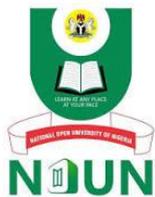


**COURSE
GUIDE**

**PUL434
LAW OF TAXATION II**

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1.0 Introduction

Tax is dynamic in nature, and that is why a system of taxation varies from one country to another. As a student, you need to appreciate the fact that tax is part of the price to be paid for living in an organized and orderly society, for if this is not done the miscreants produced through the inequality in the system will be a source of constant irritation to the well-being of those who even have.

This course (Law of Taxation II) is the second part of the Law of Taxation 1 (Law 433), and the major aims and objectives of the course is to broaden your knowledge on law of Taxation in Nigeria as relates to different Taxes, Taxing powers of different tiers of Government Duties imposed by the Government in Taxation, Tax treatment of women and special group; all in a bid to appreciate bottle problems and prospects of taxation in Nigeria.

This course consists of 6 Modules which are subdivided into 12 Study Units. In module 1 you will be introduced to some case Law definitions of tax. The reason for this is to show and enlighten you on some categories of charges that looks like tax but which under the Nigerian Tax statutes is not one.

In module 2 you will be taught the duties imposed by government in the Nigerian Tax system. While in module 3, taxing powers of Government will be examined. Module 4 introduces you to the problems of taxation, while Company taxation and reliefs are discussed in module 5.

Tax treatment of women, special groups, pensions and gratuities etc. constitutes module 6.

1.1 Course Learning Outcomes

By the end of the study, you will be able to:

- i. explain the different types of taxes
- ii. explain the term 'Taxing Powers'
- iii. analyse the problems of taxation in Nigeria and
- iv. outline the exemptions and reliefs in tax law.

1.2 Working Through This Course

To complete this course, you are advised to read the study units, recommended books, relevant cases and other materials provided by NOUN. Each unit contains a Self-Assessment Exercise, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course there is a final examination. The course

should take you about 11 weeks to complete. You will find all the components of the course listed below. You need to make out time for each unit in order to complete the course successfully and on time.

1.3 Course Materials

The major components of the course are:

- a) Course guide.
- b) Study Units.
- c) Textbooks
- d) Self-Assessment Exercises
- e) Presentation schedule.

1.4 MODULES AND STUDY UNITS

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

MODULE 1 DIFFERENT TAXES

- | | |
|--------|--------------------|
| Unit 1 | Tax Identification |
| Unit 2 | Types of Taxes |

MODULE 2 TAXING POWERS

- | | |
|--------|---|
| Unit 1 | Definition of Taxing Power |
| Unit 2 | Examination of Federal, State and Local Government Taxing Powers in Nigeria |

MODULE 3 PROBLEM OF TAXATION IN NIGERIA

- | | |
|--------|---|
| Unit 1 | Major Taxation Problems in Nigeria |
| Unit 2 | Solutions to Taxation Problems in Nigeria |

MODULE 4 DUTIES IMPOSED BY GOVERNMENT AND TAX INCENTIVES

- | | |
|--------|---|
| Unit 1 | Stamp Duties |
| Unit 2 | Other Categories of Duties |
| Unit 3 | Tax Incentives |
| Unit 4 | The Case of Nigeria with Tax Incentives |

MODULE 5 COMPANY TAXATION AND EXEMPTIONS

- Unit 1 Administration of and Chargeability to Company Tax in Nigeria
Unit 2 Company Tax Exemption and Reliefs

MODULE 6 WOMEN AND SPECIAL GROUPS TREATMENT TO TAX

- Unit 1 Imposition of Personal Tax and Income Chargeable
Unit 2 Personal Tax Exemptions and Reliefs

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

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

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

2.1 References / Further Reading

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

2.2 Assessment

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

2.3 Self-Assessment Exercises

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

2.4 Final Examination and Grading

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

2.5 How to get the most from this Course

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, your study units provide exercises for you to do at appropriate times. Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of learning outcomes which will let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

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

2.6 Online Facilitation

There will be about 8 hours of online facilitation provided in support of this course. You will be notified of the dates, times and location of the facilitations, together with the name and phone number of your facilitator, as soon as you are allocated a facilitator who will take you through the course. He will keep a close watch on your progress and on any difficulties you might encounter. Your facilitator may help and provide assistance to you during the course.

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

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

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

3.0 Course Information

Course Code:	PUL434
Course Title:	Law of Taxation II
Credit Unit:	4
Course Status:	E
Course Blub:	
Semester:	Second
Course Duration:	
Required Hours for Study	

3.1 Course Team

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**MAIN
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MODULE 1 DIFFERENT TAXES

- Unit 1 Identification of Tax
- Unit 2 Types of Taxes

UNIT 1 IDENTIFICATION OF TAX

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Identification of Tax
 - 1.3.1 What is not Tax?
 - 1.3.2 What is Tax?
 - 1.3.3 How do you identify an item as a tax?
- 1.4 Summary.
- 1.5 References/Further Readings/Web Sources
- 1.6 Possible Answers to Self-Assessment Exercise(s) within the content



1.1 Introduction

In Nigeria, tax is a major source of revenue generation. It is a source that government at all levels relied upon to generate fund to execute one form of project or another. Different forms of taxes under different names i.e charges, tolls, fees e.t.c are levied on the citizenry, ironically, not all these charges and levies qualify as tax under the law. Therefore, it is pertinent for you to know and have a clear knowledge on the legal status of some of these charges and to know the proper constitution of tax under the Nigerian law.



1.2 Learning Outcomes

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

- Identify what constitute proper tax and others that look like tax but are not tax under the Nigerian Tax system
- Appreciate some case law definition of tax.



1.3 Identification of Tax

1.3.1 Identification of Tax

First and foremost, you should know that tax was only described and not defined in whatever form in the Nigerian Tax Statute. Therefore, any definition of tax you must have come across or you are about to be taught are purely a derivation of either the case law, that is the courts perception of what constitute tax or it may be literature base, that book writers' definitions of what they believed tax is. In order words, a simple or single definition may not and is likely not to have all encompassing application. Therefore, in defining a tax, it is better to look at its essential characteristics rather than its name (Ipaye, 2002:4).

However, since you must have been exposed to some definitions of tax in Law of Taxation 1 (Law 433) which was the first part of this course, the importance of outlining some more definitions is to serve as a reminder and to help you to know how to identify the constituents of tax under the Nigerian law which will ultimately serve as the foundation of what you are about to be taught in this course.

In order to have a firm and grip understanding of the course, let us first examine what looks like tax but which is not one before we dwell more on to what tax really is.

Self-Assessment Exercise 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. What are the major characteristics/features that mark an item as a tax?
2. What is the best way to define or determine whether an item is a tax or not?

1.3.1 What is not Tax?

You must have witnessed, heard, or experienced, or on several occasions when Government at all levels levied some sorts of charges, fine, penalties, fees and contributions on the populace for the purpose of providing certain services. Most of the times, the misconceptions on all these charges were that, taxes were being paid. The questions now are:

Is any charge, fee or levy by government with the aims of providing commensurate services to the people a tax?

Is a voluntary contribution by the people encouraged by government at whatever level for the execution of a public project, a tax?

The answer is simply No. This is because:

- a. While tax is a compulsory contribution backed by law, charges, fees, tolls, are not.
- b. While fines, penalties are levied as a punishment for crime committed, taxes are mere contributory aid to the government.
- c. While fees, fines, penalties and other categories of charges may be arbitrarily fixed, tax must pass through the process of law making in the state before it becomes a tax.
- d. While a payer can lay claim to a commensurate benefit from charges or fees contributed, a tax payer cannot claim a direct benefit from the government that is equivalent to the amount of tax paid (Nike, 2011: 4).
- e. While a tax is a statutory collection which is not directed to the provision of a specific benefit, other charges by imposed for a particular service rendered (Ipaye: 4).

1.3.2 What is Tax?

Remember, there has not been a single all-encompassing definition of tax, therefore our effort here will be to outline some case law definitions of tax and to supplement same with some book writer's definitions and the common features that if detected in charges and other contributions qualities them as a tax.

Case Law definition of Tax

In the case of **Mathew Chicory Marketing Board (v) 1935 60 CLR, 263 at p: 276**, a High Court of Australia case that considered **section 90 of the** Australian Constitution, which prohibits States from levying excise (taxes). After examining the history of excise in England, the court concluded that the definition in Peterswald may be too narrow. The court defined as a compulsory extraction of money by a public authority for public purposes.

In **United State Vs Butler 2229 us 1 (1935) at p:61** per Mr. Justice Robers, tax was defined simply as an exaction for the support of the government.

In **Michigan Employment Sec Commission vs Patt; 4 Mich-App 224 14 N.W 2nd 663**, tax was defined a non-voluntary or donation, but an enforced/compulsory contribution, exacted pursuant to legislative authority.

Invariably therefore a tax can be said to be a compulsory and definite amount levy on adult citizenry of a particular country the collection of which is backed by the statutory provision of a state. A tax is a pecuniary burden laid upon individual or property to support government expenditure. Therefore, a tax is not levied in return for any specific service or services rendered by the government. (Lekan et al, (2006). Tax

according to the National Tax policy for Nigeria is a monetary charge on a person's or entity's income, property or transaction and is usually collected by a defined authority at the federal; and state level.

1.3.3 How do you identify an item as a tax?

The presence of the under listed characteristics/ features could be used to determine that an item is a tax.

- i. Compulsion: It is a compulsory contribution
- ii. Backed by law: it is backed by law
- iii. Fixed amount: it is a definite and fixed amount
- iv. Adult: It is levied on Adult
- v. Annually: It is paid annually
- vi. Not commensurate: The benefit is not directly commensurate with amount contributed.
- vii. Income & Asset: It is paid on income and Asset.

In conclusion, it has been established in this unit that, many charges that people thought are taxes, are in fact, not one. The unit further reveals that instead of using names or purpose of charges to determine what tax is, it is more appropriate to look at the features and characteristics of charges or levies. Therefore, no matter the name given to a charge, on it is compelled and statutorily backed by the law of the state, it is a tax.



1.4 Summary

We have in this unit discussed:

- i. What is tax
- ii. Other charges that look like tax but not one under the Nigerian tax statutes
- iii. How to identify the constituents of tax



1.5 References/Further Readings/Web Resources

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

Abdulrazaq M.T. (1993) Principle and Practice of Nigerian Tax Planning and Management Ilorin: Batay Law Publishing Ltd.

Ipaye A. (2002) "Overview of the tax Environment: Issues and challenges" in Abdulrazaq M.T (eds.) CITN Nigerian Tax Guide and Statute (2nd Edition) Lagos, Chartered Institute of Taxation of Nigeria.

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Nike P. (2011) “To avoid Multiple Taxation” in the Punch Newspaper, Wednesday, 5th January, 2011.

Teriba O. (1977) Certificate Economics for West Africa, London: Longman Group Ltd.



1.6 Possible Answers to Self-Assessment Exercise(s) within the Content

Self-Assessment Exercise

Characteristics that mark item as a tax are:

- i. Compulsion: It is a compulsory contribution
 - ii. Backed by law: it is backed by law
 - iii. Fixed amount: it is a definite and fixed amount
 - iv. Adult: It is levied on Adult
 - v. Annually: It is paid annually
 - vi. Not commensurate: The benefit is not directly commensurate with amount contributed.
 - vii. Income & Asset: It is paid on income and Asset.
2. We should look at the features rather than name.

UNIT 2 TYPES OF TAXES

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Types of Taxes
 - 2.3.1 Proportional Tax System
 - 2.3.1.1 Advantages of Proportional Tax
 - 2.3.1.2 Disadvantages of Proportional Tax
 - 2.3.2 Progressive Tax System
 - 2.3.2.1 Advantages of Progressive Tax
 - 2.3.2.2 Disadvantages of Progressive Tax
 - 2.3.3 Regressive Tax System
 - 2.3.4 Direct Tax System
 - 2.3.5 Indirect Tax System
- 2.4 Summary
- 2.5 References/Further Readings/Web Sources
- 2.6 Possible Answers to Self-Assessment Exercise(s) within the Content



2.1 Introduction

In categorizing tax, you can either use income theory or incidence theory. Income theory is a theory whereby tax classification is based on the percentage or amount of income of the tax payer. Under this theory, taxes are classified into proportional, progressive and Regressive taxes.

Incidence theory on the other hand, is the classification of tax based on where lies the incidence of such taxes. Under this theory, taxes are classified into direct and indirect taxes. In this unit, you will be exposed to a detail examination of each category of taxes, advantages and disadvantages of each.



2.2 Learning Outcomes

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

- Identify what constitute proper tax and others that look like tax but are not tax under the Nigerian Tax system.
- Identify different categories of taxes we have under the Nigerian tax system
- Demonstrate a clear understanding of the advantages and disadvantages of each categories of taxes

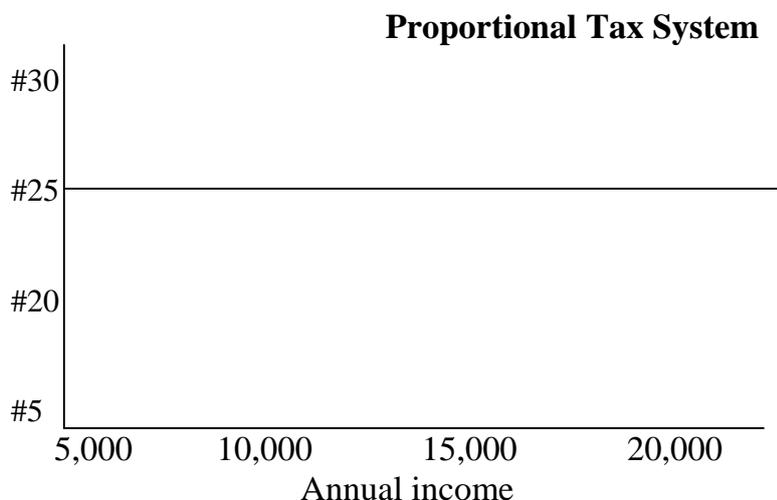


2.3 Types of Taxes

2.3.1 Proportional Tax System

Proportional tax is the tax that is paid by each tax payers premised on the same ratio to the amount to be raised as the value of his property bears to the total taxable income. In order words, a proportional of income (M.T Abdulrasaq 1993:6). It is a tax imposed so that the tax rate is fixed, with no change as the taxable base amount increases or decreases. The amount of the tax is in proportion to the amount subject to taxation. (R. M. Sommerfeld et al, 1992) "Proportional" here describes a distribution effect on income or expenditure, referring to the way the rate remains consistent (does not progress from "low to high" or "high to low" as income or consumption changes), where the marginal tax rate is equal to the average tax rate. (Janes, 1998). In proportional tax system, the tax rate is uniform for all the taxpayers, so under this system, whether one is rich or poor he or she has to pay the tax at the same rate.

In order wards, in the proportional tax system, the percentage of tax rate remains the same as tax base increases. As a result the amount of tax paid is proportional to the tax base. (Lekan: 7). Therefore, if the tax rate is 25% every person shall have to pay income tax at this rate and a person whole income double pay double the amount tax.



2.3.1.1 Advantages of proportional Tax System

The following are the advantages of proportional tax system

Equality: Payment of equal percentage based on income is achievable

Simplicity: The calculation of tax is on proportional basis is easy for anybody to do.

It does not affect income distribution: No matter your income, every person pays the same rate of tax.

Neutralizing effects: It has neutralizing effects on saving and incentives (Lekan n:8)

Non distributing: This tax system distributes the economy as little as possible because every person contributes as nearly as possible in proportion to his ability to pay (Lekan:8).

2.3.1.2. Disadvantages of Proportional Tax System

The following are the disadvantages of proportional tax system.

Inequitable: Where both high-income and low income groups are taxed as the same rate; persons who belong to the low income make a greater sacrifice than those in high income groups (Lekan: 8).

