

COURSE GUIDE

PUL 811 LAW OF TAXATION I

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INTRODUCTION

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

Our discussion in this semester will focus on the nature, scope as well as the elements of taxation. We will consider the tax administration in Nigeria and discuss also, chargeable income and various tax reliefs.

COURSE LEARNING OUTCOMES

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

- explain the term 'tax' is
- identify income chargeable to tax
- describes various tax reliefs.

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.

COURSE MATERIALS

The major components of the course are.

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

MODULES AND STUDY UNITS

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

Module 1 The Nature and Scope of Taxation

- | | |
|--------|---|
| Unit 1 | The nature and meaning of tax |
| Unit 2 | Background history of Nigerian taxation |
| Unit 3 | Types and forms of taxation |

Module 2 Elements of Taxation

- Unit 1 Nigerian Tax A Base
- Unit 2 Sources Of Tax Laws In Nigeria

Module 3 Nature of Tax Administration in Nigeria

- Unit 1 Imposition of Personal Income Tax in Nigeria and Determination of Residence
- Unit 2 Nigerian Tax Administration

Module 4 Income Tax Chargeability

- Unit 1 Chargeable Income And Its Computation
- Unit 2 Computation Of Income Tax

Module 5 Deductible Expenses and Allowable Expenditures

- Unit 1 Deductible Expenses

Module 6 Employment Taxation

- Unit Taxation of Employment Income

Module 7 Business Income

- Unit1 Taxation Of Business Income

Module 8 Tenets of Investment Income

- Unit 1 Taxation Of Investment Income

Module 9 Income Tax Personal Reliefs

Unit 1 Personal 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.

REFERENCES / FURTHER READING

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

ASSESSMENT

There are two aspects of the assessment of this course, the Tutor Marked Assignments and a written examination. In doing these assignments you are expected to apply knowledge 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.

SELF-ASSESSMENT EXERCISES

There is a self-assessment exercise at the end of 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.

FINAL EXAMINATION AND GRADING

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

COURSE SCORE DISTRIBUTION

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

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

HOW TO GET THE MOST FROM THIS COURSE

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might 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 objectives. These objectives 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.

TUTORS AND TUTORIALS

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

your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

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

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

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

MAIN COURSE

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GENERAL INTRODUCTION

In this first semester of the Postgraduate Program - Master of Laws course known as Law of Taxation I (PUL806), the basic principles of taxation are highlighted slightly above that of the Undergraduate level. It is divided into Six Modules.

Module 1 gives the background history of Nigerian taxation including the meaning, nature and scope of taxation as well as the forms and types of taxation. Module 2 analysis the Nigerian tax bases such income, capital and expenditure. This is to enable students to comprehend ideology behind the taxation of taxpayers' income for revenue generation. In Module 3, the nature of Nigerian tax administrative system is treated with the view of letting the students know the *modus operandi* of relevant tax authorities, tax appeals tribunal, tax laws and their interpretation by the courts in Nigeria. Module 4 of the course Unit Structure evaluates the chargeable income, its computation. Chapter 5 made some additions on the deductible expenses and allowable expenditures available to all tax payers. Under module 6, the taxation of employment income was analysed and module 7 examines the taxation of business income. Module 8 highlights the tenets of investment income and finally, module 9 gives a purview of personal reliefs respectively. Below is the arrangement of table of contents

MODULE 1 THE NATURE AND SCOPE OF TAXATION

Unit 1	The Nature and Meaning of Tax
Unit 2	Background History of Nigerian Taxation
Unit 3	Types and Forms of Taxation

UNIT 1 THE NATURE AND MEANING OF TAX

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Nature and Scope of Taxation
- 1.4 The nature and meaning of tax
- 1.5 Features and characteristics of good tax system,
- 1.6 Summary
- 1.7 Reference/ Further Readings/Web Sources
- 1.8 Possible Answers to SAE

1.1 Introduction

It is very fundamental that students studying the subject, law of taxation must know understand and comprehend the nature and meaning of taxation generally. Thus, under this unit, the actual definition of tax will be examined particularly in respect to various views of authors in the field. Also, the historical perspective of taxation in Nigeria will be considered as well as the various forms and types of taxes in Nigeria including its importance in everyday life of the Nigerian society.

1.2 Learning Outcomes

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

- Understand and appreciate the concept of taxation.
- Highlight the history of Nigerian tax system
- Explain the types of taxes as well as its importance to the Nigerian society

1.3 Scope and Nature of Taxation

1.3.1 The Nature and Meaning of Tax

Self-Assessment Exercises 1

1. Attempt the meaning or definition of tax
2. Enumerate the characteristics of tax

There is no universal meaning or definition of tax. Our tax statutes do not define tax. However, we can have considered the definitions given to tax by considering what the authors of text books on tax provided as well as some case laws in order to understand the subject matter.

For instance, Webster's dictionary of English language (1995) defined tax "*...as charge imposed by government authority on properties, individuals or Transactions to raise money for public purpose...*" The Black's law Dictionary (2009) further describe tax as "... a ratable portion of the produce of the property and labour of individual citizen taken by a nation in the exercise of its sovereign rights for the support of government for the administration of the laws and as a means for continuing in operation the various legitimate functions of the state.

The Oxford English Dictionary (1973) defined tax as '... a compulsory contribution to the support of government levied on persons, property, incomes, commodities, transactions etc. now at a fixed rate

proportionate to the amount on which the contributions are levied...”. In addition to the above definition, the Oxford Advanced Learner’s Dictionary (2006) defined tax as “...*money that you have to pay to the government so that it can pay for public services...*”

A text book writer Adesola (1998) defines tax as “...a compulsory levy which a government imposes on its citizens to enable it obtains the required revenue to finance its activities. Likewise, Dominic (2006) defined tax as “...*an enforced contribution of money, enacted pursuant to legislative authority...*”

Another book written by Abdulrazaq M.T (1993) postulated that taxes are imposed under the authority of the legislature that they are levied by a public purpose. What is more, a recent book written by the same author Abdulrazaq (2002) defines tax as “...*an enforced contribution of money, extracted pursuant to legislature authority...*”

Perhaps we can consider Aiyar’s Concise Law Dictionary (2009) which compressively defined tax as “...*a compulsory exaction of money by a public authority for public purposes enforceable by law and it is not payment for services rendered...*”

Apart from the opinion of text book writers on the definition or meaning of tax, it will be more convincing to examine the definition of tax given by the courts, in some cases, since the tax statute failed to do so: it can be referred as- Judge-made-laws or judicial precedent.

The first case that comes to mind is **Mathews vs. Chicory Marketing Baord (1938) 60 CLR 263** where it was held that tax is “...a compulsory exertion of money by a public authority for public purposes or taxation is raising money for the purpose of government by means of contribution by individual persons...”

Also, in the case of **U.S. v. Butter (2279) U.S. 1 (1946) p. 61**, Justice Robert Stated that “...a tax in the general understanding of the term and as used in the Constitution signifies an exertion for the purpose of government. The word has never been thought to connote the expropriation of money from one group for the benefit of another...”

It can be seen from the definitions given above by the dictionaries, text books authors and case laws, but without any statutory definition of tax, it can be clearly understood that tax is basically a fund raised by the government as revenue from individual taxpayers for public use. (***With the aid of authorities, define the term ‘taxation’***). The common elements in the above definitions of tax is mandatory payment, coercion

or compulsion to pay money levied by the government or any legal authority, backed by law and for public use whether direct or indirect.

Cogently put, tax can be defined as a compulsory and mandatory levy imposed on the income, property, commodities, transactions, trade, business or profession of taxpayers by the government through any relevant tax authority for the economic development of that country state or nation.

Tax is different from other similar compulsory exactions from taxpayers. For example, paying tollgate fees is not tax *per se* because, it is simply a charge for a government service, you can choose not to ply that road. Whereas, any mandatory charge such as income or salary for defence or revenue generations in the country can be considered as tax provided it is legislated upon or laws are made in that respect by the government.

1.3.2 Features and characteristics of a good tax system

This is also termed the canon of taxation postulated by the famous English Economists – Adams Smith in his book ‘*The Wealth of Nations*’. (not published). (***What features would you use to identify an item as a tax?***). He was really frightened after the analysis of the global increase of population that if it is not managed properly, there will be acute shortage of food etc. In the same vein, he stated that governments should carefully tax the citizenry in such a way that taxes will not only be equitable, neutral and just but it should make sure that the taxpayer becomes certain of his/her liabilities so as to give room for Administrative efficiency in tax collection and mobilization as Adam Smith posits in his writings, *Canons of Good Taxation* (not published). Consequently;

- a. By equity in taxation, he means that those with the same income should be made to pay equal amount of tax known as ‘horizontal equity.’
- b. His ideas of neutrality in tax, means that taxes should not affect or distort the forces of demand and supply in the market economy. How true is this in today’s Nigerian Market? Your guess is good as mine.
- c. Of course, every person would like to know how much is to be paid as tax and for what purpose? Certainty therefore is a good feature of tax administration.
You may recast your mind to the reasons and causes of the 1929 Aba Market Women Riots and the imposition of some poll taxes in the North during the colonial era.

- d. What is more, any tax administration that is costly to maintain cannot stand the test of Adam Smith. Taxes should be easily and cheaply collected so that the revenue so collected should by far outweigh the amount spent on its collection. This is meant as Administrative Efficiency.

However, in Britain the Meade Report on the structure and Reform of Direct Taxation in 1978 elucidated Adam Smith's 'Canon of Taxation'. It categorized the characteristics of a good tax system into group as follows:

- e. It said that taxes must give incentives and economic efficiency. This is analyzed into: 'Income effect' and 'Substitution effect' as it relates to taxpayers, tax burden and the ability to pay tax vis-à-vis economy efficiency. It has the tendency such as to enable a taxpayer to work, save, invest in capital development and take risks in business, to be innovative in the allocation of resources efficiently to benefit the nation and the community it serves.

It also emphasizes on the distribution basis of taxation such as; who are to bear the burden of the tax? Usually, those who are to benefit from the government revenue and expenditure should be the ones. But this is inefficacious in a developing country like Nigeria where both the rich and poor needed some basic economic and social infrastructures. It seems more equitable to apply the horizontal and vertical equity in taxation as a panacea for an egalitarian society in Nigeria.

- f. This point emphasized the fact that the collection of tax should look simple, cost effective administrative wise so as to ensure compliance by the taxpayer about the taxes that ought to be paid consistently and to avoid incidence of multiple taxation between the various organs of taxation at the federal, state and local governments.

The tax personnel should be well trained in the manner and approach to the collection of tax as well as the remission of the tax proceeds to the government. Bribery, corruption and nepotism should be highly discouraged from within the tax personnel.

- g. Finally, the Meade Report (London, 1978) on *The structure and Reform of Direct Taxation* suggested that tax should be flexible and just in all ramifications. It is not for any government to come in and change the taxing system overnight to suit its political leaning. This will be disastrous to the polity. Tax must give incentives to economic growth and development. It must possess

the semblance of equity, neutrality, certainty and fair in the eyes

Self-Assessment Exercise 2

1. Briefly discuss the importance of tax.

1.3.3 Importance of tax

Taxes are levied by governments to raise revenue that will help in the administration of government – such as paying salaries and allowances to civil servants. Revenue raised by taxation enable the government to provide infrastructural facilities like, schools, hospitals, housing, roads, defence, law and order and other socio-economic and cultural facilities.

As an important weapon for redistribution of income between the rich and poor, tax is used progressively to balance the tax burden between the “haves” and ‘have-nots’ in a way that the rich are taxed higher than the poor to achieve economic and social equality. However, it can be argued that the progressive method of taxation is a double-edged sword. It can give incentives or disincentives to the rich particularly in relation to the ability to either work harder to recover from the high tax or may weaken the taxpayer. In Nigeria today, it appears that any increase in tax to any business, trade or profession seems to have the effect of increasing the cost of products in the economy. Thus, the tax burden seems to shift to the poor person, which the protective tax is meant to protect. In fact, the progressive tax encourages negative economic activities like tax evasion and avoidance.

Tax can be used as a vehicle for economic revitalization, increase investment and saving incentives. It controls and redirects the economy to boom against recession as well as to regulate or discourage negative activities such as; smoking, alcoholism and pools betting respectively.

It is now clear to us that tax defies a single worded definition. The tax statutes also did not help us in defining tax. (*How and why do you think the introduction of tax is a good omen to human society?*). But, by considering the views of textbook writers and decided cases in the law courts, we can say that tax is a compulsory exaction of taxpayers’ income through relevant legal channels for the upkeep of government and its citizen. Also, the taxes imposed should be ideal in such a way that it does not affect the welfare of the government and taxpayers negatively. We have also noted that taxes are significant because, it gives revenue to the government which enables it to carry out its functions, duties and obligations to its citizens.

1.4 Summary

Under this unit, we were able to discern the meaning of tax, its characteristic features as well as its importance to government and its citizens.

1.5 References/Further Readings/Web Sources

AYUA I.A (1993) *The Nigerian Tax Law* (2nd ed.) Spectrum Publishing Co. ltd. Ibadan.

