purpose of earning management fee unless prior approval of an agreement giving rise to such management fee has been obtained from the Minister;
- (h) any expense whatsoever incurred within or outside Nigeria as management fee under any agreement entered into after the commencement of this section except to the extent as the Minister may allow;
- (i) any expense of any description incurred outside Nigeria for and on behalf of any company except of a nature and to the extent as the Board may consider allowable.

28. Waivers or refund of liability or expenses

When a deduction has been allowed to a company under the provisions of section 24 or 25 of this Act in respect of any liability of, or any expense incurred by that company and such liability is waived or released or such

expense is refunded to the company, in whole or in part, then the amount of that liability or expense which is waived, released or refunded, as the case may be, shall be deemed to be profits of the company on the day on which such waiver, release or refund was made or given.

PART IV

Ascertainment of assessable profits

29. Basis for computing assessable profits

- (1) Save as provided in this section, the profits of any company for each year of assessment from such source of its profits (hereinafter referred to as "the assessable profits") shall be the profits of the year immediately preceding the year of assessment from each such source:

Provided that in respect of any company which makes up its accounts to any date between 1 January and 31 March, 1980, the profits to be assessed to tax-

- (a) in 1980 year of assessment, shall be the profits of the period from the beginning of the accounting year to 31 December, 1979; and
- (b) in 1981 year of assessment, shall be the profits for 1 January to the end of the company's accounting year in 1980.
- (2) When the Board is satisfied that a company has made or intends to make up accounts of its trade or business to some day other than the 31st day of December, it may direct that the assembled profits of that company shall be computed on the amount of the profits of the year ending on that day in the year preceding the year of assessment:

Provided that where the assessable profits of a company have been computed by reference to accounts made up to a certain day, and such company fails to make up an account to the corresponding day in the year following the assessable profits of that company for the year of assessment in which such failure occurs and for two years of assessment next following shall be computed on such basis as the Board in its discretion may decide.

New trade or business

(3) The assessable profits of any company from any trade or business for the year of assessment in which it commenced to carry on such trade or business (or in the case of a company other than a Nigerian company, for the year of assessment in which it commenced to carry on such trade or business in Nigeria) and for the two following years of assessment (which years are in this subsection respectively referred to as "the first year", "the second year", and "the third year") shall be ascertained in accordance with the following provisions-

- (a) for the first year the assessable profits shall be the profits of that year;
- (b) for the second year the assessable profits shall, unless such notice as hereinafter mentioned is given, be the amount of the profits of one year from the date of the commencement of the trade or business as determined for the purposes of paragraph
 - (a) of this subsection;
- (c) for the third year the assessable profits shall, unless such notice as hereinafter mentioned is given, be computed in accordance with subsection (1) of this section;
- (d) a company shall be entitled, on giving notice in writing to the Board within two years after the end of the second year, to require that the assessable profits both for the second year and the third year (but not for one or other only of those years) shall be the profits of the respective years of assessment:

Provided that the company may, by notice in writing given to the Board within twelve months after the end of the third year, revoke the notice, and in such case, the assessable profits both for the second year and the third year shall be computed as if the first notice had never been given:

Provided that if the basis period for the second or third year is the period of nine months from 1 April to 31 December, 1980, the profits of that basis period shall be grossed up as if they were the profits of twelve months;

- (e) where such notice as aforesaid has been given or revoked, such additional assessments or such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to paragraph (d) of this subsection:

Provided that if the company fails to agree with the Board as to the amount of any reduction of an assessment or repayment of tax, the Board shall give notice to the company of refusal to admit such reduction or repayment and the provisions of Part XI of this Act shall apply accordingly with any necessary modifications as though such notice were an assessment.

Cessation of trade or business

- (4) Where a company permanently ceases to carry on a trade or business (or in the case of a company other than a Nigerian company, permanently ceases to carry on a trade or business in Nigeria) its assessable profits therefrom shall be-
 - (a) as regard the year of assessment in which the cessation occurs, the amount of the profits of that year;
 - (b) as regards the year of assessment preceding that in which the cessation occurs, the amount of the profits as computed in accordance with the foregoing subsections, or the amount of the profits of such year, which ever is the greater;
 - (c) Provided that where the profits of such year is for a period of nine months from 1st April to 31st December, 1980, the profits shall be grossed up as if they were the profits of twelve months; and
 - (d) the company shall not be deemed to derive assessable profits from such trade or business for the year of assessment following that in which the cessation occurs.
- (5) Where the provisions of subsection (1) of this section apply, such additional assessment or, on a claim being made by the company for this purpose in writing, such reductions of assessments or repayments of tax shall be made as may be necessary to give effect to these provisions: Provided that, if the company fails to agree with the Board as to the amount of any reduction of an assessment or repayment of tax, the Board shall give notice to the company of refusal to admit the claim to such reduction or repayment and the provisions of Part XI of this Act shall apply accordingly with any necessary modifications as though such notice were an assessment.

Apportionment of profits

- (6) Where in the case of any trade or business it is necessary, in order to arrive at the profits of any year of assessment or other period, to allocate or apportion to specific periods the profits or loss of any period for which accounts have been made up, or to aggregate any such profits or loss or apportioned parts thereof, it shall be lawful to make such allocation, apportionment or aggregation, and any apportionment under this section shall be made in proportion to the number of days in the respective periods, unless the Board, having regard to any special circumstances, otherwise directs.

Receipts and payments after cessation of a trade or business

- (7) Where, after the date on which a company has permanently ceased to carry on a trade or business (as determined for the purposes of subsection (4) of this section), the company, its receivers or liquidators, receive or pay any sum which would have been included in or deducted from the profits of that trade or business if it had been received or paid prior to that date, such sum shall be deemed for all purposes of this Act to have been received or paid by the company on the last day before such cessation occurred.

Certain partnership

- (8) Where a company is engaged in a trade or business in partnership with any other person in Nigeria, that trade or business shall be deemed to constitute a separate source of profits, and the assessable profits of the company from that source shall be determined under the provisions of the Personal Income Tax Act in like manner as would be the assessable income of any individual partner in that partnership:

Provided that, with respect to any assets of such partnership, where any annual, initial or balancing allowance or charge would fall to be given to or made upon the company for any year under the provisions of the Fifth Schedule to that Act, if the company were an individual partner in that partnership, such allowance or charge shall be given or made as though due under the provisions of the Second Schedule and in place of any other allowance or charge arising thereunder with respect to the same asset.

Trades or businesses sold or transferred

- (9) Where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purposes of better organisation of that trade or business or the transfer of its management to Nigeria and any asset employed in such trade or business is sold or transferred, if the Board is satisfied that one company has control over the other or that both are controlled by some other person or are members of a recognised group of companies, the Board may in its discretion direct that:
- a) the provisions of subsections (3) and (4) of this section shall not apply to such trade or business; and
 - b) for the purposes of the Second Schedule to this Act, each such asset shall be deemed to have been sold for an amount equal to the residue of the qualifying expenditure thereon on the day following such sale or transfer; and
 - c) the company acquiring each such asset shall not be entitled to any initial allowance with respect to that asset under the said Schedule and any allowances deemed to have been received by the vendor company under the provisions of this paragraph:

Provided that the Board in its discretion-

- (i) may require either company directly affected by any such direction which is under consideration by the Board to guarantee or give security, to the satisfaction of the Board, for payment in full of all tax due or to become due by the company selling or transferring such trade or business; and
- (ii) may impose such conditions as it sees fit on either or both the companies directly affected, and in the event of failure by either company to carry out or fulfill such guarantee or conditions, the Board may revoke the direction and make all such additional assessments or repayments of tax as may be necessary so as to give effect to such revocation; and for the purposes of this subsection, reference to a trade or business shall include references to any part thereof.

Trade or business transferred under Part II of the Companies and Allied Matters Act

- (10) Where, in pursuance of Chapter 3 of Part II of the Companies and Allied Matters Act, a company (in this subsection referred to as "the re-constituted company") is incorporated under that Act to carry on any trade or business previously carried on in Nigeria by a foreign company and the assets employed in Nigeria by the foreign company in that trade or business vest in the re-constituted company, then, if the Board is satisfied that the trade or business carried on by the re-constituted company immediately after the incorporation of that company under the Act is not substantially different in nature from the trade or business previously carried on in Nigeria by the foreign company, the following provisions of this subsection shall have effect, that is-
 - (a) the provisions of subsections (3) and (4) of this section shall not apply to the trade or business carried on by the re-constituted company;
 - (b) for the purposes of the Second Schedule to this Act, the assets so vested in the re-constituted company shall be deemed to have been sold to it, on the day of the incorporation of that company, for an amount equal to the residue of the qualifying expenditure thereon on the day following the day on which the trade or business previously carried on in Nigeria by the foreign company ceased; and
 - (c) the re-constituted company shall not be entitled to any initial allowances as respects those assets and shall be deemed to have received all allowances given to the foreign company in respect of those assets under the Second Schedule to this Act and any allowances deemed to have been received by the foreign company under the provisions of this paragraph or subsection (9) of this section; and

- (d) subject to subsection (11) of this section, the amount of any loss incurred during any year of assessment by the foreign company in the said trade or business previously carried on by it in Nigeria, being a loss which has not been allowed against any assessable profits or income of that company for any such year, under the provisions of this Act or the corresponding provisions of the Companies Income Tax Act 1961 or the Income Tax Act, shall be deemed to be a loss incurred by the re-constituted company in its trade or business during the year of assessment in which its trade or business commenced; and the amount of that loss shall, in accordance with section 31 of this Act, be deducted from the assessable profits of the re-constituted company;
- (e) no deduction shall be made under paragraph (d) of this subsection in respect of any loss to which that paragraph relates-
- (i) except to the extent, (if any) to which it is proved by the re-constituted company to the satisfaction of the most senior officer in the Industrial Inspectorate Division of the Federal Ministry of Industry (hereinafter in this subsection referred to as "the director") that the loss was not the result of any damage or destruction caused by any military or other operations connected with the civil war in which Nigeria was engaged and which ended on 15 January, 1970:

Provided that the President may by order direct that, to the extent specified in the order, a deduction under paragraph (d) of this subsection shall be made in respect of a loss which was the result of any damage or destruction caused by any military or other operations connected with the said civil war;

- (ii) unless within three years after the incorporation of the re-constituted company a claim for the deduction is lodged by that company with the director and a copy of the claim is forwarded by that company to the Board; and
- (f) any deduction to which paragraph (d) of this subsection applies, shall be made as far as possible from the amount, if any, of the assessable profits of the re-constituted company for the year of assessment in which its trade or business commenced and, so far as it cannot be so made, then from the amount of the assessable profits of the next year of assessment, and so on, but such deductions shall not be made against the profits of the company after the fourth year from the commencement of such business,

and in this subsection "**foreign company**" means a company incorporated outside Nigeria before 18 November, 1968, and having on that date an established place of business in Nigeria.

Board may call for returns and information relating to certain assets, etc.

- (11) For the purposes of subsections (9) and (10) of this section, the Board may by notice require any person (including a company to which any assets have vested in pursuance of Chapter 3 of Part II of the Companies and Allied Matters Act) to prepare and deliver to the Board any returns specified in the notice or any such information as the Board may require about the assets; and it shall be the duty of that person to comply with the requirements of any such notice within the period specified in the notice, not being a period of less than 21 days from the service thereof.
- (12) No merger, take-over, transfer or restructuring of the trade or business carried on by a company shall take place without having obtained the Board's direction under subsection (9) of this section and clearance with respect to any tax that may be due and payable under the Capital Gains Tax Act.

30. Board's power to assess and charge on turn-over of trade or business

- (1) Notwithstanding section 40 of this Act, where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations of the business are carried on outside Nigeria) it appears to the Board that for any year of assessment, the trade or business produces either no assessable profits or assessable profits which in the opinion of the Board are less than might be expected to arise from that trade or business or, as the case may be, the true amount of the assessable profits of the company cannot be ascertained, the Board may, in respect of that trade or business, and notwithstanding any other provisions of this Act if the company is a-
 - (a) Nigerian company, assess and charge that company for that year of assessment on such fair and reasonable percentage of the turn-over of the trade or business as the Board may determine;
 - (b) if that company is a company other than a Nigerian company and-
 - (i) that company has a fixed base of business in Nigeria, assess and charge that company for that year of assessment on such fair and reasonable percentage of that part of the turnover attributable to the fixed base;
 - (ii) that company operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, assess and charge to the extent that the profit is attributable to the business or trade carried on through that person;

- (iii) that company executes one single contract involving surveys, deliveries, installations or construction, assess and charge the company for that year of assessment on such a fair and reasonable percentage of the turnover of the contract; and
 - (iv) the trade or business is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, assess and charge on a fair and reasonable percentage of that part of the turnover as may be determined by the Board.
- (2) The provisions of this Act as to notice of assessment, additional assessment, appeal and other proceedings, shall apply to an assessment or additional assessment made under this section as they apply to an assessment or additional assessment made under any other section of this Act.

