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**AN OVERVIEW OF THE PERSONAL INCOME TAX
AND CAPITAL GAINS TAX REGIME IN NIGERIA**

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ABSTRACT

In Nigeria, the Personal Income Tax is a tax charged on the income of individuals and is imposed on different sources of income like labour, pensions, interest and dividends. Revenues from the Personal Income Tax constitute an important source of income for three tiers of government in Nigeria. Capital gains tax administration in Nigeria is regulated by the Capital Gains Tax Act.¹ The Act is administered by both Federal Inland Revenue Service and the States Internal Revenue Service. Federal Inland Revenue Service deals with the taxation of capital gains arising from the disposal of property by corporate entities while the State Internal Revenue deal with gains on disposal by individual sole traders. The Tax rate is 10% on capital gains. The capital gain is the difference between the sale proceeds from sale of the assets. Expenses that are incidental to the disposal are allowed as a deduction from the sales proceeds. The objective is to provide better understanding of the different ways of assessing and collection of taxes with a view to providing and ensuring improved compliance by the tax payers. The paper further examines the issues relating to persons subject to tax, resident, the key legislation governing imposition of tax in Nigeria including the authorities charged with the responsibility to administer it. In carrying out this research we adopted a theoretical framework by looking at other literature on the subject as basis for our findings and recommendations. Findings revealed that tax has positive significant impact on government revenue in Nigeria. It is therefore recommended that there should be increased tax awareness and campaign in order to enable government generate more revenue from tax to boost its gross domestic products.

Keywords: *Tax, Income tax, Capital Gains Tax.*

¹ Cap C LFN 2004.

INTRODUCTION

Taxation is one of the veritable sources of government revenue. Its economic importance to Nigeria and most countries of the world cannot be overemphasized. The Nigerian tax authorities have been making efforts aimed at increasing the level of tax collections and improving government revenue generation from taxation in departure from total reliance on a mono economy. This is spearheaded by the Federal Inland Revenue Services (FIRS) and the State Internal Revenue Services of all the States as well as the Federal Capital Territory. The authorities have initiated different schemes including several tax amnesty programs to encourage taxpayers to come forward and declare their taxes. Despite these efforts, the general level of tax compliance in Nigeria is still quite low. The recent International Monetary Fund (IMF) country report shows that only about 10million people, out of a labour force of about 77million people, have registered for taxes in Nigeria.² The apathy of Nigerian taxpayers is not unconnected with the usual question as to what they will benefit from a government to which they pay large chunks of money.

Personal income tax is regulated by the Personal Income Tax Act of 1993.³ The Act identifies: Taxable persons,⁴ chargeable income,⁵ determines assessable income and taxes that income.⁶ The Act also determines the residence of the tax payer⁷ for the purpose of payment or collection of personal income tax. Tax is any compulsory payment to government, imposed by law without seeking direct benefit or return of value or a service whether it is called a tax or not.⁸ This is a civic duty owed by every citizen, as it is a major source of revenue required by government to meet public needs. A good tax system is made up of the tax policy, tax laws and tax administration and these three elements are expected to interface to promote the attainment of the economic goal of the nation.⁹ Nigeria National Tax Policy was first published in 2012 as part of the efforts to entrench a robust and efficient tax system in Nigeria. Four years later, the demand for new strategies to enhance tax compliance led to the need for review and update of the NTP in 2016.

Nigeria has her National Tax Policy (NTP) which seeks to provide the fundamental guidelines for the orderly development of the Nigerian tax system. The NTP is a document which sets broad parameters for taxation and ancillary matters connected with taxation in Nigeria. It is a clear statement on the principle governing tax administration and revenue collection, providing a set of rules and guidelines for all stakeholders in the tax system to use when regulating taxation.¹⁰ The Policy is expected to achieve the following specific objectives among others:¹¹

²Olufunso Ola-Ojo and Oladejo Adeyemi. Nigeria: Effective Taxation of The Nigerian Informal Sector. Available at <https://www.mondaq.com/nigeria/tax-authorities/764066/effective-taxation-of-the-nigerian-informal-sector> accessed on 9/8/2020

³As adopted by the laws of the Federation of Nigeria (LFN) 2004 now 2011. CAP.P8. it has been amended by Personal Tax Amendment Act, 2011 as well as the Financial Act, 2019.

⁴ Section 2 of Personal Income Tax Act later referred to as PITA, 1993.

⁵ Section 3 PITA, 1993.

⁶ Section 1 PITA, 1993.

⁷First Schedule to the PITA.

⁸ Nigerian Tax Policy Federal Ministry of Finance (2016) p. 1.

⁹Adeyeye, G., Adeoye, A., & Adeyeye, A. "Personal Income Tax Administration in the rural communities. A study of selected Local Government Areas in Ogun State, Nigeria" [18][2] (Annals of SpiruHaret University, Economic Series) 24

¹⁰ Oxford Business Group. Nigeria/Tax. An overview of National Tax Policy and Administration in Nigeria. Available at <https://www.oxfordbusinessgroup.com/overview-of-national-tax-...>

¹¹(i) guide the operation and review of the tax system;

Section 4 of the 1999 Constitution¹² addresses the division of taxing powers between the federal, state and by implication, the local government councils, while the second schedule to the Constitution discusses taxing powers and revenue sharing. Under these provisions, functions assigned to the States are residual powers not explicitly assigned to the Federal government. The Nigerian Constitution also provides the powers of the State Houses of Assembly in relation to collection of Federal, State and Local Government taxes. With regard to Federal taxes specifically stated in item D part II of the Nigerian Constitution, the powers of the State Houses of Assembly are restricted to collection and administration of certain taxes subject to authorization by the National Assembly. The State Houses of Assembly of each of the 36 States are expected to work closely with their respective State Executive Councils in exercising their responsibilities for the collection and administration of the taxes. Various types of taxes exist in Nigeria such as, personal income tax, companies' income tax, petroleum profit tax, capital gain tax, value added tax, tertiary education trust fund tax, custom and excise duties, stamp duties and many levies.

For the purpose of this paper, only personal income tax and capital gains tax are discussed. Section 81 of the Personal Income Tax Act¹³ establishes a Pay-As-You-Earn (**PAYE**) system whereby employers are required to act as agents of the tax authorities for the purpose of collecting and remitting taxes on salaries or wages due to their employees. PAYE taxes are required to be remitted within fourteen (14) days after the month of deduction. At the end of every year, the employer is required to submit all the tax deduction cards and employer's remittance cards (Form G).

Every person, whether individual or corporate, who receives income earned or unearned by way of wages, salary, gains and profits from business is liable to pay personal income tax. This type of tax is paid after identifying the tax payer and his residence due assessment of the amount payable is made after subtracting all deductions or reliefs.

PERSONAL INCOME TAX

Personal Income Tax is a compulsory tax imposed on the income earned by a person (an individual, community, family or trust) during a given year on a preceding year basis. The amount of tax payable is not a fixed sum but a variable graduated amount,¹⁴ depending on the aggregate or gross income of the taxable person, and the tax relief granted to him under Personal Income Tax Act (PITA).¹⁵ Personal income tax is charged on income of every taxable person (individuals) from a source inside or outside Nigeria in respect of the following:

- a. The gains or profits from any trade, business, profession or vocation;
- b. The salary, wages, fees, allowances or other gains or profits from an employment including gratuities, compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted to an employee;
- c. The gains or profits including premiums from the grant of rights for the use or occupation

(ii) Provide the basis for future tax legislation and administration;

(iii) Serve as a point of reference for all stakeholders on taxation;

(iv) Provide a benchmark on which stakeholders shall be held accountable; and

(v) Provide clarity on the roles and responsibilities of stakeholders in the tax system.

(vi) To shift focus on oil revenue to non-oil areas such as tax.

¹² 1999 Constitution of the Federal Republic of Nigeria (as amended)

¹³ PITA S. 81, Cap P8, LFN 2004 as amended by PITAM 2011 and Finance Act 2019.

¹⁴ Section 37 PITA and the Sixth Schedule to the Personal Income Tax Amendment Act.

¹⁵ Note that reliefs have been variously amended by the PITA Amendment of 2011 and the Finance Act 2019.

- of any property;
- d. Dividends, interests or discounts;
- e. A pension, charge or annuity; or
- f. Any profit or gains not mentioned in the above categories; and
- g. Balancing charge arising where a business person disposed of an asset used for the purpose of trade or business carried on by it at a profit.

This tax which is imposed on the income of persons under the Personal Income Tax Act in Nigeria¹⁶ is graduated from 7 to 24 per cent depending on the tax payer's income.¹⁷

PERSONS SUBJECT TO TAX AND THE ISSUE OF RESIDENCE

Under section 41 of the Personal Income Tax Act (PITA)¹⁸ every employer is under obligation to file employers' tax returns (Form H1) with the relevant tax authority of all emoluments paid to its employees in the preceding year. The timeline is that payment should be made not later than 31 January of every year. By "persons" the Personal Income Tax Act in section 2 envisages the taxation of different categories of taxable persons which could be categorized into first, second and the third category as follows;

Category one:

a. Individuals: The first category of taxable persons include; any individual or body of individuals such as communities, families etc. it also includes any corporation sole and Executors of estates of a deceased person. All the above listed are assessed by the respective States Board of Internal Revenue in their respective States of residence.¹⁹ By virtue of section 2 subsection 2 of PITA, every individual other than persons covered by paragraph (b) or corporation sole or body of individuals who resides in a relevant State are chargeable to tax by the State in which they reside.

The persons whose taxes are collected by the Federal Inland Revenue Service and not the relevant tax authority of the State include,

- (a) Persons employed in any of the Nigerian forces such as the Army, Navy, Air force or Police except those employed in a civilian capacity.
- (b) Officers of the Nigerian foreign service
- (c) Residents of the Federal Capital Territory, Abuja and
- (d) A person resident outside Nigeria but who derives income or profit from Nigeria.²⁰

b. Partnership: The income of a partnership is taxed by the tax authority of the territory in which the principal office or place of business of the partnership is situated in Nigeria on the first day of that year or is first established during that year.²¹ The principal place of business is that which is registered as such under Companies and Allied Matters Act. That place is the partnership's residence for the purpose of taxation. Where the Charter or partnership agreement has its own principal office, then that becomes the principal place of business for the purpose of determining

¹⁶Section 3 of the Personal Income Tax Act Laws of the Federation of Nigeria 2004.

¹⁷ According to the sixth schedule to the Personal Income Tax Amendment Act, 2011, which Amends section 37 of PITA, the graduated tax table is as follows; The First N300, 000 is taxed at 7%. Next N300,000 at 15%, Next 500, 000 at 19%, Next N1,600,000 at 21%, Next 3,200,00 at 24%

¹⁸ Cap P8 LFN 2004 (as amended)

¹⁹ J. A. A., Agbonika, *supra* 21, 59.

²⁰ Section 2(1) (b) PITA

²¹ Section 108 PITA, 1993 as amended.

residence for partnership taxation.

c. Communities: Communities, villages or indigenous groups are chargeable to tax in the territory in which that community is found, on the basis of the estimated total income of all its members.²² Where it is impracticable to be assessed individually, the estimated total income of its members would be used. Where there is a communal income, tax would be charged on it. The Nigerian PITA has not made provisions to impose taxes on communities and therefore cannot be seen to collect those taxes. For States wishing to collect such taxes from communities, they must expressly impose the tax by legislation. The definition of individuals under section 100 PITA, expressly exclude communities.

d. Families: The income of a family recognized under any law or custom in Nigeria in which the several interests of individual members of the family are indeterminate or uncertain may be taxed only by the State in which the member of the family who customarily receives that income in the first instance resides.²³ For tax to be imposed on a family therefore, the following conditions must exist:

The family must be recognized under any law or custom in Nigeria.

- i. The interest of the several members of the family must not be distinctly identifiable or determinable and
- ii. The taxing authority must be the State where the principal member of the family resides.

Flowing from the above indices, the following observations are identifiable:

- i. One is not aware of any such family which is so recognized by any State legislation or custom for the purpose of tax
- ii. If such recognition is created, the problem of double taxation among the members of the family could arise to encourage tax evasion, as taxable persons in the family may hide under the guise of the family to avoid tax payment.
- iii. In contemporary times, it is difficult if not possible for the interest of various members of a family to be pooled in such a way that it would not distinctly be identifiable.
- iv. The principal member of the family can therefore be taxed in respect of income derived from the family business whereas other members who also have a distinct source of income either by virtue of being employed in the family business or otherwise will be equally taxed.
- v. With respect to the last condition, it may be difficult to confine the taxation of such a family to the State where the principal member of the family resides. For instance, if the family is engaged in petroleum exploration or if it has its business scattered all over Nigeria, it would be inappropriate to make the SIRS to assess and demand petroleum tax or stray into the jurisdiction of other States to collect tax on incomes the family derives from another State.