Ola C.S (2004) *Income Tax Law and Practice in Nigeria* (3rd ed.) Heinemann Educational Books ltd. Ibadan.

The Finance Act, 2021 (as amended)

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

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

1.6 Possible Answers to Self-Assessment Exercises 1

- i. There is no universal meaning or definition of tax. Our tax statutes do not define tax. However, we can have considered the definitions given to tax by considering what the authors of text books on tax provided as well as some case laws in order to understand the subject matter.

For instance, Webster's dictionary of English language (1995) defined tax "*...as charge imposed by government authority on properties, individuals or Transactions to raise money for public purpose...*

- ii. Characteristics of tax are:
 - a. equity
 - b. neutrality
 - c. flexibility
 - d, certainty
 - a. Administrative efficiency

Possible Answers to Self-Assessment 2

1. A. Taxes are levied by governments to raise revenue that will help in the administration of government
- B. Tax is an important weapon for redistribution of income between the rich and poor,
- C. It is used for economic revitalization

UNIT 2 BACKGROUND HISTORY OF NIGERIAN TAXATION

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Background History of Taxation
 - 2.3.1 General history of taxation in Nigeria from pre-colonial, colonial and post-colonial era to date
- 2.4 Summary
- 2.5 References /further readings/web sources
- 2.6 Possible Answers to Self-Assessment

2.1 Introduction

It is necessary to understand events in the past and be aware of the present so that we can have foresight into the future. This is called history. In order to have a clear understanding of Nigerian history of taxation, we have to consider the political, economic and socio-cultural background of our country now known as Nigeria. This takes us to the history of taxation in Nigeria from the pre-colonial, colonial and post-colonial period up to date.

2.2 Learning Outcomes

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

- To know and give detail account of Nigerian tax history in general.
- Have the knowledge on the fact that there was system of taxation event before the advent of the British colonialist
- Analyse the impact of British tax system in our society

2.3 Background History of Taxation in Nigeria

2.3.1 General history of taxation in Nigeria from Pre-colonial, colonial and post-colonial era to date.

Historically, before the arrival of British to what is known as Nigeria, there were various systems of taxation. Tax administration was clearly more elaborate in the then Northern part of Nigeria, partly because of the entrenched Islamic System of Taxation introduced by the Arabs from North Africa. There was little or no system of taxation in the South, East and Western part of Nigeria. Taxes in pre-colonial Nigeria

were paid either in cash either in cash or tribute paying to acknowledge the hegemony of vassal states or kingdom conquered by the stronger Chief, Emirs and Obas etc. at a given point in time.

Self-Assessment Exercises 3

1. Would it be correct to say that, if not for the coming of the British, Nigeria could not have had any tax history at all?
2. Enumerate the three problems arose out of the Raisman Commission of 1958

By 1904, the Land Revenue Proclamation Law was established in the North. In 1917, the Native Revenue Ordinance was made for the Western Region. These were the design of the British Colonial Administration in what is now Nigeria following the amalgamation of the Northern and Southern 'protectorate' in 1914. Attempt to introduce Personal Income Tax to the classless society in the Eastern region let to the famous Aba Women Market Riot of 1929.

By 1939, non-native (protectorate) ordinance was introduced to tax non-natives especially on company profits 'accruing from' or 'brought into' Nigeria under the company income tax ordinance no. 3 provided for the taxation of Nigerians with the exception of those living in Lagos. Those taxable are persons in any town, village, community or settlement in any locality including nomadic Fulanis and other persons living within a given geographical location. Hence, income from land, and annual profits of produce from land, employment and pensions, profits from trade or manufactured products, dividends and interest including livestock are all subject to tax. A more adequate tax system was introduced in 1943 partly because of the increasing needs of government policies and society at large. The 1943 tax ordinance introduced high rates of taxes on income 'accrued in', 'derived from', or 'brought into' Nigeria. These include profits from trade, business, profession or vocation carried on in Nigeria.

Constitutionalism led to the need to distribute taxing powers between the central and the regional governments or federal and state governments as we now have. The Nigerian constitutional conference in 1957 at London led to the establishment of Raisman commission. Its objectives were to make recommendations as to how and where the regional and the central governments are to harmonize tax collection and administration in Nigeria.

Their report in 1958 recommended that the Central (federal) should have exclusive jurisdiction on corporations and company taxes together with taxation of non-resident persons (expatriates) and to enter in to double taxation agreements with other countries. (***Succinctly discuss the history of taxation in Nigerian society***). Similarly, regional (states) government should have exclusive power to impose personal income tax on individuals, sole traders, partnerships clubs, trusts and other corporate associations. These recommendations were inserted into the 1960 (Constitution) Order in council.

Three problems arose out of the Raisman Commission of 1958. First, was the danger of double taxation. Second, the Regional (State) personal income tax law might conflict with taxation agreements which the Central (Federal) Government entered or might enter in future with foreign governments. Third, federal (Central) Government and State (Regional) Government must clearly demarcate which income should be subject to companies tax and income tax. It further suggested some uniformity of tax administration particularly in matters of definition of taxable income and basis of charge, period of assessment, taxation of income remitted to Nigeria from overseas; taxation of income accruing in Nigeria to residents overseas, approval of pensions and provident funds for tax purpose, treatment of dividends, taxation of partnership and the type of information to be exchanged between one tax authority and the other. As a result, the Income Management Act of 1961 was enacted (I.T.M.A). All regions (state) were made to enact their tax legislation in line with I.T.M.A 1961. The Western region enacted their tax law to Wit Income Tax (Amendment) Law 1961 also known as Income Tax Development Contribution Law. The Eastern region enacted the Eastern Region Finance Law 1962 and the Northern – region enacted Northern Nigeria Personal Tax Law 1962. The newly created Mid-western region enacted their tax laws in line with the Western region in 1963.

But with the creation of 12 states out of the 4 regions, serious bureaucratic problems arose. It led to the promulgation of Income Tax Management (Uniform Taxation Provisions, etc) Act of 1975. This Act amended I.T.M.A 1961. So far various constitutional provisions e.g. the, 1963, 1979 and the present 1999 constitutions drastically improved the tax legislations in Nigeria. (***Explain the taxing powers of the federal and state governments***).

For instance, the Federal Government has exclusive jurisdiction over the taxation of income and profits of companies, petroleum profit tax, export and excise duties, purchase and sales taxes on some commodities, royalties in mining industries. Whereas, the State Government have jurisdiction over personal income taxes, community taxes purchase and

sales taxes on produce, hides and skins, motor fuel, licence fees, wealth and property taxes, estate duties, casino, pools, lotteries taxes, motor, vehicle registration and driving licence fees. (*Schedule 2 Part II of the Constitution of the Federal Republic of Nigeria (CFRN), 1999 as amended*)

However, note should be taken that there are areas of conflicts between the Federal and State Governments regarding sales tax (Value Added Tax {VAT}) and mining taxes. This has serious economic, social and political implications in present day Nigeria especially in some states of the Federation who are rich in solid mineral and oil reserves. Some cases are pending both at the Supreme Court and National Assembly as at the time of writing this topic.

In conclusion, it can be observed that there were some forms of taxation practiced in the northern, western and eastern parts of what is now known as Nigeria. But, with the advent of the British colonialist, some of the tax systems were either enhanced or reorganized, while others were set aside based on direct and indirect system of colonial governance. What is noticeable is that there was the introduction of British tax system in Nigeria. Even at our independence and post-independence era, we still adopt some of the British tax system.

2.4 Summary

In this unit, we were able to consider the history of taxation in Nigeria from different perspectives. It is an established fact the north had a fairly moderate tax system based on Islamic religious heritage. The west and eastern part of the country had their traditional methods of taxation. The coming of the British colonial regime affected our tax history tremendously in such ways that our present tax system has direct bearing to English tax legislation.

2.5 References/Further Readings/Web Sources

Ayua I.A (1993) *Nigerian Tax Law*. Spectrum Books Ltd, Ibadan

Abdulrazaq M.T (1993) *Principles and Practice of Nigerian Tax Planning and Management*, Batay Publications Ltd, Ilorin

2.6 Possible Answers to Self-Assessment Exercise 3

- i. No
- ii. Three problems arose out of the Raisman Commission of 1958. First, was the danger of double taxation. Second, the Regional (State) personal income tax law might conflict with taxation agreements which the Central (Federal) Government entered or might enter in future with foreign governments. Third, federal (Central) Government and State (Regional) Government must clearly demarcate which income should be subject to companies tax and income tax

UNIT 3 TYPES AND FORMS OF TAXATION

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcome
- 1.3 Types of Taxation
- 1.4 Types and forms of taxes
- 1.5 Summary
- 1.6 References/Further Readings/Web Sources
- 1.7 Answers to SAEs

3.1 Introduction

There are taxes and there are taxes. This means that taxes are classified under different nomenclature. Taxpayers know that they must pay their taxes but, it is not every tax that they must pay. There are various forms and types of taxes to be paid. This is why there is the need to discuss them for the purposes of knowing which tax the taxpayers are liable to pay.

3.2 Learning Outcomes

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

- Identify and understand the different kinds of taxes under our tax laws
- It is expected that the student should be able to know as well as not only to identify but to also understand the different kinds of taxes under our tax laws.

3.3 Types of Taxation

3.3.1 Types and forms of taxes

The following are some of the well-known categories of taxes a taxpayer ought to know:

Self-Assessment Exercises 4

1. State the major distinction between direct and indirect taxes
2. Which kind of taxes do you think is good for revenue generation in Nigeria

1. *Direct Tax*

These are taxes, which every citizen is obliged to pay. It is usually assessed on persons, income, property and vocation or business etc. e.g Personal Income Tax, Business Tax, Capital Gains Tax, Companies Income Tax e.t.c.

2. *Indirect Tax*

Taxes imposed on commodities before they reach the consumer and are paid not as taxes but as part of the price of the goods and services. They are known as Indirect Taxes E.g. Sales Tax now called Value Added Tax (VAT), Stamp duties, Excise duties and Custom duties etc. Indirect Taxes are fixed at a flat rate or specific sum on commodities. This distinguishes it from expenditure, which is fixed by looking at the total expenditure of the taxpayer at a given period.

3. *Proportional Tax*

Any tax paid by the taxpayer which is the equivalent in ratio to the amount of the total value of the person's property representing his total taxable income is a proportional tax. This tax is neutral.

4. *Progressive Tax*

This tax is applied according to the rise in taxpayer's income. The more the income increases, the more the tax is increased. This is a vertical equity meant to distribute income between rich and poor. It may create incentives or disincentives in business investment. (***What is the advantage of regressive tax over proportional tax?***).

5. *Regressive Tax*

In this kind of tax, the structure is based on the percentage of tax rate paid becomes smaller as the value of the property increases. Here, the taxpayer earning higher income but pays lower tax than the person that earns lower income. This kind of tax is not good for any revenue authority.

6. *Ad Valorem or Unit tax*

This is a specific tax levied on the volume of what is being taxed such as excise duties on tobacco and allied products that are taxed based on their weight. The tax is charged on the value of the tax base on the item at different rate, type and percentages of income.

3.4 Summary

Taxes are imposed depending on the knowledge and understanding of the taxpayer about the incidences of the tax burden. So, looking at the various taxes enumerated above, tax liabilities arise depending on the type of income the taxpayer earns categorically. This unit classified and identified the various forms and types of taxes from the direct to indirect taxes. It also provided an insight into proportionate, progressive, regressive and unit forms of taxes.

3.5 References/Further Readings/Web Sources

Ola C.S (2004) Income Tax Law and Practice in Nigeria (3rd ed)
Heinemann Educational Books ltd, Ibadan.

3.6 Possible Answers to Self-Assessment 4

1. While direct taxes are usually assessed on persons, income, property and vocation or business etc. e.g Personal Income Tax, Business Tax, Capital Gains Tax, Companies Income Tax, indirect taxes are imposed on commodities before they reach the consumer and are paid not as taxes but as part of the price of the goods and services
2. Progressive tax system

MODULE 2 ELEMENTS OF TAX

Unit 1	Nigerian Tax Base
Unit 2	Sources of Tax Laws In Nigeria

UNIT 1 NIGERIAN TAX BASE

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcome
- 1.3 Nigeria Tax Base
 - 1.3.1 The Nigerian Tax Base
 - 1.3.2 Definition of Income for Tax Purpose
 - 1.3.3 Distinction Between Income and Capital
- 1.4 Summary
- 1.5 References/Further Readings/Web Resources
- 1.6 Answers to Self-Assessment Exercises

1.1 Introduction

Of course, it will be insignificant if we do not know the tax base in which forms the fundamental framework for the imposition of taxes. Taxes are imposed on the incomes and expenditures of the taxpayer. That being the case, what constitute income, capital, assets and expenditures becomes the subject matter for discourse under this unit.

1.2 Intended Learning Outcomes

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

- define the terminologies of what constitute income, capital and expenditures
- determine where the tax burden lies
- analyse when and how certain types of transactions are liable to tax.