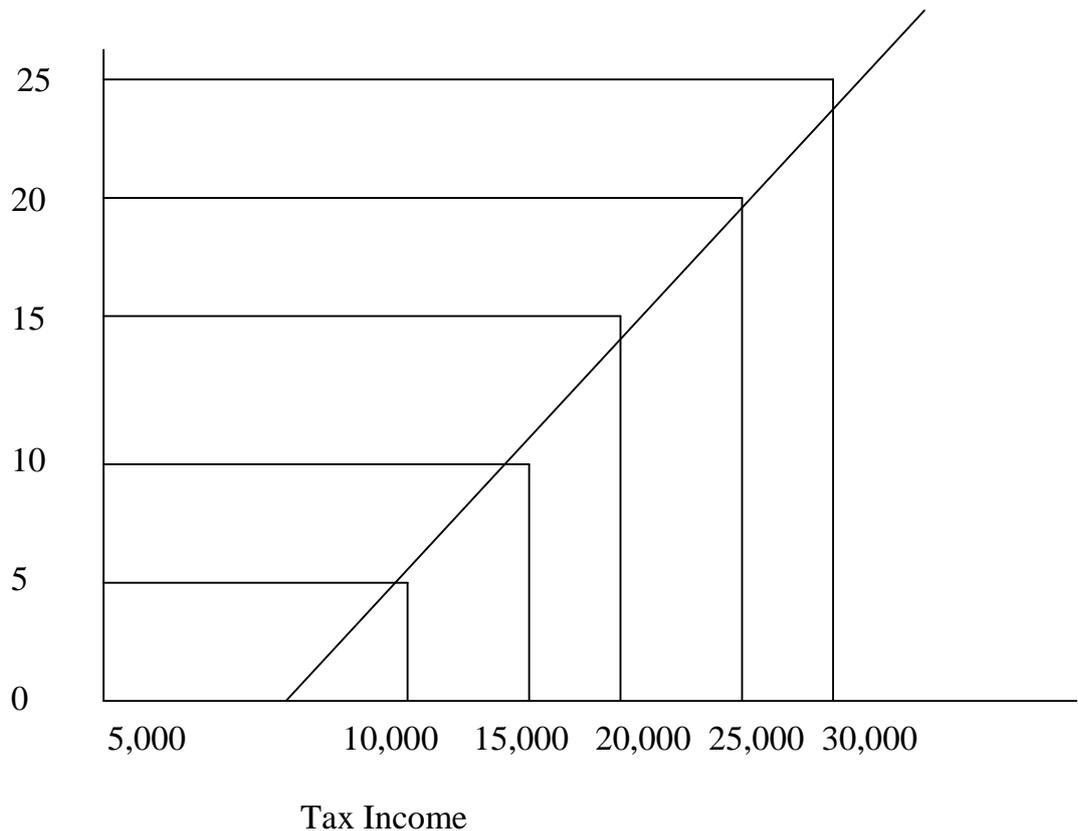
Less productive: It does not bring enough revenue because of constant tax rate (Lekan: 8).

It is against the principle of taxable capacity and it may have bad effect for the economy: By tax the high and low income group at the same rate this tax system proportionally taxes away a larger percentage of the income of low income groups. As a result, the consumption standard of such group falls. (Lekan: 8).

2.3.2 Progressive Tax System

Progressive tax is a tax system that takes an increasing proportion as income rises. (M.T. Abdulrazaq. O). It is **tax** system in which the tax rate increases as the taxable amount increases. The term *progressive* explains how the tax rate progresses from low to high, with the result that a taxpayer's average tax rate is less than the person's marginal tax rate. Furthermore, progressive tax is a tax that is based on the idea of vertical equity which simply means redistribution of income from the well-to-do to the less privileged (Ayua: 12). A tax is progressive if its rate increases as the size of income or stock of wealth which is being taxed increases. The burden of a progressive income tax falls on those with higher income (Teriba, 1977: 176).

Progressive Tax



2.3.2.1 Advantages of progressive tax

The following are the advantages of progressive tax system.

It ensures increase payment in tax: As to change tax rate thereby generating extra revenue more easily through progressive tax.

Equality: Since high income earner pay higher in this tax system, equity is achieved.

It encourages better use of resources and it promotes economic stability: By reducing the tax rate during a recession or depression the government provides relief to the tax payer so that they may increase their demand for goods and as a result investment is encouraged.

On the other hand, by raising tax rates during economic boom the government reduces the purchasing power of the tax payers in order to fight inflation. Thus, this tax system helps in bringing economic stability in the economy. (Lekan: 10).

2.3.2.2 Disadvantages of Progressive Tax System

The following are the disadvantages of progressive tax system. It encourages tax offences: If people are taxed heavily there is the tendency and greater urge to evade the payment of tax.

It discourages capital formation: Because this tax system adversely affects savings, the resultant effect is the discouragement of investment and capital formation. According to Lekan 2006, since the high income groups are the main source of savings in a country's heavy taxes on them discourage savings and investments and thus hamper development of trade and industry.

It is arbitrary: There is no scientific or standard way of fixing the tax rate progressively.

It is faulty: Since utility is subjective and cannot be measure in terms of money, basing a tax on diminishing marginal utility of income cannot aid the actualization of tax purposes.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

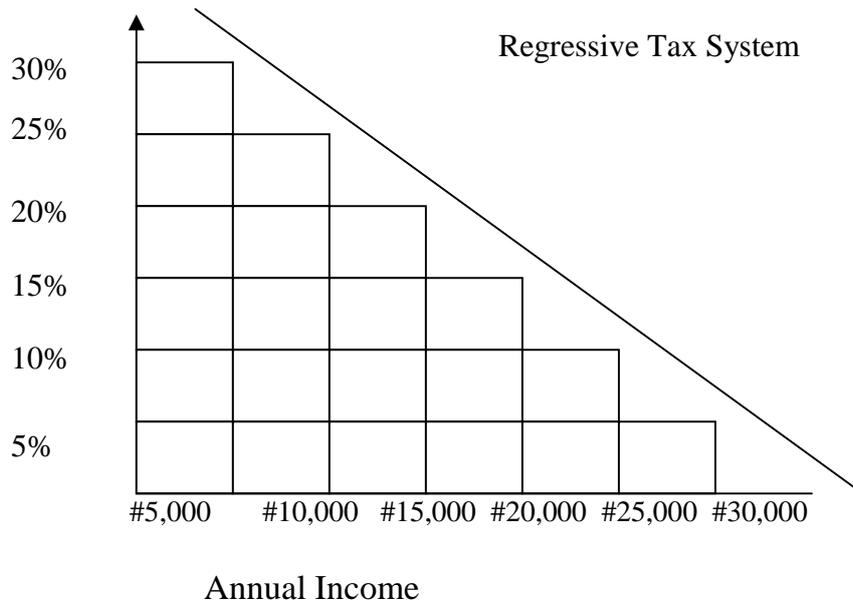
Why do you think regressive tax system is not healthy for a developing country like Nigeria?

2.3.3 Regressive Tax System

Regressive tax system is structured in a way that, the tax rate diminishes as the taxable amount increases. In other words, there is an inverse relationship between the tax rate and taxable income. The rate of tax decreases as the income of taxpayers increase. This tax system generally favours and benefits the high income earners of as they need to pay tax at lesser rates. On the other hand, people with lesser incomes are burdened with higher rate of tax. Regressive tax is a tax whose structure is such that the revenue yield becomes smaller as the value of the property taxed increases. (Ayua: 1996: 2). In order words, a regressive tax takes a declining proportion of income as income rise (M.T. Abdulrazaq:6). In a regressive tax system, a high income person pays less tax than low income person.

The general criticism of the regressive tax system is that, it fails to take care of the economic needs of the poor masses that constituted the majority of the population in the developing countries. Not only that, due

to low revenue yielding nature of the regressive tax system, it is also not suitable for developing country like Nigeria.



2.3.4 Direct Tax System

The incidence of tax is of vital essence in classifying tax into direct or indirect taxes. A direct tax, is one which is demanded from the very persons who it is intended or desired should pay it (Ayua:12). In a direct tax system, a person or organization pays directly to the entity/authority that imposed it. An individual taxpayer, for example, pays direct taxes to the government for various purposes, including income tax, real property tax, personal property tax, or taxes on assets. In essence, the incidence of taxation directly fell on the actual tax payer. In this type of tax, the tax is not only advised by notification called assessment notice, but it is duly receipted (Lekan; p:6). Company Tax, PAYE Tax, Capital Gain Tax, and Capital Transfer Tax are examples of Direct Tax. In some jurisdiction like U.S, direct taxes are largely based on the ability-to-pay principle. This economic principle states that those who have more resources or earn a higher income should bear a greater tax burden. Some critics interpret that as a disincentive for individuals to work hard and earn more money because the more a person makes, the more taxes they pay. In direct tax system, taxes cannot be passed on to a different person or entity. Rather, the individual or organization upon which the tax is levied is responsible for paying it. A direct tax is the opposite of an indirect tax as we will see shortly, wherein the tax is levied on one entity, such as a seller, and paid by another—such as a sales tax paid by the buyer in a retail basis.

The major advantage of a direct tax system is that the burden of tax payment falls directly on the tax payer. Not only that, the notification and

assessment notice aided both the accurate calculation and payment of the tax by the tax payer.

The major limitation of this type of tax however is that because the incidence falls directly on the tax payer, there is tendency for the unscrupulous tax payer to wanting to evade or completely avoid the payment of such tax.

2.3.5 Indirect Tax System

In indirect tax system, taxes are levied upon goods and services before they reach the customer who ultimately bear the burden by paying the tax indirectly as a part of market price of the good or service purchased. So, an indirect tax is collected by an intermediary such as a retail store, from the person (such as the consumer) who actually pays the tax included in the price of a purchased good. The intermediary later files a tax return and forwards the tax proceeds to government with the return. In this sense, the term indirect tax is contrasted with a direct tax, which is collected directly by government from the persons (legal or natural) on whom it is imposed. Indirect tax system is borne by a person other than the one from whom the tax is collected. In other words, indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of the other (M.T. Abdulrazaq: 7).

In a nutshell, indirect taxes are those which are imposed on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Examples of indirect taxation are Value-Added Tax, Stamp Duty, Exercise Duty, Customs Duty, and Sales of purchase Tax (Ayua:12).

Amongst the advantages of indirect tax is that, the burden of incidence does not fall directly on the tax payer. Not only that, collection of indirect tax is also easier and more revenue is generated through the source.

From the discussion in this unit, it could be gleaned that different taxes exist in Nigeria. While some are direct, some are indirectly levied on property and individuals. It is also clear from the discussion that, most of the taxes have both advantages and disadvantages.



2.4 Summary

We have in this unit discussed:

- i. Different categories of taxes
- ii. Advantages and Disadvantages of each classes of taxes



2.5 References/Further Readings/Web Resources

- Ayua I.A. (1996)** The Nigerian Tax Law, Lagos: Spectrum Law Publishing.
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2.6 Possible Answers to Self-Assessment Exercise(s) with the Content

Self-Assessment Exercise

SAE

Because of its low revenue generation

MODULE 2 TAXING POWERS

- Unit 1 Definition of Taxing Power
- Unit 2 Examination of Federal, State and Local Government Taxing Powers in Nigeria

UNIT 1 DEFINITION OF TAXING POWER

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Definition of Taxing Power
 - 1.3.1 Definition of Taxing Power
 - 1.3.2 History of Taxing Powers in Nigeria
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Possible Answers to Self-Assessment Exercise(s) within the Content



1.1 Introduction

As already discussed in the 1st unit of this course, Nigerian Tax issue and law are purely statutory; therefore, it would be incongruous for any tier to seek to impose any form of tax on subjects, belt person or property, beyond its legislative competence (Arifowomo 2010, 185). The simple meaning of this is that Nigerian tax system originated from law and any tax levied on the people must be backed by law. Any levy whatever name it is called not backed by law is not a tax. The tax system thus features a wide and mixed range of statutes by which the various governments in the country seek to charge and collect revenue for public expenditure. (Ipaye:2009: 21). **In Mathew vs Chicory Marketing board (1938) 60 GLR 263 at 276 and US vs Butter (1936) 227 9 U & I at 61**, tax is said to be a compulsory exacting of money by the government for public purpose. (M.T. Abdulrazaq: 2005:1).

While this unit will expose the meaning of taxing power, an attempt will also be made to trace the historical development of taxing powers in Nigeria.



1.2 Learning Outcomes

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

- explain what taxing power means
- appreciate the historical development of taxing powers in Nigeria.



1.3 Definition of Taxing Power

1.3.1 Definition of Taxing Power

Taxing power is the power and authority by a tier of government to impose and collect taxes from the citizenry in that particular state. According to Abiola (2002), taxing power is the power of a level of government to impose a tax by its own law and prescribe conditions for the collection and due administration of the tax either by its own agency or that of another level of government.

In other words, power is the ability of government to levy tax or raise revenue through taxation. The power is said to have its origin in the implied common law powers of government and that such power “ought to know no bounds than the exigencies of the nation and the resources of the community. This power has been variously described as an imperious necessity of all governments, which ought not to be restricted by merely legal friction”, “not dependent upon the consent of the individual taxpayer” (Abiola: 2009:44)

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

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

In Nigeria, the Federal Government is vested with the exclusive power to impose custom duties, excise duties, stamp duties, personal income tax, companies' income tax education tax, and VAT and any tax on any of the subject matters contained in the Exclusive Legislative List to the extent permitted by the Constitution.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. Taxing power is a mere power to collect taxes or levies and nothing more. TRUR or FALSE
2. Identify the key contribution of Hicks-Phillipson commissions to the issue of taxing power in Nigeria.

1.3.2 History of Taxing Powers in Nigeria

An analysis of the federal and state taxing powers should not be made in complete isolation from the legal history of the processes which culminated in the recognition and adoption of the rationale of the basis and structure for the demarcation of taxing powers between the federal and state Government within the Federation of Nigeria. Certainly, a brief discourse upon the past not only explains the origins of the present system, but also gives a clearer insight into the concepts and reasoning that have underlined our structure of the demarcation of the tax jurisdiction (Okorodudu: 1991: 51-52).

Historically, when Nigeria became a federation in 1954, the issue of sharing of taxing powers between the Regions and the federal government immediately arose. According to Ayua 1996, the question was discussed at the Nigeria constitutional conference in London in 1957. At that conference it was decided that the issue be referred to a Commission. Consequently, the Raisman commission was inaugurated to look into the issue of how to allocate taxing powers between the Regional and Federal governments and make recommendation that would ensure an equitable tax distribution.

Earlier in 1951 and 1953, two commissions were set up; they were the Hicks Phillipson Commission of 1951 and Sir Louis Chick Commission of 1953. In its composite recommendations Hicks Phillipson laid down amongst others, the principle of independent revenue with a view to making the regions within the newly established federation more financially self-reliant (Okorodudu:1991:53). While sir Louis recommendations to a larger extent reflected in the Section 155-163 of the 1954 constitution order-in-council.

Raisman commission report was submitted in June, 1958, the proposals of his commission in relation to the division of taxing powers between the tiers of government had strong influence on the relevant provisions

of the Nigerian Constitution Order-in Council, 1960. Section 70 of the 1960 Independence Constitution provides as follows:

- (1) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the income and profits of companies.
- (2) Parliament may make laws for Nigeria or any part thereof with respect to taxes on income and profits other than the income and profits of companies for the purpose of:
 - (a) Implementing any treaty, convention or agreement between the federation and any other country or any arrangement with or decision of an international organisation of which the federation is a member with respect to taxes on income and profits;
 - (b) Securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria;
 - (c) Securing uniform principles for the computation of income and profits of all persons (including members of partnerships) for the purposes of assessment of tax and for the treatment of losses, depreciation of assets, and contributions to pensions or provident funds or schemes;
 - (d) Regulating the liability to tax of persons within Nigeria by reference to their places of residence or otherwise for the purpose of ensuring that any income or profit does not bear tax under the, laws of more than one territory;
 - (e) Providing, in pursuance of any arrangement in that behalf subsisting between the Government of the Federation and the Government of a State, for the exemption from liability to tax in respect of all or part of the income or profits of any person or class of persons;
 - (f) Obtaining information with respect to income or profits from any source and providing for the exchange of information between different tax authorities; and
 - (g) Providing, in pursuance of any arrangement in that behalf subsisting between the Government of the federation and the Government of a Region, for the establishment and regulation of authorities empowered to promote uniformity of taxation and to discharge such other functions relating to the taxation of income and profits as may be conferred upon them in pursuance of any such agreement.
- (3) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the estates of deceased persons and the succession to their property for the purpose of ensuring that any

estate or part thereof does not bear tax under the laws of more than one territory.

- (4) The powers conferred upon Parliament by sub-sections (2) and (3) of this section shall not extend to the imposition of any tax or penalty or the prescribing of rates of tax or personal allowances and reliefs.
- (5) Nothing in subsections (2) and (3) of this section shall preclude the legislature of a region from making laws with respect to the matters referred to in these subsections.
- (6) In this section references to the Income and profits of companies are references to the income and profits of any company or other corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere but do not include references —
 - (a) to the income and profits of anybody corporate established by or under the Native Authority Law, 1954, of Northern Nigeria, the Eastern Nigeria Local Government Law, 1960, of Eastern Nigeria, or the Western Region Local Government Law, 1952, or the Local Government Law of Western Nigeria, as amended, or any law replacing any of those lam;
 - (b) to the income and profits of any purchasing authority established by the legislature of a Region and empowered to acquire any commodity in that Region for export from Nigeria derived from the purchase and sale (whether for purposes of export or otherwise) of that commodity; or
 - (c) to the income or profits of any corporation established by the legislature of a Region for the purpose of fostering the economic development of that Region, not being income or profits derived from a trade or business carried on by that corporation or from any share or other interests possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority.