²² PITA section 2(4)

²³ Ibid section 2(5)

It is humbly submitted that the family should be removed from the conception of taxable persons since individual family members can be charged in respect of their shares of profits in the family business.

e. Itinerant Worker: This is an individual who works in more than one territory in Nigeria or who earns daily wages. This does not include members of the armed forces.

In computing his tax, the individual's gross income to date, the tax paid to date and the free pay to date in any other tax authority shall be recognized. Furthermore, the unpaid tax before leaving a tax jurisdiction will be kept in abeyance until he returns and he will be given credit for payments made in other tax jurisdictions.

Amendment of Section 108 of the Principal Act²⁴ has however redefined itinerant worker to include "an individual irrespective of his status who works anytime in any State during a year of assessment (other than a member of the armed forces) for wages, salaries or livelihood by working in more than one State for a minimum of twenty (20) days in at least three (3) months of every assessment year". The implication of this amendment is that employees, executives or other workers other than members of the armed forces who by nature of their work move from State to State may fall under the definition of itinerant workers. If they work in more than one State and earn a living for at least 20 days in 3 months he shall be charged by any State in which the itinerant worker is found during the year.²⁵ If he pays the tax in another territory having abandoned one without payment, he shall be held responsible for the unpaid tax to the extent of the unpaid amount.

The PITA Amendment Act 2011 also provides that notwithstanding anything in the Principal Act, the relevant tax authority in a State shall have powers to collect tax under this Act from itinerant workers. The implication of this amendment is that individuals who now fall under the definition of itinerant workers may now be liable to tax in more than one State. It must be noted also that the Act identifies itinerant workers and families as taxable persons under subsections (3) and (5) respectively.²⁶

Category two:

f. Trustees: The second category of taxable persons include trustees of any settlement or trusts. This category is assessed by either the State internal revenue service or the Federal Inland Revenue Service (FIRS) depending on the residence of the trust or settlement.²⁷ Where income accrues to a trust or settlement, estate or executor of the estate of a deceased person, tax may be imposed by the tax authority of the territory where the seat of trust was first established.²⁸ This means the State where the administration of the trust takes place or where the deceased was last resident. Although the Personal Income Tax Act makes trustees and executors taxable persons, it does not do so to settlements, settlers and beneficiaries. Personal Income Tax Act, 2004²⁹ defines settlement to include any disposition, trust, covenant, agreement or transfer of asset. An individual taxpayer that transfers properties to his infant children under a family arrangement will come under this definition of the settler or transferor for income tax purposes.

²⁴PITA

²⁵ PITA section 2(3)

²⁶ PITA 1993 section 2

²⁷ Ibid section 2(6)

²⁸ Section 2(6) PITA, 1993

²⁹ Schedule 2 Paragraph 8.

Category three:

(g) Persons whose residence cannot be ascertained

The third category of taxable persons include persons serving in the forces such as those employed in the Nigerian Army, Navy, Air force and the Nigerian Police Force other than in a civilian capacity.³⁰ Also, it includes officers of the Nigerian Foreign Service, every resident of the Federal Capital Territory, Abuja and a person resident outside Nigeria who derives income or profit from Nigeria. These categories above are assessed exclusively by the FIRS because they have been identified as persons whose residence cannot be determined. It is important to note also that with the creation of the Federal Capital Territory Internal Revenue Service (FCT-IRS) the residents of Abuja are no longer assessed by the FIRS but the FCT-IRS. The FCT-IRS came into being vide the FCT Internal Revenue Service Act 2015 and is the only Internal Revenue Service in the country established by the National Assembly. It is empowered to administer tax and non-tax revenues accruable to the FCT and is therefore responsible for collection of all taxes collectible by a State government in accordance with the Taxes and Levies (Approved List of Collection) Act, 1998 as amended. The Service is also responsible for the coordination of collection of all other revenues accruable to the Federal Capital Territory. Since the FCT-IRS took over administration of Personal Income Tax from FIRS in January 2018, it has been committed to the provision of an all-inclusive and sustainable tax administration system in the FCT. This has optimized the processes, systems and resources used in the assessment, collection and accounting of taxes, levies and other revenues in the FCT for the benefit of all residents and people working in the FCT. Its mission is to provide effective and efficient tax administration through innovation and professionalism capable of generating sufficient income for socio-economic and infrastructural development in the FCT, comparable to the best in the world.³¹

Residence

Personal income tax is collectable by the Federal, State and Local Governments.³² This is a residence based tax and is administered by the relevant State Board of Internal Revenue (SBIR) or the Federal Inland Revenue Service as the case may be. The other major taxes that are administered at the State level are the withholding tax, capital gains tax, stamp duties etc. The tax is charged upon gains from trade, business, profession, vocation, salaries, wages, rents, dividends and interest (paid by foreign companies), pensions and annuities. The person obliged to file returns must do so with the relevant tax authority within 90 days of the assessment period.³³ Income tax is payable on a preceding year basis. Therefore the tax from January 1st 2020 to December 31st 2020, will only become due in 2021, while that of 2021 will become due in 2022 etc. The taxes of all of these persons except that of companies are chargeable under PITA. The taxes of company are assessed under the CITA or petroleum profit Tax Act where Petroleum extraction or operation is involved.

Section 4 of the Constitution divides taxing powers into Exclusive and Concurrent Legislative Lists. Matters on the exclusive legislative list are legislated upon by the National Assembly comprising the House of Senate and House of Representatives. Matters on the concurrent

³⁰ Ibid section 2(7)

³¹ About us-FCT-IRS fctirs.gov.ng

³² Taxes and Levies (Approved List for Collection) Act 1998 No 2 as Amended by the Taxes and Levies (Approved List for Collection) Act (Amendment) Order 2015

³³Section 44 of the Personal Income Tax Act

legislative list are legislated upon by the State Houses of Assembly of the respective States. Personal Income Tax is on Item 59D of the exclusive legislative list and is therefore under the power of the National Assembly. However, the right of collection of taxes is delegated to the States.

Generally, residence means living in a particular locality and it may be possible that a person has two or more places of residence. Residence therefore connotes the idea of remaining and settling in a place for a period. The determination of residence of an individual is very important in order to ascertain the relevant tax authority that has jurisdiction over such individual. By virtue of the Constitution of the Federal Republic of Nigeria 1999 as amended, Nigeria consists of 36 States and the Federal Capital Territory (FCT).³⁴ Each of these States as well as the FCT Abuja has its own tax assessment and collection procedure administered by its State Board of Internal Revenue created under section 87 of PITA or the FCT, IRS. A tax authority of one State cannot have administrative power over a person who is neither resident nor deemed to be resident within that State. Residence is therefore essential in the assessment and collection of personal income tax. For taxation purposes, the dwelling for a year of assessment must be for a continuous period of twelve months commencing from 1st of January to 31st of December of a particular year under consideration.³⁵ An individual is regarded as being a resident in Nigeria in an assessment year if he is domiciled in Nigeria or sojourns in Nigeria for a period of 183 days or more in a period of 12 months or serves as a diplomat or diplomatic agent of Nigeria in a country other than Nigeria. A non-resident therefore is one who has not stayed for the stated period and neither receives income from nor trades in Nigeria. Since residence is used to determine liability to personal income tax, the Personal Income Tax Act³⁶ considered the question of where a person is deemed to be resident in a particular year of assessment along the following lines:

a. Individuals in Employment on 1st January of a particular year

A place of residence is defined under paragraph 1 of the First Schedule to the PITA in relation to an individual to mean ‘a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest house or other places at which he is temporarily lodging unless no more permanent place is available for his use on that day.’ However, where an individual has two or more places of residence, his tax would be administered by the tax authority within his principal place of residence. And the phrase ‘principal place of residence’ in relation to an individual with two or more places of residence on a relevant day not being both within a State means:

- i. For an individual who is a pensioner, with no other source of income, his principal place of residence is that particular place or those places that he usually resides.
- ii. For an individual who earns his income from paid jobs in Nigeria (but who is not a pensioner), his principal place of residence is that place or those places which on a relevant day is nearest to his usual place of work.
- iii. For an individual who has a source or sources of unearned income in Nigeria, his principal place of residence is that place or those places in which he usually resides.

b. Individuals taking up Employment within the Year

³⁴ See section 3(1) of the 1999 Constitution

³⁵ Section 108, PITA, 1993.

³⁶ Paragraph 1 of the First Schedule to the PITA

A person taking up an employment or trade during a particular year of assessment is deemed to be resident for that year in the place where he has a place of residence or principal place of residence if he resides in two or more places in an assessment year. The first schedule to PITA defines Nigerian employment to mean any employment, the duties of which are wholly or partially performed in Nigeria.

c. Persons on Leave from Employment

An individual who is on leave from a Nigerian employment on the first day of January in a year of assessment shall be deemed to be resident for that year by reference to his place or principal place of residence immediately before his leave began.

d. Individuals in Foreign Employment

An individual who holds a foreign employment on the first day of January of the year of assessment, the duties of which are performed in Nigeria (apart from temporary visits of the employee to Nigeria), is deemed to be resident in that year in the territory in which the main or principal office is situated on that day. Residence is very important in taxation as tax could be imposed only by the State in which the individual is deemed to be resident for that year. In a situation where the individual has more than one place of residence, Personal Income Tax (Amendment) Act, 2011 refers to his 'principal place of residence'. It is pertinent to state that the period of residency in Nigeria now includes the period of annual leave or temporary period of absence. Under paragraph 2 of the First Schedule to the Act, income on foreign employment is not liable to tax in Nigeria except to the extent to which:

- (i) The duties are performed in Nigeria.
- (ii) It is paid in Nigeria.
- (iii) It is accruable to Government official.
- (iv) It is brought into Nigeria.

Determination of Income Tax Liability

Personal taxation in Nigeria is based on certain conditions as provided by section 10 of PITA. Income from employment derived from Nigeria will be taxable in Nigeria if the duties of such employment are performed wholly or partly in Nigeria, unless:³⁷

- (a) The employer is not resident in Nigeria and the remuneration of the employee is not borne by a fixed base of the employer in Nigeria.
- (b) The employee is not in Nigeria for an aggregate of 183 days (inclusive of annual leave) or a temporary period of absence or more in any 12 months period.
- (c) The employee's income is proved to have been taxed in another country under the provisions of the double tax treaty with that other country.

Assessable Incomes

This is the aggregate of the tax payer's income from all sources after the allowable deductions including reliefs and losses. These include:

- a. Gains and profits from any trade, business or profession;

³⁷ Nigeria: Individual - Taxes on personal income. Available at <https://taxsummaries.pwc.com/nigeria/individual/taxes-on-personal-income>. Accessed on 10/9/2020.

- b. Employment emoluments such as salaries, wages, fees and allowances (note that gratuity is not taxable);
- c. Interests and commissions, annuities and royalties;
- d. Gains and profits resulting from rent on property. Note that rent received in advance can be apportioned only for a maximum of 5 years.
- e. Share options granted to employees (however, liability will only arise when the option is exercised).

Mode of Assessment of Personal Income Tax

A taxpayer is required to deliver his tax returns to the tax authority in accordance with the provisions of the Act. It is then the responsibility of the tax authority to assess tax. The tax authority may accept the return and make an assessment accordingly. However, where it is not satisfied with the return, it may refuse to accept the return and assess the tax payer based on its best of judgment.³⁸ For each year of assessment, the law requires that a taxable person shall, without notice or demand, file a return of income in the prescribed form, containing the prescribed information with the tax authority of the State in which the taxable person is deemed to be resident.³⁹ The taxable person is equally expected to file along with the return, a true and correct statement in writing stating the total amount of income earned from every source within the year preceding the year of assessment and particulars of any such income, allowance, relief, deduction or otherwise as may be material.⁴⁰ He is expected by the Act to calculate and state in the tax returns filed, the amount of tax payable by him under the circumstance, based on the provisions of the Act.⁴¹

A bonus of 1% accrues to any tax payer who promptly files his tax returns as required under the Act.⁴² Where however the tax authority is not satisfied with the facts contained in the tax returns filed, it is empowered under the Act, to call for further returns⁴³ or call for books, documents and information for purposes of ascertaining the actual amounts of tax payable by the tax payer.⁴⁴ In fact, in extreme cases, the tax authority may enter and search the premises of the tax payer where it is convinced that there is failure on the part of the tax payer to disclose relevant information.⁴⁵ On the part of employers, they are expected to submit a comprehensive list of their employees together with PAYE deductions for every month the PAYE tax is remitted. They are also expected to file annual returns of Employment Income and Tax remitted in respect of their employees in the previous year in Form H1 on or before 31st of January of every year. Where a taxable person fails to deliver any return, the tax authority is empowered by the Act to, use its best of judgment to determine the assessable, total or chargeable income and make an assessment accordingly.⁴⁶

If a person disputes the assessment, the law permits him to apply to the relevant tax authority by notice of objection in writing to request that the assessment be reviewed and revised. Such an application must state precisely the grounds of objection to the assessment, and must be made

³⁸S 54 (2) PITA 2011.