1.3 The Nigerian Tax Base

Income is the tax base in Nigeria like any other developing countries in the world. Income is the basis for any tax liability. It is very absurd to tax capital because it will destroy the sources where income is derived. Expenditure tax on consumption is another source of tax base but, it is commonly used in Great Britain and other advanced countries to sidetrack income tax base. This was adopted following the *Meade's*

Report (1978, London) on The structure and Reform of Direct Taxation in Britain. The reason being that, what an individual consumes creates dis-savings in the economy. But where the individual keeps as income creates savings into the economy. Expenditure tax discourages wastage of resources. In spite of these advantages derived from Expenditure tax, it is not good for developing countries because, it does not stop extortionate and Ostentatious living.

Self-Assessment Exercise 5

1. What is the problem associated with the definition of income?
2. Why is it absurd to tax capital?

1.3.2 Definition of income for tax purpose

The *Personal Income Tax Act, 2004* defines income as "... *any amount deemed to be income under the Act.*" Statute law has no satisfactory definition of income therefore; recourse must be made to case law.

In **COITNESS IRON CO. V. BLACK** (1881) 1 T.C 289, Lord President defined income as: "...Everything of the Nature of Income shall be assessed from what source so ever it may be derived whether from invested capital or from skill and labour or from a combination of both, and whether temporary or permanent, steady or fluctuating precarious or secure" Lord MacNaghten did not give a clear definition of income in **LONDON COUNTRY COUNCIL V.A.G (1981) A.C 26** as*a tax on income, it is not meant to be a tax on anything else*".

In **WHINEY V. IRC** (1925) 10 T.C 113 income was defined to mean – such income as is within the Act taxable under the Act. Income seems to defy any clear logical statutory or case law definition because it is a word without any definite and precise term.

Nigerian courts follow English Courts as regards the definition of income or trading profits. in the case of **ARBICO LTD V FBIR (1986) NCLR 159.**

(What is the problem of expenditure tax in relation to developing countries?).

Economists see income as "the value of what the taxpayer could have consumed during the year without living on and so diminishing his capital wealth in the process.

Income is a dynamic subject hence, little or no importance should be attached to its definition. The only good thing that can be done is to ascertain any amount which can be termed taxable income of a taxpayer such as wages, salaries, shares, profit and taxable income, unless the context otherwise requires in a taxing statute.

There is no general definition of capital as income. Lord Upjohn in **STRICK V REGENT Oil Co. Ltd** (1965) 3 WLR 1577 stated that; “it is indecisive to consider whether a receipt or outgoing is capital or income for tax purposes”. He suggested that the issue should be left to the tribunals and judges to handle it practically in each case brought before them. Capital actually represents the stock of resources from which flows the income as was held in **MALLET V. STAVELEY COAL & IRON CO. LTD.** (1828) 20 K.B 405

(With respect to asset, what factor distinguishes income from capital?). Thus, as can be seen above, it is difficult to understand whether an asset is a revenue receipt or a capital. An asset in any particular trading or business activity may determine its nature such that the nature of the asset may change if and when there is a change in the business. The function of asset is the test of changeability of profits gained as a capital or business revenue. So the main distinction between income and capital involves: -

- a. The physical nature of the asset.
- b. Its function.

Hence, the physical nature of the asset can enable us to know whether it is a capital or trading receipt and in such case, the function of the asset can easily answer the question. Thus, income from land can be distinguished between rental payments; and capital payments like lease premium is usually made; the nature of payments as between installments of capital, and income payments; trading income where a trading profit and an isolated capital gain are differentiated for tax purposes and tax avoidance where under tax avoidance schemes income is converted into capital.

1.4 Summary

It can be seen that; it is very necessary to know what tax base is all about so as to know when liability to tax burden lies on the taxpayer. It is also important to know what capital is and what income is for tax purposes. Under this unit, we are able to analyze and understand Nigerian tax base, the meaning of income, capital, expenditure and their various distinctions.

1.5 References/Further Readings/Web Resources

Ayua, I.A (1993). *Nigerian Tax Law*, Spectrum Publication ltd, Ibadan.

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

1.7 Possible Answers to Self-Assessment Exercise 5

1. Income seems to defy any clear logical statutory or case law definition because it is a word without any definite and precise term.
2. It is very absurd to tax capital because it will destroy the sources where income is derived

UNIT 2 SOURCES OF TAX LAWS IN NIGERIA

Unit Structure

- 2.1 Introduction
- 2.2 Intended Learning Outcome
- 2.3 Legislative Sources of Tax Laws in Nigeria
- 2.4 Summary
- 2.5 References/Further Readings/Web Resources
- 2.6 Possible Answers to Self-Assessment Exercises

2.1 Introduction

In our definition of tax, we are made to understand that tax is a mandatory or compulsory exaction of taxpayer incomes, properties, assets and transactions etc by any lawful authority for the upkeep of government and its citizens. But, that cannot materialize until it has been legislated upon by the lawmakers. That being the case, it means that any taxable subject or object that does not receive the backing of law is null and void strictly. Hence, legislation is the backbone for any liability to tax can arise. But this by no means limited the judge-made- laws even though not firmly enough.

2.2 Intended Learning Outcome s

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

- explain the essence of enacted law by a legal authority before any tax authority impose any tax on the citizen
- explain the judicial decisions that also amplify our tax laws

2.3 Legislative Sources of Nigerian Tax Laws

Certainly, before a taxpayer is liable to pay tax, a law must be enacted to give assent to its imposition. Some of this tax legislation are given as follows:

Self-Assessment Exercises 6

1. How and where does the Nigerian constitution provide for tax in Nigeria?
2. List other tax legislations you know

a. The 1999 Constitution of the Federal Republic of Nigeria. (CFRN)

This is by far the most significant legislative source of income taxes in Nigeria. By virtue of section 4(2) of the CFRN, 1999 as amended under part I & II of the Second Schedule, the Federal legislature has exclusive legislative matter power to make any law on taxation etc; Thus, leaving the residuary legislative powers to the State to make other tax laws under the Concurrent Legislative list under section 4(7) a-c of the 1999 Constitution.

b. Personal Income Tax

These are taxes on the persons or individuals throughout Nigeria known as the Personal Income Tax known as Personal Income Tax Act Cap C.21 LFN, 2004). It replaces the Income Management Act (ITMA) 1961 and 1979 respectively.

c. Companies Income Tax

It is a form of tax levied on the income or profits of all the companies operating in Nigeria. It is a consolidating Act promulgated in addition to the Companies and Allied Matters Act (C.A.M.A.) Cap. C.21, LFN 2004. It is referred to as the Companies Income Tax Act, Cap C. 2 L.F.N., 2004 and replaces Companies Income Tax Act of 1961 and CITA, 1979 accordingly.

d. Capital Gains Tax

They are taxes on the total Assets and Capital of the Company. First introduced as Capital Gains Tax Act (CGTA) 1967, but was amended by CAMA, 1993. It is now referred to as Capital Gains Tax Act (CGTA) Cap. C.2.L.F.N. 2004.

e. Petroleum Profit Tax

These are taxes on the incomes derived from all petroleum products particularly crude oil. It regulates and controls the income and expenditure of all petroleum companies in Nigeria. First introduced in 1955, but amended by CAMA 1993. It is cited as Petroleum Profits Tax Act (PPTA) Cap.P.4 LFN 2004. A PPTA bill to amend it since 2008 has not scaled through up to this point in time.

f. Capital Transfer Tax

It is a tax on the value of properties transferred by any person in a lifetime including the value of the property left at death e.g. testamentary dispositions etc. First introduced by Decree No. 12 of 1979 but amended by other subsequent legislations. It is now called the capital Transfer Tax Act (C.T.T.A) Cap. 43, L.F.N. 1990. But it was abolished in the fiscal policy of 1996.

i. Other income tax legislation

These includes the value Added Tax (V.A.T) Decree No. 102 of 1993. It is a tax that is added to the price of goods and services. It replaces the sales tax Decree No. 7. 1986. There are also the stamp duties which are taxes on documents like deeds, leases mortgages for the sale of landed properties and agreements, etc. It is governed by stamp duties Act (S.D.A) Cap. 411 LFN, 1990. We also have the Education Tax Act of 2004, the Tertiary Education Funds Act, 2004 and the Federal Inland Revenue Service Act, 2004. Finance Act, 2021 (as amended). There are many other income tax laws like Custom and Excise duties, Gambling lottery and pools betting legislations to mention but few. Income taxes are varied in Nigeria from the Federal, state and down to local government levels. However, the federal government has more legislative powers to impose income taxes in Nigeria. (*VAT is an example what type of tax?*)

Even though we know that any tax imposed by the government must be legislated upon. There are instances in which the courts also add value to these statutes but with a strong warning never to interpret the tax laws contrary to the provisions of the tax statutes.

2.4 Summary

Conclusively, it can be said that the sources of Nigerian tax laws are made by legislation in the National assembly and Judges are expected to interpret our tax laws strictly according to the intent of the legislature without any iota of deviation that can render it null and void. From the above, we were able to discuss the sources of Nigerian tax laws which are basically statute oriented and law court judges are obliged to interpret it according to the intent of the legislators strictly. The Personal income tax Act, Companies income tax Act and several other statutory tax Acts were reviewed accordingly.

2.5 References/Further Readings/Web Resources

Abdulrazaq, M.T. (1993) *The Principles and Practice of Taxation in Nigeria*, Batay Publication ltd, Ilorin.

Ayua, I.A. (1993) *Nigerian Tax Law*, Spectrum Publishing co. ltd. Ibadan.

Ifueko, O.O. (2012). *Federal Inland Revenue Service and Taxation Reform in Democratic Nigeria*. (FIRS) Ibadan Nigeria.

2.7 Possible Answers to Self-Assessment Exercise 6

1. By virtue of section 4(2) of the CFRN, 1999 as amended under part I & II of the Second Schedule, the Federal legislature has exclusive legislative matter power to make any law on taxation etc; Thus, leaving the residuary legislative powers to the State to make other tax laws under the Concurrent Legislative list under section 4(7) a-c of the 1999 Constitution.
2.
 - a. Personal Income Tax
 - b. Company income tax
 - c. Capital Gains Tax
 - d. Petroleum profit tax
 - e. Capital transfer tax

MODULE 3 NATURE OF TAX ADMINISTRATION IN NIGERIA

Unit 1 Imposition of Personal Income Tax in Nigeria and Determination of Residence

UNIT 1 IMPOSITION OF PERSONAL INCOME TAX AND DETERMINATION OF RESIDENCE

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcomes
- 1.3 Imposition of personal income Tax
 - 1.3.1 Persons subject to tax
 - 1.3.2 Relevant tax authorities
 - 1.3.3 Tax Appeal Tribunal
 - 1.3.4 Interpretation of Tax Laws
- 1.5 Summary
- 1.7 References/Further Readings/Web Resources
- 1.8 Answers to Self-Assessment Exercises

1.1 Introduction

At this point, it is significant to know the persons that are liable to pay tax. The taxpayers are the subject matter as to the liability of tax payment. In this case, we have to ask ourselves, who are these taxpayers and where do they reside in order to determine the relevant tax authorities that will enforce tax payment? Here also, the Nigerian tax administrative organs need to be understood. Since tax statutes are mandatorily invoked, students must know how the court interprets these tax laws strictly. Likewise, following the court processes, there must be aggrieved tax authorities and taxpayers who may not be contented with some decisions on tax issues; hence, we shall also consider the appeal system provided under the Federal Inland Revenue Act, 2004 for expediency.

1.2 Intended Learning Outcomes

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

- determine persons subject to tax and the residence issues
- describe the grievance mechanism to solve tax cases at the Tax Appeal tribunals
- evaluate how are these tax statutes interpreted by the courts.

1.3 Imposition of Personal Taxation in Nigeria

1.3.1 Imposition of Personal Income Tax and Determination of Residence

Prior to the enactment of the 1979 constitution, most of the states in the country promulgated their own law, which empowered them to impose personal income tax on their subjects. But the 1979 constitution later invalidated all the laws as soon as it came into effect. (*Identify some of the amendments effected in our tax laws from inception and the reasons*). It must be pointed out that the need for uniformity in the taxation of persons has always been advocated by our successive constitutions ever since 1960. It was the desire for uniformity that informed the enactment by the Federal government of the income tax management Act 1961 which was subsequently amended a number of times and consolidated into Income Tax Management (Uniform Taxation Provisions e.t.c.) Act 1975. In 1993, it was amended to wit Personal Income Tax Act (P.I.T.A) 1993. Also in 2004, there was another amendment known as the Personal Income Tax Act Cap P.8 LFN, 2004. Some further amendments were made under PITA, 2011 and 2012 which appears to be the most current Personal Income Tax Act respectively. It has identified taxable persons as well as determining their assessable income with reference to the taxpayer's source of income. Furthermore, it determines the taxability of such income as identified.