PART V

Ascertainment of total profits

31. Total profits from all sources

- (1) The total profits of any company for any year of assessment, shall be the amount of its total assessable profits from all sources for that year together with any additions thereto to be made in accordance with the provisions of the Second Schedule to this Act, less any deductions to be made or allowed in accordance with the provisions of this section, section 32 and of the said Schedule.
- (2) Subject to the provisions of subsection (4) of this section, there shall be deducted-
- (a) the amount of a loss which the Board is satisfied has been incurred by the company in any trade or business during any preceding year of assessment:

 Provided that-
 - (i) in no circumstances shall the aggregate deduction from assessable profits or income in respect of any such loss exceed the amount of such loss; and
 - (ii) a deduction under this section for any particular year of assessment shall not exceed the amount, if any, of the assessable profits, included in the total profits for that year of assessment, from the trade or business in which the loss was incurred and shall be made as far as possible from the amount of such assessable profits of the

first year of assessment after that in which the loss was incurred and, so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on; but such deductions shall not be made against the profit of the company after the fourth year from the year of commencement of such business;

- (iii) the period for carrying forward any loss in sub-paragraph (ii) of this paragraph, shall be limited to four years after which period any such loss shall lapse;
- (b) the amount of any loss which, under paragraph (d) of subsection (10) of section 29 is deemed to be a loss incurred by the company during the year of assessment in which its trade or business commenced, so however that any deduction in respect of that loss shall be made as provided under paragraph (f) of that subsection.
- (3) The amount of any loss incurred by a company engaged in an agricultural trade or business for the year of assessment in which it commenced to carry on such trade or business, shall be deducted as far as possible from the assessable profits of the first year of assessment after that in which the loss was incurred and so far as it cannot be so made, then from such amount of such assessable profits of the next year of assessment, and so on (without limit as to time) until the loss has been completely set off against the company's subsequent assessable profits.
- (4) For the purposes of subsection (2) of this section, the loss incurred during any year of assessment shall be computed, where the Board so decides, by reference to the year ending on a day in such year of assessment which would have been adopted under subsection (2) of section 29 of this Act for the computation of assessable profits for the following year of assessment if such profits had arisen.
- (5) Where under the provisions of subsection (6) of section 29 of this Act for the purpose of computing the profits of a period from a source chargeable with tax under this Act, being a period the profits of which are assessable profits from that source for any year, it has been necessary to allocate or apportion to specific periods which fall within that whole period both profits and losses, then no deduction shall be made under the provisions of subsection (2) of this section in respect of the loss or apportioned part thereof referable to any such specific period, except to the extent that such loss or part thereof exceeds the aggregate profits apportioned to the remaining specific period or periods within that whole period.

32. Reconstruction investment allowance

- (1) Where a company has incurred an expenditure on plant and equipment, there shall be allowed to that company an investment allowance as provided in subsection (2) of this section and shall be in addition to an initial allowance under the Second Schedule of this Act.
- (2) The rate at which investment allowance is to be allowed for the purpose of subsection (1) of this section shall be 10 per cent of the actual expenditure incurred on such plant and equipment.
- (3) Any provisions of the Second Schedule applicable to an initial allowance shall also apply to an investment allowance under this section, except that an investment allowance shall not be taken into account in ascertaining the residue of qualifying expenditure in respect of an asset, for the purpose of the said Schedule.
- (4) If in the case of any qualifying expenditure incurred on the new asset, any such event as is mentioned in the next following subsection occurs within a period of five years beginning with the date on which the expenditure was incurred, no investment allowance shall be made in respect of the expenditure, or if such allowance has been made before the occurrence of the event, it shall be withdrawn.
- (5) The events referred to in subsection (4) of this section are-
 - (a) any sale or transfer of the asset representing the expenditure made by the company incurring the expenditure otherwise than to a person acquiring the asset for a chargeable purpose or for scrap;
 - (b) any appropriation of the asset representing the expenditure made by the company incurring the expenditure to a purpose other than a chargeable purpose;
 - (c) any sale, or transfer or other dealing with the asset representing the expenditure by the company incurring the expenditure, being a case where it appears that the expenditure was incurred in contemplation of the asset being so dealt with, and being a case where it is shown either-
 - (i) that the purpose of obtaining tax allowances was the sole or main purpose of the company for incurring the expenditure or for so dealing with the asset; or
 - (ii) that the incurring of the expenditure and the asset being so dealt with were not *bonafide* business transactions or were artificial or fictitious transactions, and were designed for the purpose of obtaining tax allowances.
- (6) A company incurring any expenditure in respect of which an investment allowance has been made and has not been withdrawn, shall give notice to the Board if, to the knowledge of the company, any of the events as is

mentioned in subsection (5) of this section occurs at any time before the expiration of five years beginning with the date when the expenditure was incurred.

- (7) Any notice of a sale or transfer given under subsection (6) of this section shall state the name and address of the person to whom the sale or transfer is made.
- (8) Where an asset in respect of which an investment allowance has been made is sold or transferred, it shall be the duty of the purchaser or transferee, and of the personal representatives of any such person, on being required to do so by any officer duly authorised by the board to give that officer all such information as he may require, and as they have or can reasonably obtain, about any sale or transfer of the asset representing the expenditure or about any other dealing with the asset.
- (9) Any person who, without reasonable excuse, fails to comply with this section, shall be guilty of an offence and liable on conviction to a penalty not exceeding N100 plus the amount of tax lost by the granting of the investment allowance made in respect of the expenditure in question.
- (10) All such additional assessments and adjustments of assessments shall be made as may be necessary in consequence of the withdrawal of any investment allowance, and may be so made at any time.
- (11) For the purposes of this section-

"artificial or fictitious transactions" has the same meaning as in section 22 of this Act;

"chargeable purpose" means the purpose of putting the assets to a use such that profits accrue or are intended to accrue therefrom and will be chargeable tax;

"initial allowance" has the same meaning as in the Second Schedule to this Act;

"qualifying expenditure" has the same meaning as in the Second Schedule to this Act.

33. Payment of minimum tax

- (1) Notwithstanding any other provisions in this Act where in any year of assessment the ascertainment of total assessable profits from all sources of a company results in a loss, or where a company's ascertained total profits results in no tax payable or tax payable which is less than the minimum tax, there shall be levied and paid by the company the minimum tax as prescribed by subsection (2) of this section.

- (2) For the purposes of subsection (1) of this section the minimum tax to be levied and paid shall-
- (a) if the turnover of the company is N500,000 or below and the company has been in business for at least four calendar years be-
 - (i) 0.5 per cent of gross profit; or
 - (ii) 0.5 per cent of net assets; or
 - (iii) 0.25 per cent of paid-up capital; or
 - (iv) 0.25 per cent of turnover of the company for the year, whichever is higher; or
 - (b) if the turnover is higher than N500,000, be whatever is payable in paragraph (a) of this subsection plus such additional tax on the amount by which the turn-over is in excess of N500,000 at a rate which shall be 50 per cent of the rate used in paragraph (a) (iv) of this subsection.
 - (3) The provisions of this section shall not apply to-
 - (a) a company carrying on agricultural trade or business as defined in subsection (9) of section 11 of this Act.
 - (b) a company with at least 25 per cent imported equity capital; and
 - (c) any company for the first four calendar years of its commencement of business.
 - (4) (a) Nothing in this section shall exempt any company from payment of any levy or tax imposed on the total profits of the company under section 40 of this Act so however that the tax payable under subsection (1) of this section, shall be the amount by which the amount computed under subsection (2) thereof exceeds the amount that is levied and payable under section 40 of this Act;
 - (b) For the purposes of this section and the Second Schedule to this Act, the capital allowance for any assessment year in which a minimum tax is payable, shall be computed and the amount so computed, together with any unabsorbed allowances brought forward from previous years, shall be deducted as far as possible from the assessable profits of the assessment year and, so far as it cannot be completely deducted, the amount by which the total amount of the capital allowance exceeds the amount of the assessable profit of the assessment year, shall be carried forward to the next assessment year.

34. Rural investment allowance

- (1) Where a company incurs capital expenditure on the provisions of facilities such as electricity, water, tarred road or telephone for the purpose of a trade or business which is located at least 20 kilometers away from such facilities provided by the government, there shall be allowed to the company in addition to an initial allowance under the Second Schedule to this Act an allowance (in this Act called "rural investment allowance") at the appropriate per cent certain as set out in subsection (2) of this section of the amount of such expenditure:

Provided that where any allowance has been given in pursuance of this section, no investment allowance under section 32 of this Act shall be due or be given in respect of the same asset or in addition to the allowance given under this section.

- (2) The rate of the rural investment allowance for the purpose of this section shall be as follows-

- (a) no facilities at all.....100%
- (b) no electricity.....50%
- (c) no water.....30%
- (d) no tarred road.....15%
- (e) no telephone.....5%

- (3) For the purpose of this section the rural investment allowance shall be made against the profits of the year in which the date of completion of the investment falls and the allowance or any fraction thereof, shall not be available for carry forward to any subsequent year whenever full effect cannot be given to the allowance owing to there being no assessable profits or assessable profits less than the total allowance for the year the investment was made.

35. Export processing zone allowance

- (1) A company which has incurred expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an export processing zone shall be granted 100 per cent capital allowance in any year of assessment.
- (2) A company granted capital allowance under subsection (1) of this section shall not be entitled to an investment allowance under this Act.

- (3) The profit or gains of a 100 per cent export oriented undertaking established within and outside an export free zone shall be exempt from tax for the first three consecutive assessment years provided that-
- (i) the undertaking is 100 per cent export oriented;
 - (ii) the undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;
 - (iii) it manufactures, produces and exports articles during the relevant year and the export proceeds form 75 per cent of its turnover;
 - (iv) the undertaking is not formed by transfer of machinery or plants previously used for any purpose to the new undertaking or where machinery or plant previously used for any purpose is transferred does not exceed 25 per cent of the total value of the machinery or the undertaking;
 - (v) the undertaking repatriates at least 75 per cent of the export earnings to Nigeria and places it in a domiciliary account in any registered and licensed bank in Nigeria.
- (4) For the purpose of subsection (3) of this section only the tax written down value of the assets shall be carried forward at the end of the tax holidays.
- (5) In this section "**export processing zone**" and "**approved activity**" have the meanings assigned to them in the Nigerian Export Processing Zone Act.

36. Mining of solid minerals

A new company going into the mining of solid minerals shall be exempt from tax for the first three years of its operation.

37. Incomes in convertible currencies to be exempt

25 per cent of incomes in convertible currencies derived from tourists by a hotel shall be exempt from tax, provided that such income is put in a reserved fund to be utilised within five years for the building expansion of new hotels, conference centres and new facilities for the purpose of tourism development.

38. Local plants and fabrication of spare parts

- (1) A company which engages wholly in the fabrication of spare parts, tools and equipment for local consumption and export shall be allowed 25 per cent investment tax credit on its qualifying capital expenditure.

- (2) A company which purchases a locally manufactured plant, machinery or equipment for use in its business shall be allowed 15 per cent investment tax credit on such fixed asset bought for use.

PART VI

Incentives to the gas industry

39. Gas utilisation (downstream operations)

- (1) A company engaged in gas utilisation (downstream operations) shall be granted the following incentives, that is-
- (a) an initial tax-free period of three years which may, subject to the satisfactory performance of the business, be renewed for an additional period of two years;
 - (b) as an alternative to the initial tax free period granted under paragraph (a) of this subsection, an additional investment allowance of 35 per cent which shall not reduce the value of the asset, so however that a company which claims the incentive provided under this paragraph shall not also claim the incentive provided under paragraph (c) (ii) of this subsection;
 - (c) accelerated capital allowances after the tax-free period, as follows, that is-
 - (i) an annual allowance of 90 per cent with 10 per cent retention, for investment in plant and machinery;
 - (ii) an additional investment allowance of 15 per cent which shall not reduce the value of the asset;
 - (d) tax free dividends during the tax free period, where-
 - (i) the investment for the business was in foreign currency; or
 - (ii) the introduction of imported plant and machinery during the period was not less than 30 per cent of the equity share capital of the company;
 - (e) interest payable on any loan obtained with the prior approval of the Minister for a gas project, shall be tax deductible.
- (2) The tax-free period of a company shall start on the day the company commences production as certified by the Ministry of Petroleum Resources.

(3) In this section-

"gas utilisation" means the marketing and distribution of natural gas for commercial purposes and includes power plant, liquified natural gas, gas to liquid plant, fertiliser plant, gas transmission and distribution pipelines;

"tax-free period" means the tax-free period referred to in subsection (1) (a) of this section.