³⁹S 41 (1) PITA 2011.

⁴⁰ibid.

⁴¹S 44 PITA 2011.

⁴²S 45 PITA 2011.

⁴³S 46 PITA 2011.

⁴⁴S 47 PITA 2011.

⁴⁵S 53 PITA 2011.

⁴⁶S 54 (3) PITA 2011.

within 30 days from the date of service of the notice of assessment.⁴⁷The mode of assessment under the Personal Income Tax Act 1993 as amended, is self-assessment.⁴⁸ Section 41 of PITA provides that: *For each year of assessment, a taxable person shall without notice or demand, file a return of income in the prescribed form and containing the prescribed information with the tax authority of the State in which the taxable person is deemed to be a resident together with a true and correct statement in writing.*

However, Government assessment comes in when there is failure or lateness in filling a return or where the information filed by a taxpayer in his return is adjudged by the tax authority to be incorrect or fraudulent.⁴⁹

Section 44 of the PITA goes further to say that a taxable person required to file a return of income shall in the return calculate the amount of tax payable. These statutory provisions guarantee self-assessment. Upon the receipt of such return prescribed by section 41, the relevant tax authority shall proceed to assess the taxable person chargeable with income tax as soon as possible after the time allowed to the person for the delivery of the return.⁵⁰ On the other hand, where a taxable person fails to deliver the return or fails to deliver it within the prescribed time, the relevant tax authority shall use its discretionary best of judgment to assess the person. But that assessment shall not affect any liability otherwise incurred by such person in respect of interest and penalties by reason of his failure or neglect to deliver a return. Therefore an action for evasion can still be brought against such a defaulter. The implication is that the self-assessment afforded a taxpayer can only be defeated by his failure to file returns correctly or total failure to file returns. Where a taxable person has delivered a return, the relevant tax authority has the option to reject and return the assessment to the taxpayer and proceed to assess on the basis of its judgment or accept the returns and assess the taxpayer on the basis of the returns made.⁵¹

However, the self-assessment scheme afforded taxpayers is usually subject to abuse, as taxpayers especially high income earners see it as an opportunity to reduce their liability to tax by way of making frivolous claims in a bid to enjoy deduction, allowances and reliefs which are sometimes exaggerated and usually falsely claimed. The effect is that what they set out to use as a tax reduction plan could lead to criminal prosecutions for tax evasion.

Personal Income Tax Reliefs

The Personal Income Tax provides a number of personal reliefs to an individual taxpayer. These reliefs are deducted from the gross income of an individual taxpayer in each year of assessment before determining his taxable income. The reliefs are available to individuals resident in Nigeria. However, in the United Kingdom residents may claim personal relief in respect of UK income.⁵² It is noteworthy that the reliefs are not given as a matter of course; a taxpayer must claim them by filing a formal return.⁵³ Some of the reliefs are provided by section 33 PITA.⁵⁴ it is important to

⁴⁷S 58 (1) PITA 2011.

⁴⁸Section 41 (1) (2) (3) & 44, PITA, 1993, as adopted in 2004 and amended in 2011

⁴⁹ Section 53(1) & (2) (b) & (3)

⁵⁰ Ibid. (1)

⁵¹ Section 53 (3)

⁵² W.C., Butterworth, *Revenue Law Principles and Practice*, (London: Butterworth Publishing Ltd., 1995), 13th edition, 54.

⁵³ Section 34 PITA 1993.

⁵⁴Personal Allowance

know that by virtue of section 27 of the Finance Act, 2019, the reliefs dealing with wife's allowance, children's allowance, dependent relative, disabled allowance among others have been deleted from the operation of PITA.

Capital Allowances

Capital allowances are granted to traders, business or self-employed persons in respect of capital assets like building, machinery, liquid cash etc used in the businesses.⁵⁵ The allowances are granted to encourage private entrepreneurs to expand or develop and equip their businesses. This types of capital allowances include initial allowance, annual allowance, investment allowance and balancing allowance.⁵⁶

A personal relief of ₦5, 000 or 20, 000 of a taxpayer's earned income is granted by s. 33(1) PITA.⁵⁴ Earned income includes income from trade, business, employment, profession or vocation but does not include unearned or investment income such as rents, dividend interest or royalties.⁵⁴ Section 5 of the Personal Income Tax Act, Amendment Act 2011 has introduced the Consolidated Relief Allowance (CRA) into section 33 of the Personal Income Tax Amendment Act (PITA) of ₦200,000. By this amendment, the personal relief of ₦5, 000 is substituted with ₦200, 000 or 1 percent of the gross income whichever is higher. The exact computation of the CRA is not clear as the provisions of section 5(1) PITA Amendment conflicts with paragraph (1) of the sixth schedule to the PITAA which grants a flat rate allowance of ₦200, 000 plus 20% of the gross income. Other allowances now repealed include;

- Wife's Allowance of ₦300 under section 33(4) (a) in respect of a wife maintained by a taxpayer or a former wife who has been granted alimony by a court of competent jurisdiction.
- Children Allowances

A deduction of ₦2, 500 is relieved for each unmarried child up to the maximum of four, maintained by the taxpayer in the year preceding the year of assessment by s. 33(4) (b). However, the child must be below the age of sixteen years or if more than sixteen, must be receiving full-time instruction in a recognized educational establishment or under article of indenture in a trade or profession. It is pertinent to note that the number of children must not exceed four.

- Dependent Relative's Allowance of ₦2, 000 for the maintenance of dependant relative who is either the widowed mother of a taxpayer or the widowed mother of his spouse. Also, by section 33(4) (c) (ii) PITA the dependant must be incapacitated by old age or infirmity as to be incapable of taking care of herself and this fact must be proved by evidence of a medical doctor, the evidence must be proved that the husband is dead and there is no other male relative who is below the age of 63 to look after her. In addition, the aggregate of deductions to be allowed to two or more individuals in respect of any one relative shall not exceed ₦2, 000.
- Disabled Person's Allowance of ₦3, 000 or 20% of the earned income of a disabled person is allowed.

⁵⁵ Fifth Schedule to PITA, 1993.

⁵⁶For a taxpayer to qualify for the allowance, the following conditions must be met:

- The capital expenditure must be incurred in the basis period
- The capital expenditure incurred must be the qualifying expenditure as defined under paragraph 2 of the Fifth schedule to the PITA 1993 and
- The capital expenditure incurred must be for the purpose of the trade or business.
- Other Allowances include;
 - a. Bonus: Individuals enjoy 1% tax bonus for filling self-assessment return and paying income tax within the stipulated time by law.⁵⁶
 - b. Retirement benefits: Before 1996, ₦1, 000 was allowed as exemption from tax in respect of retirement benefits, but, since January 1st 1996, all retirement gratuities are exempted from income tax.
 - c. Compensation for loss of office: Payment for loss of office or employment is completely exempted from income tax.
 - d. Pensions for self-employed individuals: The pensions or annuities of self-employed individuals are exempted from tax provided that such amount does not exceed 10% of the taxpayer's total income. This is in addition to any premium in respect of life assurance scheme the self-employed tax payer may have.
 - e. Dividends, interest, rent, royalties, fees, commission etc from foreign countries: This category of income earned abroad and brought into Nigeria by a person resident in Nigeria is to enjoy 100% tax exemption provided they are received in convertible currency and paid into a domiciliary account in a bank approved by the Federal Government. This incentive is a step in the right direction since the taxpayer would be subjected to double taxation should he pay tax on such income earned abroad and subjected to tax there. Any domestic taxation of such income will amount to double jeopardy.
 - f. Remuneration or salaries payable to temporary guest Lecturers, teachers, nurses, doctors and other professionals outside Nigeria enjoys 100% tax exemption. These categories of incomes are exempted from tax if earned by Nigerians abroad and brought into Nigeria provided that such foreign incomes are deposited in a domiciliary account with a bank in Nigeria
 - g. Withholding tax on dividends: withholding tax on dividends and interest carried from any shareholding or investment in Nigeria is now a final tax in the hands of the recipient

Other allowances which used to exist under PITA but which have been removed by the PITAA 2011 include:

Incentives and Disincentives

Apart from allowances and reliefs, incentives are also offered to encourage certain activities. Incentives are deliberate elimination or reductions in tax liability in order to encourage specified desirable economic activities such as savings, investments, export, certain sectoral activities etc.⁵⁷ In developing countries, Governments sometimes reduce or eliminate corporation taxes for the purpose of attracting foreign direct investment or stimulating growth in selected activities or industries.⁵⁸

Disincentives on the other hand are unintended negative aspects of taxation which discourages socio-economic behaviors. While tax incentives may be necessary for the purpose of economic development, tax disincentives can slowly and silently kill development efforts. In Nigeria, there is a considerable volume of incentives in the various statutes to encourage and attract local and foreign investors. Altogether, Nigeria offers about one hundred different kinds of incentives to corporate and individual taxpayers.⁵⁹ These incentives, whatever their nature, be they waivers, exemptions, tax holidays, tax free allowance, tax free status etc are part of considerations for investors wishing to take investment decisions. Apart from tax concessions or incentives, other factors may be considered.⁶⁰

The above items must be taken care of by any country that wishes to encourage investment. The issue of liability to tax can no longer be determined by reference to only the charging legislation. Reference must also necessarily be made to other laws such as the Finance Act 2019 & 2020, the Taxes and Levies Approved List of Collection 1998 and its amendments, among others to ascertain the current reliefs and allowance

The 2011 Personal Income Tax (Amendment) Act (PITAM) addresses some of the challenges in the Principal Act as follows;⁶¹

- (i) It brings the Personal Income Tax Act up to date with existing realities of the Nigerian economy especially as it relates to the rates of tax, tax threshold and fines or penalties.
- (ii) It introduces a more equitable tax system by providing realistic tax rates, and recommending an efficient and effective tax administrative and enforcement system, and also provides simpler tax laws. It empowers tax authorities to shift from direct to indirect taxation by

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- Housing allowances maximum of N150, 000
 - Transport allowance N20, 000 per annum
 - Leave allowance 10% of basic salary
 - Entertainment allowance N6, 000
 - Utility allowance N10,000
 - Meals allowance of N5, 000 but if cash is paid it is deductible
 - Cost of passage
 - Medical or dental expenses both removed also.⁵⁶

⁵⁷ Nigerian Tax Reform (NTR) in 2003 and beyond, 40.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

- ⁶⁰Stability and economic growth such as
- Political stability
- Infrastructural development and facilities
- Good governance
- Law and order in the country so as to ensure security of life and property
- Cost of adequate personnel.

⁶¹ Adam Smith. An Inquiry into the Nature & Causes of the Wealth of Nations 1776. Available at https://www.adamsmith.org/about.adamsmith-...:https://en.m.wikipedia.org/wiki/the_Wealth_of_Nations

lowering direct tax rates. In fact, the thrust of the Amendment is in line with the National Tax Policy of the Government which aims at tax burden reduction, equitable income redistribution, and a shift from direct to indirect taxation.