Self-Assessment Exercises 7

1. How does residence help in determining whether or not a person's income is subject to tax?
2. What is partnership?

a. *Determination of Residence*

In determining whether or not a person's income is subject to tax, his residence acts as an indicator or a pointer to that fact. Thus, a person's income cannot be taxed unless his residence in a tax territory is proved in a year of assessment. In personal income tax, the rules for the determination of the residence as well as the accessibility of the income of individuals, partnership, communities, families' trustees and executors are dealt with by virtue of section 2 of P.I.T.A, 2004.

b. *Meaning of Residence*

This denotes a particular locality where a taxpayer resides. Sometimes, a person may have two places of residence. Especially, in the case of individuals, residence is defined to mean “a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest house or other places at which it is temporarily lodging unless no more permanent place is available for his use on the day of assessment. (s.2 sub-section 2, PITA 2004)

c. *Meaning of Principal Place of Residence*

In relation to an individual, who has two or more places of residence, on a relevant day, it connotes the following: -

- i. In the case of an individual who has no source of earned income other than a pensioner, it means that place or those places in which he usually resides.
- ii. In the case of an individual who has a source of earned income other than a pensioner in Nigeria, it means that place or those places which on a relevant day is nearest to his usual place of work;
- iii. In the case of an individual who has a source of unearned income in Nigeria, that place or those places in which he usually resides.

d. *Determination of Residence of Individual Itinerant Worker*

An itinerant worker is defined to mean: -

“.....An individual who works at any time during a year of assessment (other than a member of the armed forces) for daily wage or customarily earns his livelihood in more than one place in Nigeria and whose total income does not exceed ₦600”. (s.100 PITA 1993), Ayua 76(1993)

Though the word “place” is not defined in the Act, it may be deemed to connote a state or territory. This conclusion is informed by the fact that an itinerant worker is taxed by the state in which he is found and in fact, it is submitted that the equation of “place” with “territory” is national having regard to the fact that the Decree does not make the proof of residence of an itinerant worker a condition precedent for the determination of his income tax liability.

e. *Partnership Income*

(Identify the terms that are usually imbedded in partnership deed).
Partnership income in any year of assessment is done by the tax authority of the territory in which the principal office or place of

business of the partnership in Nigeria is based on the first day of that year or is first established during that year. By the way of introduction, a partnership may be regarded as an association of two or more persons who agree to carry on business in common with a view to making profit. Usually the partnership business is carried on in accordance with certain terms and conditions agreed mutually by all the partners concerned. These terms are normally imbedded in partnership deeds, which in some cases may not be evidenced in writing. Normally such agreements will refer to the following:

1. Each partner's contribution to the capital of the partnership;
2. Rate of interest, if any payable on capital;
3. Salaries if any, payable to each of the partner's;
4. Limits of amounts which each of the partners can withdraw;
5. Profits or losses sharing ratio.

The taxation of partnership is currently regulated by Section 8 PITA, 2004. But it must be quickly pointed out that the liabilities of partnership are unlimited though in certain cases, there may be registered partnerships with limited liabilities. It is the income of individual partners that is taxed. A certified true copy of a partnership deed is usually required and shall on request be given to the relevant tax authority for purposes of registration. But where there is no written deed, any agreement under which the partnership is operating would suffice. The instrument evidencing partnership is required to relate to accounting year (and not the assessment year) since the accounting year is subject to changes and which is to be appointed among the partners for the purpose of composing the tax payable by each of the individual, partners.

The instrument of partnership does not necessarily connote a regular partnership deed. Where the terms of the partners are contained in series of documents or in correspondences between the partners, the documents or letters would suffice as instrument of partnership, which will, entitle the firm to be registered. It is not of too much importance that the deed of partnership should have been in existence right from the outset or commencement of the partnership. Once there is evidence of partnership that would suffice. It must be emphasized here that no partnership can be registered unless the instrument specifies the individual shares of the partners in the profits of the partners.

The first thing to do is to find out the income of the partnership for the year of assessment. Partnership income is computed as the income of a sole trader is being computed. The only difference being that, any remuneration, interest on the capital payable to the partners together with the lost of partners leave or recreational passages, which would

have been disallowed for individuals are permitted in the partnership account. Though ultimately, they are taxed in the hands of the recipients individually.

Partners' income arrived at usually apportioned to each of the partners in accordance with the provisions embedded in the partnership agreement. Thus, the assessment on the partners is done as if they were trading individually. In determining the income of the partner, the following shall be added up:

1. Salary and interest on capital, if any, paid to him and charged in the partnership account.
2. Private passages costs, if any, charged in the partnership accounts.
3. Share off the partnership income as appointed to him in accordance with the terms of sharing profits and losses as laid down in the partnership agreement.

The sums arrived at is deemed to represent the ascertained income or loss of the partners for that period from trade, business, profession or vocation carried on by him during the period. It is this sum that when added with any other income of the partner derived from other sources to arrive at the total income of that partner that is chargeable to income tax.

f. Communities.

Section 2(4) PITA, 2004 provides with respect to the computation of the income of a village or other indigenous community to the effect that tax may be imposed for any year only by the law of the territory in which that community is to be found and such tax may be either: -

1. The estimated total income of all its members;
2. The estimated total income of those of its members whose income it is impracticable in the opinion of the relevant tax authority to assess individually; or
3. The amount of any income, which in the opinion of the relevant state tax authority in relation to such community, is impracticable to apportion with certainty between its members.

Under section 100 PITA, the phrase "individual" means a corporation sole and a body of individuals". But it does not include a company, partnership, community, trustee or executor, or any body of trustees or executors. Thus, "a body or individual", is not the same as "a community". Before a community can be subject to income tax, tax must specifically be imposed upon it as a taxable person otherwise, no tax can be imposed upon it. A community's income can be computed for

tax purposes in three ways as indicated above. Assessment is however made in the name of the member who manages its activities. But any part of the total income of such a community, which is ascertainable as the separate income of an individual who is a member of the group, is not taxable on the group as a whole. Some states have however; resort to section 2(4) PITA to impose flat rate income tax on the subjects.

g. Family Income.

Family income is that income in which the several interests of individual members of the family are indeterminate or uncertain and recognized under a particular law or custom. Such income can only be taxed by the state in the name of that family who customarily receives that income on behalf of the family from its source. In the case of family, any part of the total income of such a body, which is ascertainable as the separate income of an individual, who is a member of the group as a whole? Section 2(5) PITA provides for the taxation of the family income. Ayua 67 (1993)

h. Trustees, Executors and Settlements.

Section 2(5) PITA also governs the taxation of settlements or trusts or an executor of states of a deceased person. Usually, the tax authority of such a deceased person or trustees in the state is the Inland Revenue department where the administration of the trust takes place or where the deceased was last resident. Usually in assessing the income of a deceased person in the name of the executor for tax purpose, the income, which arose before death, is assessed in the executors' name. Full allowable expenses are granted as if the deceased had not died but has simply learned to carry on his trade or business. Assessable tax due before the deceased death is payable out of the estate. In the case of income, which arose after his death, assessment is made in the name of the executor as a single person. Paragraph 8 of the second schedule of PITA defined settlement as any disposition, trust, covenant, agreement, arrangement or transfer of asset. Under the Act, individual tax payers who transfer properties to their infant children under a family arrangement come within the purview of paragraph 8 of second schedule referred to. Thus, any such disposition made in favour of an infant is deemed to be income of the settler or transfer for the purpose of tax. Like family income, most of the state tax laws do not provide for the taxation of income of settlement or beneficiary under a settlement. The result is that incomes of settlers are not taxed in such states in the federation.

i. Corporate Bodies

Any corporate body is deemed to be resident during the year of assessment in the state which its principal place of business is in Nigeria in the first year of assessment. It is important to note that any dispute that arises with respect to the determination of place of residence of a person for the purpose of tax in any assessment year shall be referred to the Board for adjudication by the relevant tax authorities involved.

j. Armed Forces

A member of the Armed Forces (employed in combatant capacity) is deemed to be resident in the Federal Capital Territory for tax purposes in the year of assessment.

Incapacitated Taxpayers.

The fact that a person is handicapped individual does not mean he is not liable to income tax. Thus, an infant or a lunatic is a taxable person. In such a case, he is assessed in the name of his agent, guardian or any person acting on his behalf. Where an infant has no guardian or trustee, an assessment can be made in his own name or an agent may be appointed for him.

k. Persons Outside Nigeria.

A person outside Nigeria who is carrying on a trade or business in Nigeria is subject to tax on the profit arising from such trade or business. The proportion of the profit relating to the business in Nigeria is liable to tax. Where an individual's income become taxable as a result of the fact that he is deemed to be resident in that state even though not physically present, an assessment can be made in his agent's name. The amount of tax payable is such amount the individual would have paid if he had been physically resident.

(List and briefly explain various persons subject to tax)

Clearly show how residence is of ultimate importance to the tax authorities and taxpayers in Nigeria generally.

Self-Assessment Exercises 8

1. Enumerate the tax authorities you know
2. What is the aim of the Indigenous Concession Programme?

1.3.2 Relevant Tax Authorities in Nigeria

It is of great importance to examine the relevant tax authorities in Nigeria. PITA, 2004 (as amended) established the tax administrative organs and amplified by the Federal Inland Revenue Service Act (FIRSA), 2007 which are provided below:

1. Federal Inland Revenue Service (FIRS)

FIRS Act, 2007, was established by virtue of section 1 of the Federal Inland Revenue Service (Establishment, etc.) Act of 2007. It was enacted out of the former Federal Board of Inland Revenue that was established under section 1 of the Companies Income Tax Act (CITA) 1990 and was dissolved by section 62 of the Act. (*What are the responsibilities of the FIRS?*). FIRS Act 2007 is the operational Federal Government's agency in charge of assessing and collecting relevant taxes for the Federal Government. Its functions include the following:

- i. to collect, recover and pay to the designated account, any tax recognized by the Act or any other law or enactment.
- ii. To assess persons including companies, enterprises and individuals chargeable with tax
- iii. to assess, collect and enforce payment of taxes as maybe due to the government or any of its officials
- iv. to collaborate with relevant ministries and agencies, for the review of the tax regimes and promote the application of tax revenue for the stimulation of economic activities and development
- v. to make, from time to time, a determination of the extent of financial loss and such other losses by government arising from tax evasion and fraud and such other losses or revenue forgone arising from tax waivers and other related matters.

FIRSA has a Board, with the power to provide general policy guidelines relating to the functions of the service, among other related matters under section 7 of the Act. The Technical Committee of the Board considers all tax matters that require professional expertise and make recommendations to the Board.

2. State Board of Internal Revenue (SBIR)

SBIR is the relevant tax authority charged with assessing and collecting taxes that are due to the state governments. It was established under section 85A of the Personal Income Tax Act (PITA) 1993 now PITA, 2011. The SBIR has an operational arm known as State Internal Revenue Services.

Its functions are:

- i. ensuring the effectiveness and optimum collection of all taxes and penalties due to the state government under the relevant laws.

- ii. doing all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Commissioner for Finance of the relevant state.
- iii. Making recommendations where appropriate to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemptions as may be beginning from time to time.
- iv. generally controlling the management of the State Services on matters of policy subject to the provisions of the law setting up the State Service

3. Local Government Revenue Committee (LGRC)

LGRC was also established under section 85 (1) of PITA, 1993 now PITA, 2011. Its function includes assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected in a manner to be prescribed by the Chairman of the Local Government.

4. Other tax authorities.

In addition to the above, PITA 1993 also establish other tax authorities namely:

- a. Joint Tax Board (JTB)
- b. Joint State Revenue Committee (JSRC)

a. Joint Tax Board

The creation of the Joint Tax Board vide section 85(1) of the

Personal Income Tax Act of 1993 now PITA 2011 is a pragmatic move to streamline if not eliminate the conflict in the taxing powers in Nigeria. The Joint Tax Board is made up of:

- i. The Chairman of the Federal Board of Inland Revenue as Chairman.
- ii. One member from each state who should be a person experienced in income tax matters.
- iii. A secretary who is not a member but shall be in charge of the administrative matters of the Board.
- iv. The Legal Adviser of the Federal Board of Inland Revenue shall be in attendance at all meeting of the Joint Tax Board as Adviser.

The Joint Tax Board shall reach decisions by consensus otherwise by majority of members present and voting. Quorum of members is seven. The duties of the Joint Tax Board are expressly stated in the Act some of which are:

- i. Use its best endeavors to promote uniformity both in the application of Personal Income Tax Act 1993 now PITA 2011 and in the incidence of tax on individuals throughout Nigeria, and
- ii. Impose its decisions on matters of procedure and interpretation of the Personal Income Tax
- a. Act, on any state for purpose of conforming to agreed procedure or interpretation.

The Act fails to arm the Joint Tax Board with powers to discipline erring members. Rather than resolving the various conflicts in the taxing powers of the members of Joint Tax Board encourages their respective governments to create more conflicts in the guise of exercising their rights to collect various taxes.

b. Joint State Revenue Committee

This body comprises the principal tax officers from both the state and local government levels to ensure proper adherence to the state and local government taxing powers so as to avoid conflicting interest or any problem arising from the collection and enforcement of taxes within their taxing jurisdictions.

1.3.4 Tax Appeals Tribunal

The importance of tax to any Nation of the World today cannot be overemphasized. It is a fact that there is a paradigm shift among the developed and developing economies from reliance on Oil revenue to taxation due to the uncertainty of sale in the International market. In Nigeria today, the federal government is trying to open all other sectors of the economy especially the manufacturing and the Agricultural sector in order to boost the revenue profile of the economy. Therefore, the National Tax Policy of Nigeria emphasizes the need for an efficient tax system that encourages a formidable tax dispute resolution system. Hence, the Tax Appeal Tribunal (TAT) which came into existence through the Federal Inland Revenue Service (FIRS) Establishment Act, 2007 and the Tax Appeal Tribunal (Establishment) Order, 2009. It is therefore monumentally expedient to unfold, interrogate and discuss on these issues which are salient to the legality or otherwise of the TAT with regards to the limitations of the powers, functions, jurisdiction and operation of the TAT.