PART VII

Rate of tax, deduction of tax from dividends and relief for double taxation

40. Rates of tax

- (1) There shall be levied and paid for each year of assessment in respect of the total profits of every company, tax at the rate of thirty kobo for every naira.
- (2) In addition to any levy made pursuant to subsection (1) of this section, there shall, as from the assessment year commencing on 1 January, 1989 be levied and paid a special levy of fifteen per cent on excess profits of every company including banks and for the purpose of this subsection, **"excess profits"** means the difference between total profits as computed in accordance with section 31 of this Act and standard profits as calculated in accordance with the provisions of subsection (3) of this section.
- (3) For the purposes of subsection (2) of this section, **"standard profits"** means-
 - (a) in the case of every Nigerian company-
 - (i) the addition of the amounts arrived at after applying the percentages specified in this sub-paragraph to the amount of capital employed at the end of the accounting period, that is to say-

Paid-up capital.....	40per cent
Capital or statutory reserve	20 per cent
General reserve.....	20 per cent
Long term loan.....	20 per cent; or

- (ii) the amount of six million naira, whichever is greater;
- (b) in the case of every company other than a Nigerian company and as respects any year of assessment commencing on 1 January, 1989-
 - (i) the amount of fifteen per cent of the turnover of the company for that year being turnover attributable to any part of the operations of the company carried out in Nigeria; or
 - (ii) the amount of six million naira, whichever is greater.
- (4) A company which is yet to commence business after at least six months of incorporation shall for each year it obtains a tax clearance certificate pay a levy of-
 - (a) N500 for the first year; and
 - (b) N400 for every subsequent year, before a tax clearance certificate is issued.
- (5) The provisions of Parts VIII and XIV of this Act shall apply to subsection (3) of this section. (6) For the purposes of paragraph (a) of subsection (4) of this section, any unabsorbed capital allowance brought forward shall be suspended until normal assessment is made; but a notional allowance shall be deemed to have been granted for the assessment year in which a turnover tax is payable.
- (6) Where in any of the basis period for the year of assessment in which a company commenced business and the next following four years of assessment as determined under the provisions of section 29 of this Act, a Nigerian company engaged in manufacturing or agricultural production , mining of solid minerals or wholly export trade, earns a total gross sales (turn over) of below one million naira, there shall be levied and paid by such company , tax at the rate of twenty kobo on the total profits
- (7) Where in any of the basis period for the year of assessment in which a company commenced business and the next following four years of assessment as determined under the provisions of section 29 of this Act, a Nigerian company engaged in manufacturing or agricultural production, mining of solid minerals or wholly export trade, earns a total gross sales (turnover) of below one million naira, there shall be levied and paid by the company, tax at the rate of twenty kobo on every naira of the total profits.
- (8) Notwithstanding the provisions of subsection (7) of this section, where a Nigerian company engaged in the trade and business specified in that subsection commenced business before 1 January, 1988 and makes a gross

sales (turnover) of below five hundred thousand naira, there shall be levied and paid by such company for each of the assessment years 1988, 1989 and 1990 tax at the rate of twenty kobo on every naira of the total profits.

- (9) The provisions of subsections (7) and (8) of this section shall not apply to a company formed to acquire the whole or any part of the trade or business previously carried on by another company.
- (10) The provisions of subsection (7) of this section may be extended for additional two years where the company shows evidence of good records and management and remained in the preferred sector of the economy as specified in that subsection.
- (11) Where a company has incurred an expenditure on electricity, water, tarred road or telephone for the purpose of a trade or business carried on by the company which is located at least 20 kilometers away from electricity, water, tarred road or telephone facilities which are provided by the government, the company shall be allowed a relief called "investment tax relief" for each year expenditure is incurred on each such facility at the following rate of the expenditure-
 - (a) no facilities at all.....100%
 - (b) no electricity50%
 - (c) no water.....30%
 - (d) no tarred road15%
 - (e) no telephone5%
- (12) For the purposes of subsection 11 of this section, a company shall not be allowed to claim the investment tax relief for more than three years and the relief shall not be available to a company already granted the pioneer status.

41. Replacement of obsolete plant and machinery

Where a company has incurred an expenditure for the replacement of an obsolete plant and machinery, there shall be allowed to that company, 15% investment tax credit.

42. (*Deleted by 2007 No. 56, s. 12.*)

43. Dividends and tax on interim dividends paid by Nigerian companies

- (1) In respect of every dividend paid by a Nigerian company, being a dividend to which the proviso to section 18 applies, the company shall issue to each of its shareholders a certificate setting out the amount thereof to which such shareholder is entitled and describing the profits out of which the dividend is paid, and the company shall not be entitled to deduct tax from any such dividend on payment thereof.
- (2) For the purposes of this section, the net Nigerian rate of tax applicable to a dividend shall be the rate computed or agreed by the Board in the following manner-
 - (a) where the accounting period of a company out of the profits of which a dividend is declared to be wholly payable coincides with any single basis period of that company for a year of assessment (as determined under the provisions of Part IV of this Act) the net Nigerian rate of tax applicable to that dividend shall be computed by dividing the tax payable by the company for that year of assessment after deduction of any relief given under the provisions of section 44 or 46 by the distributable profits, as shown by the accounts of the company, arising during that period, before deduction of any tax but after deduction of any profits specified in subsection (1) of this section;
 - (b) in any other case, the net Nigerian rate of tax applicable to the dividend shall be determined by the Board as may appear to it to be just and equitable:

Provided that in no case shall the net Nigerian rate of tax applicable to a dividend exceed the rate specified by section 40 of this Act for the year of assessment in which payment of the dividend becomes due.
- (3) Within fourteen days thereof every Nigerian company shall supply full particulars to the Board of each dividend declared, and on request of the Board shall supply a list of the shareholders to whom the dividend is payable showing their respective shares therein.
- (4) In the event that the net Nigerian rate of tax applicable to a dividend has not agreed or computed by the Board before the date on which payment of that dividend becomes due, the certificate to be given for the purposes of subsection (2) of this section shall so specify, and no repayment out of tax deducted from that dividend shall be made to any shareholder until that rate has been finally determined.
- (5) Nothing in this section shall be construed as requiring a company to deduct tax from a dividend that is not paid in money.
- (6) Notwithstanding the foregoing provisions of this section, every company paying dividend to its shareholders shall pay tax at the prescribed rate in subsection (1) of section 40 of this Act to the Board prior to the payment

of the dividend. The tax so paid shall be a deposit against the tax due from the company on the profits out of which the dividend is paid:

Provided that the provisional tax paid under section 77 (1) of this Act shall be taken into account in determining the amount of tax due under this subsection.

44. Relief in respect of Commonwealth income tax

- (1) If any Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Board that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows-
 - (a) if the Commonwealth rate does not exceed one half of the rate of tax under this Act, the rate at which relief is to be given shall be the Commonwealth rate of tax;
 - (b) in any other case the rate at which relief is to be given shall be half the rate of tax under this Act.
- (2) If any company, other than a Nigerian company which has paid, by deduction or otherwise, or is liable to pay, tax under this Act for any year of assessment on any part of its profits, proves to the satisfaction of the Board that it has paid, by deduction or otherwise, or is liable to pay, Commonwealth income tax for that year of assessment in respect of the same part of its profits, it shall be entitled to relief from tax paid or payable by it under this Act on that part of its profits at a rate thereon to be determined as follows-
 - (a) if the Commonwealth rate of tax does not exceed the rate of tax under this Act, the rate at which relief is to be given shall be one half of the Commonwealth rate of tax;
 - (b) if the Commonwealth rate of tax exceeds the rate of tax under this Act, the rate at which relief is to be given shall be equal to the amount by which the rate of tax under this Act exceeds one half of the Commonwealth rate of tax.
- (3) For the purposes of this section-

"Commonwealth income tax" means any tax on income or profits of companies charged under a law in force in any country within the Commonwealth or in the Republic of Ireland which provides for relief from tax charged both in that country and Nigeria in a manner corresponding to the relief granted by this section;

"the rate of tax" under this Act of a company for any year of assessment means the rate determined by dividing the amount of tax imposed for that year (before the deduction of any double taxation relief granted by this Part) by the amount of the total profits of the company for that year, and the Commonwealth rate of tax shall be determined in a similar manner.

- (4) Any claim for relief from tax for any year of assessment under this section shall be made not later than six years after the end of that year, and if the claim is admitted, the amount of the tax to be relieved shall be re-paid out of the tax paid for that year of assessment or set-off against the tax which the company is liable to pay for that year of assessment:

Provided that if the company fails to satisfy the Board as to the amount of the tax to be relieved, the Board shall give notice of refusal to admit the claim and the provisions of Part XI shall apply accordingly with any necessary modifications as though such notice were an assessment.

45. Double taxation arrangements

- (1) If the Minister by order declares that arrangements specified in the order have been made with the Government of any country outside Nigeria with a view to affording relief from double taxation in relation to tax imposed on profits charged by this Act and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect notwithstanding anything in this Act.
- (2) On the making of an order under this section with respect to arrangements made with the government of any Commonwealth country or the Republic of Ireland, section 44 of this Act shall cease to have effect as respects that country and shall be deemed to have ceased to have had effect as from the beginning of the first year of assessment for which the arrangements are expressed to apply except in so far as the arrangements otherwise provide.
- (3) Where any arrangements have effect by virtue of this section, any obligation as to secrecy in this Act shall not prevent the disclosure to any authorised officer of the government with which the arrangements are made of such information as is required to be disclosed under the arrangements.
- (4) The Minister may make rules for carrying out the provisions of any arrangements having effect under this section.

- (5) An order made under the provisions of subsection (1) of this section may include provisions for relief from tax for periods commencing or terminating before the making of the order and provisions as to profits which are not themselves liable to double taxation.

46. Method of calculating relief to be allowed for double taxation

- (1) The provisions of this section shall have effect where, under arrangements having effect under section 45 of this Act, foreign tax payable in respect of any profits in the country with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of those profits under this Act, and in this section, "foreign tax" means any tax payable in that country which under the arrangements is to be so allowed.

- (2) The amount of the tax chargeable in respect of the profits which are liable to both tax and foreign tax shall be reduced by the amount of the credit admissible under the terms of the arrangement:

Provided that no credit shall be allowed to a company for a year of assessment unless during some part of that year it was a Nigerian company.

- (3) The credit shall not exceed the amount which would be produced by computing, in accordance with the provisions of this Act, the amount of the profits which are liable to both tax and foreign tax, and then charging that amount to tax at a rate ascertained by dividing the tax chargeable (before the deduction of any double taxation relief granted by this Part of this Act) on the total profits of the company entitled to the profits by the amount of the total profits.

- (4) Without prejudice to the provisions of subsection (3) of this section, the total credit to be allowed to a company for a year of assessment for foreign tax under all arrangements having effect under section 45 of this Act shall not exceed the total tax payable by it for that year of assessment.

- (5) In computing the amount of the profits-

- (a) no deduction shall be allowed in respect of foreign tax (whether in respect of the same or any other profits);
- (b) where tax chargeable depends on the amount received in Nigeria, the said amount shall be increased by the appropriate amount of the foreign tax in respect of the profits; and
- (c) where the profits include a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what,

credit is to be given against tax in respect of the dividend, the amount of the profits shall be increased by the amount of the foreign tax not so chargeable which falls to be taken into account in computing the amount of the credit, but notwithstanding anything in the preceding provisions of this subsection a deduction shall be allowed of any amount by which the foreign tax in respect of the profits exceeds the credit thereof.

- (6) Paragraphs (a) and (b) of subsection (5) of this section, but not the remainder thereof shall, apply to the computation of total profits for the purpose of determining the rate mentioned in subsection (3) of this section, and shall apply thereto in relation to all profits in respect of which credit falls to be given for foreign tax under arrangements for the time being in force under section 45 of this Act.
- (7) Where-
 - (a) the arrangements provide, in relation to dividends of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and
 - (b) a dividend is paid which is not of a class in relation to which the arrangements so provide, then, if the dividend is paid to a company which controls, directly or indirectly, not less than one half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.
- (8) Credit shall not be allowed under the arrangements against tax chargeable in respect of the profits of a company for any year of assessment if the company elects that credit shall not be allowed in the case of those profits for that year.
- (9) Any claim for an allowance by way of credit shall be made not later than two years after the end of assessment, and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.
- (10) Where the amount of any credit given under the arrangements is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable in Nigeria or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other determinations have been made, whether in Nigeria or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

PART VIII

Persons chargeable, agents, liquidators, etc.

47. Chargeability to tax

A company shall be chargeable to tax-

- (a) in its own name; or
- (b) in the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria in like manner and to like amount as such company would be chargeable; or
- (c) in the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable if no receiver or liquidator had been appointed.

48. Manager, etc., to be answerable

The principal officer or manager in Nigeria of every company shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Act for the assessment of the company and payment of the tax.

49. Power to appoint agent

- (1) The Board may by notice in writing appoint any person to be the agent of any company and the person so declared the agent shall be agent of such company for the purposes of this Act, and may be required to pay any tax which is or will be payable by the company from any moneys which may be held by him for, or due by or to become due by him to, the company whose agent he has been declared to be, and in default of such payment the tax shall be recoverable from him.
- (2) For the purposes of this section, the Board may require any person to give information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any company.
- (3) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as though such notice were an assessment.

50. Indemnification of manager, etc., or agent

Every person answerable under this Act for the payment of tax on behalf of a company may retain out of any money coming into his hands on behalf of such company so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him in pursuance and by virtue of this Act.

51. Company wound up

Where a company is being wound up, the liquidator of the company shall not distribute any of the assets of the company to the shareholders thereof unless he has made provision for the payment in full of any tax which may be found payable by the company, including any tax deductions made by the company under any laws in force in any part of Nigeria relating to the tax of individuals.