The provisions of section 70 above were transcribed unto the Legislative List in the Schedule to the said Constitution of Nigeria 1960 accordingly. Subsection (1) was included in the Exclusive Legislative List, and subsections (2) and (3) were included in the Concurrent Legislative List. Matters reserved to the exclusive taxing authority of the Federal Government in Part 1 of the Schedule to the 1960 Constitution were:

item 10: Customs and excise duties, including export duties item 25: Mines and minerals, including oil fields, oil mining, geological surveys and natural gas. (Authority of the Federal Government to impose mining rents and royalties may be implied from this item, vide item 44 “Any

matter that is incidental or supplementary (a) to any matter mentioned elsewhere in this list; or (b) to be discharge by the Government of the federation or any officer, court or authority of the federation of any function conferred by this Constitution. item 38: Taxes on amounts paid or payable on the sale or purchase of commodities except — (a) produce; (b) hides and skins; (c) motor spirit; (d) diesel oil sold or purchased for use in road vehicles; (e) diesel oil sold or purchased for other than industrial purposes. item 42: Wireless, broadcasting and television other than broadcasting and television provided by the Government of a Region; allocation of wavelengths for wireless, broadcasting and television transmission. (Authority of the federal Government to levy license fees on non- Regional wireless radio and television may be implied from this item in conjunction with item 44— incidental and supplementary matter.

While the foregoing taxing powers were made exclusive to the federal government, the legislative list did not specify additional matters relating to taxing authority which is concurrent to both the federal and regional government besides those already incorporated by subsection (2) & (3) of section 70 of the 1960 constitution (Okorodudu: 1991:58)

It could be gleaned from the discussion in this unit that Nigerian Taxing Powers are statutory in nature. The power to tax of both Federal and state are embedded in the legislative powers of the National and states House of Assemblies and that a charge can only become a tax only if it is passed in to law by the legislative arms of the government.



1.4 Summary

We have in this unit, discussed

- i. What taxing power is
- ii. The historical development of taxing powers in Nigeria



1.5 References/Further Readings/Web Resources

Abdulrazaq M.T (2005). Nigerian Revenue Law, Lagos, Malthouse Press

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1.6 Possible Answers to Self-Assessment Exercise(s) within the Content

Self-Assessment Exercise

1. FALSE
2. Hicks Phillipson's recommendations laid down amongst others, the principle of independent revenue with a view to making the regions within the newly established federation more financially self-reliant

UNIT 2 EXAMINATION OF FEDERAL, STATE AND LOCAL GOVERNMENT TAXING POWERS IN NIGERIA

Unit Structure

- 2.1 Introduction **Error! Bookmark not defined.**
- 2.2 Learning Outcomes **Error! Bookmark not defined.**
- 2.3 Examination of Federal, State and Local Government Taxing Powers in Nigeria **Error! Bookmark not defined.**
 - 2.3.1 Examination of Federal, State and Local Government Taxing Powers in Nigeria
- 2.4 Summary
- 2.5 References/Further Readings/Web Resources
- 2.6 Possible Answers to Self-Assessment Exercise(s)



2.1 Introduction

The most important factor that determines the division of taxing powers in a country is whether the country is operating a federal or unitary system of government (Abiola: 2002, 651). In other words, type of government operated will determine the level of taxing powers of each tiers of government. Globally, the allocation of taxing powers between different levels of government is a complex problem (Abiola: 650), and this problem is not exclusive of Nigeria, therefore, as a student of law of taxation, it is pertinent for you to know who among the three tiers of government in Nigeria have the statutory power to levy tax - the federal, state or Local Government?



2.2 Learning Outcomes

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

- explain how taxing power is constitutionally shared in Nigeria
- determine the constitutionality or otherwise of some of the existing federal and state tax statutes
- appreciate the status of local governments as regards taxing power in Nigeria..



2.3 Examination of Federal, State and Local Government Taxing Powers in Nigeria

2.3.1 Federal Taxing Powers

From 1960-1979, distribution of the taxing powers between the Federal and State Governments remain relatively constant except for a few deviation during the military Administration of Jan 1966-Sept 1979.

Going by the tax jurisdiction as demarcated under the 1960 independence constitution, 1963 Republican constitution, 1999 constitution, the federal government has taxing powers to taxing on:

- i. Import duties
- ii. Export duties
- iii. Excise duties
- iv. Mining Rents and Royalties
- v. Companies Income Tax
- vi. Capital Gain Tax
- vii. Personal Income Tax
- viii. Petroleum Profit Tax
- ix. Sales and Purchase Tax

However, from 1979, all vital matters subject to tax are kept within the exclusive control of the Federal Government most likely with a view to avoiding competing and conflicting tax jurisdiction.

The taxing power of the Federal Government is spelt out in sec 4 (2) of the 1979 constitution. According to the section,

The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter including in the Exclusive Legislative List set out in part 1 of the second schedule to this constitution.

Going by the schedule to the Taxes and Levies (Approved list of collection), Decree No. 102, 1993, there seems to be multifarious taxes in Nigeria, however in the Exclusive Legislative List, only four of them are specifically mentioned by name. the four as stated in the second schedule of the CFRN, 1999 are:

- i. Customs duties in the item 16
- ii. Excise duties also in item 16
- iii. Export duties in the 22nd item, and
- iv. Stamp a duty which is in the 58th items.

In addition, item 59 of the Exclusive legislative list vests the Federal government with powers on “taxation of incomes profits and capital gains pursuant to which the personal income tax, companies income tax, petroleum profit tax and capital gain tax have been imposed (Abiola: 2002, 652-653). The simple implication of this is that, from 1979, the federal government of Nigeria can impose tax on any of the 67 subject matters on the exclusive legislative list pursuant to its implied power in item 68. This position was affirmed by the Supreme Court of Nigeria in the case of the **Attorney General, Ogun State Vs Alhaja Ayinke Aberuagba (1984) SC, 20**. The main reason for given so much power to

the federal government may be to avoid competing and conflicting tax jurisdiction, or to aid the federal government's higher generation of revenue in order to be able to meet the socio-economic responsibility of the central government.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes:

1. Both local and state governments have equal powers when it comes to the issue of levying tax since the Constitution did not explicitly capture any of them in this regard. TRUE or FALSE
2. Unlike the federal government, no tax is specifically reserved for the state government under the 1999 constitution. So, the state government has no power to impose tax. YES or NO

2.3.2 State Taxing Powers

Unlike the federal government, no tax is specifically reserved for the state government under the 1999 constitution. The only reference in the constitution to the powers of state governments in relation to taxation is contained in item D-9 and 10 of the Concurrent Legislative List in the CFRN, 1990. (Sanni: 2002: 657).

However, going by the provision of section 4 (7) of the 1999 constitution of the Federal Republic of Nigeria, which provides for the legislative powers of the state House of Assembly, it could be deduced that, save items listed in the Exclusive Legislative List in the second schedule of the constitution, the state can legislate including the levying of tax on matters in the concurrent legislative lists and others not clearly mentioned therein.

Going by section 4 (7), the House of Assembly of a state shall have power to make laws for the peace, order and good government with respect to the following matters that:

- a. Any matter not included in the Exclusive Legislative list in the second schedule to this constitution;
- b. Any matter included in the concurrent legislative list set out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto and
- c. Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

It is clear from the above provisions, that as the state governments have powers to make laws on matters in the concurrent legislative list, so also

it has plenary powers to make laws on any subjects matter that is not on either the Exclusive or concurrent legislative list. A federal law on concurrent matter does not necessarily preclude states laws on the same matter; however, the state power to make law with respect to those on the concurrent legislative list is subject to the “doctrines of inconsistency and covering the field”. (Sanni: 657) The meaning of this is that, the state law must not be in conflicts with the federal law on the same item. And to determine conflict according to professor Nwabueze (1983), legislation on concurrent list must therefore first be made by both governments before any question of inconsistency between them can arise, and only then can a compromise be made to see if one has conflicted with the other.

2.3.3 Local Government Taxing Power

In the examination of the present status of local governments in Nigeria, we are will look briefly to the historical development of local government system in Nigeria. The British Colonial Government established the Native Authority Systems of local administration in which the local governments, following the Anglo -Saxon tradition was given the status of a body corporate. Since then, local government system of administration has experienced various reforms and 27um mons 27 ation and metamorphosing from a body corporate into a department of state governments and lastly as it is now, into a constitutional establishment. The 1976 local government reform constitutes the watershed of the formal and unequivocal recognition of the local government as a distinct tier of government with defined boundaries, clearly stated functions and provisions for ensuring a measure of human and financial resources.

These reforms transformed Local Governments in Nigeria from mere administrative units status to a constitutional establishments.

Under section 7(1) of the 1999 constitution of the F R N the arms local government by democratically elected process is guaranteed. Therein, every state government is man- dated to ensure their existence under an applicable law that regulates their establishment, structure, composition, finance and functions. (Arifowomo: 189)

Today however, the status of the local government has been enhanced. And, the enhanced status of the local government councils has raised the question whether or not they have independent power to raise own taxes (Sanni: 658).

The division of legislative power under section 4 for the constitution involves only the federal and state governments. Also, it will be

observed that matters that the constitution mandating the state governments to rest in the local government councils are matters within the residual power of the states. The implication of this is that local governments have no legislative power of their own and cannot impose any tax on any subject matter whatsoever. Therefore, it is instructive to note that the provisions of schedule 4 of the constitution do not directly rest the local government councils with power to collect taxes. (Sanni: 658).

To this extent, the local government councils were brought within the federal structure of the distribution of taxing powers and functions. However, these councils are not given any direct legislative powers under the constitution but are made to loop up to the Federal and State Government for their sustenance, via statutory allocations as stated in section 7 (6) (a) & (b) and section 162 (5) (8) of the constitution FRN (Orifowomo: 189).

Furthermore, in getting these statutory allocations, a state government must first enact appropriate enabling law, which will determine the taxable persons, assessment procedure and method of collection, recovery and penalties for tax delinquency. And where such a law has been enacted, a local government council must exercise its power within the limits prescribed by the law; any exercise of power beyond the units allowed by the constitution or the enabling law according to the court in **Shell Petroleum Development Company of Nigeria Limited Vs Burutu Local Government Council (1989) 9 NWLR (Pt. 165) 318 C.A**, will be *ultra vires, null and void* (Sanni: 659).

However, notwithstanding the lack of clear taxing power for the local government in the Nigerian constitution, since section 7(1) of the Nigerian constitution guarantees the system of local government, for their sustainability and running of the local governments, the local government council is allowed to generate revenue through the levying of certain categories of rates to wit, the collection of radio and television licenses, establishment of cemeteries, burial grounds, licensing of bicycles, trunks, wheel barrows and carts, establishment, maintenance and regulation of slaughter house, slaughter slabs, motor park, naming of roads and streets, registration of births and deaths e.t.c. All these functions are specified in the fourth schedule of the Nigerian Constitution.

Attempt by some local governments in some years back, to impose a mobile advertisement tax for display of corporate names on vehicles failed as they were successfully challenged in court. In *S.D. V Nigeria Limited and Others v. Apapa Local Government Council* (Unreported, see The Guardian, 13th May, 2000 31) and Cornerstone Insurance Pic.

Vs. Surulere Local Government and Mushin Local Government ((Unreported) suit No. M/64/2001. In the latter case, the Court held that: “Having resolved that the Defendants do not have the constitutional power to impose the Mobile tax or rates on the Plaintiffs cars bearing its logo, those four questions posed in A, B, C and D endorsed on the 29um mons are resolved positively. Consequently, I hold that the Defendants lack the taxing powers to impose and collect Mobile Advertisement Tax Rates on the Plaintiff’s car which have been duly registered and licensed to ply all routes in the Federal Republic of Nigeria

Based on the foregoing, there appears to be lopsidedness in the distribution of taxing powers as well as revenue formula of the Nation, however it is instructive to point out that all tax revenues collected by the federal government are not wholly retained by it. Rather according to Sanni (2002), the taxes collected by the Federal Government are paid into the federation Account and distributed among the federal, states and local governments pursuant to section 162 (2) of the 1999 constitution.

In conclusion, the Federal Taxing power is more explicitly stated in the section 4 (2) of the constitution of the Federal Republic of Nigeria. And, the items outlined therein are called the Exclusive Legislative list. These lists are contained in the second schedule of the constitution. Not only that item 59 of the exclusive legislative list also vested powers on the federal government on some sorts of taxes pursuant to which the personal income tax, companies income tax and others are taxed.

Furthermore, this unit also exposes the fact that, states taxing powers basically are on the items in the concurrent list and others not clearly mentioned either in the Exclusive or current lists. In nut shell while the state taxing powers are open-ended that of the federal government can be specifically be enumerated.

In conclusion, the discussion in this unit also revealed that, though constitutionally, the local government can generate fund by itself but the third arms of government in Nigeria does not have any clear or concrete constitutional taxing power.

This is so because according to Section (2) of the CFRN, Nigeria shall be a federation consisting of states and a federal capital territory, which means that only the state and federal authorities can levy tax so to say.



2.4 Summary

We have in this unit, discussed

- The taxing powers of the three tiers of government in Nigeria

- Examined the taxing power status of the local government councils in Nigeria.



2.5 References/Further Readings/Web Resources

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2.6 Possible Answers to Self-Assessment Exercise(s)

Self-Assessment Exercise

- | |
|----------|
| 1. FALSE |
| 2. NO |

MODULE 3 PROBLEMS OF TAXATION IN NIGERIA

- Unit 1 Major Taxation Problems in Nigeria
- Unit 2 Solution to Taxation Problems in Nigeria

UNIT 1 MAJOR TAXATION PROBLEMS IN NIGERIA

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Major Taxation Problems in Nigeria
 - 1.3.1 Tax Avoidance
 - 1.3.2 Tax Evasion
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Possible Answers to Self-Assessment Exercise(s) within the Content



1.1 Introduction

So far, in this course, apart from the treatment of what tax is in this first unit of the module, in the second unit, we have also discussed the taxing powers under the Nigerian Tax System. From the two lessons, we have been able to appreciate the fact that Nigeria tax is a baby of tax legislations. Nothing can be categorized as tax except such is backed by the law of the land. Not only that, you must have also discovered in the last two lessons that, the Nigerian taxing powers are strictly and constitutionally shared amongst the federal and state tiers of government. For an efficient tax system, an assessable person must be identifiable; the amount of tax to be paid must be accurately determined by the tax authority, which also is in the position to collect the assessed tax. The assessed tax must also be paid by every taxpayer that a particular tax is targeted. (Lekan et al 2006: 59). That being the case, Nigerian income tax laws prescribed various legal instruments to enforce tax, such as distress, tax clearance certificate system, search and seizure (Adedokun 2010: 439). However, despite all these efforts geared towards tax compliance, the Nigerian tax system is still facing some problems which constitute barriers to the actualization of the aims and objectives of the Nigerian tax system in this 3rd unit of the course we shall discuss those barriers that constitute clogs to the proper taxation in Nigeria.

1.2 Learning Outcomes

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

- explain what constitute taxing problems in Nigeria
- identify reasons why people engage in tax evasion and Avoidance.

1.3 Major Taxation Problems in Nigeria

The issue of taxation problems in Nigeria is becoming worrisome. Despite series of effort to curb and or eliminate the problems, it is disheartening to note that the problems still persist. Up till now the tax payers are not willing to pay their tax voluntarily. Cases of both legal and illegal/means of escaping the payment of tax is still on the high side in Nigeria.

Both corporate and private individual are culprit when it comes to the issue of nonpayment of tax. For a clearer understanding of this topic, Nigerian problems of taxation will be divided into two broad categories, the principal/major problem, and others problems. The major taxation problem in Nigeria is the problem of tax avoidance and tax evasion.

Self-Assessment Exercises

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. Differentiate between tax avoidance and tax evasion.
2. Mention any four factors that encourage tax offences in Nigeria.

1.3.1 Tax Avoidance

The word, “tax avoidance” is never defined in the Nigerian tax legislation. However, in the words of Hornby (2001), tax avoidance can be described as ways of paying only smallest amount of tax that you legally have to.

In the Black’s Law Dictionary, tax avoidance is simply described as, the act of taking advantage of legally available tax planning opportunities in order to minimize one’s tax liability.

In the words of Nlerum (2010), tax avoidance is the ability of the tax payer and their consultants to reduce their tax liability by manipulating the provisions of tax law i.e the tax payer takes full advantages of all

exemptions, deductions, concessions, rebates, allowances and other tax reliefs or benefits permitted by law and arranges his affairs under the circumstances. She stated further that, avoidance of tax liability by so arranging commercial affairs that charge to tax is reduced is not prohibited but it is wrong.

Invariably, tax avoidance therefore, can be said to be the arrangement of tax payers affairs using the tax shelters in the tax laws, and avoiding tax traps in the tax laws, so as to pay less tax than he or she would otherwise pay. That is a person pays less tax than he ought to pay by taking advantages of loopholes in a tax levy. (Lekan et al. 2005:61).