It is not a historical accident that a Federal Court can exercise its original jurisdiction over issues/matters relating to taxation within the Federal Government set up. The Federal Revenue Court (FRC) which was promulgated by Decree No. 13 of 1973 and later restyled as Federal High Court (FHC) by Section 230(2) of the 1979 Constitution was vested with more powers to exercise jurisdiction to the exclusion of any other Court in civil and criminal causes and matters arising from the exclusive legislative list. However, the powers of the Federal High Court was no longer limited to taxation, customs and excise duties, banking, currency and fiscal measures but to other issues as listed in the exclusive list.

(How did the Constitution deal with the question of taxing powers of the state and federal government?)

It should be noted that after the oil boom of the 1970s, disputes in tax matters had doubled and since the Federal High Court had more additional matters to revenue issues. The court could no longer adequately attend to tax and revenue issues hence, the delay and never ending of disputes on matters relating to taxation. To reduce any judicial inadequacies of tax and other related matters, the Personal Income Tax Act No. 104, 1993 (as amended in 2004 etc), the Companies Income Tax Act of 1990 (as amended in 2004 etc) and the Petroleum Profit Tax Act of 1990 (about to be amended) established the Body of Appeal Commissioners to entertain and resolve disputes as regards Companies Income Tax, Petroleum Profit Tax, Capital Gains Tax, and Personal Income Tax matters within the country. The Value Added Tax No.102, 1993 was no exception as it created the Value Added Tax Tribunal.

Section 59 (1) of the Act provides for the establishment of the Tax Appeal Tribunal (TAT) as a dispute resolution mechanism for all tax matters within the jurisdiction of the Federal Government with respect to taxes collected by the Federal Government as contained in the exclusive list of the Constitution of the Federal Republic of Nigeria. These taxes are assessed, collected and accounted for by the Federal Inland Revenue Service (FIRS), whose amended Act contains the Tax Appeal Tribunal (TAT).

(Briefly discuss the arguments surrounding Section 251 of the 1999 Constitution). The Constitutional question that arose was the jurisdiction of T.A.T over taxing and revenue matters of the federal government in the light of the exclusive jurisdiction of the Federal High Court over these matters under Section 251 of the amended 1999 Constitution. Obviously, the TAT has twin powers where it derives its jurisdictional powers to function. These are conferred by Section 59 and the fifth scheduled to the Act. It is interesting to know that both relate to

the Revenue of the government of the federation which brings it into conflict with the exclusive jurisdictional powers of the Federal High Court under the Constitution. Section 251(1)(a) of the Constitution confers exclusive jurisdiction on the Federal High Court to determine civil cases and matters relating to the revenue of the government of the federation. Furthermore, subsection (b) confers exclusive jurisdiction in all other bodies subject to federal taxation. In other words, revenue such as taxes, duties, charges among others assessed, collected and accounted for by federal bodies such as the Federal Inland Revenue Service, Nigerian Custom Service, Corporate Affairs Commission, Nigerian National Petroleum Corporation, to mention a few. Thus, issues, matters or disputes regarding taxation that arises, the Federal High Court is to exercise jurisdiction over them. Also, where Ministries, Departments and Agencies (MDGs) act as collection Agents on behalf of government, the Federal High Court has jurisdiction over them.

For emphasis, section 252(1) (a) and (b) of the Act provides that:

1. *“Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters.*
 - (a) *A relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a Person suing or being sued on behalf of the said Government is a party.*
 - (b) *Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation*
The aforementioned provision seems to be unambiguous as it excludes all other courts from exercising the jurisdiction conferred on the Federal High Court by this section.

Another argument that has been put forward is that Section 251 of the Act excludes “any other court” as seen in the provision and that it does not include “tribunal” and this does not imply exclusive original jurisdiction, hence the Federal High Court can exercise appellate jurisdiction over the tribunal as it is merely an administrative body.

To counter this argument, it should be noted that the courts listed in the Constitution are only superior court of records. Therefore, any other court and tribunal not in the constitution is an inferior court. *The question then is – if the constitution excludes other courts from exercising the jurisdiction conferred on the Federal High Court, how much more tribunals?* It is absurd and incongruous to contend that powers excluded from other superior courts by the constitution can be

exercised by inferior tribunals. Therefore, it is submitted that the constitution contemplates the exclusion of any other body, whether judicial or quasi – judicial from meddling into the jurisdictional powers conferred on the Federal High Court. *STABILIN VISONANI V FBIR* (2009) 13 NWLR, PT 11, p.9

There is another argument that since the tax tribunal is merely an administrative one, Section 251 of the 1999 Constitution does not affect its powers and functions in resolving disputes, this argument is misleading because paragraph 20(3) of the fifth schedule provides as follows:

“Proceedings before the tax appeal tribunal shall be deemed to be a judicial proceeding and the tribunal shall be deemed to be a civil court for all purposes”.

The above provision shows unequivocally that the tribunal is a judicial body in the exercise of the jurisdiction conferred on it by the FIRS (Establishment) Act taking a look at its procedure rules, it is vested with powers which the regular court exercises such as:

- a. Power to summon witnesses and compel their attendance
- b. Require the discovery and production of documents
- c. Receive evidence and affidavits
- d. Have the power to review its decisions.
- e. Dismiss an application for default or deciding matters *ex parte*
- f. Set aside any order or dismiss any application for default or any order passed by it *ex parte*.
- g. The power to give decisions out as on paragraph 8 of the Fifth schedule-power to conform, reduce, increase or annul the assessment or make orders as it deems fit.
- h. It has the power to do anything which in the opinion of the Tribunal is incidental or ancillary to its function under this schedule.
- i. Its decision can be appealed against to an appellate Court.
- j. And its judgment or award or decision shall be enforced as a judgment of the Federal High Court upon registration of a copy of such award or judgment with the Chief Registrar of the High Court.

(Mention and discuss at least one case relation to the entailment the Tax Appeals Tribunal)

The creation of the TAT as seen from the provision of the FIRS (Establishment) Act has continued to generate controversy in the light of the Court of Appeal decision in **Stabilini Vision Ltd v. FBIR** (supra).

This decision currently affects the legitimacy of the present tribunal due to the fact that the factual and legal elements in the case which has to do with the usurpation of the exclusive power and jurisdiction of the Federal High Court in accordance with the Constitution, can be brought to bear in the establishment, composition, jurisdiction and functions of the tribunal.

The jurisdiction of the TAT is provided in Section 59(2) FIRSA, 2007. It provides that, *“The tribunal shall have power to settle disputes arising from the operation of this Act and under the first schedule.”*

In other words, the tribunal is to determine disputes arising from the FIRS Act and to adjudicate on disputes and controversies arising from the operation of the tax laws and government regulations as enumerated in the first schedule to the FIRS Act These legislation cover:

- i. *Companies Income Tax Act, CAP. 60LFN, 1990*
- ii. *Personal Income Tax (Amendment) Act, No.20,2011*
- iii. *Petroleum Profits Tax Act CAP.354 LFN; 1990*
- iv. *Value Added Tax No. 102; 1993;*
- v. *Capital Gains Tax Act CAP. 42 LFN; 1990*
- vi. *Stamp Duties Act CAP 411 LFN, 1990*
- vii. *All regulations, proclamation, government notices or rules issued in terms of these legislation.*
- viii. *Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulation incidental to these laws, conferring any power, duty and obligation on the service;*
- ix. *Enactment or laws imposing Taxes and Levies within the FCT.*
- x. *Enactment or laws imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licenses, fees for oil Exploration License (OEL), Oil Mining lease (OML), Oil Production License (OPL), royalties, rents (Productive & Non-productive fees for licenses to operate drilling rigs, fees for oil pipeline licenses, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.*

Scholars, Researchers, Tax practitioners and Lawyers have continued to challenge the unconstitutionality of the powers and jurisdiction of the tribunal under the Constitution. These are some of the points highlighted against the Tax Appeal Tribunal namely:

1. The constitutionality of the jurisdiction of the tribunal over taxing matters and revenue of the federal government in the light of the exclusive jurisdiction of the Federal High Court over such matters under Section 251 of the Constitution.
2. The constitutionality of the composition of the tribunal whose members are entirely appointed and removable by the minister, an agent of the federal government in the light of Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) which guarantees fair hearing, by requiring every tribunal to be constituted in such a way as to secure its independence and impartiality.
3. The constitutionality of the ***ouster clause*** contained in paragraph 8 of the fifth schedule to the Act which precludes the Court from inquiring into the validity of the composition of the tribunal or the qualification of members of the tribunal.
4. The validity of the restriction, under the Act, of appeals to the Federal High Court from the decision of the tribunal to appeal only on points of law.
5. The constitutionality of the jurisdiction of the tribunal to adjudicate disputes arising from the Taxes and Levies (Approved list of collection) Act

In ***Stabling's case***, the Court of Appeal unanimously declared the provision of Section 20 of the VAT Act unconstitutional, null and void for infringing and usurping on the exclusive jurisdiction of the Federal High Court under Section 251 of the Constitution as it were.

Before the Court, **four** salient issues were raised and decided upon, these are:

- (1). *Whether the value Added Tax Tribunal was right to have assumed jurisdiction to hear and determine this matter, in view of the provision of Section 251(1) of the Constitution of the Federal Republic of Nigeria, 1999*

On the importance of jurisdiction, the Court of Appeal stated thus;
Jurisdiction is the pillar upon which the entire case before a Court stands . . . the instant case, the VAT Tribunal had no jurisdiction to entertain the action however well presented. In the circumstance, the ruling of the tribunal was null and void.

Also looking at ratio 5 of the judgment, it was stated that:
Where the Constitution of the Federal Republic of Nigeria has vested jurisdiction on a Court of Law, it cannot be lightly divested. Where it is intended to be divested, it must be done by clear, express and unambiguous words and by a competent amendment of the Constitution.

The amendment can divest or water down the exclusive jurisdiction of the Federal High Court and give same to the tribunal.

The question that arises from this is, how is Appeal triggered? That is, how can a party to a tax dispute get remedy especially where there is a disagreement between the tax authority and the taxpayer. We shall therefore discuss Appeal triggers which is the instrumentality upon which the tax tribunal can exercise its powers in resolving disputes through the various tax laws thereby ensuring tax compliance and enforcement.

Paragraph 11(1), first schedule to FIRSA, 2007 provides for the power to adjudicate on disputes, matters, issues and controversies emanating from the following tax laws:

- i *Companies Income Tax Act, CAP. 60LFN, 1990*
- ii *Personal Income Tax (Amendment) Act, No. 20, 2011*
- iii *Petroleum Profits Tax Act CAP.354 LFN; 1990*
- iv *Value Added Tax No. 102; 1993;*
- v *Capital Gain Tax Act CAP. 42 LFN; 1990*
- vi *Stamp Duties Act CAP 411 LFN, 1990*
- vii *All regulations, proclamation, government notices or rules issued in terms of these legislation.*
- viii *Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulation incidental to these laws, conferring any power, duty and obligation on the service;*
- ix *Enactment or laws imposing Taxes and Levies within the FCT.*
- x *Enactment or laws imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licenses, fees for oil Exploration License (OEL), Oil Mining lease (OML), Oil Production License (OPL), royalties, rents (Productive & Non-productive fees for licenses to operate drilling rigs, fees for oil pipeline licenses, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.*

The establishment provision, in paragraph 1(2) of the Fifth Schedule to the Federal Inland Revenue Service Act, provides for the creation and appointment of zones the tribunal may exercise jurisdiction:

“The Minister may by notice in the Federal Gazette specify the number of zones, matters and place in relation to which the tribunal may exercise jurisdiction.”

As a result of the above provision, the Minister of Finance has established eight zones which are as follows:

Abuja Zone
Lagos Zone
North Central (Jos)
North East (Bauchi)
North West (Kaduna)
South East (Enugu)
South South (Benin City)
South West (Ibadan)

Appeal process under the tribunal is a paradigm shift from what used to be obtainable in both the BAC and the VAT-T. This is indicated by paragraph 13(1) of the schedule provides:

A person aggrieved by an assessment or demand notice made upon him by the service or aggrieved by any action or decision of the service under the provisions of the tax laws may appeal again such decision or assessment or demand notice to the tribunal.

Paragraph 14 also provides:

Any aggrieved person for the non-compliance in respect to any provision of the tax laws, may appeal to the tribunal where the person is resident. . .

(Sate the jurisdiction of the TAT). The aforementioned implies that the tribunal will now be able to go beyond determination of the “amount of the total profits” to collection issues, validity of an assessment, interpretation and application of tax treaties, review of tax audit and investigation among others.

Secondly, the provisions also show that the service can now take a tax payer to the tribunal unlike what used to be the case before the Body of Appeal Commissioners where only tax payers can take the service to the Tribunal while the service could only appeal on point of law to the Federal High Court.