52. Liability to file return

- (1) Whether or not a company is liable to pay tax under this Act for a year of assessment and whether or not a return has been filed under section 55 of this Act, a company shall, upon a notice from the Board, file with the Board in the prescribed form, within such reasonable time as may be stipulated in such notice, a return of income for the year of assessment designated therein together with the audited accounts and information stipulated in subsections 1 (a) and (b) of section 55 of this Act.
- (2) Every company whose turnover is one million naira and above shall file self-assessment return within six months of its accounting period provided that a company whose turnover is below one million naira shall file a self-assessment return as from 1998 year of assessment.

53. Self-assessment of tax payable

Every company filing a return under section 58 of this Act or requested by notice of the Board to file a return under section 59 of this Act shall-

- (a) in the return, compute the tax payable by the company for the year of assessment; and
- (b) forward with the tax return, evidence of direct payment of the whole or part of tax due into a bank designated for the payment of tax.

54. Currency of assessment

Notwithstanding anything to the contrary in any law, an income tax assessment under sections 52, 53 or 55 of this Act shall be made in the currency in which the transaction giving rise to the assessment was effected.

PART IX

Returns

55. Returns and provisional accounts

- (1) Every company, including a company granted exemption from incorporation shall, whether or not a company is liable to pay tax under this Act for a year of assessment, with or without notice from the Service, file a self-assessment return with the Service in the prescribed form at least once a year and such return shall contain-
 - (a) the audited accounts, tax and capital allowances computation for the year of assessment and a true and correct statement in writing containing the amount of profit from each and every source computed;
 - (b) a duly completed self-assessment form as may be prescribed by the Service, from time to time, attested to by a director or secretary of the company and such attestation shall contain a declaration that it contains a true and correct statement of the amount of its profits computed in respect of all sources in accordance with this Act and any rule made and that the particulars given in such return are true and complete; and
 - (c) evidence of payment of the whole or part of the tax due into a bank designated for the collection of the tax.
- (2) Subject to this Act or any regulation made, the time of filing returns shall be-
 - (a) in the case of a company that has been in business for more than eighteen months, not more than six months after the end of its accounting year; and
 - (b) in the case of a newly incorporated company, within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever is earlier; in addition, the form of returns shall be signed by a director who must be the chairman or the managing director of the company and the secretary respectively.
- (3) Any company which fails to comply with the provisions of subsection (2) shall be liable to pay as penalty for late filing-

- (a) N25,000 in the first month in which the failure occurs; and
 - (b) N5,00 for each subsequent month in which the failure continues.
- (4) Notwithstanding anything to the contrary in any law, an income tax assessment shall be made in the currency in which the transaction took place.
- (5) Where an offence under this section by a company is proved to have been committed with the consent or connivance of, or to be attributable to, any neglect on the part of any director, manager, secretary or other similar officer, servant or agent of the company (or the person purporting to act in any such capacity) he as well as the company shall be deemed to have committed the offence and shall on conviction be liable to a fine not exceeding N1 00,000 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.
- (6) For the purposes of this section-
- (a) every company shall designate a representative who shall answer every query relating to the tax matters of the company; and
 - (b) a person designated by a company pursuant to paragraph (a) of " this subsection shall be a person knowledgeable in the field of taxation as may be approved, from time to time, by the Service.

56. *(Deleted by 2007 No. 56, s. 14.)*

57. Filing of returns by companies operating in the capital market

- (1) Every company operating in a Nigerian stock exchange shall, not later than seven days after the end of each calendar month, file with the Board or any other relevant tax authority, a return in the prescribed form of its transactions during the preceding calendar month.
- (2) A company filing a return shall, where its transactions involve-
- (a) an offer in the primary market, state in the return-
 - (i) the type of offer;
 - (ii) the services rendered;

- (iii) the amount of tax deducted at source; and (iv) the amount of value added tax payable;
- (b) operations in the secondary market, state in the return-
- (i) the number and value of transactions carried out during the relevant calendar month;
- (ii) the commission received or paid;
- (iii) the amount of tax deducted at source; and
- (iv) the amount of value added tax payable.

58. Board may call for further returns

The Board may give notice in writing to any company when and as often as it thinks necessary requiring it to deliver within a reasonable time limited by such notice fuller or further returns respecting any matter as to which a return is required or prescribed by this Act.

59. Extension of period of making returns

- (1) A company may apply in writing to the Board for an extension of the time within which to comply with the provisions of sections 52, 55 (3) and 60 of this Act, provided the company-
 - (a) makes the application before the expiration of the time stipulated in those sections for making the returns; and
 - (b) shows good cause for its inability to comply with those provisions.
- (2) If the Board is satisfied with the cause shown in an application under subsection (1) of this section, it may in writing grant the extension of time for making the application to such time as it may consider appropriate.

60. Power to call for returns, books, documents and information

- (1) For the purpose of obtaining full information in respect of the profits of any company, the Board may give notice to any person requiring him, within the time limited by such notice, to-
 - (a) complete and deliver to the Board, any return specified in such notice;

- (b) attend personally before an officer of the Federal Inland Revenue Service for examination with respect to any matter relating to such profits;
 - (c) produce or cause to be produced for examination at the place and time stated in such notice, which time may be from day to day for such period as the Board may consider necessary, for the purpose of such examination any books, documents, accounts and returns which the Board may deem necessary; or
 - (d) give orally or in writing any other information including name and address specified in such notice:
- (2) For the purposes of paragraphs (a) to (d) of subsection (1) of this section, the time limited by such notice shall not be less than seven days from the date of service of such notice, so however that an officer of the Board not below the rank of a Chief Inspector of Taxes may act in any of the cases stipulated in paragraph (a) or (c) or (d) of that subsection, without giving any of the required notices set out in this section.
- (3) Any person engaged in banking in Nigeria who contravenes the provisions of this section shall, in respect of each offence, be liable on conviction to a fine of N5,000 in the case of a body corporate, and in the case of an individual to a fine of N500.
- (4) Nothing in the foregoing provisions of this section or in any other provisions of this Act shall be construed as precluding the Board from verifying by tax audit any matter relating to the profits of a company or any matter relating to entries in any books, documents, accounts or returns as the Board may from time to time specify in any guideline issued by the Board.
- (5) Any person may apply in writing to the service for an extension of time within which to comply with the provisions of this section and section 10 of this Act, in so far as the person-
- (a) make the application before the expiration of the time stipulated in this section for making good returns; and
 - (b) shows good cause for his inability to comply with this provisions.
- (6) If the service is satisfied with the cause shown in the application of subsection (5) (b) of this section, it may consider appropriate.

61. Information to be delivered by bankers

- (1) Without prejudice to section 60 of this Act, every person engaged in banking including any person charged with the administration of the Federal Savings Bank Act, shall prepare a return at the end of each month specifying

the names and addresses of new customers of the bank and shall not later than the seventh day of the next following month deliver the return to a tax authority of the area where the bank operates, or where such customer is a company to the Federal Board of Inland Revenue.

- (2) Subject to the foregoing provisions of this section, for the purpose of obtaining information relative to taxation, the Board may give notice to any person including a person engaged in banking business in Nigeria and any person charged with the administration of the Federal Savings Bank Act to provide within the time stipulated in the notice, information including the name and address of any person specified in the notice:

Provided that a person engaged in banking business in Nigeria including any person charged with the administration of the Federal Savings Bank Act, shall not be required to disclose any further information under this section unless such disclosure is required by a notice signed by the chairman of the Board.

62. Return deemed to be furnished by due authority

A return, statement or form purporting to be furnished under this Act by or on behalf of any person shall for all purposes be deemed to have been furnished by that person or by his authority, as the case may be, unless the contrary is proved, and any person signing any such return, statement or form shall be deemed to be cognisant of all matters therein.

63. Books of account

- (1) If a company chargeable with tax fails or refuses to keep books of accounts which, in the opinion of the Board, are adequate for the purposes of income tax, the Board may by notice in writing require it to keep such records, books and accounts as the Board considers to be adequate in such form and in such language as may be specified in the said notice and, subject to the provisions of the next succeeding subsection, the company shall keep records, books and accounts as directed.
- (2) Any direction of the Board made under this section shall be subject to objection and appeal in like manner as an assessment save that any decision of the Appeal Commissioners thereon shall be final.
- (3) On hearing such appeal the Appeal Commissioners may confirm or modify such direction.

64. Power to enter and search premises

- (1) Where in respect of any trade or business carried on in Nigeria by any company (whether or not part of the operations is carried on outside Nigeria), the Board-

- (a) is satisfied that there is reasonable ground for suspecting that an offence involving any form of total or partial non-disclosure of information or any irregularity or offence in connection with, or in relation to tax, has been committed; and
 - (b) is of the opinion that evidence of the offence or irregularity is to be found in the premises, registered office, any other office, or place of management of the company or in the residence of the principal officer, factor, agent or representative of the company, the Board may authorise an officer of the Board to enter if necessary by force the premises, registered office, any other office or place of management or the residence of the principal officer, factor or agent or representative of the company, at any time from the date of such authorisation by the Board and conduct a search.
- (2) An authority to enter the premises, registered office, any other office or place of management or residence of the principal officer, agent or factor of a company, to conduct a search, shall be in the form contained in the Sixth Schedule to this Act, and such authority shall be sufficient warrant to search, seize and remove any records and documents found on such premises, office or, residence of the principal officer, agent or factor of the company, whether or not belonging to the company.
- (3) On entering the premises with a warrant under this section, the officer may seize and remove anything whatsoever found therein which he has reasonable cause to believe may be required for the purpose of arriving at a fair and correct tax chargeable on the company or as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1) of this section.
- (4) For the purpose of this section, an officer authorised by the Board to execute any warrant of search under this section may call to his assistance a police officer and it shall be the duty of the police officer when so required to aid and assist in the execution of any warrant, to obtain documents for the purposes of the tax chargeable or to be charged on the company or of the proceedings in respect of the offence referred to in section (1) of this section.
- (5) Where an entry to a premises has been made with a warrant under this section and the officer making the entry has seized anything under the authority of the warrant, he shall immediately before the seizure if required by either-
- (a) the principal officer of the company; or
 - (b) any other person who has had the possession or custody of those things, provide that principal officer or person with the list of items seized or surrendered.

- (6) It shall be the responsibility of any person on whom such warrant as mentioned in subsection (2) of this section is served to-
- (a) co-operate fully with the person or persons authorised to conduct a search by allowing easy access to the premises to be searched and to the items or documents that may be required for the investigation;
 - (b) answer all questions and queries put to him in the cause of the search;
 - (c) put in accessible position and facilitate the removal of all items that may be required to assist the investigation.
- (7) Any principal officer, agent, factor or representative of the company on whom a warrant of search is served who refuses to co-operate with the person or persons authorised to search or does anything tantamount to failure to co-operate or engages in an act or acts resulting in abuse, physical assault or similar misbehavior, shall be guilty of an offence and liable on conviction to a fine of N10,000 or to imprisonment of not less than 6 months or to both such fine and imprisonment.
- (8) Either prior to or during or after a warrant of search is being or has been served or executed on a principal officer, agent, factor or representative of the company, such principal officer, factor or agent may also be called upon to an interview before an officer of the Board to answer any query or question in connection with the activities of the company as would enable the Board to arrive at a fair and correct tax liability of the company.

PART X

Assessments

65. Board to make assessments

- (1) The Board shall proceed to assess every company chargeable with tax as soon as may be after the expiration of the time allowed to such company for the delivery of the audited accounts and return provided for in section 55 of this Act or otherwise as it appears to the Board practicable so to do.
- (2) Where a company has delivered audited accounts and return, the Board may-
 - (a) accept the audited accounts and return and make an assessment accordingly; or
 - (b) refuse to accept the return and, to the best of its judgment, determine the amount of the total profits of the company and make an assessment accordingly.

- (3) Where a company has not delivered a return and the Board is of the opinion that such company is liable to pay tax, the Board may, according to the best of its judgment, determine the amount of the total profits of such company and make an assessment accordingly, but such assessment shall not affect any liability otherwise incurred by such company by reason of its failure or neglect to deliver a return.
- (4) Nothing in this section shall prevent the Board from making an assessment upon a company for any year before the expiration of the time within which such company is required to deliver a return or to give notice under the provisions of section 55 of this Act, if the Board or any officer of the Federal Inland Revenue Service duly authorised by the Board considers such assessment to be necessary for any reason of urgency.
- (5) In this section, the reference to a return shall be construed as a reference to the accounts and return submitted pursuant to section 55 of this Act.

66. Additional assessments

- (1) If the Board discovers or is of the opinion at any time that any company liable to tax has not been assessed or has been assessed at a less amount than that which ought to have been charged, the Board may, within the year of assessment or within six years after the expiration thereof and as often as may be necessary, assess such company at such amount or additional amount, as ought to have been charged, and the provisions of this Act as to notice of assessment, appeal and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder:

Provided that where any form of fraud, wilful default or neglect has been committed by or on behalf of any company in connection with any tax imposed under this Act or under the Companies Income Tax Act 1961 the Board may at any time and as often as may be necessary, assess such company at such amount or additional amount as may be necessary for the purpose of making good any loss of tax attributable to the fraud, wilful default or neglect.

- (2) For the purpose of computing under subsection (1) of this section the amount or the additional amount which ought to have been charged, all relevant facts consistent with the proviso to section 76 of this Act shall be taken into account even though not known when any previous assessment or additional assessment on the same company for the same year was being made or could have been made.