From all aforesaid, tax avoidance can thus be said to be legal ways by which a tax payer can get relief through the payment of less amount he or she ought to have paid for the assessed tax period. The payer is not trying to escape payment but looking for ways of paying fewer amounts. Tax avoidance does not necessarily denote an activity that is in all cases obnoxious. Indeed, tax avoidance in some cases was considered to be legal.

The above position was maintained in the case of **IRC v Fisher's Executors (1962) A.C 395** wherein a limited company with large undistributed profits which has resolved to capitalize part of these profits and to distribute them pro rata among its ordinary shareholders as a bonus in the form of 5 per cent debentures stock, the whole aim being to prevent the shareholders from paying super tax on the bonus, it was held that the bonus paid in debenture stock was not income in the hands of the shareholders and was therefore not liable to super tax. In that case, Lord Summer said.

My lords, the highest authorities have always recognized that the subject is entitle so to arrange his affairs as not to attract taxes imposed by the crown so far as he can do so within the law, and that he may legitimately claim the advantage of any express terms or of any omissions that he can find in his favour in taxing acts. In so doing he neither comes under liability nor incurs blame....
(Ayua I.A 1996: 246-247).

It is worth noting that, the view in fisher's Executor's case was also followed in **Ayreshire Pullman Motor services and D.M Ritchie Vs IRC's case 14T.C 754** and in **Duke of west minister Vs IRC's case reported in (1934) 19 T.C 490 at 520**. In the words of Fullagar J in **Federal Commissioner of Taxation Vs Westgarth (1985) 18 (C.L.R) 396 at 414**, the word avoidance... involves, I think, no notion of escaping by any device or artifice, escaping through not being called upon to pay.

Caution must be exercised however to see tax avoidance as totally permissible or legal. Many judges on many occasions as pointed out in *Ayua* (1996) have pointed out that tax avoidance is not a commendable exercise, that indeed it is an evil exercise which should be prevented. In the case of **Latilla vs IRC**, Viscount Simon L.C said

My lords, of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy while receiving the equivalent of such income without sharing the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopt them are “entitled” to do so. There is of course, no doubt that they are within their legal rights, but that is no reason why their effects should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeed, is of course to increase *pro tanto* the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how to adopt those maneuvers.

Sir Wilfred Green M.R also concurred with this statement when he said in the case of *Lord Howard de Walden vs IRC* (1942) I K.B 389 that

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

In some other cases, i.e the case of **Finsbury Securities vs IRC** (1965) 43 TC 59, per Lord Denning, **JP Harrison Warford Ltd vs Griffiths** (1961) 40 T.C 281 per Upjohn L.J; **Reeves vs Evans Boyse and Northcolt Syndicate** (1971) 48 T.C 495 at 513 per Megarry J, judges also condemned the act of avoiding tax payment.

a. Forms of tax avoidance in Nigeria

According to Nlerum (2010), people have continued to evade and avoid tax because of a number of reasons which include unbearable high tax rates, lack of faith in the ability of government to use tax money well, total ignorance of the law, absence of any visible benefit accruing to the taxpayers, inefficiency of tax administration, ridiculous low penalties

and outright unwillingness to contribute towards the upkeep of one's society.

Not only that, the under listed is amongst the ways by which tax is avoided by the Nigerian tax payers.

- i. Incorporating the tax payer's sole proprietor or partnership into a limited liability company.
- ii. The ability to claim allowances and reliefs that are available in tax laws in order to reduce the amount of income or profit to be charged to tax.
- iii. Minimizing the incidence of high taxation by the acquisition of a business concern which has sustained heavy loss so as to set off the loss against future profits.
- iv. Minimising tax liability by investing in capital asset (for instance through the new form of corporate financing by equipment leasing), and thus sheltering some of the tax payers' income from taxation through capital allowance claims.
- v. Sheltering part of the company's taxable income from income tax by capitalizing profit through the issue of bonus shares to the existing members at the (deductible) expenses to the company.
- vi. Creation of a trust settlement for the benefit of children or other relation in order to manipulate the marginal tax rate such that a high income bracket tax payer reduces his tax liability. Converting what would ordinarily accrue to the tax payer (employee) as income into capital gain (i.e compensation for loss of office) the advantage of the employer and employee manipulation of charitable organizations whose affairs are controlled and dominated by its founders thus taking advantage of income tax exemption.
- vii. Buying an article manufactured in Nigeria thereby avoiding import duty on imported articles
- viii. Avoiding the consumption of the articles with indirect taxes incorporated in their prices e.g tobacco (Lekan et al: 2005: 61-62).

1.3.2 Tax Evasion

Just like avoidance, the Nigerian Tax statutes are also silent on the definition of tax evasion. Therefore, to have a working definition of what constitute evasion, efforts of text book authors and case law will be used.

Tax evasion according to Ayua I.A (1996) is the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns or failure to make a return or even failure to pay tax on time.

In the words of Nlerum (2010), tax evasion can be described as the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns. In Nigeria, the incidences of tax evasion are manifested by the glaring fraudulent concealment of income through false entries and failure to keep records of accounts.

From the forgoing, one deductible view about tax evasion is that, it is a criminal way of avoiding tax. It is illegal, morally and criminally punished. Tax evasion is not only morally wrong but also it involves a breach of the tax law.

According to Abdulrazaq (1993), tax evasion is a contravention of the tax laws, whereby a taxable individual or company neglects to pay the tax due, or reduces the tax liability by making fraudulent or untrue claims on the income tax form. In other words, tax evasion is a deliberate and willful practice of not disclosing full taxable income so as to pay less tax. (Lekan et al: 2005:60.

In Hornby (2001), tax evasion is described as the crime of deliberately not paying all the taxes that you should pay. In the same vein, the Black's Law Dictionary described tax evasion as the willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability. Tax evasion is punishable by both civil and criminal penalties.

In the case of **Simms vs Registrar of probates (1900) A.C 34** Lord Hobhouse in determining the question of what tax evasion is I said "... Everybody agrees that the word is capable of being used in two senses, one which suggests underhand dealing, and another which means nothing more than the international avoidance of something disagreeable".

In addition, in the case of **Ballen vs Wisconsin (1916) 240 U.S 625** the court on tax evasion observed that when an act is condemned as an evasion, what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law. The simple meaning of this is that, once tax offence is evasion, it is an offence against law and the state unlike avoidance which is not an offence per se. In the words of the court in **Akinsete syndicate vs Senior Inspector of income tax F.S.C 164/63 30/10/64 unreported**. "a person may use lawful means to avoid income tax" what he may not do is to try to evade it. What he does should be genuine not merely a veil to hide or dissemble the reality of things. According to Abdulrazaq (1999), the basic ingredient in tax evasion is mensrea and absence of any credible explanation for fraud, willful default or neglect. This was exactly what the court said in **Barrip vs Commissioner of Taxation (N.S.W)**

(1941) Australian income tax report (A.I.T.R) that it is sufficient for the purpose of the appeal to say that where a tax payer makes a profit which he knows to be taxable income, and willfully omits this profit from his income tax return, he would be guilty of evasion in the absence of some satisfactory explanation for the omission.

a. Forms of Tax Evasion.

Tax is evaded through different methods, amongst which according to Lekan et al (2005) are:

- i. Refusing to register with the relevant tax authority.
- ii. Failure to furnish a return, statement or information or keep records required.
- iii. Making an incorrect return by omitting or understanding any income liable to tax refusing or neglecting to pay tax.
- iv. Over standing of expenses so as to reduce taxable profit or income which will also lead to payment of less tax than otherwise have been paid.
- v. A tax payer hides away totally without any tax returns at all.

In a nutshell tax evasion is perpetuated if the tax payer fails to make return for income tax or capital gain tax or if he fails to make return for cooperate tax, and if he makes incorrect return or accounts. And, the various acts must be done with fraud, willful default or neglect and knowingly for them to constitute the offence of tax evasion as contained in Companies Income Tax Act (CITA) and Personal Income Tax Act (PITA) (Abdulrazaq 1999:3). Other forms of tax evasion are:

- i. Failure to furnish a return, statement or information or to keep record required as contained in P.I.T.A 1961, s.54, CITA 1979, s.66, I.T.M.A 1961 s.30.
- ii. Making an incorrect return by omitting or understanding any income liable to tax as contained in P.I.T.A 1961 s.55, CiTA 1979 s.67.
- iii. Giving any incorrect information in relation to any matter or thing affecting the liability to tax as written in P.I.T.A1961, s.55, CiTA 1979, s.6.7
- iv. Refusing or neglecting to pay as written in P.I.T.A 1961s.56 CITA 1979 s.68.

It should be noted that in developed and developing countries alike, business owners, government workers, service providers, and host of other organizations are forced by the authorities to pay their taxes. This has been the case down the human history, but no one can escape from the tax of the country. that is why in his interesting statement *Benjamin Franklin* argued that, “nothing is certain except death and taxes”. This statement implies that every citizen should be subjected to the law of tax, and they are obliged to pay the tax from their income. However, there are several factors that may precipitate tax avoidance and tax

evasion among taxpayer especially in developing economy like Nigeria. These include:

i. Tax knowledge

Tax knowledge is very crucial for taxpayers to know the cause and effect of engaging in tax evasion. If tax payers are well informed about tax evasion, their participation in tax evasion would be infrequent; the reverse is true for a taxpayer who is not well informed. Tax-related information should give more emphasis to enhance the knowledge of taxpayers and experts of the authority (Poudel, 2017)

ii. Tax morale

This is a principle and a duty of taxpayers by paying the expected amount of tax to the tax authorities without the enforcement or coercion. It is an intrinsic motivation of payers paying the tax (Sadjiarto et al., 2020). When taxpayers have low tax morals, they will become negligent and engage in tax avoidance or even tax evasion, (Alm & Torgler, 2006; Frey & Oberholzer-Gee, 1997; Torgler et al., 2008). Tax officials can destroy or boost taxpayers' morals towards the payment of tax. According to Feld and Frey (2007), when tax officials are responsible and provide respect in their duties toward taxpayers, tax morale or the honesty of taxpayers will increase. Tax morals may be affected by a demographic and another factor like income level, marital status, and religion (Rantelangi & Majid, 2018).

iii. Tax fairness/equity

Tax fairness is a non-economic factor that determines the success of a tax system in tax (Alkhatib et al., 2019). It is known that the tax collection procedures, principles, and implementation must be fair. Unethical behavior may happen due to the unfairness of the tax collection process. The fairness of tax may influence payers positively to pay the tax. Accordingly, when the tax rate is not reasonable and fair, the payers will think less of engaging in the tax evasion but they will disclose to the authorities their annual income without denying the exact amount.

iv. Subjective norms

This is another factor that influences taxpayers to engage in tax evasion. This refers to the attitude towards the behavior of taxpayers. Attitude is a means of evaluating the activities whether they are positive or negative of any object. Many studies have been done by different scholars by defining and identifying the relationship between the attitudes of taxpayers with tax evasion (Alleyne & Harris, 2017). If the attitude of taxpayers towards taxation is negative, they will be reluctant to pay their obligation to the authority; the reverse is true when taxpayers have positive attitudes towards taxation (Abera, 2019)

(Alleyne & Harris, 2017; Rantelangi & Majid, 2018)

There are other factors such as significant effect on taxpayers to engage in tax evasion practice such as compliance costs, tax system, moral obligation, capital intensity, leverage, fiscal loss, compensation, profitability, contextual tax awareness, interest rate, inflation, average tax rate, gender, and ethical tax awareness on tax evasion (Annan et al., 2014; AlAdham et al., 2016; Putra et al., 2018).

From all the aforesaid in this unit, it is clear that Nigerian Tax System is facing some problems which constantly hindered the realization of actual projected revenue from payment of tax. Majorly among these problems are tax evasion and tax avoidance which we have discussed herein.



1.4 Summary

We have in this unit discussed

- i. Major Taxation problems in Nigeria.
- ii. Constitution of tax evasion and Tax avoidance .
- iii. Reasons and strategies for tax evasion and tax avoidance in Nigeria.
- iv. Efforts in checking tax evasion and tax avoidance in Nigeria.



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1.6 Possible Answers to Self-Assessment Exercise(s)

Self-Assessment Exercise

1. Tax avoidance is the act of utilizing the loopholes and provisions in the tax statutes by taxpayers to pay less amount than ordinarily should pay, while tax evasion is a criminal way of avoiding the payment of tax or paying less amount than required by the law. Unlike tax avoidance, tax evasion is at all times unlawful.
2. Factors that encourage tax offences in Nigeria are:
 - i. Corruption
 - ii. Low remuneration of tax officers
 - iii. Poverty
 - iv. Ignorant
 - v. Low penalty for offenders

UNIT 2 SOLUTION TO TAXATION PROBLEMS IN NIGERIA

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Other Categories of Taxation Problems in Nigeria
 - 2.3.1 Problem of Assessment
 - 2.3.2 Lack of adequate professionals in the Nigerian tax administration
 - 2.3.3 Lack of Good Record Keeping
 - 2.3.4 Lack of capacity and poor working incentives
 - 2.3.5 Cumbersome process of payment and inadequate penalties for tax defaulters
 - 2.3.6 Ambiguity in the language of Nigerian tax laws
 - 2.3.7 Ignorance on the part of tax payers and tax man
- 2.4 Solution to Taxation Problems in Nigeria
- 2.5 Summary
- 2.6 References/Further Readings/Web Sources
- 2.7 Possible Answers to Self-Assessment Exercise(s)



2.1 Introduction

Though tax evasion and tax avoidance are the major clogs to proper taxation in the contemporary Nigeria, however, this does not mean that, there are no other factors debarring proper taxation in Nigeria. While tax evasion and avoidance constitute the major problems, there are many other socio-economic clogs to the proper taxation of banking business in Nigeria.



2.2 Learning Outcomes

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

- identify other problems of taxation in Nigeria
- identify how taxing problem negatively affect tax projection in Nigeria
- proffer probable solutions to the problems.

2.3 Other Problems of Taxation in Nigeria

Apart from tax evasion and avoidance, proper taxation in Nigeria is also hindered by social, cultural, economic, religious, political and administrative reasons. Apart from low income level of most of

Nigerians which makes it impossible for them to adequately cater for ever their immediate need talk less of having extra to pay as tax, the Nigeria tax system also faced problems which includes.

... excessive corruption on the part of government officials, problems of assessment collection and enforcement of tax, administrative incompetence on the part of tax authorities, general dishonesty among Nigerians, low political culture, ignorance, unfairness of the tax system, lack of regard for equity, law and justice, historical and unpatriotism. (M.T. Abdulrazaq: 1999:31).

There are also other problems inherent in the Nigerian tax system such as unavailability of tax statistics; failure to prioritize tax efforts; tax administration is poor; tax multiplicity; regulatory challenges; structural problems in the economy; underground economy and complexity of the tax laws.

For clearer understanding, let us examine some of these problems one by one.

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. Giving adequate tax education and enlightenment vast part of Tax problem in Nigeria could be solved. TRUE or FALSE.
2. Solution efforts to taxation problems in Nigeria are categorized into - and -

2.3.1 Problems of Assessment

There are two legs to this problem to wit, problem of identification of the person to be assessed and problem of identifying income for tax purpose.

Due to the poor rate of voluntary compliance, and very low degree of honesty among Nigerian tax payers, most taxable persons hide from tax authorities and if possible would give fake address to conceal their identify. (Lekan et al (2005:63).

Worst still, since most of our urban centers are not planned and that street names and numbers are either not existing or difficult to find give ready excuse to the unwilling postman to trace tax payers and deliver letters to them. According to Oladunjoye (1991) many businessmen and women do successful business without any registration or any fixed addresses. Added to this is the fact that a lot of business transactions

involving money are not documented either for fraudulent reasons or for tax purposes.

Furthermore, where the identity of the tax payer is not the problem, the problem may be that of income identification. Finding of income is one of the difficulty aspects of the tax man's work because once the income is known the correct assessment is an easy task. In Nigeria however some tax payer constantly flout notice to file return of income thereby concealing or dodging the burden of tax and concealing income yielding transactions. The resultant effect of this is that the tax man would be left with no other option than mere estimation of tax payers' income; which may not be accurate.

2.3.2 Lack of Professionals in the Nigerian Tax Administration

Experience and competent personnel are rear in the field of tax administration in Nigeria. A lot of people avoid the area of tax law, and some of those who claim to be experts are not doing the job excellently. Sometimes they assist tax payers in what is called tax engineering which leads to tax avoidance and evasion (Nlerum: 2010:6) Not only that, in some state, the Board of Internal Revenue is poorly staffed and the image of tax man in Nigeria, is that of a corrupt person (Lekan et al).

2.3.3 Lack of Good Record Keeping

A common problem with both public and private individuals in Nigeria is lack of good record keeping. A lot of businesses do not keep good records and they do this a time to escape the payment of tax.

Most of the Nigerian tax payers have a very bad attitude to tax payment. In fact, most people do not know it is part of their civil duties or responsibilities to pay tax and except a few enlightened individuals, corporate organizations and salaried employees whose income are subjected to tax many adult Nigerians are not inclined to the payment of tax.