- (iii) It also redistributes income by reducing the overall burden of low and middle income earners, and shifting it to higher net worth individuals. This is in consonance with the principles of taxation as enunciated in Adams Smith's treatise.⁶²
- (iv) Introduces a simplified process of compliance which will enhance voluntary tax compliance and a subsequent increase in tax revenue generated.
- (v) Introduces the Tax Appeal Tribunal (TAT) which was established by Section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007.⁶³
- (vi) It increases the minimum tax payable from a threshold of 0.5 per cent of total income to 1 per cent of total income in Section 37 PITAM. The import of this is that low income earners e.g. National Youth Service Corps members, interns and contract staff are now to pay taxes.⁶⁴
- (vii) Broadens the mode of serving a Notice of Assessment on taxpayers in Section 57 as it may now be sent by courier and email.
- (viii) It amends Section 10 of the PITA. Through Section 4 of the PITAM which now defines the period of residency in Nigeria to include, the period of annual leave or temporary period of absence? This clause now essentially captures itinerant tax avoiders and brings them into the tax net. Similarly, there is an amendment of the definition of "Principal Place of Residence" in the PITAM. An individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational office or operational site is situated, which includes oil terminals, oil platforms, flow stations, factories, quarries, construction sites with a minimum workforce of 50 workers, shall be the Principal Place of Residence for purposes of charging personal income tax.
- (ix) Adjusts the period for which a refund of excess Withholding Tax should be made to a period of 90 days.
- (x) Empowers the Minister of Finance in Section 30, on the recommendation of JTB, to make Regulations for the furtherance of PITA. Section 6 reinforces this with respect to Presumptive Tax Regulations. The presumptive tax regime, in Section 6, makes it easier to tax income by earners who find it relatively difficult or practically impossible to keep records e.g. those in the informal sector.
- (xi) Requires Ministries, Departments and Agencies (MDAs), and banks to demand Tax Clearance Certificates (TCCs) - and by extension a Taxpayer Identification Number - in respect of certain transactions in Section 21. A Taxpayer Identification number (TIN) must be quoted on every TCC issued by a tax authority. There is a penalty of N5million or imprisonment or both upon conviction for any defaulting authority that does not request a TCC where one is required.

62 Highlights of the Personal Income Tax (Amendment) Act, 2011. Available at www.jtb.gov.ng/highlights-personal-income-tax-amendment-act-2011.

63 The Tax Appeal Tribunal replaces the defunct Body of Appeal Commissioners in Section 14 of the PITAM, 2011. This body is established to adjudicate over disputes arising from the operations of the FIRS Act, and other Acts listed in its First Schedule (PITA included). In other words, this provision of the amended Personal Income Tax Act only brings it in line with the existing provision of the FIRS Act. The TAT is now to provide an independent outlet for tackling complaints of aggrieved taxpayers or tax authorities, and bring about speedy resolution of disputes.

64 Akhidime, E. Augustine, Nigeria Personal Income Tax (Amendment) Act, 2011: Implications for Tax Administration and Enforcement. Available at [afrievjo.net/journals/ijah/vol-2-no-4-art-14-Akidime & Abusonwan.pdf](http://afrievjo.net/journals/ijah/vol-2-no-4-art-14-Akidime%20&%20Abusonwan.pdf). Accessed on 1/4/17

- (xii) Requires the President, Vice President and all other political office holders exempted from paying taxes to now do so. This was done by the amendment of section 3 (1) (b) to include temporary employees. The Personal Income Tax (Amendment) Act, 2011, amended Section 3 (1) of the Principal Act by substituting for paragraph (b), a new paragraph (b) which states that, *any salary wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to any temporary or permanent employee other than so much of any sums as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain.*

Free tax allowances specified by the former paragraph 3 (b), which was hitherto enjoyed by employees remain deleted with the exception of reimbursement of expenses incurred by the employee in the performance of his duties.

- (xiii) Provides that benefits in kind (BIK) should be considered in determining an employee's gross emolument for Consolidated Relief Allowance CRA in Section 5. The import of this provision is that political office holders with a retinue of domestic staff, official cars and occupying official quarters, for instance, will have to pay taxes in respect of these benefits. Benefits in kind are now fully taxable in the hands of employees.
- (xiv) Amends the graduated computation of tax under the Personal Income Tax (Amendment) Act, 2011 to what is now in the sixth schedule to the Act from 7% to 24%.
- (xv) It now provides a Consolidated Tax Relief Allowance: A consolidated relief allowance shall be granted on income at a flat rate of ₦200,000.00 or 1% of gross income whichever is higher, and the balance shall be taxable in accordance with the income table in the Sixth Schedule to PITA.⁶⁵
- (xvi) Tax Exempt Income: Exempt income is income primarily subject to tax but exempt under another provision of law. The true position about exempt income Per Belgore J (as he then was) in *Northern Nigeria investment Limited v. FBIR*⁶⁶ is that, incomes from such sources are not taxable because they enjoy an exemption.⁶⁷

⁶⁵This was done through the amendment of section 33 (1) PITA by substituting the former personal allowance of ₦5000 plus 20% of gross income with ₦200,000 or 1% of gross income. Note that the CRA indicated under section 33(1) PITA is different from that provided under the sixth schedule. Under the Sixth Schedule, it is a flat rate of ₦200,000 plus 20 percent of gross income. The effect of consolidation is to increase the statutory relief of ₦5,000 plus 20 percent of earned income by replacing it with a Consolidated Relief Allowance (CRA) computed as the higher of ₦200,000 or 1 percent gross income or a flat rate of ₦200,000 plus 20 percent gross income. The CRA also seems to have replaced the previous relief allowances stipulated in section 33 such as housing allowances (₦150,000), transport allowance (₦20,000), entertainment (₦6,000), children allowance (₦2,500) etc. but because this provision of the PITAM is not specific on applicability, of previous reliefs, the CRA remained potent and could be fully claimable by all individuals liable to pay income tax under the PIT Regime, regardless of if they are in paid employment or self-employed. The amendment directs calculation to the income tax table in the sixth schedule after deduction of the CRA. By implication, it tends to ignore the reliefs under section 33 in calculation of deductions. In the absence of a repeal or proper removal of the previous reliefs, an ambiguity was raised as to whether or not those previous reliefs or allowances can run along with the consolidated relief. Section 27 of the Finance Act 2019 has provided a clear amendment in this area to remove the ambiguity. The confusion caused by PITA amendment has to a large extent been clarified by section 27 of the Finance Act 2019 which has deleted all the other numerous reliefs created by section 33 subsections 4-6, PITA.

⁶⁶Suit No FRC/L/2A/75 at 57

⁶⁷The following receipts and deductions are tax exempt as provided by section 19 PITA and the Third schedule to the Act;

- a. Refund of medical or dental expenses
- b. Cost of uniform

Taxpayers can take advantage of these allowable deductions and exemption to reduce their tax liabilities as there is no ceiling to the amount an income earner can enjoy. It can be used as a tax avoidance scheme to the detriment of tax authorities.

Changes in penalties and sanctions for offences in PITA: It introduces stiffer penalties and offences geared towards enhancing compliance. For example, a person who engages in bank business but fails to render returns or keep books of account commits an offence and is now to pay ₦500, 000 as fine (for corporate) compared to N5000 in the principal Act; and ₦50, 000 for individuals

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- c. Compensation for loss of office or employment.
 - d. Any reasonable removal or relocation expenses
 - e. Any cost of passage to and from Nigeria in respect of expatriates
 - f. Pension granted to a person under the provisions of any law for the time being such as, the Pensions Act relating to widows and orphans.
 - g. Retirement gratuities
 - h. Any dividend from a pioneer company or company incorporated in Nigeria subject to certain provisos.
 - i. National Housing Fund contribution
 - j. National Health Insurance Scheme
 - k. Life Assurance Premium
 - l. National Pension Scheme
 - m. Gratuities to a public officer or employee.
 - n. The emoluments payable from United Kingdom funds to members of visiting or other forces and to persons in the permanent service of the United Kingdom Government in Nigeria in respect of their offices under the United Kingdom Government and the emoluments payable to members of any civilian component, and the income of any authorized service organisations, accompanying the forces.⁶⁷
 - o. All consular fees received on behalf of a foreign State, or by a consular officer or employee of the State of his own account, and all incomes of such officer or employee, other than incomes in respect of any trade, business, profession or vocation carried on by an officer or employee or in respect of any other employment exercised by him with Nigeria.⁶⁷ Certain interests specified in the Act which accrue to persons who are not resident in Nigeria.
 - p. Interests on any loan granted by a bank on or after 1 January 1997 to a person engaged in agricultural trade or business and the fabrication of any local plant or machinery.
 - q. The income of a national of the United States of America from employment by the International Cooperation Administration, being an administration or agency formed and directed by the Government of that country.
 - r. An income in respect of which tax is remitted or exempted under the provisions of the Diplomatic Immunities and Privileges Act or of any enactment, order or notice continued in force or effected by that Act.
 - s. The income of a Local Government or Government institution.
 - t. The income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from trade or business carried on by such institution.
 - u. The income of trade unions registered under the Trade Unions Act, in so far as the income is not derived from a trade or business carried on by that trade union.
 - v. Interests accruing to a person on foreign currency domiciliary account.
 - w. The Minister may by Notice include in the Third Schedule to this Act all or any person or class of persons chargeable so as to exempt the income of that person or class of persons in pursuance of the Third Schedule. In relation to any treaty between Nigeria and another country or between the Government of the Federation and any State additions have been made to the list of tax exempt incomes in the Third Schedule by the amended PITA of 2011⁶⁷ to include, interests on the following instruments;
 - (i) Bonds issued by the federal, state or local governments and their agencies
 - (ii) Bonds issued by corporate bodies including supra nationals; and
 - (iii) Interest earned by holders of bonds and short term securities listed in (i) and (ii) above. The tax exemption granted by this Notice is for a period of 10 years from the date of the Notice with the exemption of Bonds used by the Federal Government which shall continue to enjoy the exemption as provided under the Personal Income Tax Act.⁶⁷

instead of ₦500 in the principal Act. Failure to demand a TCC and verify it, attracts a fine of N5 million or 3 years jail or both upon conviction.

The table below shows highlights of the old and new penalties.

SECTION	OFFENCES	OLD PENALTY	NEW PENALTY
S.47(3)	A person who engages in banking business but fails to render returns, books	5,000 for Corporate 500 for Individual	5,000 for Corporate 500 for Individual
S.49(3)	A person who engages in banking business who fails to render information about new customers within 7days of the next following month	For Corporate Body 5,000 For Individual 500	For Corporate Body 500,000 For Individual 50,000
S.52(1)(a)	Failure to keep Book of Account	5,000 for corporate 500.for Individual	For Individual 50,000 For Corporate Body 500,000
S.74(1)	Failure to deduct / remit tax	10% of taxes not deducted or 5000 whichever is higher	10% of tax not deducted/remitted plus interest at CBN Monetary Policy rate
S.81(a) (3)	Failure to file returns by Employers	5,000 for corporate 500 for individual	500,000 (company) 50,000 (individual)
S. 85(9)	Failure to demand and verify TCC		5,000,000 or 3 years jail or both
S.94	Failure to comply with any provision where there is no specific	200 in the 1 st instance 40 for everyday	5,000 in the 1 st instance 100 for everyday
S.95(1)	Making in correct returns	10% of the correct tax	20,000 fine & double the amount of tax which has been
S.95(1)(b)	Making false statements and returns	5,000 or 5 years imprisonment	500, 000 for corporate body 50,000 for individuals and imprisonment for 6 months
S.96(1)	Where the False statements by person is in relation to tax payable or repayable	1,000 or 5 years imprisonment	10,000 or imprisonment nor more than 6 months or treble the tax chargeable whichever is greater
S.97	Offences by Authorized and unauthorized persons	1,000 or 3 years imprisonment or both	100,000 or 3 years imprisonment or both

The thrust of the amendment is to bring the Personal Income Tax Act in line with existing realities in the Nigerian economy. The National Tax Policy of the Government, also aims at tax burden reduction, equitable redistribution of income, promoting tax compliance, and a radical shift from direct to indirect taxation. It is worthy to note that under the Personal Income Tax Act, persons are not exempted but certain incomes are. Note that the institution of proceeding for imposition of penalty, fine or term of imprisonment shall not relieve a person from liability to pay tax for which he has become liable.

(xviii) Calculation of total tax due to date: In calculating a taxpayer's tax liability regard shall be had to the following:

- a. The estimated income for the year is ascertained by adding the total income due to the employee,
- b. the non-taxable portion is then deducted

- c. the admissible contribution is subtracted from the taxable income
- d. personal relief as approved by the revenue is deducted
- e. the balance replaces income subject to rate on which the tax rate will be applied to arrive at the tax due for the year
- f. the tax due for the year is then apportioned evenly over the year by dividing the total balance by 12 months.
- g. Where the tax payer is an employee, the employer deducts such taxes on a monthly basis to be remitted to the relevant tax authority, if he is self-employed, he assesses himself on a preceding year basis and remits accordingly.

EFFECT OF FINANCE ACT 2019

By virtue of section 27 Finance Act, 2019, (FA) section 33(4), (5) and (6) PITA have been deleted.

This means the removal of reliefs relating alimony of three hundred naira ₦300,

- i. Children allowance of two thousand five hundred naira ₦2,500 each to the maximum of 4
- ii. Relative allowance of ₦2,000 each to the maximum of ₦4,000 per 2 relatives
- iii. Relief to a separated spouse
- iv. Apportionment of relief between husband and wife, etc.