67. Lists of companies assessed

- (1) The Board shall, as soon as possible, prepare lists of companies assessed to tax.

- (2) Such lists, herein called the assessment lists, shall contain the names and the addresses of the companies assessed to tax, the name and address of any person in whose name any such company is chargeable, the amount of the total profits of each company, the amount of tax payable by it, and such other particulars as may be determined by the Board.
- (3) Where complete copies of all notices of assessment and all notices amending assessments are filed in the offices of the Board they shall constitute the assessment lists for the purposes of this Act.

68. Service of notice of assessment

The Board shall cause to be served on or sent by registered post to each company, or person in whose name a company is chargeable, whose name appears on the assessment lists, a notice stating the amount of the total profits, the tax payable, the place at which such payment should be made, and setting out the rights of the company under the next following section.

69. Revision of assessment in case of objection

- (1) If any company disputes the assessment it may apply to the Board, by notice of objection in writing, to review and to revise the assessment made upon it.
 - (2) An application under subsection (1) of this section shall-
 - (a) be made within thirty days from the date of service of the notice of assessment; and
 - (b) contain the ground of objection to the assessment, that is(
 - i) the amount of assessable and total profits of the company for the relevant year of assessment; and
 - ii) the amount of tax payable for the year, which the company claims should be stated on the notice of assessment.
 - (3) If the Board is satisfied that owing to absence from Nigeria, the person in whose name an assessment is made is unable to make an application within the thirty days specified in subsection (2) of this section, it shall extend the time for making the application to such time as may be reasonable in the circumstances.
 - (4) On receipt of the notice of objection referred to in subsection (1) of this section, the Board may require the company giving the notice of objection to furnish such particulars as the Board may deem necessary and to

produce all books or other documents relating to the profits of the company, and may summon any person who may be able to give evidence respecting the assessment to attend for examination by an officer of the Federal Inland Revenue Service on oath or otherwise.

- (5) In the event of any company assessed, which has objected to an assessment made upon it, agreeing with the Board as to the amount at which it is liable to be assessed, the assessment shall be amended accordingly, and notice of the tax payable shall be served upon such company:

Provided that if an applicant for revision under the provisions of subsection (1) of this section fails to agree with the Board the amount at which the company is liable to be assessed, the Board shall give notice of refusal to amend the assessment as desired by such company and may revise the assessment to such amount as the Board may, according to the best of its judgment, determine and give notice of the revised assessment and of the tax payable together with notice of refusal to amend the revised assessment and, wherever requisite, any reference in this Act to an assessment or to an additional assessment shall be treated as a reference to an assessment or to an additional assessment as revised under the provisions of this proviso.

70. Errors and defects in assessment and notice

- (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act shall be quashed or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act or any enactment amending the same, and if the company assessed or intended to be assessed or affected thereby is designated therein according to common intent and understanding.
- (2) An assessment shall not be impeached or affected:
- a) by reason of a mistake therein as to-
- (i) the name of a company liable or of a person in whose name a company is chargeable; or
- (ii) the description of any profits; or
- (iii) amount of tax charged;
- (b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment the notice thereof shall be duly served on the company intended to be charged or the person in whose name such company is chargeable and such notice shall contain, in substance and effect, the particulars on which the assessment is made.

PART XI

Appeals

[EDITORIAL NOTE: In terms of section 18(2) of Act No. 56 of 2007, appeals shall be as provided in the Federal Inland Revenue Service Act.]

71 to 75 inclusive. *(Deleted by 2007 No. 56, s. 18 (1).)*

76. Assessments to be final and conclusive

Where no valid objection or appeal has been lodged within the time limited by section 69, 72 or 75 of this Act as the case may be, against an assessment as regards the amount of the total profits assessed thereby, or where the amount of the total profits has been agreed to under subsection (5) of section 69 of this Act, or where the amount of such total profits has been determined on objection, revision under the proviso to subsection (5) of section 69 of this Act, or on appeal, the assessment as made, agreed to, revised or determined on appeal, as the case may be, shall be final and conclusive for all purposes of the Act as regards the amount of such total profits; and if the full amount of the tax in respect of any such final and conclusive assessment is not paid within the appropriate period or periods prescribed in this Act, the provisions thereof relating to the recovery of tax, and to any penalty under section 85 of this Act, shall apply to the collection and recovery thereof subject only to the set-off of the amount of any tax repayable under any claim, made under any provision of this Act, which has been agreed to by the Board or determined on any appeal against a refusal to admit any such claim:

Provided that-

- (a) where an assessment has become final and conclusive, any tax overpaid shall be repaid;
- (b) nothing in section 69 or in Part XI of this Act shall prevent the Board from making any assessment or additional assessment for any year which does not involve re-opening any issue, on the same facts, which has been determined for that year of assessment under subsection (5) of section 69 of this Act by agreement or otherwise on appeal.

PART XII

Collection, recovery and repayment of tax

77. Time within which tax (including provisional tax) is to be paid

- (1) Notwithstanding any other provision of this section, every company shall, not later than three months from the commencement of each year of assessment, pay provisional tax of an amount equal to the tax paid by such company in the immediately preceding year of assessment in one lump sum.
- (2) Tax charged by any assessment which is not or has not been the subject of an objection or appeal by the company shall be payable (after the deduction of any amount to be set-off for the purposes of collection under any provision of this Act) at the place stated in the notice of assessment within two months after service of such notice upon the company:

Provided that-

- (a) if such period of two months expires after the 14th day of December within the year of assessment for which the tax has been charged and the aggregate tax to be set-off, and of any tax paid for that year within such period, then payment of any balance of such tax may be made not later than that day;
 - (b) where the assessment notice is served on the company within the approved period of payment of provisional tax, the tax shall be paid within two months after the end of the approved period, but if such period of two months expires after the 14th day of December within the year of assessment for which the tax has been charged, then the payment of any balance of such tax may be made not later than that day;
 - (c) the Board in its discretion may extend the time within which payment is to be made.
- (3) Subject to the provisions of subsection (3) of section 74 of this Act, collection of tax in any case where notice of an objection or appeal has been given by the company shall remain in abeyance until such objection or appeal is determined, save that the company shall have paid the provisional tax as provided in subsection (1) of this section or the tax not in dispute, whichever is higher.
 - (4) Upon the determination of an objection or appeal, the Board shall serve upon the company a notice of the tax payable as so determined, and that tax shall be payable within one month of the date of service of such notice upon the company:

Provided that if such period of one month expires after the 14th day of December within the year of assessment for which the tax has been charged and the condition specified in proviso (a) to subsection (2) of this section are satisfied with respect to the amount of the tax charged as so determined, then any balance of the tax payable may be paid not later than that day.

- (5) A company filing self assessment shall pay the tax due within two months from the due date of filing the assessment in one lump sum or such number of monthly instalments (not being more than six) as may be approved by the Board;

Provided that where-

- (a) such period of monthly instalments expires after the 30th day of November within the year of assessment for which the tax has been charged, the payment of any balance of the tax may be made not later than that day.
 - (b) a request for instalmental payment has been made, the request shall be accompanied with proof of payment of the first instalment to the designated bank.
- (6) The provisions of subsection (1) of this section shall not apply to a company that files self assessment for the year of assessment.
 - (7) Where a company is required to file a return within the time allowed under section 52 or specified under section 55 of this Act the tax as computed or shown in the return when filed shall be payable within two months from the date of filing the return, and the provisions of section 85 of this Act shall apply to the collection of the tax.
 - (8) Notwithstanding anything to the contrary in any law, income tax payable under sections 52, 53 and 55 of this Act shall be paid to the Board in the currency in which the income giving rise to the tax was derived and paid to the company making the return.

78. Deduction of tax from interest, etc.

- (1) Where any interest other than interest on inter-bank deposits or royalty becomes due from one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company making such payment shall, at the date when payment is made or credited, whichever first occurs, deduct therefrom tax at the rate prescribed in subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.
- (2) The rate at which tax is to be deducted in this section shall be 10 per cent.

- (3) For the purposes of this section, person authorised to deduct tax includes government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.
- (4) The tax, when paid over to the Board, shall be the final tax due from a non-resident recipient of the payment.
- (5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say-
 - (a) the gross amount of the interest or royalty;
 - (b) the name and address of the recipient; and
 - (c) the amount of tax being accounted for.

79. Deduction of tax on rent

- (1) Where any rent becomes due from or payable by one company to another company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such rent shall, at the date when the rent is paid or credited, whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.
- (2) The rate at which tax is to be deducted under this section shall be 10 per cent.
- (3) For the purposes of this section, person authorised to deduct tax includes government departments, parastatals, statutory bodies, institutions and other establishments approved for the operation of Pay As You Earn system.
- (4) The tax, when paid over to the Board, shall be the final tax due from a non-resident recipient of the payment.
- (5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say-
 - (a) the gross amount of the rent payable per annum;
 - (b) the name and address of the recipient and the period in respect of which such rent has been paid or credited;
 - (c) the address and accurate description of the property concerned; and

- (d) the amount of tax being accounted for.
- (6) Any reference to rent in this section shall be construed whenever necessary as including payments for the use or hire of any equipment, payments for charter vessels, ship or aircraft and all such other payments for the use of or hire of movable and immovable property.

80. Deduction of tax from dividend

- (1) Where any dividend or such other distribution becomes due from or payable by a Nigerian company to any other company or to any person to whom the provisions of the Personal Income Tax Act apply, the company paying such dividend or making such distribution shall, at the date when the amount is paid or credited, whichever first occurs, deduct therefrom tax at the rate prescribed under subsection (2) of this section and shall forthwith pay over to the Board the amount so deducted.
- (2) The rate at which tax is to be deducted under this section shall be 10 per cent.
- (3) Dividend received after deduction of tax prescribed in this section shall be regarded as franked investment income of the company receiving the dividend and shall not be charged to further tax as part of the profits of the recipient company. However, where such income is re-distributed and tax is to be accounted for on the gross amount of the distribution in accordance with subsection (1) of this section, the company may set-off the withholding tax which it has itself suffered on the same income.
- (4) The tax, when paid over to the Board, shall be the final tax due from a non-resident recipient of the payment.
- (5) In accounting for the tax so deducted to the Board, the company shall state in writing the following particulars, that is to say-
 - (a) the gross amount of the dividend or such other distribution;
 - (b) the name and address of the recipient;
- (c) the accounting period or periods of the company in respect of the profits out of which the dividend or distribution is declared to be payable and the date on which payment is due; and
- (d) the amount of tax so deducted.

81. Deduction of tax at source

- (1) Income tax assessable on any company, whether or not an assessment has been made, shall, if the Board so directs, be recoverable from any payments made by any person to such company.
- (2) Any such direction may apply to any person or class of persons specified in such direction, either with respect to all companies or a company or class of companies, liable to payment of income tax.
- (3) Any direction under subsection (1) of this section shall be in writing addressed to the person or be published in the Federal Gazette and shall specify the nature of payments and the rate at which tax is to be deducted.
- (4) In determining the rate of tax to be applied to any payments made to a company, the Board may take into account-
 - (a) any assessable profits of that company for the year arising from any other source chargeable to income tax under this Act; and
 - (b) any income tax or arrears of tax payable by that company for any of the six preceding years of assessment.
- (5) Income tax recovered under the provisions of this section by deduction from payments made to a company shall be set-off for the purpose of collection against tax charged on such company by an assessment.
- (6) Every person required under any provisions of this Act to make any deduction from payments made to any company shall account to the Board in such manner as the Board may prescribe for the deduction so made.
- (7) Any excess payment arising from compliance with sections 60,61,62 and 63 of this Act over the assessment if duly filed with the option to set off against future taxes.
- (8) The Minister of Finance on the advice of the Board may make regulations for the carrying out of the provisions of this section.

[Subsection (8), previously subsection (7), renumbered by 2007 No. 56, s. 19 (c).]

82. Penalty for failure to deduct tax

Any person who being obliged to deduct any tax under section 78, 79, 80 or 81 of this Act fails to deduct or having deducted fails to pay to the Board within thirty days from the date the amount was deducted or the time the duty to deduct arose, shall be guilty of an offence and shall be liable on conviction to a fine of 200 per cent of the tax withheld or not remitted, as the case may be.

83. Accountant-General of the Federation to deduct tax

Where the person referred to under section 82 is a Ministry, Department, parastatal, institution or an agency of the Federal or a State Government or is a local government, the Board may authorise the Accountant-General of the Federation in writing to deduct from the allocation of such Federal Ministry, Department, parastatal, institution or agency of the State Government or local government such amount of tax deductible plus interest at the prevailing commercial rate.

84. Payment of tax deducted

Income tax deducted under sections 78, 79, 80 and 81 of this Act shall be paid to the Board in the currency in which the deduction was made.