Moreover, the tribunal in enhancing voluntary tax compliance, encourages the new self-assessment scheme by ensuring that tax payers do not need to wait for an assessment notice before filing an appeal as they can at any stage of assessment disagreement, resort to the tribunal on any action, inaction or decision which may be unreasonable by the service imposition of penalties and interest or Best of Judgment would be reduced.

Self-Assessment Exercise 9

1. Summarily state how tax statutes are interpreted

1.3.5 Interpretation of Tax Statutes

Taxes are imposed only by statutes, which must be clearly and logically legislated upon by the legislature. Taxation is quite outside the ambit of common law. The courts and tax officials are implored to candidly ascertain the true meaning and effects of the taxing statutes so that there can be no iota of doubt or technicality. Thus, courts usually give the ordinary meaning which the taxing Acts is meant to achieve. Taxing statutes are usually given strict interpretation according to the original meaning of words used.

As Lord Cairns puts it in the case of **PARTINGTON V.A.G (1869) L.R 4 E.A.C.H.L** p. 100, that "...if the person sought to be taxed comes within the letter of the law, he must be taxed ... what is equitable construction ... is not admissible in the taxing statutes (because the words are interpreted strictly) ... no matter the hardship that may appear to the judicial mind."

(Succinctly discuss the rule guiding the interpretation of tax statutes)

Taxing statutes are a special type of statutes; hence some rules were evolved in order to interpret them. But this does not mean that the ordinary principles of interpretation of statutes are not followed. In most instance, the courts usually follow a narrower view when interpreting tax statutes and a wider view with other statutes. The reason being that taxes are sensitive issues hence it must be strictly interpreted.

Rules for Interpretation of Tax Statutes

1. No person must be made to pay tax except the taxing Acts specifically provided for it. This was the holding of the courts in **TENANT V. SMITH (1892) A.C 150** and **COLTNESS IRON CO. V. BLACK (1810) 9 T.C 289**.
2. Ordinary or natural meaning of words must be given to taxing statute. Lord Reid stated in **IRC V. HINCHY (1948) 30 T.C 369** that the intention of the legislature must appropriately be applied in interpreting tax statutes as they appear, no matter how unreasonable or unjust the consequences is.

It was also held in **C.I.R V. LORD HOWARD DE WALDEN (1948) 30 T.C 345** "that the court must be careful not to

introduce extraneous into the statutes or read things into it that are not there while ascertaining the interest of the parliament.

3. ROWLATT J. In **CAPE; BRANDY SYNDICATE V. IRC (1921) 1 K.B 6** stated that; “In taxing Act, one has to look merely at what is clearly said. There is no room for any intendment.

There is no equity about tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used”.

This means that no court should introduce any general principle in any tax statute. But this may affect many tax avoidance measures aimed at reducing tax liabilities because of the complicated wordings of tax statutes. The courts can be innovative while interpreting tax legislations aimed at reducing tax burden on tax payer without unnecessarily compromising business activities and incentives.

4. Words in taxing statutes should be given their natural meaning even if such meanings encourage tax avoidance. It was argued by Lord Simonds in:

IRC V. WOLFEN (1949) 1 ALLER, 865 that “... the construction that I favour leaves an easy loophole through which an evasive taxpayer may find escape...”

Indeed, moral precepts are not applicable to the interpretation of revenue statutes as was decided by dissenting Judge Turner in **MARX V. IRC. (1971) A.C 739**

5. It was held in **LEVEN V. IRC (1928) A.C 217** that where there is ambiguity the taxing statute should be construed in favour of the taxpayer. In the case of **C.I.R V. LORD HOWARD DE WALDEN** (supra) It was succinctly stated that “...in revenue matter there is no room for intendment. Ambiguity must tell in favour of the taxpayer” ...

All these means that courts should apply reasonable-man-test in interpreting doubtful and ambiguous words in tax statutes. Some judges give narrow or wide interpretations to taxing statutes. However, with preponderance of judicial precedence it was discovered that wider interpretation is unjust to the taxpayer, but narrow interpretation achieves better results for the taxpayer and it is this interpretation that is much favoured as was decided in the cases of **GREENBERG V. IRC (1972) A.C 109** and **POOK V. OWEN (43, T.C 571)**.

In conclusion, it can now be discerning that before the imposition of tax on any taxpayer, the issues of residence of the taxpayer must be

identified clearly. Thus, it becomes necessary to also know the relevant tax authorities that the law permits to collect and impose the taxes. As part of the administration of tax, grievance mechanism is required to adjudicate on any problem arising from the enforcement and collection of taxes, hence, the Tax Appeals Tribunal was established to handle tax cases generally, even though it looks contestable as regards its legal jurisdiction to hear such cases as discussed above. Finally, we have seen that tax statutes being a forceful legislation, judges are implored to interpret them strictly without any unnecessary intendments contrary to the wishes of the law makers.

1.4 Summary

Under this unit, we were able to discuss the imposition of taxes, the classes of persons that are subject to tax. Also the residence issue relating to taxation was analyzed in relation to the determination of residence of taxpayers in any given tax jurisdiction. Hence, it becomes very important to understand the relevant tax authorities that are legally responsible to collect the taxes. Since, there are bound to be civil or criminal law suits in the administration of tax, the Tax Appeal Tribunals were created to settle these litigations. This unit therefore discussed on it. It is an established fact the tax statutes are difficult to comprehend. That being the case, judges are enjoined to interpret them strictly according to the intents of the legislature

1.5 References/Further Readings/Web Resources

- AYUA I.A (1996) *The Nigerian Tax Law*, Spectrum Law Publishing c. ltd. Ibadan
Ola C.S (1999) *Income Tax Law and Practice in Nigeria*. Heinemann Educational Books Plc Ibadan.
- Soyode, L & Kajola S.O (2006) *Taxation: Principles and Practice in Nigeria*. Silicon Publishing co.ltd Ibadan.

1.6 Possible Answers to Self-Assessment 8

1. In determining whether or not a person's income is subject to tax, his residence acts as an indicator or a pointer to that fact. Thus, a person's income cannot be taxed unless his residence in a tax territory is proved in a year of assessment
2. a partnership may be regarded as an association of two or more persons who agree to carry on business in common with a view to making profit.

Possible Answers to Self-Assessment 9

1. Relevant tax authorities include:
 - a. Federal Inland Revenue Service (FIRS)
 - b. Tax Appeal Tribunals
 - c. State Board of Internal Revenue (SBIR)
 - d. Local Government Revenue Committee (LGRC)
 - e. Joint tax board

Possible Answers to Self-Assessment 3

1. Taxes are imposed only by statutes, which must be clearly and logically legislated upon by the legislature. Taxation is quite outside the ambit of common law. The courts and tax officials are implored to candidly ascertain the true meaning and effects of the taxing statutes so that there can be no iota of doubt or technicality. Thus, courts usually give the ordinary meaning which the taxing Acts is meant to achieve. Taxing statutes are usually given strict interpretation according to the original meaning of words used.

MODULE 4 INCOME TAX CHARGEABILITY

- Unit 1 The Meaning and Ascertainment of Chargeable Income
Unit 2 Computation of Chargeable Income

UNIT 1 THE MEANING AND ASCERTAINMENT OF CHARGEABLE INCOME

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcome
- 1.3 Meaning and ascertainment of chargeable income
- 1.4 The Meaning and Ascertainment of Chargeable Income
- 1.5 Summary
- 1.6 References/Further Readings/Web Resources
- 1.7 Possible Answers to Self-Assessment Exercises

1.1 Introduction

All taxpayers are subject to their taxes so long they earn an income, be it salary, wages, gains, profits, dividends etc. This is because, the tax laws provided so. In order to subject the taxpayer to pay the taxes, it must be ascertaining the basis for such liabilities. After the taxpayer is ascertained by the relevant tax authorities, the taxpayers' can be assessed and charge to tax according to the type and nature of the income. Therefore, under this unit, we shall discuss the meaning and ascertainment of chargeable incomes of the taxpayers.

1.2 Intended Learning Outcomes

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

- explain the meaning and how to ascertain taxpayers' chargeable income
- analyse how to determine the basis of the assessment period
- calculate and compute chargeable income taxes of the taxpayers.

1.3 Meaning and Ascertainment Chargeable Income

Chargeability and ascertainment of income tax in Nigeria is based on the nature of the taxpayer. Hence, the assessment of income tax payable by an employed individual is different from an individual businessman. The assessment generally for individuals differs from that of a company.

For individuals, their chargeable income is the income of the taxpayer from all sources, including balancing charge, less allowable deductions for expenses, capital allowances, and losses. It must be the income of the taxpayer which is also known as the Statutory Total Income or Total Assessable Income.

(Attempt the explanation of 'chargeability of income tax'). The income tax of a company is payable upon income, accruing in Nigeria, derived from Nigeria, brought into Nigeria and received in Nigeria. Income Tax is payable on income from a source inside or outside Nigeria. It should be noted that examples of the types of income stated above are as follows: income accruing in Nigeria include the income producing assets, income derived from Nigeria include income producing activities; income brought into Nigeria include remittances; while income received in Nigeria include emoluments as is provided under section 8 of the Companies Income Tax Act (CITA, 2004). They include:

- i. profit or gain from trade
- ii. remuneration from an employment, which could be any salary, wage, fee, allowance or gain or profit from employment including compensations, commission, bonuses, premiums, benefits or other prerequisite allowed, given or granted by any person to an employee.

Self-Assessment Exercises 10

1. Explain the types of income you know
2. What is Basis period of assessment?

1.3.1 Types of Income.

There are two types of income (especially in respect of individuals) thus: earned income and unearned income. Earned income means income derived by a person from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of any previous employment. It is a reward for effort. Unearned income on the other hand, represents rent, dividends, royalty, discounts, usually received net of withholding tax. These are also known as investment income. You should however further note that there are two types of income for the purpose of tax namely: personal income and company income. Personal income tax is

charged on income of every taxable person (individuals) from a source inside or outside Nigeria including:

- a. the gains or profits from any trade, business, profession or vocation;
- b. the salary, wages, fees, allowances or other gains or profits from an employment including gratuities, compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted to an employee
- c. the gains or profits including premiums from the grant of rights for the use of occupation of any property
- d. dividends, interests or discounts;
- e. a pension, charge or annuity; or
- f. any profit or gains not mentioned in the above categories
- g. balancing charge arising where a business person disposed off an asset used for the purpose of trade or business carried on by it at a profit.

(What attributes qualify an activity as a trading transaction to give rise to profit or gain upon which tax can be levied?).

Thus, the statutory total income or total assessable income for an employed individual is the addition of (a) – (f) above while the statutory total income for the following categories of income have been provided for the purposes of measuring the taxable income of companies:

- a. gains or profits from a trade or business
- b. rents or premiums arising from property
- c. dividends, interests, discounts, charges or annuities
- d. benefits from pension or provident funds treated as income under the Income Tax Management Act
- e. fees, dues, and allowances (wherever paid) for services rendered.

In the case of **Arbico v FBIR (1968) NCLR 150 at pp. 150 -151**, the court had stated that before any particular activity can be said to be a trading transaction which has given rise to profit or gain upon which tax can be levied, the following factors would be considered:

- i nature of assets
- ii circumstances of purchase
- iii vocation of tax payer
- iv number of like transactions
- v the object clause of memorandum and articles of association
- vi length of time property was held by the company
- vii circumstances of sale

1.3.2 Basis Period for determination of assessable income (for individuals) or profits (for companies)

The determination of basis period of assessable income of individuals (employed and businessman) and assessable profits for companies is the same. Basis period of assessment is the period, the profit of which is to be assessed in a year of assessment. It is the period of business activity to be taken into account in determining the tax liability of a chargeable person in a particular year of assessment.

There are two types of basis period – normal and abnormal basis period of assessment.

a. Normal Basis Period of assessment

In using a normal basis period of assessment, the tax administrator or collector will use the preceding year to calculate the tax accruing from the taxpayer. Thus, the profit or gain that will be taxed in this year of assessment is the profit of the previous year (i.e. last year). The characteristics of a normal basis period include:

- i It must be of 12 months duration
- ii It must be the only accounting period ending in a preceding fiscal or tax year
- iii It must also be commenced from a date immediately after the end of the previous year that is, there is an element of continuity. There must be no gap or coincidence of dates; one basis period must commence the day the end of the previous one.

b. Abnormal Basis period

Abnormal basis period of assessment is used where it is impossible for the administrator to use parameters for the normal basis period to calculate the tax. The following are examples of situations where a normal basis period will not apply:

- c. where a business has just commenced operation
- d. where a business has ceased operation
- e. where there is a change in accounting date

1.4 Summary

All said and noted, we now know the meaning of income tax as it relates to both individuals and companies. Taxes generally are not indiscriminately imposed but duly calculated using certain methods like the period of assessment. We have also known how the period of

assessment is determined by the relevant tax authorities. Under this unit, we were able to discuss the meaning of income tax as it concerns the payable tax on the income of an individual and income tax payable by a company. We also explained the meaning of earned and unearned income after which we discussed the categories of income upon which tax will be levied both for individuals and companies. We finally looked at the basis period of assessment of taxable income and its types.