2.3.4 Lack of Capacity and Poor Working Incentives

There is insufficient number of personnel engaged as tax authority officials coupled with poor remuneration and orientation of inadequate services and corrupt practices resulting to paid taxes sometimes ending up in private pockets and ultimately resulting in a variance between actual amount paid and amount receipted, therefore, there is the need for training of staff, computerization of tax offices, introduction of on-line payment, creation of fee-back forum, sustained and increased level of public enlightenment and better welfare system for staff (Nlerum: 6) .

2.3.5 Cumbersome Process of Payment and Inadequate Penalties for tax Defaulters

The procedures of tax payment in Nigeria are too cumbersome. Due to this, many Nigerians who are not patient enough especially where there are no pressing needs for tax clearance certificate often end up not paying the tax half way or a times bribe the tax officials to get clearance. Despite this the inadequate penalties for tax offenders finally made nonsense of the whole exercise. Most of the penalties for tax offences in Nigeria are not strict enough to enforce compliance.

2.3.6 Ambiguity in the language of tax statutes

An examination of the language of some of the Nigerian tax statutes reveals that some of the provisions are confusing, even to the professionals. Identifying tax liability and valuation is not an easy task. Many of the supposed tax payers understand nothing about the rules under which they are to pay or the range of deductible expenses and allowances available to them. As such, they have difficulty ascertaining and disclosing their taxable income. This difficulty is even worsened by the unpopular nature of tax payment and the reluctant attitude of some people to reading. Provisions of tax statutes should be made simpler and clearer for better understanding and tax law reforms must focus on simplifying tax statute provisions. (Nlerum).

Generally, the level of awareness of many Nigeria on their civic responsibility is very low. The belief many tax payer is that the tax money is going to the government to settle civil servant salaries or at worst for embezzlement and since most government in Nigeria too are not performing the tendency and urge of more people on this fallacy is rife. Therefore, people refuse to pay their tax and the resultant effect is the low tax generation in the Nigerian tax system.

2.3.7 Ignorance on the part of tax payers and tax man

In Nigeria, most of the tax payers are ignorant of tax laws and the Nigerian tax man is not ready to enlighten the payers in whatever form, instead what they are ready to do is forceful enforcement. This and many other factors make tax payers see tax and tax authorities as a plaque to be avoided.

2.3.8 Increase in Demand to Grow Internal Generated Revenue

There is a constant increase in demand to grow more revenue within States in Nigeria. This has resulted in the exercise of Taxation to detriment of Taxpayers. Taxpayers have to bear higher tax burden

because Government wants to have more revenue to meet social needs of the Citizens.

2.3.9 Lack of Adequate Information

There is not enough relevant information available to Tax Payers in Nigeria. This includes information in the area of Tax Compliance, Rules and Guidelines, which can cause uncertainty and cause great Leakages in the Taxation System

2.4 Solutions to Taxation Problems in Nigeria.

a. Statutory Solutions

The statutory effort in checking and possibly halting tax avoidance is outlined in the Section 17 of the Personal Income Tax Act with corresponding provision on when undistributed profits may be treated as distributed in Section 21 of the Companies Income Tax Act. According to section 17(1) PITA:

Where a tax authority is of opinion that any disposition is not in fact given effect to, or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the disposition or direct that such adjustment shall be made as regards the income of an individual, an executor or a trustee, as the tax authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction.

In brief, the Nigerian general anti avoidance provision operates on two limbs, namely, if tax authority is of opinion that any disposition is not in fact given effect to or if a tax authority is also of the opinion that any transaction which reduces or would reduce the amount of tax payable is artificial or fictitious (Abdulrazaq:2002: 678 - 679).

b. Other Solutions

The under listed can serve as solutions to the problems of taxation in Nigeria.

1. Total overhauling of the Nigerian Tax System
2. Strict enforcement of the presentation of tax clearance for any business transaction with the government.
3. Strict penalties both civil and criminal to any tax evaders.
4. Adequate and constant education and mobilization of the tax payer on the need for prompt payment of their tax. There is serious need for proper information to educate the taxpayers in Nigeria about Taxation. In this case, there should be Radio and Television Programmes in Nigeria, educating people about the

- benefits of Taxation, and the penalties that failure to pay tax may attract. This Educative Programmes is to inform Nigerian Citizens, that there is mandatory obligation and duty to pay Tax.
5. The use of alternative dispute resolution mechanism in achieving peaceful settlement/compliance of the payment of tax.
 6. The use of less aggressive and rigid enforcement procedure by tax authorities because this is making the tax payers to be less willing to comply with tax laws (Adedokun: 2010:147)
 7. Continuous review of Tax legislations: There is need for continue reviewing of tax policies in Nigeria. This is to meet the standard of ensuring that economic realities are met. For example, Nigeria have found ways to enhance the proper administration for collection of revenue in Nigeria. There are recent reforms like TIN, unique *Taxpayers' Identification number*, which was effective in February 2018, and other Taxation scheme called *Voluntary Asset and Income Declaration Schemes*. *All these will help to reduce the incidence of Tax touts, enforcement schemes i.e. Special Purpose Tax Officers. It will also to secure and ensure compliance in payment of tax in Nigeria.*

In conclusion, basically tax evasion and avoidance, problem of assessment, lack of competent tax man, bad attitude of Nigerians to tax system, lack of adequate penalty for tax offence, ambiguity in the Nigerian Tax statutes language etc are some of the problem facing proper taxation in Nigeria. The aftermath of all these problems is the constant failure in the Nigerian tax policy and no noticeable benefit to Nigerians from the tax revenue.

It has also been discussed in this unit that lack of interest of the Nigerian tax payer which culminated in shying aware from performing their civic responsibility also hinder greatly the getting of apt and correct tax assessment and the best a tax man can do is to use an estimated assessment's strategy which in most cases faulty and not accurate.

To create an efficient taxation system therefore, a nation like Nigeria must make clear and definite choices regarding the distribution of tax burden-who will pay taxes, how much they will pay and how taxes collected will be spent (Nlerum: 2010:13).



2.5 Summary

We have in this unit discussed:

- i. Other categories of taxation clogs i.e problem of assessment, lack of competent hands in the Nigerian tax management, bad attitude to the payment of tax by Nigerians, lack of adequate tax law to curb tax offences and ambiguities in the tax law languages.
- ii. Reasons and strategies for tax evasion and tax avoidance in Nigeria.
- iii. Solutions to taxation problems in Nigeria.
- iv. Efforts in checking tax evasion and tax avoidance in Nigeria.



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2.7 Possible Answers to Self-Assessment Exercise(s)

Self-Assessment Exercise

- | |
|-------------------------|
| 1. TRUE |
| 2. Statutory and others |

MODULE 4 DUTIES IMPOSED BY GOVERNMENT

Unit 1	Stamp Duties
Unit 2	Other Categories of Duties
Unit 3	Tax Incentives
Unit 4	The Case of Nigeria with Tax Incentives

UNIT 1 STAMP DUTIES

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Stamp Duties
 - 1.3.1 Definition of Stamp Duties
 - 1.3.2 Administration and General Nature of Stamp Duties
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.7 Possible Answers to Self-Assessment Exercise(s) within the Content



1.1 Introduction

A duty is a tax you pay on things that you buy especially those that you bring into a country (Hornby: 2000:364). In Nigeria, categories of duties that can be imposed by the government are stated in the second schedule to the constitution of the Federal Republic of Nigeria, (1999). The duties are Custom and Excise Duties, items 16, Export Duties, item 25, and Stamp Duties which is the 58th items on the Exclusive Legislative List.

In this unit, the duties that government can impose under the Nigerian law will be examined. Not only that, the essence and reason for the imposition of those duties will also be discussed.



1.2 Learning Outcomes

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

- explain what stamp duties are
- list the categories of items subject to Stamp Duties
- categorize Items Exempted from Stamp Duties
- explain stamp Duties Commissioner and its duty.



1.3 Stamp Duties

1.3.1 Definition of Stamp Duties

Stamp duties are one of the oldest taxes (M.T Abdulrazaq). They are taxes paid to the federal or state government on documents for the purpose of conferment of legal approval or authority. Stamp duties may be specific or *advalorem* taxes imposed upon instruments otherwise called written document. (Lekan et al).

According to Ola C. S (1981), stamp means as well as a stamp impressed by means of a die, as an adhesive stamp for denoting any duty or fee. Simply put, stamp duties are taxes paid in perfecting documents. Apart from the fact that, stamp duties are one of the oldest taxes, it is specific or “*advalorem*” taxes imposed upon instruments otherwise called written documents (Lekan et al: 2006: 639). Stamp duties are an everyday affair yet little or no attention is paid to its details which are very important for the day to day running of most business (M.T. Abdulrazaq, 2002: 568).

Stamp duties are strictly taxes on documents and not on transactions or personal tax. It is a tax that is governed by the Stamp Duties Act 1939 as amended by numerous acts that followed. Stamp duties is one of the most important ways of making legal document acceptable in the criminal proceeding, evidence relating to document cannot be given in the Nigerian criminal proceeding except when same is duly stamped

From the foregoing, a deductible definition of stamp duty is that it is a form of tax levied on legal document in order to have legal recognition. In nutshell, stamp duty is simply a tax on legal document in pursuant to the perfection of such document.

Self – Assessment Exercise 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

How many parts does Stamp Duties Act have?

1.3.2 Administration and General Nature of Stamp Duties

Historically, stamp duties were originally introduced in 1694 in England (M.T Abdulrazaq). However, in Nigeria today, a stamp duty is administered by the provisions of stamp Duties Act CAP 411 LFN 1990

and it is managed by the commissioners of stamp duties. The process of determining formally the correct duty is by adjudication and to achieve this, the instrument must be sent to the commissioner of stamp Duties for adjudication. (M.T Abdulrazaq: 2002:569).

In the stamp Duties administration in Nigeria, going by the provision of Section 4(1)(2) of the Stamp Duties Act, the power is vested on both the Federal as well as the State government. In the wordings of the Act;

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

According to the court in the case of **A.G. vs Camplough (1878) 3 ex 214**. The law of stamp duties is governed solely by statute and no document can be charged with stamp duty unless it comes within the clear words of an Act Parliament. (M.T. Abdulrazaq)

The stamp Duties Act is divided into three parts. Part 1 consists of a number of general provisions and contains the charging section, which imposes a stamp duties specified in the schedule on the Act on the documents set out in the schedule. These are arranged in alphabetical order and are called the heads of charge. Each head of charge may be divided into several sub heads. Part II consists of a number of explanatory sections which relates to and supplements the various heads of charge. Part III contains supplementary provisions relating to stamp duties. The duties specified in the schedule are of two kinds, fixed and *anvalorem*. Fixed duties do not vary with the consideration for the document whereas the *ad valorem* duties vary with the amount of the consideration and in accordance with the scales stated in the schedule as amended by subsequently Acts (Abdulrazaq: 2002:569).

In Nigeria, as earlier said, Stamp Duties is levied by both state and Federal Government. All the federation Units (states) as well as the central Government are empower by law to establish their own stamp duties office and appoint their own commissioner who will be in charge of proper execution of stamp duties issues and according to sec. 6 SDA cap 411 LFN 1990 such commissioner is to be appointed by the relevant civil service commission.

a. Categories of items subject to Stamp Duties

The under listed items are liable to stamp duties before becoming effective as a legal instrument.

- i. Letters of power of Attorney
 - ii. Leases
 - iii. Bank Notes, promissory Notes and Bills of exchange
 - iv. Bills of Landing
 - v. Conveyances on sale vi. Duplicate and Counterparts
 - vii. Mortgages
- Other as outlined in Lekan et al is:
- viii. Agreements
 - ix. Appraisement
 - x. Instrument of Apprenticeship
 - xi. Contract Notes
 - xii. Other conveyances
 - xiii. Exchange, partition or Division xiv. Marketable Securities
 - xv. Notarial Acts
 - xvi. Policies of Insurance
 - xvii. Receipts
 - xviii. Settlements
 - xix. Share Warrants
 - xx. Warrants for Goods; and
 - xxi. Capital of Companies

b. Categories of Items Exempted from Stamp Duties

In Lekan et al (200: 641-642), the items that are exempted from stamp Duties were examined; the items include:

i) Liquidation sales /Transactions.

Where liquidation is under a compulsory winding up order by a court or a creditor's voluntary winding section 513 of company and Allied Matter Act 1990 provides exemption from stamp duties

- Any assurance (which includes any deed, conveyance, discharge, assignment or surrender).
- Mortgage, charge or other encumbrance on any property forming part of the assets of the company to be liquidated.
- Power of attorney, or order in respect of the company's property. A property sold by a liquidated is exempted

ii) Treaties/Agreements.

Treaties/Agreement made either between the Federal Government and other Foreign Government or foreign private Corporations/international organizations are exempt from stamp duty.

iii). Company Reconstruction and Amalgamation.

Section 104 of this Stamp Duties Act exempts instruments in reconstructions and amalgamations. These include such instruments as a

conveyance or transfer of sale assigning debts whether secured or unsecured. However, the exemption does not cover debts (a part from debts due to banks or trade creditors) incurred less than two years before the proper time for making a claim of exemption. Section 102 provides that a loan capital shall be exempted from stamp duty if paid in respect of a mortgage or marketable security on any trust deed or other document securing such a loan capital iv) Section 70 of SDA exempt instruments providing for penal rent or increased rent in the nature of a penal rent.

- v) Receipts issued for the payment of any government duties or taxes or of money for government are exempt.
- vi) A letter of credit granted in Nigeria or amount drafts to be drawn in Nigeria for payment outside Nigeria is also exempted.

Self – Assessment Exercise 2

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. List any five of the functions of the commissioner for stamp Duties.
2. What is the essence of adjudication?

c. Stamp Duties Commissioner and its duty

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

- a) Stamping room where documents are embossed.
- b) Cash office where duties are paid and books are balanced on daily basis.
- c) The archive where copies of stamp documents are kept for future (Lekan et al: 2006:641).

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

- a. Assessments and fixing of appropriate duties and rates on document
- b. Stamping or embossments which may be by way of embossment with dies, affixing adhesive stamps, affixing postage stamps in lieu of adhesive stamps and printing on the instrument.
- c. The stamp duties commissioner is also charged with the custodian of dies and adhesive stamps use in stamping instruments in other to guide against its loss or misuse.
- d. Sometimes a commissioner may be required to express option on the amount of duty to be paid on any executed instrument and

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

i Collection and Assessment of Stamp Duties.

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

ii Stamp Adjudication

The special nature of stamp duties according to Abdulrasaq is illustrated by the adjudication process which enables the correct amount of duty to be determined – usually conclusively by the commissioners. Any person may require the commissioners to express their opinion on the liability to duty or to amount due. Following such an option the instrument may be stamped with the amount of duty determined and further stamped or with a stamp to show that it is not chargeable. There is however, no obligation to pay that duty and generally the only consequence is that the document is not adjudicated and duly stamped.

A taxpayer reserves the right to seek the opinion of the Commissioner of stamp duties as to the amount of duty chargeable or payable on his instrument. When a person seeks the opinion of the Commissioner as to the amount of the duty chargeable, he is making an application for adjudication. Any taxpayer may require the Commissioner to express his opinion on the liability to the duty or the actual amount due, and as far as the opinion is duly expressed, the instrument may then be stamped with the amount determined.

Where the instrument is not chargeable to duty, a stamp to show that no duty is charged must be impressed on such instrument to prove its acceptability in court or otherwise. For that purpose, applicants have to furnish the facts and circumstances affecting the amount of stamp duty chargeable together with hard copies of the instrument and other supporting documents. The duty assessment is made according to the

rates provided under the laws which may be revised from time to time by a resolution of the National Assembly.

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

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

Any issue arisen from adjudication; it is the High Court that has the jurisdiction to entertain same. And this will be by way of case stated after adjudication and payment of the duty. The appeal must be made within 21 days of assessment. The commissioners of stamp Duties must state a case and deliver it to the appellant who may then within seven days' file it at the High Court (M.T. Abdulrasaq; 2002:577). According to the count in **Holimeigh (Holdings) ltd vs IRC (1958) 46TC, 435**, oral evidence is admissible to supplement & the case stated. Not only that the court in **Clarke Chapman Tolin Thompson ltd vs IRC (1976)** and **Western United investment Co Ltd. Vs IRC (1958 ch 392)** held that if the appeal is successful overpaid duty can be repaid with such interest as the court determine.

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

d. Legal Status of Instrument not properly stamped.

The failure to stamp a document (unlike a failure to pay income tax) is not an offence and in general, the state cannot sue for duty on an unstamped instrument. Isaacs J in **Dent vs Moore (1919) CLR316 at 324** held that an instrument which is not properly stamp is nevertheless effective. However, the stamp duty Acts provide a number of sanctions against no-stamping (M.T. Abdulrazaq: 200: 578)

According to section 22 Stamp Duties Act an instrument which is not duly stamped in accordance with the law in force at the time when it was first executed “shall not except in criminal proceedings, be tendered in evidence or be available for any purpose whatsoever”.