85. Addition for non-payment of tax and enforcement of payment

- (1) Subject to the provisions of subsection (3) of this section, if any tax is not paid within the periods prescribed in section 77 of this Act-
 - (a) a sum equal to ten per centum per annum of the amount of the tax payable shall be added thereto, and the provisions of this Act relating to the collection and recovery of tax shall apply to the collection and recovery of such sum;
 - (b) the tax due shall carry interest at bank lending rate from the date when the tax becomes payable until it is paid, and the provisions of this Act relating to collection and recovery of tax shall apply to the collection and recovery of the interest;
 - (c) the Board shall serve a demand note upon the company or person in whose name the company is chargeable and if payment is not made within one month from the date of the service of such demand note, the Board may proceed to enforce payment as hereinafter provided;
 - (d) an addition imposed under this subsection shall not be deemed to be part of the tax paid for the purpose of claiming relief under any of the provisions of this Act.
- (2) Any company which without lawful justification or excuse, the proof whereof shall lie on the company, fails to pay the tax within the period of one month prescribed in paragraph (b) of subsection (1) of this section, shall be guilty of an offence against this Act.

- (3) The Board may, for any good cause shown, remit the whole or any part of the addition due under subsection (1) of this section.

86. Power to distrain for non-payment of tax

- (1) Without prejudice to any other power conferred on the Board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand note has, in accordance with the provisions of this Part of this Act, been served upon the company or upon the person in whose name the company is chargeable, then, if payment of the tax is not made within the time limited by the demand note, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due-
- (a) distrain the taxpayer by his goods or other chattels, bonds or other securities;
- (b) distrain upon any land, premises, or place in respect of which the taxpayer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.
- (2) The authority to distrain under this section shall be in the form contained in the Fourth Schedule to this Act, and such authority shall be sufficient warrant and authority to levy by distress the amount of tax due.
- (3) For the purposes of levying any distress under this section, any officer authorised in writing by the Board may execute any warrant of distress and if necessary break open any building or place in the day time for the purpose of levying such distress, and he may call to his assistance any police officer and it shall be the duty of that police officer when so required to aid and assist in the execution of any warrant of distress and in levying the distress.
- (4) Things distrained under this section may, at the cost of the taxpayer, be kept for fourteen days and at the end of that time if the amount due in respect of the tax and the cost and charges of and incidental to the distress are not paid, they may, subject to subsection (6) of this section, be sold at any time thereafter.
- (5) Out of the proceeds of any such sale there shall, in the first place, be paid the cost or charges of and incidental to the (sale and keeping of the) distress, and disposal thereunder and in the next place the amount due in respect of the tax; and the balance (if any) shall be payable to the taxpayer upon demand being made by him or on his behalf within one year of the date of the sale.
- (6) Nothing in this section shall be construed so as to authorise the sale of any immovable property without an order of a High Court, made on application in such form as may be prescribed by rules of court.

87. Action for tax by Board and refusal of clearance where tax is in default

- (1) Tax may be sued for and recovered in a court of competent jurisdiction at the place stated in the notice of assessment as being the place at which payment should be made, by the Board in its official name with full cost of action from the company charged therewith as a debt due to the Government of the Federation.
- (2) For the purposes of this section, a court of competent jurisdiction shall include a magistrate's court, which court is hereby invested with the necessary jurisdiction, provided that the amount claimed in any action does not exceed the amount of the jurisdiction of the magistrate concerned with respect to actions for debt.
- (3) In any action brought under subsection (1) of this section, the production of a certificate signed by any person duly authorised by the chairman of the Board giving the name and address of the defendant and the amount of tax due shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for the said amount.
- (4) In addition to any other powers of collection and recovery provided in this Act, the Board may, where the tax charged on the profits of any company which carries on the business of ship owner or charterer has been in default for more than three months, whether such company is assessed directly or in the name of some other person, issue to the Nigerian Customs Service or other authority by whom clearance may be granted, a certificate containing the name or names of the said company and particulars of the tax in default, and on receipt of such certificate, the said Nigerian Customs Service or other authority shall be empowered and is hereby required to refuse clearance from any port in Nigeria to any ship owned wholly or partly or chartered by such company until the said tax has been paid.
- (5) No civil or criminal proceedings shall be instituted or maintained against the said Nigerian Customs Service or other authority in respect of a refusal of clearance under this section, nor shall the fact that a ship is detained under this section affect the liability of the owner, charterer, or agent to pay harbour dues and charges for the period of detention.

88. Attendance of director, etc., at proceedings, etc.

- (1) The court, before which the Board has sued a company for non-payment of tax, may issue a bench warrant on a director or other officer of the company to compel the director or officer to appear at every proceeding on the case until the final disposal of the case.

- (2) Where the Board has obtained judgment against a company for non-payment of tax and the judgment debt remains unpaid six months after the judgment, the court may, on the application of the Board, issue a bench warrant on a director or other officer of the company to compel the director or officer to appear in court and show cause why the judgment debt has not been paid.

89. Remission of tax

The President may remit, wholly or in part, the tax payable by any company if he is satisfied that it will be just and equitable to do so.

90. Relief in respect of error or mistake

- (1) If any company which has paid tax for any year of assessment alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return, statement or account made by or on behalf of the company for the purposes of the assessment, it may, at any time not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Board for relief.
- (2) On receiving any such application, the Board shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment of tax such relief in respect of the error or mistake as appears to be reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return, statement or account was in fact made on the basis or in accordance with the practice of the Board generally prevailing at the time when the return, statement or account was made.

- (3) In determining any application under this section, the Board shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the profits of the company, and for this purpose the Board may take into consideration the liability of the company and assessments made upon it in respect of other years.
- (4) A determination by the Board under this section shall be final and conclusive.

91. Repayment of tax

- (1) Save as is otherwise in this Act expressly provided, no claim for repayment of tax shall be allowed unless it is made in writing within six years after the end of the year of assessment to which it relates.
- (2) The Board shall give a certificate of the amount of any tax to be repaid under any of the provisions of this Act or under any order of a court of competent jurisdiction and upon the receipt of the certificate, the Accountant-General of the Federation shall cause repayment to be made in conformity therewith.

PART XIII

Offences and penalties

92. Penalty for offences

- (1) Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of N20,000.00, and without prejudice to section 55 (4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of N 2,000.00 for each and every day during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.
- (2) Any person who-
 - (a) fails to comply with the requirements of a notice served on him under this Act; or
 - (b) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him, shall be guilty of an offence against this Act.
- (3) Notwithstanding any of the provisions of the Criminal Procedure Act or any other applicable law, a magistrate may dispense with personal attendance of the defendant if he pleads guilty in writing or so pleads by a legal practitioner.
- (4) In the case of failure by a company to comply with the requirements of any notice given by the Board under the provisions of section 55 or 58 of this Act for the purpose of the tax to be charged upon the company for any year of assessment, the Board may, in lieu of the institution of proceedings under subsection (2) of this section, impose a penalty upon the company of an amount equal to the tax chargeable upon the company for the preceding year of assessment:

Provided that-

- (a) written notice of the penalty shall be served upon the company; and
- (b) any amount of such penalty remaining unpaid thirty days after service of such notice may be sued for and recovered in a court of competent jurisdiction by the Board in its official name with full costs of action from the company liable thereto as a debt due to the Government of the Federation; and
- (c) a certificate signed by an officer of the Federal Inland Revenue Service duly authorised by the Board setting out the name and address of such company, the date of service of the said notice, and the amount of the penalty remaining unpaid, shall be sufficient authority for the court to give judgment for that amount; and
- (d) the Board may remit the whole or any part of such penalty, whether before or after judgment, for any reason which appears to it to be adequate.

93. *(Deleted by 2007 No. 56, s. 22.)*

94. False statements and returns

- (1) Any person other than a company who-
 - (a) for the purpose of obtaining any deduction, set-off, relief or repayment in respect of tax for any company, or who in any return, account or particulars made or furnished with reference to tax, knowingly makes any false statement or false representation; or
 - (b) aids, abets, assists, counsels, incites or induces any other person-
 - (i) to make or deliver any false return or statement under this Act; or
 - (ii) to keep or prepare any false accounts or particulars concerning any profits on which tax is payable under this Act; or
 - (iii) unlawfully to refuse or neglect to pay tax, shall be guilty of an offence and shall be liable on conviction to a fine of N 1,000 or to imprisonment for five years, or to both such fine and imprisonment.
- (2) The Board may compound any offence under this section and with the leave of the court may before judgment stay or compound any proceedings thereunder.

95. Penalties for offences by authorised and unauthorised persons

Any person who-

- (a) being a person appointed for the due administration of this Act or employed in connection with the assessment and collection of the tax who-
 - (i) demands from any company an amount in excess of the authorised assessment of the tax; or
 - (ii) withholds for his own use or otherwise any portion of the amount of the tax collected; or
 - (iii) renders a false return, whether orally or in writing, of the amount of tax collected or received by him; or
 - (iv) defrauds any person, embezzles any money, or otherwise uses his position as to deal wrongfully with the Board; or
- (b) not being authorised under this Act to do so, collects or attempts to collect the tax under this Act,
shall be guilty of an offence and be liable on conviction to a fine of N600 or to imprisonment for three years or to both such fine and imprisonment.

96. Tax to be payable notwithstanding proceedings for penalties

The institution of proceedings for, or the imposition of a penalty, fine or term of imprisonment under this Act shall not relieve any company from liability to payment of any tax for which it is or may become liable.

97. Prosecution to be with the sanction of the Board

No prosecution in respect of an offence under section 93, 94 or 95 may be commenced except at the instance of or with the sanction of the Board.

98. Savings for criminal proceedings

The provisions of this Act shall not affect any criminal proceedings under any other enactment.

99. Place of an offence

An offence under this Act shall be deemed to occur in the town where the registered office of the ncompany is situated or at such other place as the Board may decide.

PART XIV

Miscellaneous

100. Power to alter rate of tax, etc.

The National Assembly may on the proposal by the President of each of the Houses of National Assembly impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable specified in section 29 and the Second Schedule to the ct in accordance with section 59 (2) of the Constitution of the Federal Republic of Nigeria, 1999

101. Tax clearance certificate

- (1) Whenever the Board is of the opinion that tax assessed on profits or income of a person has been fully paid or that no tax is due on such profits or income, it shall issue a tax clearance certificate to the person within two weeks of the demand for such certificate by that person or, if not, give reasons for the denial.
- (2) Any Ministry, department or agency of Government or any commercial bank with whom any person has any dealing with respect to any of the transactions mentioned in subsection (4) of this section, shall demand from such person a tax clearance certificate of three years immediately preceding the current year of assessment.
- (3) A tax clearance certificate shall disclose in respect of the last three years of assessment-
 - (a) total profits or chargeable income;
 - (b) tax payable;
 - (c) tax paid;
 - (d) tax outstanding or alternatively a statement to the effect that no tax is due.
- (4) The provisions of subsection (1) of this section shall apply in relation to the following, that is-
 - (a) application for government loan for industry or business;

- (b) registration of motor vehicles;
- (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 and its agencies and registered companies;
- (g) application for trade licence;
- (h) application for approval of building plans;
- (i) application for transfer of real property;
- (j) application for import or export licence;
- (k) application for plot of land;
- (l) application for buying agent licence;
- (m) application for pools or gaming licence;
- (n) application for registration as a contractor;
- (o) application for distributorship;
- (p) stamping of guarantor's form for Nigerian passport;
- (q) application for registration of a limited liability company or of a business name;
- (r) application for allocation of market stalls;
- (s) stamping of statement of the nominal share capital of a company to be registered and any increase in the registered share capital of any company; and
- (t) stamping of statement of the amount of loan capital.

- (5) An applicant for exchange control permission to remit funds to a non-resident recipient in respect of income accruing from rent, dividend, interest, royalty, fees, or any other similar income shall be required to produce a tax clearance certificate to the effect that tax has been paid on funds in respect of which the application is sought or that no tax is payable, whichever is the case.
- (6) When a person who has deducted any tax under any provisions of this Act fails to pay the tax so deducted to the appropriate tax authority, no tax clearance may be issued to that person even if he has fully discharged his own tax liability under this Act.
- (7) Where a person is able to produce evidence that he suffered tax by deduction at source and that the assessment year to which the tax relates falls within the period covered by the tax clearance certificate, such a person may not be denied a tax clearance certificate:

Provided that any balance of tax after credit has been given for the tax so deducted has been fully paid.

102. Conduct of proceedings

Any officer of the Federal Inland Revenue Service duly authorised in writing in that regard by the chairman of the Board, may prosecute or conduct on behalf of the Board, any prosecution or other proceedings arising under this Act in any court in the Federation.

103. Power to pay reward

The Board may with the approval of the Commissioner pay rewards to any person, not being a person employed in the Federal Inland Revenue Service in respect of any information which may be of assistance to the Board in the performance of its duties under this Act.

104. Repeals, transitional provisions, etc.

- (1) Subject to this section and without prejudice to the provisions of section 6 of the Interpretation Act, the Companies Income Tax Act 1961 shall, except where other provisions are made in that behalf in this Act, cease to have effect with respect to tax on the income or profits of companies for all years of assessment beginning after the 31st day of March 1977.
- (2) Anything made or done, or having effect as if made or done, before the date of commencement of this Act under or pursuant to any provision of the Companies Income Tax Act 1961 by the Board and having any continuing or resulting effect with respect to the taxation of the profits of a company or any matter connected

therewith, shall be treated and for all purposes shall have effect as if it were made or done by the Board under the corresponding provision of this Act.