1.4 References/Further Readings/Web Resources

- Ola C.S (1999) *Income Tax Law and Practice in Nigeria* Heinemann Books Publications Ltd. Ibadan.
- Ayua, I. A. (1996). *The Nigerian Tax Law*. Ibadan: Spectrum Law Publishing.
- Soyode, L and Kajola, S. O. (2006). *Taxation: Principles and Practice in Nigeria*. Ibadan: Silicon Publishing Company

1.6 Possible Answers to Self-Assessment Exercise 10

1. There are two types of income (especially in respect of individuals) thus: earned income and unearned income. Earned income means income derived by a person from a trade, business, profession, vocation or employment carried on or exercised by him and a pension derived by him in respect of any previous employment. It is a reward for effort. Unearned income on the other hand, represents rent, dividends, royalty, discounts, usually received net of withholding tax.
2. Basis period of assessment is the period, the profit of which is to be assessed in a year of assessment. It is the period of business activity to be taken into account in determining the tax liability of a chargeable person in a particular year of assessment.

UNIT 2 COMPUTATION OF CHARGEABLE INCOME

CONTENTS

- 2.1 Introduction
- 2.2 Intended Learning Outcome
- 2.3 Computation of Chargeable Income
- 2.4 Computation of Income Tax
- 2.5 Summary
- 2.6 References/Further Readings/Web Resources
- 2.7 Answers to Self-Assessment Exercises

2.1 Introduction

Apart from knowing the theoretical aspect of tax computation of chargeable income of taxpayers, there is the need to know how it is done practically. So under this unit, we shall learn how to compute and calculate the actual tax liabilities of taxpayers.

2.2 Intended Learning Outcomes

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

- i. Explain and calculate the tax payable on the income an individual
- ii. Analyse and calculate the tax payable on the income of a company

2.3 Computation of Chargeable Income

Chargeable income tax of taxable persons can be assessed and computed in accordance with the nature of each person. However, the assessment and computation had been undertaken in two major divides – personal income and companies' incomes.

Self-Assessment Exercises 11

1. Which law stipulates the assessment and computation of income of any individual?
2. The taxable profit is arrived after the treatment of

2.2.1 Personal income

Computation of personal income tax accruing to an employed individual is different from an individual business person. Please note that a person is described as an individual or a businessperson. A businessperson is further looked at as a sole proprietor or partnership. We shall examine them each below. (*What is personal income?*).

a. **Assessment and Computation of the Statutory Total Income for employed individual and individual businessperson.**

Under section 36 of PITA 2004, the total income of any individual for any year of assessment shall be assessed in accordance with the following steps:

1. Compute the total amount of his total assessable income (statutory total income), earned and unearned, from all sources (listed in unit 1) for that year.
2. Add the total assessable income to any balancing charge for the year
3. Deduct the following from the total summation of the above (total assessable income plus balancing charge):
 - i any loss relief for that year
 - ii any capital allowances for that year
 - iii personal relief granted by the Act. For example, personal allowance, life assurance relief, children allowance and dependant relative allowance (e.g. wife etc.)

The net (*total*) figure of the above is called chargeable income **on** which tax is chargeable at progressive rates in force during the particular year of assessment. (*List the steps in the assessment of the total income of any individual for any year*).

However, according to section 37 of the PITA 2004 (as amended) and the *Sixth Schedule* of the Act, the personal income tax shall be computed as follows

- i the *personal relief allowance* of a flat rate of **40 percent** of the taxpayers' income shall be granted on the income. That is, an amount equivalent to 40 percent shall be deducted from the taxpayers' total assessable income.
- ii After the personal relief allowance has been granted, the balance of income shall then be taxed accordingly.

2.2.2 Assessment and Computation of the Statutory Total Income for partnerships and companies.

At any rate and before the statutory total income of a partnership or a company can be duly taxed, the profits of the enterprise must first be ascertained. And according to sections 19 and 20 CITA, 2004, certain expenses and income shall not be included in the profits computation. Thus the accounting profits (that is the total calculated profits) will have to be adjusted to obtain the actual profits due for tax known as the *Adjusted or Assessable Profits*.

The taxable profit is arrived after the treatment of the following:

- i loss relief.
- ii capital allowances and balancing allowances
- iii balancing charge.

Thus, the adjusted profit of a partnership or company is computed in accordance with the following steps: ascertain the *net profit as per account* (i.e. the accounting profit as explained above), then, add the available *disallowable expenses* to the accounting net profit. Next, deduct the following from summation of the above (i.e. net profit as per account plus disallowable expenses):

- i. allowable items not so treated.
- ii. income exempted.

After the ascertainment of the taxable profit (adjusted profit) as we have calculated above, then the tax payable for the relevant year of assessment shall be computed as follows: Add together the *adjusted profit* and *balancing charge*. Next, deduct the following from the above summation (i.e. adjusted profit plus balancing charge)

- i capital allowances
- ii Loss relief

This will give us the *Taxable or chargeable profit*. Finally, after determining the chargeable/taxable profit, the actual tax payable on the profit shall then be determined by *multiplying* the *applicable rate* (as prescribed by the tax authorities from time to time) by the *taxable profit* (e.g. 30% x Taxable Profit).

2.4 Summary

This unit exposed to us how to compute the chargeable income of individual and corporate taxpayers. It also helps us to understand the

practical mathematical ways of calculating different categories of taxpayers. Under this unit, we examined the meaning of taxpayers' chargeable income, how the income tax is being ascertained and the basis period of assessment as well as the computation of the income tax.

2.5 References/Further Readings/Web Resources

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2.6 Possible Answers to Self-Assessment Exercise 11

1. Section 36 of PITA 2004
2.
 - i. loss relief
 - ii. capital allowances and balancing allowances
 - iii. balancing charge.

MODULE 5 DEDUCTIBLE EXPENSES AND ALLOWANCES

UNIT 1 DEDUCTIBLE EXPENSES AND ALLOWANCES

Unit structure

- 1.1 Introduction
- 1.2 Intended Learning Outcomes
- 1.3 Deductible Expense
 - 1.3.1 Allowable Expenditures
- 1.4 Summary
- 1.5 References/Further Readings/Web Sources
- 1.6 Answers to SAEs

1.1 Introduction

In the computation of chargeable income subject to tax, there are some expenses that are deductible before the taxpayers' incomes are tax. But, for any expense to be deductible, the taxpayer must prove that they are wholly, exclusively, reasonably and necessarily incurred in the production of income. There are also allowable deductions available to the taxpayer if they satisfy the aforementioned requirements. This is what we shall discuss in this unit.

1.2 Intended Learning Outcomes

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

- determine which allowances are deductible from the taxpayers' income so as to understand the actual chargeable income.

1.3 Deductible Expenses

(What are the tests for the deductibility of expense in taxation?)

The test for the deductibility of expenses is clearly provided under section 20(1) PITA, 2004 (as amended). According to the section, all expenses and out goings are deductible from emoluments of the fiscal year in which such expenses are incurred: But such expenses and outgoing must meet the test that:

- a. It was incurred in the production of the income. In order word, the expenses must have been incurred in the performance of duties.
- b. The expenses must have been incurred wholly, exclusively, necessarily, and reasonably.

Specifically, section 3(1) of the Act provides for certain allowable deductions relevant to employment taxation. They are as follows:

1. Any sums allowed by the relevant taxing authority of a state in the nature or reimbursement to the employee of expenses incurred by him in the performance of his duties and from which it is not intended that the employee should make any profit or gain;
2. Medical or dental expenses incurred by the employee.
3. The cost of any passages to or from Nigeria incurred by the employee,
4. The cost of the maintenance or education of a child where the income tax law of a state permits it as deductible expenses;
5. Any compensation for loss of employment;
6. Any amount of rent or allowance in lieu, paid by the employer to or on account of the employee up to a maximum of N10, 000 for Lagos and Abuja, ~~N~~6, 000 for State Capitals and N4, 000 for other areas; and
7. Any allowance up to a maximum of N2, 436 per annum paid in respect of any motor vehicle owned or operated by the employee for the purpose of his employment.

Apart from the above statutory deductions, it is necessary to also examine case law position on deductibility of expense incurred by employees.

Self-Assessment Exercises 12

1. When and why do expenses incurred by employees are deductible?
2. Identify the expenses not allowed as deductible in the computation of income.

1.3.1 Allowable Expenditures

Expenses incurred by employees are only deductible for income tax purposes if they are incurred in the performance of duties in such employment. (*Explain the conditions required for employee's expenses in the performance of his duties to be allowed as deductible expense*). The following three conditions if it is fulfilled, the employee's expenses in the performance of his duties will be allowed as deductible expense.

1. **Where the duties of the employment make it necessary for the employee to incur the expenses**

If the duties do not oblige him to incur the expenses, he will not be allowed to make any deduction even if the employer imposes on the employee the duty to incur the expenses. This principle is illustrated in the case of **BROWN V BULLOCK (1961) 3 ALLER 129**. In this case, the taxpayer was appointed a manager of a west end branch of a bank and he became a member of the West end club. It was a condition of his employment that he should do so. He deducted an annual subscription of £21 pounds from his taxable emoluments. The court of Appeal rejected the deductible expenses because, in the opinion of the court, the tax payer could perform the duties of his office without becoming a member of the club. As stated by Donovan, L.J. in the above case that: *“the test is not whether the employer imposes the expenses but whether the duties do.”*

Similarly, in **OWEN V. BURDEN (1972)1 ALLER 356**, the tax – payer was employed as a country curator. He had prepared a by-pass scheme similar to that of a neighboring country council. He then attended a world road conference in Tokyo during his annual leave. This he did without the authority of his employers. His reason for attending the world road conference was to obtain an entirely independent opinion as to whether his scheme was to be preferred than that of the other country. The Court of Appeal held, while returning the taxpayers request in these terms.

“I am afraid that, sympathetic as I am to the taxpayer, it would be quite impossible to say on the facts as found. The expenses which he is claiming were necessary incurred in the performance of his duties. He was no doubt doing his best and in a broad sense, his duty, but it was not necessary for him to incur the expenses of this journey for the purpose of the office he was occupying.”

As to why the expenses are incurred wholly, exclusively, necessary and reasonably; the purpose of this phrase is to draw a demarcation or to qualify the list of allowable deduction which a tax payer may be allowed. There appears to be some problem with this phrase. For instance, there is the problem of persuading the court to accept the fact that expenses are incurred not only wholly and exclusively but also necessary and reasonably in the performance of one’s duties.

2. **Where the expenditure is more than necessary**

Where the amount incurred is more than necessary, even though the type of expenditure was necessary, the excess will be allowed as necessary.

The illustrative case is that of **MARTIN V IRC (1965) 2 ALLER 361**. The taxpayer was an Inland Revenue investigator whose nature of work made him to travel a lot. The inland revenue paid him a mileage allowance in respect of the use of his private car for the purpose of his duties. Though this was not disputed, the taxpayer also sought to deduct the extra cost of travelling over above the amount he incurred Penny quick, J. refused the extra deduction.

3. Travelling Expenses

The effect of the two aspects of the rules of expenses is vividly shown in the cases dealing with travelling expenses of employees. Thus a taxpayer may deduct the cost of travelling “in the performance of the duties of the office or employment”. An employee who incurs travelling expenses whilst at work may deduct such expenses but the cost of travelling to work is not permissible deductions.

As has been pointed out these type of expenses is not deductible. This is illustrated in the case of **RICKETS V COLGUHOUN 10 T.C 118**. The taxpayer was a barrister practicing in London and also held the appointment of recorder of the city of Portsmouth. He claimed that his travelling expenses from London to Portsmouth on the occasion that he sat as a recorder were deductive. The House of Lords rejected this claim because the expenses were not incurred in the course of the tax-payer’s duties.

Viscount, L.J stated the true position in the following words:

“The expense is incurred not because the appellant held the office of Recorder of Portsmouth but because living and practicing away from Portsmouth, he must travel to that place before he can begin to perform his duties as recorder and having concluded these desires to return home. They are incurred not in the course of performing his duties but partly before he enters upon them and partly after he has fulfilled them.” (supra)

Travelling expenses would be allowable if “there is proof that the taxpayer in real sense or in respect of the officer or employment in question had two places of work and the expenses were incurred in travelling from one to the other in the performance of his duties” In **POOK V OWEN (1970) A.C 244** the taxpayer carried on as a general practitioner at his residence. He also held a part time appointment at a hospital 15 miles away. On certain occasion he was on a standby duty and during those periods he had to be accessible by telephone. His responsibility for the patient began as soon as he received the telephone call. On receipt of the call, he immediately thereafter went to the hospital. The House of Lords by a majority decision decided that they were deductible expenses. Lord Guest while distinguishing this case from that of **RICKETS V COLQUHOUN**, (supra) said as follows:

“... In **Rickets V Colquhoun**, (supra) there was only one place of employment. In the present case the duties, of Dr. Owen began as soon as, he was connected by the Hospital Authorities. This further is emphasized by the fact that his responsibilities began as soon as he received a telephone call and that he sometimes advised treatment by telephone... there his duties were performed; the hospital and the telephone in his consulting room. If his duties were being performed at two places, it is difficult to see why he was not performing his duty while on journey between the two places. The travelling expenses in my view were necessarily incurred in the performance of his duties.”