In other words, the prohibition on admissibility does not extend to criminal proceedings, nor apparently to rent tribunals, since these are not court of law (M.T. Abdulrazaq) and as was held in **Mason vs Motor Traction co (1905)1 Ch 419**.

Through failure to stamp an instrument is not a criminal offence but SDA provides a penalty for late stamping. (M.T. Abdulrazaq). Not only that going by sec24 SDA, if any person whose office is to enroll register or enter in, or enters any such instrument not being duty stamped, he shall incur a fine (C.S. Ola).

According to M.T. Abdulrazaq (2002) on penalties for late stamping, the general rule SDA 5.23 (1) is that the person presenting the instrument for stamping after the date of execution must pay the unpaid duty, penalty of ₦20 and a further penalty, if the unpaid duty exceeds ₦20 of interest on such duty at 10% per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty. (M.T. Abdulrazaq: 2002: 579).

Pursuant to Section 9 of the Stamp Duties Act, a fine of ₦40 is chargeable if a person executes an instrument in which partial facts affecting the liability to or amount of duty were not disclosed especially if it was with an intention to defraud the state.

e. Some Challenges in The Administration of Stamp Duties Act

In the administration of Stamp Duties Act, certain challenges are usually encountered. These include the following:

- i. Regarding the appointment of a Stamp Duty Commissioner, the Act did not specify the qualification requirement of a person that can be appointed to the office. This office requires an officer that is experienced in the field of taxation to be able to adjudicate on an instrument presented effectively.

- ii. The Stamp Duties Act did not provide for enforcement of the non-admissibility of unstamped instruments despite the admissibility in principle. There is no sanction on those that violate the principle or on those that accept unstamped instruments.
- iii. Fake stamped documents are still being accepted for registration without recourse to verification from the Tax Revenue Authorities.
- iv. Section 22(1) of Stamp Duties Act requires judges, magistrates, arbitrators or referees to take notice of whether any instrument tendered before it has been duly stamped as required by law, but in practice, such has not been done without any consequences.
- v. The Stamp Duties Act is obsolete in context and content. A careful study of the sanction, penalty, fines and interest payable under the Act shows that they are ridiculously low and do not reflect the current economic realities and the policy direction of the government.
- vi. The rates of Stamp Duties on some instruments are also too low and have led to a reduction in the needed tax revenue by the government.
- vii. The Stamp Duties Act did not make provision for clear guidelines on matters of residency. For example, where an instrument is executed by a person that resides in more than one state, the Act is unclear about which tax authority he is to pay to.
- viii. There is a serious lack of awareness by taxpayers on the instruments that are subject to Stamp Duties and their respective rates in Nigeria.

In conclusion, though not as pronounced as the other forms of taxes, but from the discussion in this unit, it is clear that stamp duties are also a tax and its essence can never be overemphasised. Stamp duties are not a tax on transaction or personal tax, but a tax on document. Issues on stamp duties are governed by the Stamp Duties Act 1993 as amended.

Whilst is the duty of commissioner to adjudicate on what constitute the stamp duties but any issue that arisen from adjudication strictly lies to the High Court in essence it is the High Court that has the jurisdiction to hear appeal from stamp duties matter.

It has also been established in this unit that, though the law required ones to stamp some categories of legal document but failure to stamp them properly still does not makes them ineffective because, failure to stamp a document is not a criminal offence but if any person saddle with the responsibility of enroll, register or enter such instrument do so without stamp, he shall incur a fine.



1.4 Summary

We have in this unit discussed:

- i. What stamp Duties is
- ii. Categories of items that qualify for stamp duties and the ones not qualify.
- iii. How stamp duties is levied
- iv. Legal effect of a document not properly stamped.



1.5 References/Further Readings/Web Resources

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

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

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

Paul, Minn (1999). *Black’s law Dictionary (7th ed..)*, West Group, St Paul Minn.

1. Critically examine the jurisdictional competency of state stamp duties office in the adjudication of instrument that relates to matters executed between a company and an individual taking cognizance the provision of section 4 (1) (2) stamp Duties Act.
2. With a well plan strategy of enforcement, both Custom and excise duties and export duties can be a good sources of fund to government through tax-Discuss

**1.6 Possible Answers to Self-Assessment Exercise(s)****SAE 1**

Three

SAE 2

1. Administratively, the functions of Commissioner of Stamp Duties are basically, to ensure the proper functioning of the SDA office by ensuring that:
 - i. Stamping room where documents are embossed.
 - ii. Cash office where duties are paid and books are balanced on daily basis.
 - iii. The archive where copies of stamp documents are kept for future

Technically his functions include:

- i. Assessments and fixing of appropriate duties and rates on documents
 - ii. Stamping or embossments of instrument.
 - iii. Being the custodian of dies and adhesive stamps used in stamping
2. The adjudication process enables the correct amount of duty to be determined – usually conclusively by the commissioners

UNIT 2 OTHER CATEGORIES OF DUTIES

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Other Categories of Duties
 - 2.3.1 Customs and Excise Duties
 - 2.3.2 Import and Export Duties
- 2.4 Summary
- 2.5 References/Further Readings/Web Resources
- 2.6 Possible Answers to Self-Assessment Exercises



2.1 Introduction

Apart from Stamp duties which can be legislated upon by both state as well as the federal legislatures, other duties are exclusive for the federal government. And even on the stamp duties, it is only the execution of personal instruments that can be legislated upon by the state government, while federal government legislates on stamp duties executed by Corporate and residence of the federal capital territory, Abuja. Even though not highly pronounced, duties are one of the modest but constant ways of generating revenue to the government coffer through indirect taxation.

In this unit, our target will be to examine other categories of duties that government imposes on goods and reasons for imposing them.



2.2 Learning Outcomes

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

- explain other categories of duties imposed by government on goods
- reasons why government imposes duties.



2.3 Other Categories of Duties

Self-Assessment Exercises

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. Whenever there is any ambiguity on the amount of stamp duties paid or to be paid, a request of adjudication can be sought. YES, or NO
2. One of the serious criminal offences is a failure to stamp instrument before it execution. TRUE or FALSE

2.3.1 Customs and Excise Duties

Excise duty is defined by the Excise Ordinance No. 64 of 1941 as “any duty other than export duty of customs imposed on any goods manufactured in Nigeria”.

Excise duty is the money paid to the government by manufacturing concerns on goods produced. It is a production tax. Excise duties are government tax on some goods made, sold or used within a country (Hornby: 2000: 401). A customs and excise duty is the 16th items on the Exclusive Legislative List.

Amongst the reasons for the imposition of excise duties according to Lekan et al (2006) are:

- i. It is a fiscal weapon that can be manipulated to achieve predetermined economic objectives.
- ii. It has high capacity for re-allocating income
- iii. It can be used to influence exercise of purchasing power by consumers.
- iv. It can be used to discourage the proliferation of industrial development along certain lines to the exclusion of others. For example, exercise duty may be increased on certain commodities to deter investors.
- v. Exercise duties also have import substitution effect. Rate of exercise duty are sometimes reduced or eliminated completely in order to give impetus to local production activities.

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

2.3.2 Export Duties

This is a tax on goods coming and going out of the country. Though a product tax, it is one of the effective indirect ways of generating fund for government. Just like the excise duties, import and export duties are levied in order to check the production and distribution of certain classes of goods. To check importation and to correct imbalance of trade between one country and another, a higher percentage of rates can be fixed on importations, while a lower percentage of importation rates will encourage the flowing in of such goods. An export duty is the 25th items on the Exclusive Legislative List.

In this unit you have been exposed to other duties that government imposed on goods apart from stamp duties. All in all, the most important things to note is that the levying of all these duties are basically for raising of funds as an indirect ways of taxation.



2.4 Summary

We have in this unit discussed:

- i. Other categories of duties levied by government
- ii. Reasons for the imposition of excise duties
- iii. Importance of levying duties



1.5 References/Further Readings/Web Resources

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

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

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Paul, Minn (1999). *Black’s law Dictionary (7th ed.)*, West Group, St Paul Minn



2.6 Possible Answers to Self-Assessment Exercise(s) within the Content

SAE

- | | |
|----|-------|
| 1. | YES |
| 2. | FALSE |

UNIT 3 TAX INCENTIVES

Unit Structure

- 3.1 Introduction
- 3.2 Learning Outcomes
- 3.3 Tax Incentives
 - 3.3.1 Effects of Tax Incentives
 - 3.3.2 Types of Tax Incentives
 - 3.3.3 Depreciation Allowances
- 3.4 Summary.
- 3.5 References/Further Readings/Web Resources.
- 3.6 Possible Answers to Self-Assessment Exercise



3.1 Introduction

Tax incentives, also known as ‘tax benefits’ refer to those reductions in tax that the government makes in order to encourage spending on certain items or activities. Tax incentives are usually considered as a great way to encourage economic development. A tax incentives are aspects of a country's tax code intentionally designed to incentivize or encourage a particular economic activity by reducing tax payments for a company in the said country. It should be noted however, that tax incentives may have both positive and negative effect on an economy. These refer to tax reliefs or exemptions granted by the Government to qualified multinational investment projects or companies whose income or profit are derived from, brought into, accruing in or received in the country, to attract foreign direct investment for the growth and development of the nation's economy.



3.2 Learning Outcomes

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

- appreciate the need for tax incentives
- explain the examples/instances of tax incentives.



3.3 Tax Incentives

3.3.1 Effects of Tax Incentives

Tax incentive can have positive as well as negative impacts on economy depending on how it is designed and implemented. Among the positive benefits of tax incentive when designed and implemented properly, tax includes the attraction of investment to a country. Other benefits of tax

incentives are increase in the employment level, higher number of capital transfers, research and technology development, as well as improvement to less developed areas. although it may be difficult to estimate the effects of tax incentives, they can, properly designed and applied, improve the overall economic welfare through increasing economic activity and growth, and government tax revenue.

On the other hand, tax incentive can also have some negative effects on a government's financial condition-among other negative effects, if they are not properly designed and implemented (*B. D. McDonald, 2020*).

There are four major costs to tax incentives. These include:

i. Resource allocation costs

Resource allocation refers to lost government tax revenue as a result of the tax incentive.

ii. Compliance costs

Compliance cost refers to the situation where the tax incentives result in too much investment in a certain area of the economy and too little investment in other areas of the economy.

iii. Revenue costs

This is associated with enforcing the tax incentive and monitoring who is receiving the incentive and ensuring they are eligible to benefit from the incentive. In this regard, it is noted that, the higher and the more complex the tax incentive, the higher the compliance costs owing to the larger number of people and firms attempting to secure the tax incentive.

iv. corruption costs.

This costs are in respect of the possibility of people abusing the tax incentive through corrupt tendencies. Corruption occurs when there are no clear guidelines or minimal guidelines for qualification and implementation.

Self – Assessment Exercise 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

- i. Tax credits and accelerated depreciation allowances are examples of...
- ii. Which agency or commission regulates “The pioneer status”?

3.3.2 Types of Tax Incentives

Tax incentives are basically categorized into two types. These are:

- i. Cost-based Tax Incentives. These include tax credits and accelerated depreciation allowances.

- ii. Profit-based Tax Incentives. They include tax holidays and reduced tax rates.

It is important to note that, the type of tax incentives granted is dependent on the sector, income type, business size, and business location. In Nigeria for instance, there are many incentives available just to encourage especially foreign direct investment. A good example is the **Pioneer Status Incentive (PSI)** in form of tax holiday. It is a profit-based tax incentive regulated by the **Industrial Development (Income Tax Relief) Act, Cap 17 Laws of the Federation of Nigeria, 2004**. The law has been established in line with the modern tax regimes as a means of attracting and boosting investment and economic development in the different sectors of the nation's economy.

The whole essence of pioneer status as a tax incentive is that companies in industries designated as pioneers are relieved from paying company income tax in their formative years to enable them make a considerable profit for re-investment into the business. It is a tax holiday granted for up to five years (initial period of three years and renewable for additional two years) to qualifying industries that meet the conditions, from paying corporate income tax. Companies qualified for pioneer status also enjoy the benefits of exemption from 10% withholding tax on dividends paid out of business profits. The pioneer status is regulated by the Nigerian Investment Promotion Commission (NIPC).

Pursuant to *section 1 of the Industrial Dispute Act (IDA)* an industry is designated as a pioneer industry if the industry's business is currently not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or there are favourable prospects of further development in Nigeria or it is expedient in the public interest to encourage the development or establishment of such industry in Nigeria.

The application process for the grant of pioneer status incentive takes the following steps:

- i. An applicant must make a written application for pioneer status to be submitted to the NIPC in the first year of production or service to be accompanied by evidence of all required legal and regulatory compliance documentation.
- ii. Request a date to present the project to the NIPC covering company overview, project overview, project impact, financial analysis, etc.
- iii. Provide a project profile, indicating pioneer industry/product, share capital, and non-tangible current assets.
- iv. NIPC provides feedback and requests payment of application and due diligence fees within a week.

- v. Once the applicant pays the prescribed fees, the next step is to submit Part 1 of the application form to the Executive Secretary of NIPC with supporting documents.
- vi. NIPC reviews the application and performs legal, regulatory, and compliance checks and after review, NIPC requests a date for the verification visit.
- vii. After a verification visit has been conducted, NIPC makes a decision on the application and notifies the company of its decision, and requests payment of service charge deposit within a week.
- viii. Upon payment of the service charge deposit to the NIPC, the NIPC issues an Approval in Principle to the company.
- ix. The applicant is also to complete the Part II application form and submit same to the Industrial Inspectorate Department (IID).
- x. The IID reviews the application for completeness and requests an inspection visit to determine production day.
- xi. Upon determination of a project's production day, the IID will issue a **Production Day Certificate** to the applicant and notifies the NIPC of the issuance.
- xii. Finally, upon receipt of the copy of the production day certificate from the IID, the NIPC will issue a **Pioneer Status Incentive Certificate** to the applicant and sends a copy to the FIRS and the IID. The Pioneer Certificate will state the period of which the pioneer status incentive is valid.

In any event however, to qualify for this tax incentive (pioneer status), a joint venture or wholly foreign-owned company and an indigenous company must have a non-current tangible asset above **N100,000,000 (One Hundred Million Naira) Factors considered before granting pioneer status to companies.**

When application is made for the grant of pioneer status, it is expected that the applicant should demonstrate the tangible impact its activity will have on Nigeria's economic diversity, growth and development, and the NIPC will also further consider others factors, among which are:

i. The employment generation

The company must be able to provide jobs as shown evidence for capacity building, transfer of technology, and develop local know-how for indigenous employees capable of boosting entrepreneurship and investment in the economy.

ii. Value addition

The value addition a business creates in the production process a critical factor considered before granting pioneer status. It involves the process

of transformation of a primary product into finished goods within the economy without necessarily assembling the goods in Nigeria.

iii. Contribution to the sustainable development of the economy

To grant pioneer status, the NIPC will consider the potential of the company e.g. building of schools, provision of water, electricity, road networks, etc, to the community in which it is established.

iv. The NIPC will also considers the Nigerian local content with interests on the promotion of value addition in Nigeria through the use of raw materials, products, and services that would encourage the growth of indigenous capacity.

v. Export potential

The export potential of the business is also an essential factor put into consideration since there is a belief that the investment will generate an inflow of foreign exchange into the Nigerian economy before it can qualify for pioneer status.

In addition to the above, there are other incentives such as Rural Location Incentives, Export Incentives, Gas Utilisation Incentives, Tourism Incentives as well as Interest Incentives.

3.3.3 Depreciation Allowances

Depreciation allowance refers to the estimate of the annual cost of using an item that is based on its acquisition cost divided by its estimated or assumed useful life. It is also considered as a loss of value expressed in terms of a percentage of replacement or reproduction cost new. Depreciation is a method applied in allocation of the cost of tangible assets or fixed assets over an assets' useful life. In other words, it involves the allocation of a portion of that cost to periods in which the tangible assets helped in generating revenues or sales. By charting the decrease in the value of an asset or assets, depreciation reduces the amount of taxes a company or business is liable to pay through tax deductions.

Depreciation also refers to the decrease in the value of assets and the method used to reallocate, or "write down" the cost of a tangible asset, for example equipment, over its useful life span. Businesses depreciate long-term assets for both tax and accounting purposes. The decrease in value of the asset affects the balance sheet of a company or business, and the method of depreciating the asset, accounting-wise, affects the net income, and therefore, the income statement that they report. Generally, the cost is allocated as depreciation expense among the periods in which the asset is expected to be used. The deductions and

reductions in tax liabilities of a company or business based on these depreciations is called depreciation allowances.

It is important to note that, the methods of computing depreciation, and the periods over which assets are depreciated vary in line with asset types within the same business and may also, vary for tax purposes. These may be specified by law or accounting standards, which may vary depending on jurisdiction.