Section 49 of the Principal Act was also amended by S28 to compel every person engaging in banking business to provide a tax identification number as a precondition for opening or continuing to maintain a bank account.

Section 29 FA amends Section 28 PITA by creating more methods of delivery of notice to include delivery in person, by courier service and via electronic mail.

The name Federal Board of Internal Revenue (FBIR) has now been clearly substituted for the words Federal Inland Revenue Service (FIRS) in line with section 1 of the Federal Inland Revenue Service (establishment) Act 2007. To comply with this, section 25 FA 2019 amends the following sections 2(2), 49(1), 86(2)(a), 102(1) and 108 PITA. Section 108 has also been amended by section 32 FA to substitute 'Board' with 'Service' where appropriate. Provisions in the Finance Act have also made similar amendments in CITA, PPTA, VATA etc.

Though not directly relevant to this paper, it is important to note that the Finance Act also made amendments in respect of other types of taxes as follows;

i. CITA

Section 3 FA creates a new S.10 CITA which now compels all companies to have tax identification number which should be displayed in businesses and business transactions. They should also provide this as a precondition for opening an account.

The period of carrying forward losses provided by S.16 (7) has been amended by section 6(a) FA to limit such period to four years of assessment. By S.16(12) newly created by section 6 (d) FA, tax payable by an insurance company shall not be less than 0.5% of gross premium for non-life insurance or life assurance business as the case may be.

The accounting periods shown in S.29 CITA have also been amended by S.12 FA to show periods of commencement and cessation of business, depending whether the company is considering taxation for the 1st, 2nd or 3rd year of assessable profit. If it is ceasing permanently to carry on business or trade, tax shall be assessed from the beginning of the accounting period to the date of cessation and must be paid within six months from date of cessation.

Section 33 CITA is amended by S.14 FA to create a minimum threshold of 0.5% of gross turnover of a company and by a new paragraph (b), a company earning less than 25 million naira shall not be liable to tax, under section 33(3) (b) CITA. For this reason, a new section 40 has been enacted to create liabilities for rates of taxes as follows;

Small companies with less than 25 million turnover are tax exempt at 0%,

Medium sized companies with 25 to 100 million naira turnover at 20%

Large companies with over 100 million naira turnover at 30%

This is different from the two tiered assessment of 20% minimum rate and 30% maximum rate previously provided by section 40 CITA. Section 77 CITA as amended by s.18 FA creates a new subsection 5(a) to give bonus to early tax paying companies, who pay 90 days before the due date of filing as provided by section 55 CITA as follows;

Medium sized company – 2%

Other companies – 1%

Where they pay 90 days before due date and any amount remains unpaid as at due dates, interest and penalties apply under s. 5(b) FA to the unpaid balance. Just like PITA, CITA is also brought in line with FIRS Act in relation to use of FIRS instead of FBIR, or use of Service instead of Board as the case may be under S.105(1) CITA as amended by S.22 .A new schedule is also inserted as the 7th schedule to clearly explain certain terms such as connected persons or debt.

Petroleum Profit Tax

By section 24 FA, section 60 PPTA is deleted. This relates to the restrictions on the effect of PITA and other Acts in respect of income and dividend paid out any profits which are taken into account in the calculation of chargeable profits already charged under PPTA.

Value Added Tax Act (VATA)

The principal amendment to the VATA was the increment of the rate of the tax from 5% to 7.5% by section 34 FA which amends S.4 VATA.

Registration and deregistration requirements for business in S.8 VATA was amended by section 35 FA as follows; A taxable person shall upon commencement of business register with the service for the purpose of tax. Failure to do so shall attract;

- (a) Penalty of ₦50,000 for the first month of failure
- (b) ₦25,000 for each subsequent month in which failure continues.
- (c) In case of permanent ceasure of business, the tax payer shall within 90 days of cessation of trade or business, notify the Service of its intention.
- (d) Where a non-resident company wishes to carry on business in Nigeria, section 10(1) requires it to register for tax purposes using the address of the person with whom it has a

subsisting contract as its address for the purposes of correspondence relating to the tax. For companies operating in the oil and gas sector, the service may direct deduction of Vat at source and remit same to the service. The invoice of a non-resident company shall include tax for the supply of taxable Service. The person to whom the services are supplied in Nigeria shall withhold such tax and remit directly to the Service in the currency of payment.

- (e) Where a taxable person has made taxable supplies of ₦25,000,000 or more, it must in compliance with section 15 VATA provide on or before 21st day of every month returns of the input tax paid and output tax collected by him in the preceding month. A person who does not fall within the threshold mentioned above is exempt from the provisions relating to payment of VAT, registration under S.8(2) VATA, rendering returns on input and output under section 8(2), 13, 29, 34 and 35.

By virtue of S.16 a taxable person is liable to pay input to the relevant tax authority and get his refund as consumers begin to make output payments upon consumption.

Note that,

- (i) If output tax exceeds input tax paid, he must remit the excess to the Service
- (ii) If input paid exceeds output tax collected, he shall utilize the excess tax as credit against the subsequent months and if it is not so utilized, he shall be entitled to a refund from the Service.

Input is what the supplier pays as tax on the goods at the time of purchase. Output is what is added to the goods as VAT and collected by the registered retailer from tax payers on behalf of the Service

Section 19 VATA as amended by s.40 FA, 2019 provides that, failure to remit tax as specified in section 15 VATA shall attract a payment of 10% of the tax not remitted and interest at CBN minimum discount rate in addition to the sum collected and not remitted. Penalty and interest shall also apply. The service may proceed to enforce payment if taxpayer defaults after 30 days of such notification. Any person who fails to remit tax within the period specified by the Act shall be liable to pay a sum equal to 10% of the tax not remitted and interest at the prevailing Central Bank of Nigeria minimum discount rate.⁶⁸ Failure to notify the Service of any change of address within 30 days of such change or failure to comply with requirement for cessation of business under section 8 shall under section 28 VATA attract penalty of ₦50,000 for the first month and ₦25,000 for each subsequent month.⁶⁹ The amendment of section 46 VATA substitutes the name Board for Service and explains the meanings and terms used in the Act.

Custom and Excise Tariff etc (consolidated) Act

By Section 21 of this Act, an amendment is made to charge excise duties on imported goods provided the goods are;

- a. Not locally produced in Nigeria
- b. Materials are not locally available in Nigeria.

Stamp Duties Act (SDA)

⁶⁸ Section 19 of VAT

⁶⁹ Finance Act 2019, section 42

Section 2 SDA is clearly amended by s.52 FA to explain that stamp refers to an impressed pattern or mark of an engraved or inked block die, adhesive and electronic stamps, national stamp on an electronic receipt. Instrument includes every written and electronic documents.⁷⁰ By section 4 SDA amended by section 53 FA, Federal Government is substituted with FIRS while State Government is substituted with the relevant tax authorities in a State. The term receipt and denoting were also explained as follows by section 89 SDA. Receipt means note, memorandum in writing or electronic inscription where money is acknowledged or expressed to have been received or where debt or demand is acknowledged settled, satisfied or discharged. Receipt may be denoted by an adhesive stamp or by a digital tag with an electronic stamp or acknowledgement. Section 52 FA provides the amended definition of stamp, stamped instrument. The stamp for any amount from ₦10,000 upwards shall be a single charge of ₦50.00 but where payment is made from one's own account or document into another, there shall be no stamp duty.⁷¹ Exemption from stamp duties is extended by section 56 to include;

Receipt given in a requested securities lending transactions issued by Securities and Exchange Commission SEC.

- ii. Shares, stocks and securities transferred by a lender to its approved agent.
- iii. Shares, stocks and securities returned to a lender or its approved agent.
- iv. All documents relating to a regulated securities lending transactions issued by SEC.

TAX APATHY – Despite clear provisions of the law relating to self-assessment and PAYE or withholding tax, Nigerians do not seem to show any form of eagerness to pay tax and will use any form of maneuver to avoid or evade tax. The reason for such apathy may not be unconnected with untold financial impropriety often displayed by those in control of public funds. Such sums are usually embezzled by private individuals while needed infrastructure remain unattended to. As a tax amnesty device, the government introduced the Voluntary Assets and Income Declaration (VAIDS) which has not helped much in locating moneys hidden in warehouses or tax havens.⁷² There is need to check the underlying problem of embezzlement, corruption, money laundering and other ills which remain unchecked.

CAPITAL GAINS TAX

Capital can be defined as the total wealth in the form of money or other assets owned by a person or organization or available or contributed for a particular purpose such as starting a company or investing.⁷³ Capital Gains Tax is a tax payable on the profit gained from the disposal of capital assets.⁷⁴ The law does not recognize or include losses in this definition. Generally, all legal entities are liable to capital gains tax, on the total amount of chargeable gains accruing to a person from the disposal of assets in the year of assessment. Disposal of assets in Nigeria by foreign companies are also subject to capital gains tax. Upon reorganization of a company's business or transfer of its

⁷⁰Damilola Wright and Ibrahim Hassan. Stamping Of Electronic Documents Under The Stamp Duties Act (As Amended By The Finance Act): Impact Of The FIRS' Clarification Circular. Available at <https://www.banwo-ighodalo.com/resources/stamping-of-electronic-documents-under-the-stamp-duties-act-as-amended-by-the-finance-act-impact-of-the-firs-clarification-circular-1>

⁷¹ Section 54(3)

⁷² Section 98 PITA

⁷³ Garner, B. A., Black's Law Dictionary 9th Edition

⁷⁴*Ibid* p. 327

management, no tax shall apply to the sale or transfer of assets between the members of a recognized or controlled group within 365 days prior to the date of reorganization under section 32 CGTA. If the disposal takes place after 365 days of reorganization it would be created as though they did not qualify for the concession. Section 36 CGTA which relates to compensation for personal injury or loss of office which was previously limited to ₦10,000 has now been increased to ₦10,000,000 to bring it within economic reality. Compensation shall therefore not be liable to tax unless it exceeds 10million Naira.⁷⁵Section 46 CGTA amends the interpretation section to substitute Board with Service and FBIR with FIRS wherever they appear.

1. Chargeable Gains:

Capital Gains Tax was introduced into Nigeria in 1967⁷⁶and is charged at the rate of 10%.⁷⁷The Act which was a virtual copy of its English counterpart⁷⁸has been retained ever since with a few amendments outlined below:

- (a) In 1972, an amendment was made to include gains arising from disposal of stocks and shares into the list of chargeable gains.
- (b) Another amendment was made in 1993 to exempt from the list of taxable gains, shares acquired by virtue of a merger or takeover where no cash payment is made in respect of such acquisition.
- (c) In 1998, there was yet another amendment which brought about two amendments to the capital gains tax.⁷⁹
 - (i) Gains arising from sale of stocks, shares and Nigerian government's securities were exempted from taxable gains.
 - (ii) Tax rate for capital gains tax was reduced from 20% to 10%.

iii The applicable law is the Capital Gains Tax Act (CGTA).⁸⁰

The Federal and State Governments administer the Capital Gains Tax since the National Assembly and the various States' Houses of Assembly are empowered by the Constitution to prescribe for the Federal and States the conditions for the imposition of tax on capital gains.⁸¹ Section 43(1) of the Capital Gains Tax Act provides that, the Capital Gains Tax shall be under the care and management of the Board and the provisions of the Income Tax Acts in the schedule to the Act shall apply in relation to capital gains tax as they apply in relation to income tax chargeable under those Acts subject to any necessary modifications. The above provision implies that the rules for assessment, payment and collection of capital gains tax are the same with that of personal income tax. To economists, capital gains are just as much income as profit of a trade or salary and one of the purposes of capital gains tax is that if capital gains were taxed as income this would avoid the problems of differentiating between income and capital receipts and reduce the erosion of tax base through taking income benefits in capital form. Such capital gains are subject to capital gains tax

⁷⁵ Ibid section 49

⁷⁶ Pursuant to the Capital Gains Tax Decree 44. The Decree was reenacted at cap 42 of the Laws of the Federation of Nigeria (LFN) 1990 and subsequently adopted in Laws of the Federation of Nigeria 2004 as GGTA cap C8

⁷⁷ Capital Gains Tax Act, Cap C1, Laws of the Federation, 2004

⁷⁸ Lekan, Soyode and Sunday Kajola, Op cit p.472.

⁷⁹ CGT (Amendment) Act 1998.

⁸⁰ CAP C8, Laws of the Federation of Nigeria, 2004.