- (3) All rules, orders, notices or other subsidiary legislation made under the Companies Income Tax Act 1961 shall continue to have effect as if made under the corresponding provisions of this Act.
- (4) All references in the Personal Income Tax Act and in any other enactment to provisions of the Companies Income Tax Act 1961 shall be construed as references to the corresponding provisions of this Act

105. Interpretation

- (1) In this Act, unless the context otherwise requires-

"Board" means the Federal Board of Inland Revenue referred to in section I of this

"company" means any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere;

"foreign company" means any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria;

"Joint Tax Board" means the Joint Tax Board established under the provisions of any enactment regulating the taxation of incomes of persons other than companies in Nigeria;

"Minister" means the Minister charged with responsibility for finance;

"Nigerian company" means any company incorporated under the Companies and Allied Matters Act or any enactment replaced by that Act;

"officers of the Board" includes any officer of the Federal Inland Revenue Service;

"persons" includes a company or body of persons;

"tax" means the tax imposed by this Act;

"year of assessment" means a period of twelve months commencing on 1 January.

- (2) Any reference in this Act to any section, Part or Schedule not otherwise identified is a reference to that section, Part or Schedule of this Act.

106. Short title and application

- (1) This Act may be cited as the Companies Income Tax Act.
- (2) This Act shall, except where other provision is made in that behalf in this Act, apply in respect of tax charged for the year of assessment commencing on 1 April 1977 and each succeeding year of assessment.

SCHEDULES

FIRST SCHEDULE

[Section 3 (4).]

Powers or duties which the Board may not delegate except to the Joint Tax Board with the consent of the Minister

- 1.** In this schedule, any reference to powers and duties shall not include any part of any power or duty of the Board either to make enquiries or to carry out or give effect to any decision of the Board.
- 2.** Subject to paragraph (b) of subsection (4) of section 3 of this Act, no power or duty of the Board specified or imported in the following provisions, namely-
 - (a) sections 1(3), 7, 14 (2), 21, 22, 23 (1) (d), 29 (6), 29 (9), 42 (3), 42 (5), 43 (2) (b), 87 (4), 90, 91 (2), 93 (3) and 94 (2) of this Act, and in paragraphs 6 (2) and 18 of Schedule 2 thereto;
 - (b) section 13 of the Industrial Development (Income Tax Relief) Act;
 - (c) the powers of the Board to decide to take proceedings under subsection (3) or section 6 or to take or sanction proceedings under section 97 of this Act;
 - (d) the power of the Board to consider anything necessary under subsection (2) of section 3 of this Act;
 - (e) the power of the Board to authorise under subsections (3) and (4) of section 3 of this Act, shall be delegated to any other person.

SECOND SCHEDULE

Capital allowances

ARRANGEMENT OF PARAGRAPHS

PARAGRAPH

1. Interpretation.
2. Provisions relating to mining expenditure.
3. Owner and meaning of "relevant interest".
4. Sale of buildings.
5. Qualifying industrial building expenditure.
6. Initial allowances.
7. Annual allowances.
8. Asset to be in use at end of basis period.
9. Balancing allowances.
10. Balancing charges.
11. Residue.
12. Meaning of "disposed of".
13. Value of an asset.
14. Apportionment.
15. Part of an asset.
16. Extension of meaning of "in use".
17. Exclusion of certain expenditure.

18. Application to lessors.
19. Asset used or expenditure incurred partly for the purposes of a trade or business.
20. Disposal without change of ownership.
21. Meaning of "allowances made".
22. Claims for allowances.
23. Election in double taxation cases.
24. Manner of making allowances and charges.

TABLE 1

Initial allowances

TABLE 11

Annual allowances

1. Interpretation

- (1) For the purposes of this Schedule-

"basis period" has the meaning assigned to it by the following provisions of this definition-

- (a) in the case of company to or on which any allowance of charge falls to be made in accordance with the provisions of this Schedule, its basis period for the year of assessment is the period by reference to the profits of which any assessable profits for that year fall to be computed under the provisions of section 29 of this Act;
- (b) such profits mean profits in respect of the trade or business in which there was used an asset in connection with which such allowance or charge falls to be made:

Provided that, in the case of any such trade or business-
- (i) where two basis periods overlap, the period common to both shall be deemed, except for the purpose of making an annual allowance, to fall in the basis period ending at the earlier date and in no other basis period;

- (ii) where two basis periods coincide, they shall be treated as overlapping, and the basis period for the earlier year of assessment shall be treated as ending before the end of the basis period for the later year of assessment;
- (iii) where there is an interval between the end of the basis period for one year of assessment and the basis period for the next year of assessment, then unless the second-mentioned year of assessment is the year in which, for the purposes of subsection (4) of section 29, such company permanently ceases to carry on the trade or business, the interval shall be deemed to be part of the second basis period; and
- (iv) where there is an interval between the end of the basis period for the year of assessment preceding that in which the trade or business permanently ceases, for the purposes of subsection (4) of section 29, to be carried on by such company and the basis period for the year in which it so ceases, the interval shall be deemed to form part of the first basis period;

"concession" includes a mining right and a mining lease;

"lease" includes an agreement for a lease where the term to be covered by the lease has begun, any tenancy and any agreement for the letting or hiring out of an asset, but does not include a mortgage, and the expression **"leasehold interest"** shall be construed accordingly and-

- (a) where, with the consent of the lessor, a lease of any asset remains in possession thereof after the termination of the lease without a new lease being granted to him, that lease shall be deemed for the purposes of this Schedule to continue so long as he remains in possession as aforesaid; and
- (b) where, on the termination of a lease of any asset, a new lease of that asset is granted to the lessee, the provisions of this Schedule shall have effect as if the second lease were a continuation of this first lease;

"qualifying expenditure" means, subject to the express provisions of this Schedule, expenditure incurred in a basis period which is-

- (a) capital expenditure (hereinafter called "qualifying plant expenditure") incurred on plant, machinery or fixtures;
- (b) capital expenditure (hereinafter called "qualifying building expenditure") incurred on the construction of buildings, structures or works of a permanent nature, other than expenditure which is included in sub-paragraph (a) or (c) of this definition;

- (c) capital expenditure (hereinafter called "qualifying mining expenditure") incurred in connection with, or in preparation for, the working of a mine, oil well or other source of mineral deposits of a wasting nature (other than expenditure which is included in sub-paragraph (a) of this definition);
- (d) capital expenditure (hereinafter called "qualifying plantation expenditure") incurred in connection with a plantation-
 - (i) on the clearing of land for planting;
 - (ii) on planting (other than replanting);
 - (iii) on the construction of any works or buildings which are likely to be of little or no value when the source is no longer worked or, where the source is worked under a concession, which are likely to become valueless when the concession comes to an end to the company working the source immediately before the concession comes to an end;
 - (iv) on the acquisition of, or of rights in or over, the deposits or on the purchase of information relating to the existing and extent of the deposits;
 - (v) on searching for or on discovering and testing deposits, or winning access thereto;
- (e) and for the purposes of this definition, where-
 - (i) expenditure is incurred for the purposes of a trade or business by a company about to carry on such trade or business; and
 - (ii) that expenditure is incurred in respect of an asset owned by that company if that expenditure would have fallen to be treated as qualifying expenditure if it had been incurred by that company on the first day on which it carries on that trade or business, that expenditure shall be deemed to be qualifying expenditure incurred by it on that day;
- (f) capital expenditure, that is, qualifying research and development expenditure, incurred on equipment and facilities, patents, licences, secret formula or process or for information concerning industrial, commercial or scientific process; technical feasibility of products or processes and purchases, searching for and discovering and testing products or process for future market or use; and such other similar cost which has not brought into existence any asset;

- (g) capital expenditure, that is, qualifying agricultural expenditure incurred on plant in use in agricultural trades and businesses within the meaning of section 11 of this Act;
- (h) capital expenditure, that is, qualifying public transportation, motor vehicle expenditure, incurred on a fleet of buses of not less than three used for public transportation;
- (i) capital expenditure (hereinafter called qualifying public transportation (intercity) new mass transit coach expenditure) incurred on new mass transit coach of 25 seats and above operated by a recognised corporate private establishment.

"trade or business" means a trade or business or that part of a trade or business the profits of which are assessable under this Act.

Application of' capital allowances to assets acquired under hire-purchase agreement, etc.

- (2) This Schedule shall apply in relation to any asset acquired by any hirer under a hirepurchase agreement, the terms of which provide for the use and ultimate acquisition of the asset by the hirer, as it applied to an asset acquired by any owner of an asset for the purposes of his trade or business, but shall so apply subject to the following modifications, that is to say-
 - (a) the qualifying expenditure within the meaning of sub-paragraph (1) (i) of paragraph 1 of this Schedule shall, in relation to any asset so acquired under that agreement, be limited to the amount of the instalment paid by the hirer during his basis period (within the meaning of those provisions) excluding in the computation of such qualifying expenditure any interest paid under the agreement;
 - (b) any reference in the provisions as aforesaid to any owner of any asset shall be construed as including a reference to a hirer under the hire-purchase agreement and as excluding a reference to the person letting the goods to the hirer under the agreement.

2. Provisions relating to mining expenditure

- (1) For the purposes of this Schedule, where-
 - (a) qualifying mining expenditure has been incurred on the purchase of information relating to the existence and extent of the deposits or on searching for or on discovering and testing deposits or winning access thereto and such expenditure has been incurred for the purposes of a trade or business carried on by the company incurring the expenditure, or expenditure has been incurred for the purpose of trade or business about to be carried on

by the company incurring the expenditure and such expenditure would have fallen to be treated as such qualifying mining expenditure if it had been incurred in a basis period; and

- (b) such expenditure has not brought into existence any asset; and
 - (c) such trade or business consists of the working of a mine, oil well or other source of mineral deposits of a wasting nature, then such expenditure shall be deemed to have brought into existence an asset owned by the company incurring the expenditure and in use for the purpose of such trade or business.
- (2) For the purpose of this Schedule, an asset in respect of which qualifying mining expenditure has been incurred by any company for the purposes of a trade or business carried on by it, and which has not been disposed of, shall be deemed not to cease to be used for the purpose of that trade or business so long as such company continues to carry on that trade or business.
 - (3) So much of any qualifying mining expenditure incurred on the acquisition of rights in or over mineral deposits and on the purchase of information relating to the existence and extent of the deposits as exceeds the total of the original cost of acquisition of such rights and of the cost of searching for, discovering and testing such deposits prior to the purchase of such information, shall be left out of account for the purposes of this Schedule:

Provided that where such costs were originally incurred by a company which carried on a trade or business consisting, as to the whole or part thereof, in the acquisition of such rights or information with a view to the assignment or sale thereof, the price paid on such assignment or sale shall be substituted for the aforementioned costs.

3. Owner and meaning of "relevant interest"

- (1) For the purposes of this Schedule, where an asset consists of a building, structure or works, the owner thereof shall be taken to be the owner of the relevant interest in such building, structure or works.
- (2) Subject to the provisions of this paragraph, in this Schedule, the expression "**the relevant interest**" means, in relation to any expenditure incurred on the construction of a building, structure or works, the interest in such building, structure or works to which the person who incurred such expenditure was entitled when he incurred it.
- (3) Where, when he incurs qualifying building expenditure or qualifying mining expenditure on the construction of a building, structure or works, a person is entitled to two or more interests therein, and one of those interests is

an interest which is reversionary on all the others, that interest shall be the relevant interest for the purposes of this Schedule.

4. **Sale of buildings**

Where capital expenditure has been incurred on the construction of a building, structure or works and thereafter the relevant interest therein is sold, any company which buys that interest shall be deemed, for all the purposes of this Schedule except the granting of initial allowances, to have incurred, on the date when the purchase price became payable, capital expenditure on the construction thereof equal to the price paid by it for such interest or to the original cost of construction whichever is the less:

Provided that where such relevant interest is sold before the building, structure or works has been used, the foregoing provisions of this paragraph shall have effect with respect to such sales with the omission of the words "**except the granting of initial allowances**" and the original cost of construction shall be taken to be the amount of the purchase price on such sale:

Provided also that where any such relevant interest is sold more than once before the building, structure or works is used, the provisions of the foregoing proviso shall have effect only in relation to the last of those sales.

5. **Qualifying industrial building expenditure**

For the purpose of this Schedule-

- (a) where but for this paragraph a company is entitled to an annual allowance in respect of qualifying building expenditure in respect of an asset in use, for the purposes of a trade or business carried on by it at the end of its basis period for any year of assessment, if that asset is an industrial building or structure in use as such at the end of its basis period for any such year then, in lieu of such allowance and qualifying building expenditure, the qualifying expenditure in respect of that asset shall be taken to mean "qualifying industrial building expenditure" for any allowances to be made to such company, in respect of that qualifying expenditure, for that year; and
- (b) "**industrial building or structure**" means any building or structure in regular use-
 - (i) as a mill, factory, mechanical workshop, or other similar building, or as a structure used in connection with any such buildings;

- (ii) as a dock, port, wharf, pier, jetty or other similar building structure;
- (iii) for the operation of a railway for public use or for a water or electricity undertaking for the supply of water or electricity for public consumption; and
- (iv) for the running of a plantation or for the working of a mine or other source of mineral deposits of a wasting nature.