The tax incentives include those tax reliefs or exemptions granted by the Nigerian Government to qualified multinational companies or investment projects whose income or profit are derived from, brought into, accruing in or received in Nigeria, to attract foreign direct investment to enhance the growth and development of the nation's economy.



3.4 Summary.

In this unit, we have discussed tax incentive. Examined the types and effect on tax incentive to the economy.



3.5 References/Further Readings/Web Resources

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

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

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

Paul Minn (1999) Black's law Dictionary (7th edition), West Group, St Paul Minn



3.6 Possible Answers to Self-Assessment Exercise(s)

SAE 1

1. Cost-based Tax Incentives
2. The pioneer status is regulated by the Nigerian Investment Promotion Commission (NIPC).

UNIT 4 THE CASE OF NIGERIA WITH TAX INCENTIVES

Unit Structure

- 4.1 Introduction
- 4.2 Learning Outcomes
- 4.3 The Case of Nigeria with Tax Incentives
 - 4.3.1 Tax Incentives Law and Administration in Nigeria
 - 4.3.2 Desirability of Tax Incentives in Nigeria
- 4.4 Summary.
- 4.5 References/Further Readings/Web Resources
- 4.6 Possible Answers to Self-Assessment Exercises



4.1 Introduction

Tax incentives can be grouped into a number of categories: tax holidays, investment allowances and tax credits, timing differences, reduced tax rates, and free economic zones. Imagine a nation or country existing without taxation at all or effective taxing system. This would be unimaginably and might be practically impossible as we know that taxation is the life wire of every nation. and if properly managed, helps to sustain a nation's growth and development. Tax incentives are one of the ways to make take system effective in an economy.



4.2 Learning Outcomes

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

- analyze the case of Nigeria with tax incentives
- explain why Nigeria deserves tax incentive.



4.3 The Case of Nigeria with Tax Incentives

Self-Assessment Exercises 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

Why do you think developing countries like Nigeria deserve tax incentives?

4.3.1 Tax Incentives Law and Administration in Nigeria

The essence of tax incentives is majorly, to attract new investments into a country as well as help in the growth and expansion of existing ones which is expected to translate to higher future production in the

economy. The resultant effect would be the creation of more employment opportunities, increases gross domestic product (GDP), more food and savings for the nation.

However, a close examination of various tax incentive packages granted by the government so far revealed that it is not quite impressive as large sums of tax revenue are being lost annually. Some authors like Adegbe & Fakile (2011) in Business Day of 26th August (2015) observed in a study conducted on Nigerian Customs Service (NCS) that there is under assessment of payable duties, unauthorized transfer of funds, abuse of waivers, concessions and exemptions, as well as non-remittance of government revenues. Findings showed that there is a lot revenue loss to all concessions between in the country which may vary from year to year. Such loss of large sums of revenue annually by government which undoubtedly affect the economy negatively.

It has been observed by Oriakhi & Osemwengie (2013) that another factor that affects the effective use of tax incentive to encourage business decision is corruption. Accordingly, corruption is one of the common features of the emerging countries like Nigeria and manifests in several ways. The implication is that, where tax incentives are not effectively managed or administered in line with the provision of the law, they may lead to loss rather than yielding the expected revenue. The billions of Naira lost to tax incentives could have been channeled into the building of schools, education sector development, youth and social development, environmental development, health service development,

agricultural sector development, road, water management and provision of other people oriented social infrastructure and better the economy in Nigeria. However, effective use of tax incentives to encourage investment decision is hindered by some factors which may be political or economic. These can manifest in form of social insecurity and dysfunctional legal system leading to poor and ineffective use of tax incentives to facilitate investment decision.

4.3.2 Desirability of Tax Incentives in Nigeria

As noted earlier tax incentives are indeed desirable specially to growing economy like Nigeria because of the following reasons:

- i. They attract new investments into a country
- ii. Tax incentives help in the growth and expansion of existing industries
- iii. This translates to higher future production in the economy.

- iv. The overall effect would be the creation of more employment opportunities, increases gross domestic product (GDP), more food and savings for the nation



4.4 Summary

The case against tax incentive packages in Nigeria is that concessionary duty rate, concessions to manufacture-in-bond schemes and export processing/exercise factory levy should be discontinued because the essence and beauty of these tax incentive packages has been defeated. Besides, the Nigerian Customs Service should be reformed in line with transformation (change) agenda of the present administration in order to reduce the number of corrupt officers in the system.



4.5 References/Further Readings/Web Resources

- I Omesi and N P Nzor, 'Tax Reforms in Nigeria: Case against Tax Incentives' (2016) *AFRREV IJAH An International Journal of Arts and Humanities* 5(1):138
- A Idajiwo, 'Are tax incentives in Nigeria attracting investment or giving away revenue? (2018) < <https://taxjustice.net/2018/08/14/are-tax-incentives-in-nigeria-attracting-investment-or-giving-away-revenue/>>
- J Ohaka, 'Tax Incentives for Industry Synergy in Nigeria: A Pragmatic Proprietary System Advocacy' (2012).



4.6 Possible Answers to Self-Assessment Exercise(s) within the Content

SAE 1

1. Developing economies like Nigeria deserve tax incentives because of its many benefits to the economy such as attract new investments into a country attraction of new investments into the country, help in the growth and expansion of existing industries, etc.

MODULE 5 COMPANY TAXATION AND EXEMPTIONS

- Unit 1 Administration of and Chargeability to Company Tax
 Unit 2 Company Tax Exemption and Reliefs

UNIT 1 ADMINISTRATION OF AND CHARGEABILITY TO COMPANY TAX

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Administration of and Chargeability to Company Tax in Nigeria
 - 1.3.1 Administration of Companies Income Tax
 - 1.3.2 Chargeability to tax
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Possible Answers to Self-Assessment Exercise(s)



1.1 Introduction

Just like every individual, companies are also chargeable to tax. The law requires that companies should endeavor to make yearly return to the tax authority. It is therefore important to know that, a company is a different entity from its share holders

In this unit, you will be exposed to the administration of company taxation and ways by which companies are chargeable to tax.



1.2 Learning Outcomes

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

- appreciate the administration of company income tax in Nigeria
- explain the chargeability of companies to tax in Nigeria.



1.3 Administration of and Chargeability to Company Tax in Nigeria

Self-Assessment Exercise 1

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

- i. A company is distinct from its shareholders when it comes to the issue of tax. TRUE or FALSE

1.3.1 Administration of Companies Income Tax

The administration of Company Income Tax Act and the tax is under the care and management of the Federal board of Inland Revenue (Ariwodola: 2000; 132). Going by the provision of Section 1(1) Companies Income Tax Act).

There shall continue to be a board of which the official name shall be the Federal Board of Inland Revenue (in this act referred to as the “Board”) whose operational arm shall be called and known as the Federal Inland Revenue service (in this Act referred to as “the service”)

1.3.2 Composition of the Board

Different categories of people, stakeholders and interest group serve as the board of Inland Revenue. While the president shall appoint the chairman of the board, other members according to section 2(a), (b),(c),(d),I,(f)(g),(h),(i) are;

- b) Directors and head of departments of service;
- c) Director with responsibility for planning, research and statistics in the Federal Ministry of Finance
- d) a member of the national Revenue Mobilisation Allocation and

Fiscal Commission;

- e) a member from the Nigerian National Petroleum Corporation not lower in rank than an executive director;
- f) a Director from National Planning Commission;
- g) a Director from Nigerian Customs Service;
- h) the Registrar general of the Corporate affairs commission;
- i) the legal adviser to the service

The quorum and powers of the board are stated in section 2(3) and section 3(1), (2), (3), (4), (a), (b), (5), (6) of the Act.

1.3.3 Chargeability to tax

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

section 36 CITA clearly states that “A Company shall be chargeable to tax”

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

Note that, while (a) and (b) above relate to a going concern company while (c) is in respect of any company in receivership or in liquidation. (Ariwodola:137)

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



1.4 Summary

We have in this unit, discussed

- i. Administration of company taxation in Nigeria
- ii. Company's' chargeability to tax.

1.5 References/Further Readings/Web Resources

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

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

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

Hornby A.S. (2000), *Oxford Advanced Learner's Dictionary, of Current English*, Oxford University press.

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

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



1.6 Possible Answers to Self-Assessment Exercise(s)

SAE

1. TRUE

UNIT 2 COMPANY TAX EXEMPTION AND RELIEFS

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Company Tax Exemption and Reliefs
 - 2.3.1 Definition of Tax Exemption
 - 2.3.2 Categories of Company Tax Exemptions
 - 2.3.2.1 Pioneer industries Relief
 - 2.3.2.2 Exemption and Relief of Chargeable Gains
 - 2.3.2.3 Import Duties and long term Fiscal System Relief
 - 2.3.2.4 Common Wealth Income Tax Relief
 - 2.3.2.5 Double Taxation Relief
- 2.4 Summary
- 2.5 References/Further Readings/Web Resources
- 2.6 Possible Answers to Self-Assessment Exercises



2.1 Introduction

As you are aware right from the first unit of this course, tax is a compulsory payment imposed by government on the citizenry in a country. However, in order to reduce the burden of taxation on both individual and corporate entity and in a bid to encourage prompt and proper tax payment, government allows certain categories of people at a certain time not to pay tax; this is known as tax exemption or tax holiday. During this time, any individual or corporate organization enjoying it will pay less amount of money that are supposed to be paid as a tax.

In this unit, the constituent of Tax exemption will be examined, not only that, reasons and benefits of tax exemption and different categories of tax exemption will also be discussed.



2.2 Learning Outcomes

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

- explain what Tax exemption is
- differentiate categories of tax exemptions in Nigeria
- discuss the benefit of tax exemption to both to the state and individual.



2.3 Company Tax Exemptions and Reliefs

2.3.1 Definition of Tax Exemption

Tax exemption otherwise known as “tax holiday” is the most widespread tax incentive. Tax exemption simply means a period of exemption from the payment of taxes imposed by the government and this exemption may be complete or partial. (Ayua I.A:1996:306). Tax exemption may also relate to industry, regions or type of investment (F.M Andie 1968). Tax exemption is that which is not taxed while tax Relief is a reduction in the amount of tax you have to pay, especially when you are using the money for a particular purpose, such as buying property (Hornby A.S: 2000:1227)

From the foregoing what we can describe tax exemption to be is an incentive in form of nonpayment of tax for a specific period of time. The nonpayment may be total or partial; and it is done in order to encourage investment and guaranteed some level of relief to the tax payers. Tax exemption begins with the day of initial production or the day of first commercial sale, because tax exemption has been generally regarded as an industrial investment device. (F.M Andie)

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. What is the rationale behind the idea of tax holiday?
2. What conditions must a company satisfy before it can be granted a pioneer status?

2.3.2 Categories of Company Tax Exemptions

2.3.2.1 Pioneer Industries Tax Exemption

The major reason for tax holiday is to encourage and stimulate private investment in the country economy. Exempting them from payment of tax for some years is also a booster for stability and growth of such business.

In Nigeria, the pioneer companies relief was first introduced by the Aid to Pioneer Industries Ordinance, 1952, which was superseded by the industrial Development (Income Tax Relief) Act 1958. The 1958 Act liberalized and extended the former aid to pioneer industries and provided that the establishment and development of industrial and commercial enterprises might be encouraged by way of income tax relief (Ayua: 1996: 316).

The 1958 Act was repealed by the industrial Development (Income Tax Relief) Act 1971 and the law has now been consolidated in the industrial Development (Income Tax Relief) Act cap 179 LFN 1990. In this CAP, tax relief grant is 3 to 5 years and it is available to both foreign and indigenous industries with the required initial investments for the foreign company at #150,000 and indigenous company at #50,000. According to section 12 of the Act, a pioneer company is forbidden from carrying on a trade or business other than its pioneer enterprise. Where this occurred section 6 provides that such company will be liable to tax in respect of those profits otherwise the profits of a pioneer company are exempted from tax.

What we are saying here is that, cognizance is taken of the newness and relevance of the products by the companies and the tax holiday period is subject to a maximum of 5 years. During this time, there is total exemption from tax of the company's profit during the pioneer period. (Ariwodola: 2000:15).

Not only that a pioneer company is entitled to claim the benefit of capital allowances at the end of its tax relief period thereby extending a tax free period of five years by another period during which a pioneer company pays no tax (Ayua: 317).

For a company to be granted a pioneer status under the Act, the following conditions must be satisfied:

- a) Federal Executive Council must be satisfied that any industry is not being carried on in Nigeria on a scale suitable to the economic requirement of Nigeria or is not being carried on at all.
- b) There are favourable prospects of further development in Nigeria of such industries in Nigeria, and
- c) It is expedient in the public interest to encourage the development or establishment of such industries in Nigeria. (Lekan et al: 2006: 413).

2.3.2.2 Exemption and Relief of Chargeable Gains

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

1. Gain accruing to –
 - a) An ecclesiastical, charitable or educational institution of a public character.
 - b) Any statutory or registered friendly society;

- c) Any co-operative society registered under the Co-operative Societies Law of any State.
 - d) Any trade union registered under the Trade Unions Act;
- According to section 27(1), CITA, the accruing gain of the above listed institutions must not be derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society, not only that, the gain must applied purely for the purpose of the institution or society as the case may be.
2. Gains accruing to any Local Government Council S. 28 (1).
 3. Gains accruing to any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria; or
 4. Gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria in so far as the gains are not derived from the disposal or any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some person or authority. S 28 (2).
 5. Grains accruing on disposal of investments held as part of any superannuation fund and other statutory retirement benefit scheme to the same extent as income derived from the assets would be exempt under S.20 of PITD (S.20.1). Disposal of a right to, or any part of any sum payable out of any superannuation fund shall also not be chargeable. (S.29.2).
 “Superannuation Fund” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under Section 21 (1) (g) of PITD.
 Grains accruing on disposal by any person of a decoration awarded for valour or gallant conduct which he acquires otherwise than for consideration in money or money’s worth (S.30).
 6. Grains accruing from a disposal of Nigerian Government Securities (S.31). Nigerian Government Securities include Nigeria treasury bonds, savings certificates and premium bonds issued under the savings Bonds and certificates Act.
 7. Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers (S.9).
 8. Gains accruing in connection with the disposal of an interest in or the right under any policy of assurance or contract for a deferred annuity on the life of any person (S.33).

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

- i) S.35 exempts sums obtained by way of compensation or damages for any wrong or injury suffered by an individual to his person or his profession or vocation. This includes wrong or injury or enticement. Sums obtained by way of compensation for loss of office exceeding N10,000 in any year of assessment is however chargeable.
- ii) S.36 exempts gain accruing on disposal of a dwelling house (with a maximum land area up of one acre or such larger area as the board may determine) which has been the individual's only or main residence throughout the period of ownership up to the time of disposal or up to the last twelve months before the date of disposal. So far as it is necessary for the purposes of this section to determine which of two or more residences is an individual residence for any period.
 - a) The individual may conclude that question by notice I writing to the Board given within two years from the beginning of that period. This can be varied by a further notice in writing to the Board as respects any period beginning not earlier than two years before the given of the further notice.
 - b) The question shall be concluded by the determination of the Board. The individual may appeal Commissioners against that determination within thirty days of service of the notice by the Board.
- iii) A gain accruing on disposal of tangible and movable assets shall not be chargeable gain if the total value of the consideration does not exceed N1,000. iv) A motor vehicle the carriage of passengers is an exempt's asset for CGT purposes unless it is of a type not commonly used as private vehicle and is unsuitable to be so used (S.38).
- v) S.39 exempts assets acquired by way of gift and disposed of in a similar manner. vi) S.40 exempts capital gains accruing to a diplomatic body.
- vii) Double taxation relief is applicable to CGT as it is applicable to income tax under PITD and company's income tax under CITA with the substitution of the words capital gains for income and profit and CGT for income tax.

The following exemptions have been included from 1990

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

Grains arisen in respect of disposals of securities Unit Trust provided the proceeds are reinvested (S.32B). Not only that, from 1st January 1998, Stock and shares of every description are also exempted. (Ariwodola: 2001:247)

Furthermore, going by section 19 (2) CITA, 1990, the federal executive council may exempt by order:

- a) Any company or class of companies from all or any of the provisions of the Act,
or.
- b) From tax or all or any profits of any company or class of companies from any source on ground which appear to be sufficient.

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

2.3.2.3 Important Duties and Long Terms Fiscal System Relief

Relief from custom duties on imports of equipment and construction materials lowers the cost of firm's capital equipments whilst relief from duties on imports of raw materials and semi-processed materials enhances the competitiveness of the firm in establishing a domestic or foreign market. Thus, relief from import duties may also take the form of differentiation between types of industries and between the destination of the products produced by these industries, namely, as to whether for internal use or for export markets. (Ayua: 1996: 312).

On the long-term fiscal system, according to Ayua, is geared towards the stabilization of tax charges, and this tax holiday usually entitles the approved enterprise to the following benefit.