⁸¹ Part II, Section 7-10, 1999 Constitution of the federation

under the Capital Gains Tax Act.⁸²

The tax is imposed on gains made on disposal of assets. Section 6(1) of the Act⁸³ provides:

Subject to any exceptions provided by this Act, there is, for the purposes of this Act, a disposal of assets by a person where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum, and in particular -

- a. where any capital sum is derived by way of compensation for any loss of office or employment;*
- b. where any capital sum is received under a policy of insurance and the risk of any kind of damage or injury to, or the loss or depreciation of assets;*
- c. where any capital sum is received in return for forfeiture or surrender of rights, or for refraining from exercising rights;*
- d. where any capital sum is received as consideration for use or exploitation of any assets; and*
- e. without prejudice to paragraph (a) of this section, where any capital sum is received in connection with or arises by virtue of any trade, business, profession or vocation.*

2. Persons chargeable to Capital Gains Tax

A chargeable person is one who deals in a chargeable asset. Chargeable persons under the Capital Gains Tax Act are:

- i. Companies throughout Nigeria;
- ii. Persons to whom the Income Tax (Armed forces and other persons) Special Provisions Act 1990 apply.

Capital gains tax is administered by the Federal Inland Revenue Service FIRS in respect of corporate bodies⁸⁴ while the tax is administered by the State Board of Internal Revenue Service or FCT Internal Revenue Service in respect of individuals on the basis of their residential status. An aggrieved tax payer or the respective tax authority as the case may be can appeal against the decision of the tax authority to the Tax Appeal Tribunal (TAT).⁸⁵

3. Rate of Tax

Although section 2(1) of the Capital Gains Tax Act 1967 provided for 20% tax rate on the capital gains accruing to any person in the year of assessment it with effect from 1st January, 1996, reduced to 10%.⁸⁶ The rate for capital gains tax is therefore 10%.

4. Basis of Charging Capital Gains Tax

Capital Gains Tax accrues on an actual year basis and it pertains to all gains accruing to a taxpayer from the sale or lease or other transfer of proprietary rights in a chargeable interest which are

⁸² Cap C1 LFN 2004

⁸³ Capital Gains Tax Act Op cit.

⁸⁴ Section 43 CGTA

⁸⁵ Section 59 FIRS Act.

⁸⁶ Section 2 Capital Gains Tax Act Cap C8 LFN, 2004

subject to a capital gains tax of 10%. Such chargeable assets may be corporeal or incorporeal and it does not matter that such an asset is not in Nigeria.⁸⁷ Where however, the tax payer is a non-resident company or individual, the tax will only be levied on the amount received or brought into Nigeria. Computation of capital gains tax is done by deducting from the sum received or receivable, the cost of acquisition to the person realizing the chargeable gain, plus expenditure incurred on the improvement or expenses incidental to the realization of the asset.

Instalment payment

Where the buyer and seller agree that sale proceeds on the disposal of an asset be made by installment, the capital gain may also be taxed by instalment but such repayment period shall not be less than 18 months. In doing this, the ratio that the instalment being paid bears to the total amount payable relative to the total capital gains arising from the disposal shall be considered. The formula shall be,

Amount paid on installment X Total Capital Gains

Total amount payable

Disposal under Section 6(2) of Capital Gains Tax Act can be in full or in part.

There is full disposal of assets where:

- i. All proprietary rights or interests over the asset have been disposed; and
- ii. There is part disposal where a part of the assets is not disposed of.

The basis for charging Capital Gains tax arises where there is a disposal of assets by a person, and any capital sum is derived from the sale, lease, transfer, assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the particular sum.⁸⁸

Where however the taxpayer is a non-resident company or individual the tax will only be levied on the amount received or brought into Nigeria. Computation of capital gains tax is done by deducting from the sum received or receivable, the cost of acquisition to the person realizing the chargeable gain, plus expenditure incurred on the improvement or expenses incidental to the realization of the asset.⁸⁹ Capital gains is the positive difference between the consideration accruing on disposal and the original cost of the asset.

5. Chargeable Assets

By virtue of Section 3 CGTA, chargeable assets are, assets the disposal of which will result in chargeable gains. These are all assets not specifically exempted and may or may not be situated in Nigeria.⁹⁰

87 Lekan Soyode and Sunday Kajola. Taxation Principles and Practice in Nigeria. Silicon Publishers Ibadan P 479. Available at [www.libonline.bowenuniversity-edu.org/...](http://www.libonline.bowenuniversity-edu.org/)

88 Section 6, Capital Gains Tax Act, Laws of the Federation, 2004

89 Section 11 CGTA

⁹⁰They include:

1. options, debts and incorporeal property;
2. any currency other than Nigeria currency;
3. all qualifying capital expenditure under CGTA, PITA, PPTA or any form of property created by the person disposing of it, or otherwise

Meaning of options, debts, and incorporeal assets:

(a) Options

This is a right or option which a person has to buy or sell property at an agreed price. If the right is not exercised within the agreed period, it is forfeited. When an option is disposed, capital gains tax is charged on the actual amount paid for the option since no cognisance is given to its cost of acquisition. When the subject matter which has an option attached such as, a hire-purchase, is subsequently disposed, capital gains tax shall be assessed on the difference between the actual cost of the asset and the cost of the option.⁹¹

(b) Debts:

Where a person (being a debtor) owes another (being a creditor) a particular sum of money, goods or services, a debt is said to have arisen. Capital gains will arise where an asset acquired in exchange for the debt is disposed. No capital gains tax will arise if the asset acquired in exchange for a debt is not disposed. The chargeable gain shall be the difference between the amount of debt and the value obtained on the disposal of the asset acquired in exchange for the debt.

(c) Incorporeal Properties:

These are not physical assets but are in accounting sense fictitious assets which are represented by rights. Examples include patents, copyright, trademarks etc. Capital gain is charged on the actual sale proceed upon its disposal. No consideration is given for the cost of acquisition but the legal cost of protecting such properties is an allowable expense. Where a part of a whole asset is disposed, the issue in the correct determination of the cost of acquiring the asset is the cost of the part disposed. Where there is part disposal of an asset, the cost of that part of the asset disposed and the part undisposed shall be apportioned. The consideration which the part disposed bears to the total value of the whole asset on the date of disposal plus the market value of the part of the asset which remains undisposed shall be the apportionment formula.⁹²

The ratio used to determine this is

A

A + B

Where A is the sale proceed of the part disposed,

coming to be owned without being acquired;

4. any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired such as copy rights, patents etc;

5. In respect of assets outside Nigeria, tax is chargeable on remittance basis for assets;

- i. disposed by a non-resident individual, or
- ii. trustee of any trust or settlement, or
- iii. for a company whose activities are managed and controlled outside Nigeria.

CGT is chargeable on that part of the gains (if any) received or brought into Nigeria when they are so disposed.⁹⁰ This is what is termed 'remittance bases. The amount of the gains chargeable is dependent on the whole or part which is remitted to Nigeria. If there is no remittance to Nigeria, there is no liability to Capital Gains Tax in respect of the disposals of those fixed assets out of Nigeria.

⁹¹ Section 46(3) CGTA

⁹² Section 16(2) CGTA.

B is the market value of the part not disposed.

C the cost of acquiring the whole asset.

The proportion that the sale proceeds bear to the market value of the whole asset is appropriated on the total cost of acquiring the whole asset. Stocks and shares of every description which were on this list of chargeable assets were excluded from chargeable assets with effect from 1/1/98.⁹³

Capital loss on disposal of any asset is not deductible from capital gains on disposal of any other asset even if both are of the same type.⁹⁴

(i) **Deductions allowable**⁹⁵

Certain sums are allowable as deductions from gains before being charged to capital gains tax. The Act restricts the sums allowable as deductions from the consideration accruing to a person on the disposal of an asset to –

- a. Cost of acquisition or purchase price, including all costs incidental to the purchase.
- b. Improvement costs wholly, exclusively and necessarily incurred.
- c. Cost wholly, exclusively and necessarily incurred in establishing, preserving or defending the owner's title to a right over the asset.
- d. Incidental costs of disposal. These include:
 - (i.) Fees, commissions or remuneration paid for professional services of surveyor or valuer; auctioneer, accountant; agent or legal adviser.
 - (ii.) Cost of transfer or conveyance (including Stamp Duties).
 - (iii.) Advertisement cost to find a seller/buyer
 - (iv.) Cost reasonably incurred to make any valuation or apportionment required for the purpose of computing the capital gains including expenses in ascertaining market value where required.

(ii) **Disallowable Expenditure**

Sums allowable as deductions in computing the profits, gains or losses of a trade for income tax purposes are not allowable under Section 14.⁹⁶ Insurance premiums on the asset are also not allowable.⁹⁷

EXEMPTED GAINS

In Nigeria, some capital gains are exempted from taxation in section 26 CGTA.⁹⁸ For instance; gains of ecclesiastical, charitable or educational institutions of a public character, statutory or registered friendly society, cooperative society, trade union registered under the Trade Union Act, and diplomatic bodies.⁹⁹

93 CITA Amendment Act of 1998

94 Section 5 Capital Gains Tax Act, Cap C1 LFN 2004

95 Section 13 Capital Gains Tax Act.

96 *Ibid* section 14

97 *Ibid* section 15

98 Section 26 of the Capital Gains Tax Act applicable in Nigeria

99 *Ibid*

Where trustees or nominees transfer assets to beneficiaries they are not considered to be disposing of the assets, hence the transaction does not attract capital gains tax.¹⁰⁰

Other exemptions include;

- i. Gains made upon a disposal of business assets where the proceeds are spent in acquiring new business assets;¹⁰¹
- ii. Gains made upon the disposal of asset or of an interest in, the rights under any policy of assurance or contract for deferred annuity on the life of any person;¹⁰²
- iii. Sums obtained by way of compensation or damages for any wrong or injury suffered by an individual; and gains made upon the disposal of a dwelling house.¹⁰³

For the purpose of this Act,¹⁰⁴ any asset acquired or disposed of by any person chargeable to capital gains tax shall, subject to section 23 (4) of this Act,¹⁰⁵ be deemed to have been so acquired or disposed of at the date when there was an enforceable right to acquire or a binding duty to dispose of the asset or any right or interest therein. And in particular-

(a) Where any contract is performed subject to any condition, the date of acquisition or disposal of the asset shall be deemed to be the date when the condition is satisfied, but where a consideration of such a contract does not depend solely or mainly on the value of the asset at the time the condition is satisfied, the acquisition or disposal shall be treated as if the contract had never been conditional, in which case the date of the acquisition or disposal of the asset shall be the date of the contract;

(b) Where an option is conferred by virtue of the contract, the date of the acquisition or disposal of the asset shall be the date when the option is exercised. However, if the gain arose from a disposal of any asset in connection with the trade or business carried on by the institution or society, it is chargeable

Where assets are situated outside Nigeria within section 4 of CGTA, the time of disposal shall be the time when capital sum is received.¹⁰⁶ There shall be treated as gains received in Nigeria all amounts paid, used or enjoyed in any manner or form transmitted or brought into Nigeria.¹⁰⁷ Capital gains is the difference between considerations accruing to a person on the disposal of an asset and the expenses allowable for deduction from such consideration.¹⁰⁸ If you received the investment as a gift, then the cost basis is the original price of the asset, unless the investment was worth less than that amount when it was given to you.¹⁰⁹

(iii) Exemptions from Capital Gains Tax

The following are exempt chargeable gains:

100 Section 26-42

101 Section 31 CCTA

102 Deferred Annuity-Investopedia. Available at [www.investopedia.com/terms/d/deterred annuity](http://www.investopedia.com/terms/d/deterred%20annuity); section 34 & 35 CGTA

103 Lasbery Nwaeze. Capital Gains Tax in Nigeria: exemption and Reliefs-H.G.ORG; <http://www.blackfriars-law.com> visited on 23/06/2016 section 36 & 37 CGTA