6. Initial allowances

- (1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, there shall be made to that company for the year of assessment in its basis period for which that asset was first used for the purposes of that trade or business an allowance (in this Schedule called "an initial allowance") at the appropriate rate *per centum*, set forth in Table T to this Schedule, of such expenditure.
- (2) Where capital expenditure is incurred on the purchase of an asset and either purchaser is a person over whom the seller has control, or the seller is a person over whom the purchaser has control, or some other person has control over both the purchaser and the seller, then, the amount of any initial allowance to be made in respect of such expenditure shall be such an amount as the Board may determine to be just and reasonable having regard to all the circumstances relating to such asset and control:

Provided that any such amount shall not exceed the amount of the initial allowance which would have been allowable apart from the provisions of this sub-paragraph.

- (3) Where a company has incurred qualifying expenditure for the purchase of plants and machineries for the replacement of the old ones, there shall be allowed such company a once and for all 95 per cent capital allowances in the first year, with 5% retention as the book value until the final disposal of the asset:

Provided that the aggregate capital allowances granted in respect of any asset under this Schedule and under section 42 shall not exceed 95 per cent of the total cost of the asset.

7. Annual allowances

- (1) Subject to the provisions of this Schedule, where in its basis period for a year of assessment, a company owning any asset has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and

reasonably for the purpose of a trade or business carried on by it, whether or not an initial allowance was made in respect of that qualifying expenditure, there shall be made to that company for each year of assessment, in its basis period for which that asset was used for the purpose of that trade or business, an allowance (hereinafter called "an annual allowance" at the rate specified in respect thereof in Table n of this Schedule of such expenditure after the deduction of initial allowance where applicable:

Provided that an amount of N10 shall be retained in the accounts for tax purposes until the asset is disposed of:

Provided further that where the basis period for any year of assessment is a period of less than one year and such allowance for that year of assessment shall be proportionately reduced.

- (2) In the case of an asset in respect of which an allowance has been granted before the commencement of this sub-paragraph, an allowance shall be made in respect of the asset for the number of years which, if added to the number of years of assessment for which allowance has already been made, equals the number of years of assessment for which allowance is to be made under the provisions of sub-paragraph (1) of this paragraph:

Provided that if an allowance has been made for a number of years which is equal to or more than the number of years specified under sub-paragraph (1) of this paragraph, a single allowance shall be made for an amount which is N10 less than the residue of the qualifying expenditure for the year of assessment in which this sub-paragraph takes effect.

8. Asset to be in use at the end of basis period

An initial or an annual allowance in respect of qualifying expenditure incurred in respect of any asset shall only be made to a company for a year of assessment if at the end of its basis period for that year it was the owner of that asset and that asset was in use for the purposes of a trade or businesses carried on by that company.

9. Balancing allowances

Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning an asset, which has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, disposes of that asset an allowance (hereinafter called "a balancing allowance") shall be made to that company for that year of the excess of the residue of that expenditure, at the date such asset is disposed of, over the value of that asset at that date:

Provided that a balancing allowance shall only be made in respect of such asset if immediately prior to its disposal it was in use by such owner in the trade or business for the purpose of which such qualifying expenditure was incurred.

10. Balancing charges

Subject to the provisions of this Schedule, where in its basis period for a year of assessment a company owning an asset, which has incurred in respect thereof qualifying expenditure wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on by it, disposes of that asset, a charge (hereinafter called "a balancing charge") shall be made on that company for that year of the excess of the value of that asset, at the date of its disposal, over the residue of that expenditure at that date:

Provided that a balancing charge shall only be made in respect of such asset if immediately prior to its disposal it was in use by such owner in the trade or business for the purposes of which such qualifying expenditure was incurred and shall not exceed the total of any allowances made to such owner under the provisions of this Schedule in respect of such asset and in cases falling under paragraph 19 of the Fourth Schedule to the Personal Income Tax Act, of any deductions made under section 10 of that Act in respect of the capital cost of such asset.

[Fourth Schedule. Cap. PS.]

11. Residue

- (1) The residue of qualifying expenditure, in respect of any asset, at any date, shall be taken to be the total qualifying expenditure incurred on or before that date, by the owner thereof at that date, in respect of that asset, less the total of any initial or annual allowances made to such owner, in respect of that asset, before that date.
- (2) For the purpose of this paragraph, an initial allowance or annual allowance shall be deemed to be made at the end of the basis period for the year of assessment for which any such allowance is made.

12. Meaning of "disposed or"

Subject to any express provision to the contrary, for the purposes of this Schedule-

- (a) a building, structure or works of a permanent nature is disposed of if any of the following events occur:

- i) the relevant interest therein is sold; or
- (ii) that interest, being an interest depending on the duration of a concession, comes to an end on the coming to an end of that concession; or
- (iii) that interest, being a leasehold interest, comes to an end otherwise than on the person entitled thereto acquiring the interest which is reversionary thereon; or
- (iv) the building, structure or works of a permanent nature are demolished or destroyed or, without being demolished or destroyed, cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (b) plant, machinery or fixtures are disposed of if they are sold, discarded or cease altogether to be used for the purposes of a trade or business carried on by the owner thereof;
- (c) assets in respect of which qualifying mining expenditure is incurred are disposed of if they are sold or if they cease to be used for the purposes of the trade or business of the company incurring the expenditure either on such company ceasing to carry on such trade or business or on such company receiving insurance or compensation monies therefor.

13. Value of an asset

- (1) The value of an asset at the date of its disposal shall be the net proceeds of the sale thereof or of the relevant interest therein, or if it was disposed of without being sold, the amount which, in the opinion of the Board, such asset or the relevant interest therein, as the case may be, would have fetched if sold in the open market at that date, less the amount of any expenses which the owner might reasonably be expected to incur if the asset were so sold.
- (2) For the purposes of this paragraph, if an asset is disposed of in such circumstances that insurance or compensation monies are received by the owner thereof, the asset or the relevant interests therein, as the case may be, shall be treated as having been sold and as though the net proceeds of the insurance or compensation monies were the net proceeds of the sale thereof.
- (3) So much of sub-paragraph (1) of this paragraph as relates to the circumstances for determining the value of an asset by reference to the disposal of such asset, other than by way of sale, shall have effect-

- (a) in relation to any asset or the relevant interest therein disposed of not being by way of bargain made at arm's length; or
- (b) where the sale is between persons who are related to each other or between persons both of whom are controlled by some other person or one of whom has control over the other.

14. Apportionment

- (1) Any reference in this Schedule to the disposal, sale or purchase of any asset includes a reference to the disposal, sale or purchase of that asset, as the case may be, together with any other asset, whether or not qualifying expenditure has been incurred on such last-mentioned asset; and where an asset is disposed of, sold, or purchased together with another asset, so much of the value of the assets as, on a just apportionment, is properly attributable to the first mentioned asset shall, for the purposes of this Schedule, be deemed to be the value of or the price paid for that asset, as the case may be

For the purposes of this sub-paragraph, all the assets which are purchased or disposed of in pursuance of one bargain shall be deemed to be purchased or disposed of together, notwithstanding that separate prices are or purport to be agreed for each of those assets or that there are or purport to be separate purchases or disposals of those assets.

- (2) The provisions of sub-paragraph (1) of this paragraph shall apply, with any necessary modifications, to the sale or purchase of the relevant interest in any asset together with any other asset or relevant interest in any other asset.

15. Part of an asset

Any reference in this Schedule to any asset shall be construed whenever necessary as including a reference to a part of any asset (including an undivided part of that asset in the case of joint interests therein) and when so construed any necessary apportionment shall be made as may, in the opinion of the Board, be just and reasonable.

16. Extension of meaning of "in use"

- (1) For the purposes of this Schedule, an asset shall be deemed to be in use during a period of temporary disuse.
- (2) For the purposes of paragraphs 6, 7 and 8 of this Schedule-

- (a) an asset in respect of which qualifying expenditure has been incurred by the company owning such asset for the purposes of a trade or business carried on by it shall be deemed to be in use, for the purposes of that trade or business, between the dates hereinafter mentioned, where the Board is of the opinion that the first use to which the asset will be put by the company incurring such expenditure will be for the purposes of that trade or business;
- (b) the said dates shall be taken to be the date on which such expenditure was incurred and the date on which the asset is in fact first put to use:

Provided that where any allowances have been given in consequence of this subparagraph and the first use to which such asset is put is not for the purposes of such trade or business, all such additional assessments shall be made as may be necessary to counteract the benefit obtained from the giving of any such allowances.

17. Exclusion of certain expenditure

Where any company has incurred expenditure which is allowed to be deducted, in computing the profits of its trade or business under section 24 of this Act, such expenditure shall not be treated as qualifying expenditure.

18. Application of lessors

- (1) Where a company owning an asset-
 - (a) has incurred capital expenditure in respect thereof; or
 - (b) leases that asset to any person under an operating lease contract for use wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by such person, the provisions of this Schedule shall apply, as though such expenditure were incurred for the purpose of a trade or business carried on by the owner or lessor and as though the owner or lessor were using the asset for the purpose of such last-mentioned trade or business in the way in which and for the period or periods during which the asset is in fact in the first-mentioned trade or business.
- (2) Where however an asset is acquired by any hirer or lessee under a finance lease contract the terms of which provide for the transfer of ownership, risks and reward to the hirer or lessee, the provisions of this Schedule shall apply in the same way as it applies to an asset acquired by any owner or lessor of an asset for the purpose of his trade or business, but shall so apply subject to the following modifications that is to say-

- (a) the qualifying expenditure within the provisions of this Schedule shall in relation to any asset so acquired under that contract, be limited to the amount 01" the total lease payments due from hirer or lessee, during his basis period excluding in the computation of such qualifying expenditure any interest or charges payable under the contract;
- (b) any reference in this subparagraph to any owner or lessor of any asset shall be construed as including a reference to a hirer or lessee under the finance lease contract and as excluding a reference to the person leasing the asset to the hirer or lessee under the contract.
- (3) Subject to the provisions of this Schedule, where a company has incurred capital expenditure on plant and machinery or acquires same by virtue of sub-paragraph (2) of this paragraph, wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by it, there shall be due an investment allowance of ten per cent of such expenditure.
- (4) For the purposes of this Schedule the terms "**operating lease**" and "**finance lease**" shall have the meanings ascribed to them by the Statement of Accounting Standard on Leases.
- (5) For the purposes of this paragraph in relation to the trade or business which an owner is to be treated as carrying on, his basis period for any year of assessment shall be taken to be the year immediately preceding that year of assessment.
- (6) When a company owning an equipment has incurred capital expenditure in respect thereof for the purposes of leasing that equipment for the use wholly, exclusively, necessarily and reasonably for the purposes of a trade or business carried on or about to be carried on by a person, the provisions of this Schedule shall apply to all such leases.
- (7) Subject to the provisions of this Schedule where a company has incurred expenditure wholly, exclusively, necessarily and reasonably for the purposes of agricultural plant and equipment, there shall be due to that company an investment allowance of ten per cent of such expenditure.

19. Asset used or expenditure incurred partly for the purposes of a trade or business

- (1) The following provisions of this paragraph shall apply where either or both of the following conditions apply with respect to any asset:
 - a) the owner of the asset has incurred in respect thereof qualifying expenditure partly for the purposes of a trade or business carried on by him and partly for other purposes;

- (b) the asset in respect of which qualifying expenditure has been incurred by the owner thereof is used partly for the purposes of a trade or business carried on by such owner and partly for other purposes.
- (2) Any allowances and any charges which would be made if both such expenditure were incurred wholly, exclusively, necessarily and reasonably for the purposes of such trade or business and such asset were used wholly and exclusively for the purposes of such trade or business shall be computed in accordance with the provisions of this Schedule.
- (3) So much of the allowances and charges computed in accordance with the provisions of sub-paragraph (2) of this paragraph shall be made as in the opinion of the Board is just and reasonable having regard to all the circumstances and to the provisions of this Schedule.

20. Disposal without change of ownership

Where an asset in respect of which qualifying expenditure has been incurred by the owner thereof has been disposed of in such circumstances that such owner remains the owner thereof, then, for the purposes of determining whether and, if so, in what amount, any annual or balancing allowance or balancing charge shall be made to or on such owner in respect of his use of the asset after the date of such disposal-

- (a) qualifying expenditure incurred by such owner in respect of such asset prior to the date of such disposal shall be let out of account; but
- (b) such owner shall be deemed to have bought such asset immediately after such disposal for a price equal to the residue of such qualifying expenditure at the date of such disposal, increased by the amount of any balancing charge or decreased by the amount of any balancing allowance made as a result of such disposal.

21. Meaning of "allowances made"

Any reference in this Schedule to an allowance made includes a reference to an allowance which would be made but for an insufficiency of assessable profits against which to make it.

22. Claims for allowances

No allowance shall be made to any company for any year of assessment under the provisions of this Schedule unless claimed by it for that year or where the Board is of the opinion that it would be reasonable and just so to do.

23. Election in double taxation cases

- (1) Where a company makes a claim to an initial or annual allowance under this Schedule in connection with any trade or business, if the taxes in respect of the profits of the trade or business are the subject of an arrangement, having effect by virtue of section 45 of this Act, between Nigeria and any other territory, for relief from double taxation, it may elect, at the time of making such claim or within such reasonable time thereafter as the Board may allow, that