- i. Stabilisation of all tax rates at the level prevailing when the enterprise was approved and for an extended period of say 25 years.
- ii. Exemptions from any modification in tax assessment and collection procedure during this period, and
- iii. Exemption from new taxes introduced during this period.

2.3.2.4 Commonwealth Income Tax Relief

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

and in any other case, half of the rate of tax in Nigeria. (Orojo: 1979: 160).

2.3.2.5 Double Taxation Relief

Double taxation is the levying of tax on the same items by different tax authorities. In double taxation, the same income received is being taxed twice. To lessen the burden imposed by double taxation on the recipient, various countries have therefore made provisions for double taxation relief. Not only that, in order to aid the actualization of relief from double taxation, many countries including Nigeria had entered into Double Taxation Agreement. The taxes that are subject to this agreement in Nigeria include Personal Income tax, Companies Income Tax, Capital Gain Tax and Petroleum Profit Tax (Lekan et al: 2005:449).

Amongst the items exempted from double taxation are

- i) The remuneration of a professor or a teacher who is resident for not more than years in the other country for teaching purpose.
- ii) Government persons except the recipient is ordinarily resident in Nigeria
- iii) Air craft and shipping profits
- iv) Dividends paid by a UK company to a Nigeria resident who has no permanent establishment in the UK
- v) Payments to a students or apprentice during his full-time education or training in Nigeria.
- vi) The income is derived by a resident in UK provided he is not in Nigeria for at least 183 days and the services are rendered for a UK employer (Lekan etal:451).

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

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

One of the major reasons for company tax holiday is to lessen the burden of tax on the company in order to allow for stability and growth of a company. Not only that, it is also a weapon to attract foreign investment and re-investment in the economy. In nut shell, tax

exemption can be a very useful tool in the hands of the developing countries to attract foreign capital as the foreign firm may be reluctant in the first instance to come because of poor investment climate in some countries. Tax exemption therefore reassures them that their presence is needed.

In conclusion, it is pertinent to note that, tax exemption is a global phenomenon and not peculiar to Nigeria. All the countries of the world normally look for avenue to lessen the burden of tax on their citizenry. Therefore, the issue of tax exemption is both intra and international in nature, and that's why countries all over the world try to avoid higher tax boarding by entering into Double Taxation Agreement (DTA).



2.4 Summary

We have in this unit, discussed

- i. What tax exemption is
- ii. Companies tax exemptions and reliefs.



2.5 References/Further Readings/Web Resources

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

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

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



2.6 Possible Answers to Self-Assessment Exercise(s)

Self-Assessment Exercise

1. Tax holiday is adopted because of its benefits to economy. For instance, it attracts foreign investment, strengthens infants and domestic industries and can lead to increased job opportunities.
2. To be granted the pioneer status to any company, the following conditions must be met:
 - i. No industry is being carried on in Nigeria on a scale suitable to the economic requirement of Nigeria or is not being carried on at all,
 - ii. There are favourable prospects of further development in Nigeria of such industries in Nigeria, and
 - iii. It is expedient in the public interest to encourage the development or establishment of such industries in Nigeria

MODULE 6 WOMEN AND SPECIAL GROUPS TREATMENT TO TAX (PERSONAL RELIEFS)

Unit 1	Imposition of Personal Tax and Income Chargeable
Unit 2	Personal Tax Exemptions and Reliefs

UNIT 1 IMPOSITION OF PERSONAL TAX AND INCOME CHARGEABLE

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Imposition of Personal Tax and Income Chargeable
 - 1.3.1 Imposition of Tax
 - 1.3.2 Persons and Income Chargeable
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Possible Answers to Self-Assessment Exercise(s)



1.1 Introduction

The Personal Income Tax Act makes provisions for the imposition of tax on individuals, families, trustees, communities and estates throughout the country, and the liability to personal income tax in Nigeria does not depend on the domicile (where you are living) or nationality (your mother country) of the tax payer. Profit arising from a trade, business, profession or vocation, from any source inside or outside Nigeria are chargeable here if the taxpayer happens to be resident in Nigeria. Foreign residents are also taxable here if they have income arising from a Nigerian source (Ipaye:21).

In this unit, the imposition of tax on individual and the income chargeable will be discussed



1.2 Learning Outcomes

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

- Explain how tax is imposed on individual • Know the categories of persons chargeable?
- What incomes are chargeable?



1.3 Imposition of Personal Tax and Income Chargeable

1.3.1 Imposition of Tax

Personal taxes are imposed on income of individuals, communities and families. The imposition of personal tax is stated in section 1 of personal Income Tax Act as follows:

There is hereby imposed a tax on the income-

- a) Of individuals, communities and families; and
- b) Arising or due to a trustee or estate

This shall be determined under and be subject to the provisions of Personal Income Tax Act. Note however that, income tax is payable on anything that can be described as an income. And an income includes any amount deemed to be income under the Act

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

1. The imposition of personal tax is stated in *section 1* of personal Income Tax Act. TRUE or FALSE

1.3.2 Persons and Income Chargeable

Tax of an amount to be determined from the table set out in the Sixth Schedule (in this Act referred to as 'income tax') shall be payable for each year of assessment on the total income of-

- a) Every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant state under the provision of this Act; and
- b) The following other persons, that is-
 - i) Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than in a civilian capacity;
 - ii) Officers of the Nigerian Foreign Service;
 - iii) Every resident of the Federal Capital territory, Abuja; and
 - iv) A person resident outside Nigeria who deserves income or profit from Nigeria.

An individual (not an itinerant worker) can only be assessed to income tax if he is deemed to be resident in a state for the year of assessment.

The residence factor is very important in determining whether or not an individual is liable to income tax (Ariwodola: 2001:12). The categories of exempted tax here is the personal emoluments of any person serving as other rank (section 2 (7) Personal Income Tax Act).

Other person chargeable is:-

- a) Itinerant workers (section 2(3))
- b) Community (section 2(4))
- c) Families (section 2(5))
- d) Trustees (section 2(6))

The income chargeable is generally treated in section 3(1) a-f of the Personal Income Tax Act

From the discussion in this unit, it could be gleaned that even though tax is compulsory but it is not an exercise to put unnecessary burden on both individual or cooperate organization. The major reason for tax relief is to lessen the burden of tax on the people in a given society. Not only that, the unit has also exposed the fact that not all income are chargeable to tax save those treated in section 3(1) a-f of the Personal Income Tax Act.



1.4 Summary

We have in this unit, discussed

- i. How tax is imposed on individual
- ii. The categories of persons chargeable to personal tax?
- iii. What incomes are chargeable?



1.5 References/Further Readings/Web Resources

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

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

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1.6 Possible Answers to Self-Assessment Exercise(s)

SAE

1. TRUE

UNIT 2 PERSONAL TAX EXEMPTIONS AND RELIEFS

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Personal Tax Exemptions and Reliefs
 - 2.3.1 Personal Allowances
 - 2.3.2. Married Allowances
 - 2.3.3 Children Allowance
 - 2.3.4 Dependent Relative Allowance
 - 2.3.5 Life Assurance Relief
 - 2.3.6 Disposal on Account of Death
 - 2.3.7 Pension and Provident Fund
 - 2.3.8 Disable Persons Allowance
- 2.4 Summary
- 2.5 References/Further Readings/Web Resources
- 2.6 Possible Answers to Self-Assessment Exercise(s)



2.1 Introduction

To relieve the tax payers' burden, the law under certain circumstances exempts payment of tax. Not only that, some categories of people are also given certain allowances in order to alleviate their economic burden of tax incidence.

In this unit, some personal tax reliefs and mode of claiming same will be discussed. Not only that, the tax treatment of women and some special groups (as it has to do with reliefs) will also be emphasised.



2.2 Learning Outcomes

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

- explain personal tax reliefs
- Explain how women and disable people treated to tax in Nigeria.



2.3 Personal Tax Exemptions and Reliefs

Personal relief are those allowed to an individual tax payer which are set off against his gross income in order to ascertain his taxable income, that is, the amount of income on which tax is to be charged. Personal reliefs are available only to individual and not to companies. Unlike trading losses, there is no carry forward to reduce tax liability for the following year. Personal reliefs are usually granted to individual ordinary resident in Nigeria. The point to note here is that reliefs are not automatically

given. They have to be formally claimed on a signed and dated return. Their effect is to reduce the tax chargeable under an assessment. The reason for personal reliefs would seem to be:

1. the amount of expenses and number of dependant considerably reduce ability to tax on the full emolument; and
2. a taxpayer must be left with enough to live on (Ayua. 1996:82-83)

According to Ayua, the reliefs are therefore designed to adjust tax between taxpayer according to pay. Personal family commitments are thus taken into consideration in determining the tax liability of every individual tax payer. The tax system therefore helps the taxpayer to maintain his family.

The following allowances are granted under sec. 3 of PITD 1993 as amended for the purpose of determining the taxable income of an individual:

Self-Assessment Exercise

Attempt these exercises to measure what you have learnt so far. This should not take you more than 5 minutes.

- i. Explain the term 'Personal Tax Relief'.
- ii. Identify what central thing the Finance Act 2020 has done to the Nigerian Tax Statutes?

2.3.1 Personal Allowances

A tax payer is granted a personal allowance of #3,000 plus 15 per cent of earned income. The effect therefore would be that more money will be left in the hands of the taxpayer. Personal allowance is allowed in arriving at the chargeable income for tax purposes only in respect of earned income. Earned income includes income from trade, business, employment, profession or vocation but does not include investment income such as rents, dividends, interests or royalties (Ayua: 83).

2.3.2 Married Allowances (Or Wife's Allowance)

An allowance of #300 is given in respect of a wife living with or maintained by the tax payer or a former wife to whom the taxpayer pays alimony under the order of a court. The tax payer must be resident in the State in the year of assessment. (Ayua : 83). A tax payer claiming the married man allowance cannot claim for deduction of alimony at the same time.

2.3.3 Children Allowance

An allowance of #1000.00 is given for each unmarried child maintained by the taxpayer in the year immediately preceding the year of assessment. The following conditions must be met before the allowance can be claimed.

- i) The child must be under the age of sixteen in the preceding year; or
- ii) If the child is over sixteen years of age he was receiving full-time education at a recognized University, College, School or other educational establishment or articulated or indentured in a trade or profession in that year. (Ayua:84)

2.3.4 Dependent Relative Allowance

#1,000.00 is the maximum allowance given in respect of dependants maintained by the taxpayer. The dependent relative must be:

- i) the widowed mother of the taxpayer or his spouse or
- ii) Must be incapacitated by old age or infirmity from maintaining himself or herself. Where the claim is in respect of the widowed mother, it must be supported by evidence that the husband is dead and in respect of any other relative under the age of 65, there must be a doctor's certificate confirming that the relative is incapable of supporting himself or herself by virtue of the infirmity. Where two or more taxpayers contribute towards the maintenance of the dependent relative, the allowance will be divided proportionately between them. (Ayua: 85).

2.3.5 Life Assurance Relief

The taxpayer is given some relief for the insurance premium paid on his life or that of his wife. The life Assurance Relief shall not exceed 10 per cent of the Capital assured or #2000.00 or one fifth of the total income in appropriate circumstances.

To claim this relief, the taxpayer must show that in the preceding year he had insurance on his life or on the life of his wife (or vice versa) and that the premiums have been paid with an insurance company lawfully carrying on business in Nigeria. (Ayua: 85).

Other additional reliefs which were once granted include:

- a) a deduction of not more than 25 per cent of the taxpayer's total income in respect of his equity shareholdings in a company floated exclusively for the purpose of research and development;
- b) a deduction for donations made to approved research institutions and centers subject to a maximum of 10 per cent of the taxpayer's chargeable income for the year of assessment;

- c) a deduction of #2,000 in the case of a disabled person who uses special equipment and the services of an attendant in the course of a paid employment provided the deduction does not exceed 10 per cent of the earned income of the person for that year. (Ayua : 86)

2.3.6 Disposal on Account of Death S.8.

On the death of an individual, any assets of which he was competent to dispose of shall for the purposes of this Act be deemed to be disposed of by him at the date of his death and acquired by the personal representatives or either person on whom the assets devolve for a consideration equal to.

- a) In a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable to that amount;
 - b) In any other case, the market value of the asset at that date; (subsection 1)
- c) The gains which accrue in consequence of subsection (1) of this section shall not be chargeable to capital gains tax under this Act (subsection 2)

The personal representatives shall be treated as having the deceased residence and domicile at the date of death. (subsection 3).

On a person acquiring any asset as legatee-

- a) No chargeable gain shall accrue to the personal representatives and
- b) The legatee shall be treated as if the personal representatives acquisition of the asset had been his acquisition of it. (subsection 4). (Ariwodola : 2001: 250-251)

2.3.6 Pension and Provident Fund

Contributions to approved pension or provident fund scheme also qualify for relief. It is important to note that the scheme must be approved by the Joint Tax Board before any relief can be granted to the contributors; and the amount to be granted cannot be higher than N5,000.00 in any one year.

2.3.7 Disable Person allowance

An additional allowance of N3,000.00 or 20% of earned income (whichever is higher) is available to a disabled person who uses special equipment and the services of an attendant in the course of paid employment (section 33(3)(e))

It should be noted however, that the *Finance Acts 2020* (FA 2020) has refined a wide spectrum of the Nigerian tax laws in order to reflect present realities and resolve certain contentious issues. One of the laws that the Finance Act, 2020 amended is the Personal Income Tax (PITA). Among other amendments to the PITA, the Finance Act, 2020 changed the basis of computing the personal allowance claimable while computing the income tax. This was achieved through the amendment to *Section 33(2) of PITA*, which defines the "Gross Income" to be adopted in computing Consolidated Relief Allowance (CRA) for personal income tax purposes. Based on Section 33(1) of the PITA, CRA is computed as 'the higher of ₦200,000 and 1% of Gross Income + 20% of Gross Income'. As a principal component of Consolidated Relief Allowance, the Gross Income has always been a major consideration in determining the eventual personal income tax payable.

This is because CRA typically reduces the taxable income, thereby increasing employees' monthly net pay or the disposable income of other persons liable to tax under the PITA. Consequently, a contracted Gross Income will increase the taxable income, increase the personal income tax payable and ultimately reduce the net pay or disposable income.

Consolidated Relief Allowance Pre-Finance Act, 2020

Prior to the amendments made to Section 33(2) by FA 2020, the PIT (Amendment) Act provided thus: "*For the purposes of this section, "gross emolument" means wages, salaries, allowances (including benefits in kind), gratuities, superannuation and any other incomes derived solely by reason of employment*". Based on the above, Section 33(2) defined the constituents of "Gross Emolument" for the purpose of computing CRA while Section 33(1) makes reference to "Gross Income". The inclusion of the expansive phrase '*any other incomes*' presumed that the entire gamut of incomes derived by an individual from the course of employment, including compensations, bonuses, premiums, fees, perquisites and all similar sources of income arising from the employment, all fell within the definition of gross emoluments. Since Gross Emolument presupposes employment income, it appeared that the above definition was only relevant for computing CRA in instances where the individual is liable to PAYE tax. It was not sufficient in determining the constituents of Gross Income for other persons such as an individual business owner liable to tax under the PIT Act with income streams arising outside the course of employment. This lacuna thus gave rise to diverse interpretations of the "Gross Income" which was adopted in the computation of CRA.

Consolidated Relief Allowance Post-Finance Act, 2020

In order to address any prior misconception, the FA 2020 in Section 33(2) expressly defines "Gross Income" for purposes of computing CRA as follows: "*For the purposes of this Section, "gross income" means income from all sources less all non-taxable income, income on which no further tax is payable, tax-exempt items listed in paragraph (2) of the Sixth Schedule and all allowable business expenses and capital allowance.*"

From the discussion in this unit, it could be gleaned that even though tax is compulsory but it is not an exercise to put unnecessary burden on both individual or cooperate organization. The weaker sex like women, children and disabled persons are accorded some reliefs and allowances. The resultant effect is that, by this relief, the tax payer will be able to manage his meager recourses to the extent of still having some fund left to take care of other family commitments.

Significantly however, the relevant tax authority may require a claimant to support his claim for relief with documentary evidence before that he is entitle to such claim(s), and if in the opinion of the tax authority the evidence is inadequate or if the supporting evidence is not convincing, the relevant authority may refuse to allow the deduction or allow such part only of the amount claimed as the relevant tax authority may decide (Ariwodola: 78)



2.4 Summary

We have in this unit, discussed.

1. How women and disable people are treated to tax in Nigeria.



2.5 References/Further Readings/Web Resources

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

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

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



2.6 Possible Answers to Self-Assessment Exercise(s)

Self-Assessment Exercise

1. Personal relief are those allowed to an individual tax payer which are set off against his gross income in order to ascertain his taxable income.
2. the *Finance Acts 2020* (FA 2020) has refined a wide spectrum of the Nigerian tax laws in order to reflect present realities and resolve certain contentious issues