104 Section 10 of Capital Gain Tax Act (Cap. VI LFN 2004)

105 As it relates to transactions between connected persons.

106 Section 46(4) GCTA

107 Section 46(5) CGTA.

108 Sections 11- 15 of the Capital Gains Tax Act Laws of the Federation of Nigeria 2004.

109 Section 40

- a. Gains accruing to -
- i. An ecclesiastical, charitable or educational institution of a public character;
 - ii. Any statutory or registered friendly society;
 - iii. Any cooperative society registered under the cooperative societies Law of any state;
 - iv. Any Trade union registered under the Trade Unions Act; in so far the gain is not derived from any disposal of any assets acquired in connection with any trade of business carried on by the institution or society and the gain is applied purely for the purpose of the institution or society as the case may be.¹¹⁰
- b) Gains accruing to any Local Government Council.¹¹¹
- c) Gains accruing to any company, being a purchasing authority established by or under any law in Nigeria .empowered to acquire any commodity in Nigeria for export from Nigeria;¹¹² or gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria so far as the gains are not derived from the disposal of any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some person or Authority.¹¹³
- d) Gains accruing on disposal of investments held as part of any superannuation fund or other statutory retirement benefits scheme to the same extent as income derived from the assets would be exempt under Section 20 of PITA.¹¹⁴ Disposal of a right to, any part of any sum payable out of any superannuation fund shall also not be chargeable¹¹⁵ “Superannuation Fund” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under Section 20(1)(f) of PITA.¹¹⁶
- e) Gains accruing on disposal by any person of a decoration awarded for valour or gallant conduct which he acquires otherwise than for consideration in money’s worth.¹¹⁷
- f) Gains accruing from a disposal of Nigerian Government Securities.¹¹⁸ Nigeria Government Securities include Nigerian treasury bonds, saving certificates and premium bonds issued under the Savings, Bonds and Certificates Act.
- g) Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers¹¹⁹
- h) Gains accruing from the disposal of an interest in or the right under any policy of assurance of contract for a deferred annuity on the life of any person¹²⁰
- i) A mechanically propelled road vehicle constructed for carriage of passengers shall not be an

110 Section 26 (1)
111 Section 27 (l).
112 Section 27(2) (a)
113 Section 27(2) (b) *ibid*
114 Section 28(1) (a) *ibid*
115 Section 28(2) *ibid*
116 Section 28 (b) CGT
117 Section 29 *ibid*
118 Section 30 *ibid*
119 Section 31 *ibid*
120 Section 34 *ibid*

asset for the purpose of this Act unless it is vehicle of a type not commonly used as private vehicle.¹²¹

j) Some of the other exemptions and relief provisions in the Act are as follows:

a. Section 36¹²² exempts sums obtained by way of compensation or damages for any wrong or injury suffered by an individual to his person or in his profession or vocation. This includes wrong or injury for libel, slander or enticement sums.

b. Section 37¹²³ exempts gains accruing on disposal of a dwelling house (with a maximum land area of up to one acre or such larger area as the Board may determine) which has been the individual's only or main residence throughout the period of ownership up to the time of disposal or up to the last twelve months before the date of disposal. So far as it is necessary for the purposes of this Section to determine which of two or more residences is an individual's main residence for any period. A person shall not be charged to tax for gains arising from acquisition.

c. Exemption for takeovers etc.¹²⁴ of shares taken over, absorbed or merged by another company as a result of which the acquired company loses its identity provided that no cash payment is made in respect of the shares acquired. Gains accruing to unit trusts are also not chargeable to tax if the proceeds are re-invested.¹²⁵ When the proceeds are reinvested, the charge to capital gains tax is rolled over until the final disposal of the asset.

(iv) **Allowances or Reliefs**

In addition to the above catalogue of exemptions is a list of reliefs to lessen the burden of the capital gains tax. Another important relief is one granted to businessmen or traders under section 32(1) of the Act, where old business assets are sold and the proceeds are rolled over and used to procure new and similar business assets.¹²⁶ In that case no gain would be considered to have occurred until the sale of the new business assets procured. Among these reliefs are roll over relief and replacement of industrial plants and machineries relief.¹²⁷

1. **Rollover Relief:** The Act provides for rollover relief if the proceeds from the sale of fixed assets are utilized within a given period in buying a similar asset for use by the same taxpayers.¹²⁸ There are two basic types of rollover reliefs, they are:

i. Full rollover relief. This occurs where all the proceeds are applied towards the purchase of a new asset.

ii. Partial rollover relief. This occurs where only part of the proceeds is applied towards a new purchase.

2. Replacement of industrial plants and machineries: This is another relief under the CGTA, and the relief is applicable to plants and machinery bought in replacement of the old ones.

121 Section 39 *ibid*

122 Capital Gains Tax Act, Cap C1 LFN 2004

123 *Ibid.*

124 *Ibid.* Section 32

125 *Ibid* section 33

126 Section 32(1) of the Capital Gain Tax

127 Lekan Soyode and Sunday Kajola *Op cit* at p.479.

128 Section 3 CGTA *Op cit*

A relief is rolled over when upon the sale of asset; the money is remitted in the purchase of a new asset. Tax will not be charged on such disposal until the eventual disposal of that new asset. Where replacement industrial plants and machines are purchased, they enjoy a 95% capital allowance in the first year while the remaining 5% is retained as book value until the final disposal of the asset. With effect from 1st January, 1996, an investment allowance of 15% is granted for such replacement.¹²⁹

Format for Computing CGT

Sales Proceed Less: Allowable Selling Expenses/reliefs
Net Sales Proceed

Deduct/Less:

- i) Actual Cost of Acquisition
- ii) Additional Cost of Improvement
- iii) Incidental Cost of Acquisition

Chargeable Gain is Taxed at 10%

However, for chattels sold for One thousand (₦1, 000.00) or less, - no chargeable gain shall arise on their disposal.¹³⁰ However, where sales proceed or the value of chattel is above ₦1,000.00 then the CGT payable shall be the lower of:

- a. Sales Proceed - Cost x CGT rate or
- b. Sales Proceed/Value of Chattel - ₦1000.00

In the usual income tax computations, profits or losses on disposal of fixed assets are excluded by means of adjustments to the relevant accounting results. At the same time, balancing adjustment would be made in the capital allowances computation in respect of the difference between the proceeds of disposal and the tax written down value of such assets. Balancing allowance will be granted if the proceeds fall short of the written down value and a balancing charge if the proceed is higher. In the latter case, if the proceeds are greater than the cost, the amount of the balancing charge would be restricted to the amount of capital allowance previously granted. This will be the difference between the cost of acquisition and the tax written down value of disposal. In such a situation, another surplus, that is, the difference between the proceeds and the cost, which has not been subjected to any taxation treatment, arises. In tax law and practice, all transactions of capital nature are excluded from income tax. In view of the fact that the surplus referred to is a capital receipt, it cannot be included in gains or profits for income tax purposes.¹³¹ Such capital gains are however, subject to capital gains tax.

Tax Avoidance mechanisms

In order to avoid tax payments, tax payers sometimes do not transact at arms length with persons thereby, allowing their family and business relationships to affect their business transactions. Certain persons are seen by law as connected person with whom a tax payer cannot fairly deal.

129 Agbonika J.A.A., op cit at p.150

130 Section 38 CGTA

131 Section 14 Capital Gains Tax Act.

(v) Connected Persons Arms Length, and Transfer Pricing Transactions:

Stocks and shares of every description which were on the list of chargeable assets were excluded from chargeable assets with effect from 1/1/98.¹³² Capital loss on disposal of any asset is not deductible from capital gains on disposal of any other asset even if both are of the same type.¹³³

Connected persons

Under Section 23 CGTA, a transaction is deemed to have taken place between connected persons where one person is found to have control over the other. This could exist in any of the following ways;

- a. Individual: A person is connected with an individual if such person is his spouse, relative or spouse of a relative.
- b. Trustee: A trustee of a settlement is connected with an individual who in relation to the settlement is a settler or person connected with any such individual.
- c. Partnership: A person is connected with any person when, he is in partnership with such person, and with the spouse or relative of any individual with whom he is in partnership.
- d. A company and a parent or subsidiary: A company is connected with another company if that company has control over it or and that person connected with it together have control over it.

When a transaction is found to be among persons that are connected, capital gains arising from it is obtained by deducting the cost of acquisition from the higher of the market value and the sale proceed.¹³⁴ This is because, the parties would not be presumed to have dealt at arms length under section 22(2) CITA.

Under section 23 CGTA, transactions between connected persons shall be deemed to be artificial or fictitious if in the opinion of the Federal Inland Revenue Service, those transactions have not been made on terms which might be expected of persons operating at arm's length. The FIRS may, under Section 20 CGTA, disregard the transaction where this is found and charge tax on the market value, or direct that such adjustments be made as it considers appropriate to counteract the reduction of liabilities to CGT and assess the person accordingly. Market value is defined under Section 21 CGT as the price which those assets might reasonably be expected to fetch on a sale in the open market.

Arms Length transactions

The underlying assumption of the arm's length principle being that price related terms agreed between related parties in the exchange or transfer of goods and services should achieve the same result that would be agreed between unrelated parties dealing under a comparable transaction undertaken in comparable circumstances. This is in turn based on a requirement that transaction between affiliated companies should be made purely on a commercial basis in circumstances where both will seek to maximize their advantage, but without allowing their special relationship to influence the terms agreed.

132 CITA Amendment Act of 1998

133 Section 5 Capital Gains Tax Act, Cap C1 LFN 2004

134 Section 22 CITA

Sections 13(2) (d) and 22CITA, replicated in section 17 (3) PITA and section 15 (2) PPTA, capture something of the arm's length principle as articulated in paragraph 9 of the Tax Conventions. Section 13 (2) (d) applies where trade or business is undertaken between foreign company and another person controlled by it or having a controlling interest in it. If parties have agreed on terms in their commercial or financial relations which the FIRS deem to be artificial or fictitious, it may adjust the profits attributable to the transaction to reflect an arm's length transaction. The consequence of this is that the additional adjusted profit is deemed to have accrued to the foreign company in Nigeria so as to be within the tax net.

The anti-avoidance rule in Section 22 of CITA is wider in scope in that it is applicable to the generality of tax reducing transactions. Under section 22 (1):

Where the FIRS is of the opinion that any transaction which reduces or would reduce any tax payable is artificial or fictitious.....it may 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.....Section 22 (2) then provides that for the purposes of this provision, transactions between persons one of whom either has control over the other or, in the case of individuals, who are related 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 FIRS 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 .

The broad thrust of this provision is that, where related companies have undertaken a transaction that reduces tax liability on terms that the FIRS considers divergent from those that could be expected to be agreed between unrelated parties dealing under a comparable transaction, it may adjust the transaction with respect to tax liability so as to reflect an arm's length transaction.¹³⁵

Transfer pricing:

Transfer pricing refers to the prices by which members of a corporate group or other related parties set the prices at which they transfer goods, services and intangible assets between each other. More comprehensively, it covers the setting, analysis, documentation and adjustment of charges made between related parties for goods and services or the use of property. Transfer pricing relates to the essential function of determining pricing arrangements among related entities within a corporate group. It is imperative for transfer prices to be in place in order to determine the profitability of each segment of its business and to effectively manage its decision making and to appropriately reward its managers.

This procedure may be used by associated or connected companies as a means of shifting profits thereby providing avenues for tax avoidance. With the astronomical growth in the amount of cross-border transactions on the African continent in the last decade, an increasing number of African

¹³⁵ For example;

If A bought land for N80, 000 and sold to B his brother at N150, 000 at a time when the market value was N250, 000 CGT would be as follows;

Sale proceed (market value)	=	N250,000
Deduct cost of acquisition	=	N80,000
Capital gains	=	N170,000
CGT @ 10%	=	N17,000

The fact that he sold to his brother at N150,000 will be disregarded, since he could not have dealt at arms length when the actual value is N250,000.

countries, look up to tax as a sustainable source of revenue for development, and are introducing specific transfer pricing laws to combat transfer mispricing.

In dealing with transfer pricing, the FIRS was limited to the general anti-avoidance rules found in sections 13 (2) (d) and 22 of the Companies Income Tax Act (CITA), Section 15(2) of the Petroleum Profit Tax Act (PPTA), section 17(3) of the Personal Income Tax Act (PITA) and section 23 of Capital Gains Tax Act. These rules which capture the arm's length principle proved unsatisfactory because they failed to provide for certainty of treatment of transfer pricing transactions owing to their wide and subjective terms. The Regulations substitute a more structured and transparent regime based explicitly on the "arm's length principles" as elaborated by the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.¹³⁶ The absence of publicly available guidance from FIRS makes it very difficult for taxpayers and their advisers to risk assessment when the FIRS may likely be of the opinion that the terms of a particular proposed transfer price transaction were at variance with arm's length principles.

Parties are said to have dealt at arms length when they have proceeded only on business basis and have not brought in, connecting family or business relationships. The concept of an arm's length transaction allows the market to ensure that both parties in the deal are acting for their business interest and are not subject to any pressures or duress from the other party. It also assures third parties that there is no collusion between the buyer and the seller to reduce or inflate the cost price.¹³⁷ Tax laws are designed to treat the results of a transaction differently when parties are not dealing at arm's length. This is based on the principle that parties should have equal influence in transactions and should not allow personal relationships to manipulate the market. The transaction should be honest and as far away from the body as the arm is when stretched out, to be regarded as having been transacted on the bases of a genuine market value. In a transaction undertaken by unrelated parties, the price of the goods or services traded will usually be determined by market considerations. When related parties deal with each other, there may be less emphasis on ensuring the prices of the goods and services exchanged reflect market circumstances. This creates a potential for the profits attributable to a transaction to be distorted by setting the selling price too high or too low in relation to costs and other market considerations. For the person whose profits are distorted, the quantum of tax liability will be less than it would otherwise have been. When the transaction is between a multinational company and an associate in another jurisdiction, transfer pricing may be used to extract profits from the jurisdiction in which they are generated to the detriment of the local tax base. Thus transfer pricing represents a significant risk and cause of concern for tax authorities and ultimately for governments.

Transfer pricing is not in itself illegal or necessarily abusive, but what is contrary to international tax norms and therefore illegitimate is transfer mispricing, the deliberate mispricing of goods, services or intangibles traded between related parties as a means of minimizing or avoiding tax liability. The practice relies on the fact that tax rates vary across national jurisdictions, with tax havens, or as they have come to be known, tax secrecy jurisdictions, offering low or even zero tax rates. Obadira identifies the following tax motivations for transfer pricing abuse.¹³⁸

¹³⁶*Ibid*

¹³⁷ Arm's Length Transaction-Investopedia. Available at <https://www.investopedia.com/armslength>. Accessed on 7/2/20

¹³⁸ D.A. Obadira. The New Transfer Pricing Regime in Nigeria: Choice of an Imperfect system in Topical Issues on Nigerian Tax Laws and related Areas ed Josephine A.A. Agbonika, Ababa Press Ltd. Ibadan 202 pp.50-77

- i. Through under invoicing, multinational enterprises can avoid paying customs duties.
- ii. By shifting tax deductible costs to a high tax country and taxable revenue to a low tax country, the multinational enterprises can minimize the total tax paid to the two countries.
- iii. If the foreign subsidiary cannot directly remit profits to its parent company because of host country over invoicing intra firm exports to and under invoicing exports from the foreign affiliates.

The stated objectives of the regulations are fourfold:

- (i) to ensure that Nigeria is able to tax businesses appropriately based on their economic activities in the country;
- (ii) to equip Nigerian tax authorities with the tools to fight tax avoidance through mispricing of transactions between associated persons,
- (iii) to reduce the risk of double taxation, and
- (iv) to provide taxable persons with certainty of transfer pricing treatment.

Rules on Transfer Pricing

The Regulations which require the FIRS to test transfer pricing transactions by reference to the arm's length principle and enable it to adjust non-compliant transactions are to be applied in a manner consistent with Article 9 of the UN and OECD Model Tax Conventions, the OECD'S Guidelines and by implication the UN Manual on Transfer Pricing.¹³⁹ The Regulations apply to "controlled transactions" between "connected taxable persons". A controlled transaction means a commercial or financial transaction between connected taxable persons. Such transactions include those relating to sale or purchase of goods and services; sales, purchase or lease of tangible assets, transfer, purchase, license or use of intangible assets; provision of services; lending or borrowing of money; and manufacturing arrangements.

The phrase connected taxable persons is defined widely as including persons, individuals, entities, joint ventures, trusts and associations. As would be expected of subsidiary legislation, the Regulations are parasitic on existing provisions of primary tax legislation applicable to transfer pricing. This is seen in the fact that the phrase connected taxable persons is also expressed to include persons referred to in a number of anti-avoidance provision set out in primary legislation relating to particular types of taxes namely.¹⁴⁰ Each of these provisions empowers the FIRS to adjust transaction adjudged to have violated arm's length principle, and in common they cover transactions between persons one of whom either has control over the other, as well as transactions between persons both of whom are controlled by some other person.

The phrase "connected taxable persons" also covers "associated enterprises" as referred to in Article 9 of the OECD Model Tax Convention and the OECD Guidelines. Furthermore, for the purposes of the Regulations, Permanent Establishments are to be treated as separate entities and any transaction between a Permanent Establishment and its head office or other connected taxable persons is a controlled transaction.

¹³⁹ OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2017. Available at <https://www.oecd.org/tax/oecd-trans...>>

¹⁴⁰section 13(2)(d) and section 18(2)(b) of the Companies Income Act, section15(2) of the Petroleum Profits Tax Act and section 17(3)(b) of the Personal Income Tax Act and section 23 Capital Gains Tax Act.

The FIRS should make such an adjustment only if it considers that the terms of the transaction are not consistent with a comparable transaction undertaken in comparable circumstances. Where the quantum of tax generated by a controlled transaction is less than could be expected from a comparable transaction undertaken at arm's length and due to extraneous factors e.g conflicting or irrational pressures relating to customs valuations or exchange controls, the FIRS should not invoke Regulation 4(2).¹⁴¹ A taxable person may within 30 days of receipt of a draft assessment, refer the assessment to the Panel of review. The Panel must issue a decision in the form of a formal assessment within 3 months, taking into account the basis on which the draft assessment was issued, the taxable person's objections and the evidence presented by the parties. There is no express requirement on the panel to disclose to any, the evidence that the other party has submitted for consideration and so the Panel could proceed to a decision on the basis of evidence that the FIRS has submitted as part of the review in circumstances where the taxpayer has not had an opportunity to challenge it.

The rules of natural justice will apply in this situation to oblige the Panel to make such disclosure. In the event that a connected taxable person does not refer a draft assessment to the panel within the prescribed period, the Panel must proceed to issue an assessment giving effect to the draft adjustment. The decision of the Panel on any assessment is made before it is final and conclusive, but the taxpayer is entitled to refer the matter to a court of competent jurisdiction, which would be the Federal High Court, or to the Tax Appeal Tribunal before deciding to go court.

Where a competent authority of a country with which Nigeria has a double taxation treaty makes an adjustment to the taxation of a controlled transaction that results in taxation in that other country of income or profits that are also taxable in Nigeria, the FIRS may upon request by the connected taxable person subject to tax in Nigeria determine whether the adjustment is consistent with the arm's length principle. If so, the FIRS may, make a corresponding adjustment to the amount of tax charged in Nigeria, on the income so as to avoid double taxation.

A taxable person who contravenes any of the provisions of the Regulations is liable to a penalty as prescribed in the relevant provisions of the applicable tax law. By virtue of the Companies Income Tax Act, an applicable law for these purposes, failure to have in place the prescribed transfer documentation or to file a Transfer Pricing Declaration is potentially an offence attracting a fine on conviction. Also, where the FIRS has made an adjustment to a transfer price, failure to pay the additional tax required within the prescribed period would attract a penalty of 10% of the unpaid or underpaid tax. Ultimately, the directors and officers of the company concerned could incur criminal liability unless they are able to show that the default took place without their knowledge, consent or connivance. The arm's length principle and related OECD rules which

¹⁴¹ Regulation 4(2) does not expressly state what it is that the FIRS is entitled to adjust in a case where the Regulations were made to give effect to section 22 of the CITA. It is arguable that the FIRS should exercise the power of adjustment under Regulation 4(2) in the same way as the like power under section 22 is exercisable. That is, the FIRS must first adjust the terms of a non-compliant controlled transaction to accord with those of a hypothetical comparable transaction undertaken at arm's length transaction. It is clear from regulation 14 which provides for review mechanism, that the FIRS should give effect to any adjustments by means of a draft assessment.

Nigeria has transposed into law has been the subject of much criticism¹⁴² over the years from analyst and NGO's focusing on developing countries.¹⁴³

Owing to the unsatisfactory nature of the general anti-avoidance provisions available for dealing with transfer pricing, the FIRS has been hampered in tackling transfer mispricing, with tax officials invoking the provisions on account of interpretational difficulties. On their part, taxpayers had to contend with a cloud of uncertainty owing to the subjective terms of those provisions and the absence of official guidance, although it seems likely that most transfer transactions would have escaped FIRS scrutiny.¹⁴⁴ While tax payers will benefit from greater certainty of tax treatment of transfer pricing transactions, they now have additional compliance burdens through the need to prepare transfer pricing documentation as a matter of course and related disclosure requirements, along with the increased likelihood of transfer pricing audit. While Advance Pricing Agreements offer multinationals a mechanism for enhancing and formalizing best business understanding, the excess of discretion will, to some extent, breed uncertainty and in all likelihood, corruption among impoverished FIRS officials. Thus, the stated objective of the Regulations to enable the government to tax multinationals in line with the extent of their economic activity in the country is likely to be compromised by the imperfections of the machinery chosen to deliver that objective, the arm's length rule.

Conclusion

This paper has examined how the personal income tax and capital gains tax are imposed in Nigeria. Personal income tax is imposed on income of individuals (employees), corporate sole or body of individuals, communities, families or trustees or executors of any settlement as the case may be. It also covers taxation of sole traders, partnership assessment, and taxation of estates while capital gains tax is charged where there is a disposal of assets by way of a sale, lease, transfer, assignment, compulsory acquisition or any disposition of properties classified as chargeable assets. CGT which

¹⁴² Some of these criticisms are as follows: (1) The comparability required to be undertaken by the arm's length rule is misconceived. The internal transfers within multinational firms do not involve unique commodities or standard services that can be bought from third parties on the open market, but rather products and services which are unique or distinctive which can be produced more advantageously internally. (2) Many of the applicable rules require subjective judgments before they can be applied, making it difficult to achieve consistency in decision-making and ultimately undermining certainty of tax treatment. Furthermore, the subjectivity of decision-making could make staff or tax authorities vulnerable to external pressure and corruption. (3) Multinationals have been exploiting the vulnerabilities of the arm's length principle through transfer mispricing to shift profits out of the developing countries in which those profits are made. Many multinationals have been able to shift substantial amounts of taxable income from locations where the economic activity that produces the profits takes place to zero and low-tax countries where the multinationals conduct few, if any, business activities. (4) The arm's length rule is unsuitable for developing countries because of the absence of the material required to undertake the comparative analysis required by the arm's length principle. It is not just that tax administrations in such countries experience difficulties in finding reliable data on comparables, but also that there is often no appropriate data comparable available locally.

¹⁴² The Regulations herald greater sophistication on the part of the FIRS in dealing with transfer pricing transactions. They also introduce greater formality by substituting a more structured and transparent regime featuring less discretion and greater objectivity through the articulation of explicit criteria for determining compliance with the arm's length principle. The draftsman has, more or less transposed the OECD's Transfer Pricing Guidelines into law, with a modicum of country-specific requirements to ensure that the Regulations relate to Nigeria's particular situation, as demonstrated for instance by the safe harbor provisions.

¹⁴² Laws of the Federation CAP C1 LFN, 2004 (as amended)

¹⁴³ John Neighbour. Transfer Pricing: Keeping it at arm's length. Available at

https://oecdoberver.org/news/archivestory.php/aid/670Transfer_pricing:_Keeping_it_at_arms_length.html. Accessed on 15/9/2020

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is regulated by the Capital Gains Tax Act,¹⁴⁵ is usually charged at a flat rate of 10% on chargeable assets.

In Nigeria, every individual, whether resident or non-resident in Nigeria, in paid employment or businesses, or persons who derive their income from Nigeria, as well as companies that operate in Nigeria, are all liable to pay tax. Failure to deduct and remit tax or failure to pay taxes of any kind may attract punitive fines and penalties. Effective tax drive is achieved through an efficient tax administration and tax system reforms. These elements also create a tax culture, reduced incidences of corruption and tax evasion. Tax administration deals with the implementation of the various tax laws in a country in order to achieve its objective. In Nigeria, tax administration is carried out by the three tiers of government, namely; the Federal, State, and the various Local Governments, through the machineries set up by the respective government. The Federal Inland Revenue Service (FIRS) is the body statutorily empowered to administer and enforce the various tax laws in Nigeria at the federal level. The various State Governments administer tax through the various States Board of Internal Revenue, while the Local Government Revenue Committee of each State administers taxes at the local government areas. There is also the Joint Tax Board (JTB) which is a creation of Personal Income Tax Act. It comprises of the officers of the Federal and State tax authorities. The main role of JTB is purely advisory.

Ultimately, the FIRS determines whether a connected taxable person has complied with the obligation imposed by Regulation 4(1) to ensure that the taxable profits resulting from a controlled transaction is in a manner that is consistent with the arm's length principle. In examining that question, the FIRS must base its review on the transfer pricing method used by the taxable person, if such method is appropriate to the circumstances.

¹⁴⁵ Laws of the Federation CAP C1 LFN, 2004 (as amended)