(When is Travelling expenses would be allowable as deductible expense?).

Under section 3 (1) (c) of PITA tax is only levied on the profits or gains arising in respects of rents and not on the gross amount of rents paid to a taxpayer. Under the above section, such deductible expenses included;

1. Expenditure incurred in respect of maintenance, repairs insurance or management. In the case of maintenance and repairs, they must be of recurrent and routine nature before they can be deductible. Thus, major items for expenditure on improvements or re-instating dilapidated premises are not allowed as deductible expenses. They are considered as capital expenditure.
2. Expenditure incurred by the landlord in respect of any services provided by him otherwise than by way of maintenance of repairs, such services for instance must be services in respect of which he receives no separate consideration. Such expenses include the provision for a secretary, man or dog, a potter or supplying of air conditioning in a block of flats.
3. Deductible expenses must be expenses which are laid out for the purposes of earning the rental income and they must have been incurred wholly, exclusively, necessarily and reasonably for the purpose of earning the rental income such expenses include interest on loan for developing or acquiring the property, maintenance of the property, rates and other expenses borne out by the landlord in respect of the property.

There are expenses not allowed as deductible in the computation of income from property rights that include:

1. Capital expenditure is allowed.
A capital expenditure is one usually made one and for all with a view to bring an asset into being or substantially improving it. But capital allowances may be claimed on it.

2. Appropriation of profits is not allowed.
3. Expenditure not connected with the earning of the income is not allowed. Expenses that are allowed must be reasonably incidental to the trade.
4. Depreciation of the building is not allowed.

Some examples of revenue expenditure include:

1. Expenditure incurred by a professional or businessman on a study tour abroad to acquire knowledge of the latest innovations.
2. Expenditure incurred on bringing foreign techniques to suggest improved methods of operation.
3. A lump sum paid to an employee for forgoing his right of private practice.
4. Expenditure on training apprentices.
5. The cost of table furniture, linen, crockery, pots and pans in case of a hotel or restaurant business.
6. Expenditure incurred for repairing the roof of the factory premises. Examples of Capital Expenditure;
 1. Amount advanced for purchase of shares in a new company.
 2. Prospecting licensee fees paid for working new mines.
 3. Expenses on a foreign tour for purchasing new plant or starting a new business.
 4. Acquisition by a publisher of a copyright.
 5. A sum paid by a company to a retiring director in consideration of the director's consent not to compete with the company.

1.4 Summary

It is a good tax practice to consider and understand what is deductible expenses and allowable expenditures in the computation of taxpayers' chargeable income. For the taxpayer to benefit from it, they must have been incurred wholly, exclusively, reasonably and necessary in the production of the income as seen from some case studies above. This unit brings to fore the issues of deductibility of expenses and allowable expenditures of the taxpayer. But, for the taxpayer to enjoy such rights, they must have been incurred totally and squarely in the course of income generation.

1.5 References/Further Readings/Web Resources

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1.6 Possible Answers to Self-Assessment Exercise 12

1. Expenses incurred by employees are only deductible for income tax purposes if they are incurred in the performance of duties in such employment.
2. These are: Capital expenditure, Appropriation of profits and depreciation of building

MODULE 6 EMPLOYMENT TAXATION**Unit 1 Taxation of Employment income****UNIT 1 TAXATION OF EMPLOYMENT INCOME****UNIT STRUCTURE**

- 1.1 introduction
- 1.2 Intended Learning Outcome
- 1.3 Taxation of employment
- 1.4 Taxation of employment Income
- 1.5 Summary
- 1.6 References/Further Readings/Web Resources
- 1.7 Answers to Self-Assessment Exercises

1.1 Introduction

There can only be liability to personal income tax if the duties of the employment in an office or holding as an employment that perform his duties wholly or partly in Nigeria and the employer is resident in Nigeria. Hence where the duties are performed on behalf of an employer either holding an office or being employed generally in any other country and not Nigeria; (i.e the employer is not in Nigeria for 183 days or more in a year of assessment) or the remuneration of the employee liable to tax in that other country (s. 10(1) PITA 2004 (as amended), the income of the employee is taxable. Thus, where the duties of an employment are performed mainly in Nigeria, the emolument will be taxed here whether the emolument is received in Nigeria or not. But where the duties of an employment are mainly performed outside Nigeria, the employee's chargeable tax will depend on the extent to which his duties are performed in Nigeria.

1.2 Intended Learning Outcomes

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

- discuss the liability to income tax by the taxpayer
- analyse the duties of the employment in Nigeria
- describe the type of employment the taxpayer is doing.

1.3 Taxation of Employment Income

Employment income is also subject to tax. For instance, S. (1) (6) of PITA provides that any of the following income i.e. “any salary, wages, allowances or other gains or profits from an employment including gratuities compensation, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to the employees” are chargeable to tax. It should be noted that the above section is only applicable if the taxpayer holds an office or is employed and is paid remuneration. The meanings of the following terminologies must be understood.

Self-Assessment Exercises 13

1. What is office?
2. How does office differ from employment?

a. Meaning of “office.”

The word office has no statutory definition, but in **GREAT WESTERN RAILWAY COMPANY V. BAKER** (1942) 24 T.C 190, Rowlatt J defined as: -“... a subsisting permanent substantive position which exist independently of the person who filled it and which goes on and is filled in succession by successive holders. It is something which is held by tenure and title rather than by contract”. Also, in **MC MILLAN V. GUEST**, (1946) T.C 202, Lord Atkin commented on Rowlatt’s definition as being”... *a generally sufficient statement of the meaning of the word*”. But, in **EDWARDS V. CLINCH**. (1981) 3 ALLER 543, Lord Wilberforce made it abundantly clear, while approving Rowlatt’s diction that any emphasis on permanence and continuity is now misplaced, since their significance has in recent time changed. Thus in the words of Lord Wilberforce:

‘....A rigid requirement of permanence is no longer appropriate..... and continuity need not be regarded as an absolute qualification. But still, if any meaning is to be given to “office” in this legislation, as distinguished, from “employment or profession or trade, or vocation, the word must evolve a degree of continuance (not necessarily continuity) and of independent existence. It must connote a post to which a person can be appointed, which can be vacated and to which a successor can be appointed.’

In **EDWARDS V. CLINCH (supra)**, the taxpayer was a civil Engineer appointed by the department of the Environment to sit as an inspector of public local enquiries from time to time. He was paid fees showing the time he spent in discharging his duties of an inspector. By a split majority decision of 3-2, the House of Lords held that the taxpayer was holding an office. Justifying the rationale for the decision, the court observed that: -

(With the help of the law, explain the term ‘office’).

“It was a temporary ad hoc appointment confined to the taxpayer. He was not appointed to a position, which has an existence of its own. It had no quality permanency about it.

The following could be described as office holders: Judges, trustees, personal representatives, company directors, auditors, clergymen e.t.c.

b. Employment

Under section 100 PITA (as amended) employment is defined to mean” any *appointment of office whether public or otherwise for which remuneration is payable*” The term “employment” includes an office and therefore it has more extensive meaning.

Employment on general terms means an engagement, occupation, profession, trade, post or business. Employment when used in connection with a profession or vocation, as in section 3 (1) (a) means the way in which a man employs himself. But under section 3 (1) (b), of the Act, employment means the holding of an office. It is in this sense that the term employment is defined in **GREAT WESTERN RAILWAY CO. V. BAKER (supra)** as something analogous to an office. Where a person holds a post and receives salaries from an employer for duties performed, an employment is said to exist. In **FALL V. HITCHEN**, it was again held that where emoluments arise from a contract of service, it is an indication of employment.

a. Distinction between employment and profession

In some special circumstances, it may be extremely difficult to ascertain whether a person is holding an office or carrying on a profession or vocation. The leading case on the distinction is **DAVIES V. BRAITHWAITE. (1931) 18 T.C 198**. In this case, an actress claimed that each of her engagements constituted a contract of employment in respect of which she should be assessed as person holding an employment. Rowlatt J. rejected the contention and held thus: -

“Each of those engagements cannot be considered an employment but a mere engagement in the course of exercising a profession, and every profession and every trade does involve the making of successive engagements and successive contracts and in the sense of the word employment ‘... it seems to me that where one finds a method of earning a livelihood which does not consist of obtaining a post and staying in it, but consist of series of engagement and moving from one to another, then each of those engagements cannot be considered an employment”.

The above employment should be distinguished from a situation whereby a person engaged in a number of employments, which are renderable by a professional. Where this is the case, the individual would be regarded as engaged in an employment. In **I.R.C. V. BANDER AND CRUNK-SAHARK (1892) A.C 120**, a firm of advocates charged on substantial legal practice and also acted as registrars to several client companies, although they did not hold themselves out professionally as such. When they ceased to be registrars of the two companies, they received £2500. The revenue contended that the registrars of the two companies were not offices and that it was a receipt of the taxpayer in their profession or business. The House of Lord discontended the contention and held that: -

(What distinguishes employment from profession?).

“The respondents were holders of a substantive position which duties were trade which had the quality of permanency irrespective of the particular holders tenure or whether they did some work of a particular kind of companies”.

b. Emoluments

With respect to emoluments, section 3 (1) PITA, clearly states that it includes: -

“All salaries, fees, wages, compensation, bonuses, premiums and benefits”.

The definitions include all forms of voluntary bonuses paid to an employee in addition to his salary. Others are tips given to taxi drivers, extra bonus given to a company director for negotiating and concluding a particular business transaction.

Once it is established that there is an office or employment the emoluments therefore are treated as emoluments of a person under

employment and again, the office or employment must be the course of the emoluments.

c. Perquisites

The word ‘*perquisites*’ refers to something which a person derives, benefits from. It may be in the form of cash or in kind. But in the case of benefit in kind, tax can only be charged to the extent that it can be converted into money. As defined by Macnaughten J. in *TENNANT V. SMITH* (supra) perquisites means: ...any..money payments or payments convertible into money”

Before perquisites can be charged to tax it must be clearly shown that the payment is derived from an office or employment.

d. Gifts and other voluntary payments made to employees

(How and when is gift changed to income?).

The general principle in relation to changeability of gifts to income is summarized by Lord Cave in *SEYMOUR V. REED*. (1927) A,C 554. In this manner: -

“The words salaries, fees, wages, perquisites or profits include all payments made to the holder of an office or employment by way of remuneration for services, even though such payments may be voluntary. But they do not include a mere gift or present which is made to him on personal grounds and not by way of payments for his services”.

The above principle was vividly illustrated in the case of **BALL V. JOHNSON**, (1974) 4 T.C 207. In this case by virtue of the terms of his employment required to sit for the examination of the institute of bankers in order to better qualify him for duties in the service of the Bank. The taxpayer duly read for the examination and passed with flying colours.

He was paid a total sum of £130 by the Bank in accordance with the Bank’s practice. In the opinion of the tax authorities, the £130 was taxable. The court had no difficulty in holding that the cash payments were not taxable because they were payments for personal success and not remuneration for services rendered to the Bank.

Also in the case of **MOORE V. GRIFFITS** (1927) 3 ALER 205 it was held that the sum of £1,000 paid by the English Football Association to each of the members of England World Cup winning squad were not taxable emoluments. Brightman J. held that the payments have the quality of testimonial rather than the quality of remuneration for services rendered. His Lordship gave six factors which if looked at in its entirety, points to that conclusion.

The factors are as follows: -

1. The payments had no feasible elements of recurrence.
2. There was no expectation of reward as it was not a term of the contract.
3. The payment was made after the world cup has been won.
4. The principle function of the football association was to promote the sports of football and to derive a benefit from the service of footballers.
5. The payment was intended to mark its pride in a great achievement rather than to remunerate the meritorious execution of the employee's services.
6. Each member of the squad was paid irrespective of the number of times he had played or whether he was a reserve. The sum therefore was not in any way linked to the quantum of services rendered.

(What is the position of lump sum payment in relation to chargeability)

e. Restrictive covenants

An employee may be given condition to take up his employment to enter into a restrictive covenant with his employer whereby he is paid certain lump sum payment. Such lump sum payments are not taxable emoluments as was decided in **BEAK V. ROBSON**.²³(1943) A.C 352

The principle that payment made by an employer to an employee in return for a restrictive covenant is not taxable applies to whether the covenant is operative during the currency of employment or after its termination. The above examples should however be contrasted with the case of an employer who makes a lump sum payment on behalf of the employee in order to protect itself. In **RANDEL V. WEST** (1961) 1WLR650, the taxpayer was a director of a company who got involved in a car accident in which a man was killed. As a result of the accident, the taxpayer was prosecuted for the offence of causing death by dangerous driving. He had first arranged for the Automobile Association to conduct his defence. But the company who appreciated his past services to the company arranged for their own solicitors to defend him at their expenses. The legal fee for the defence cost to the company was £641 and was taxed on the The House of Lord held that he had been rightly assessed to tax on the amount and that though the company's main purpose might have been the direct interest they had in providing for his defence, yet it was still a benefit enjoyed by the employee or taxpayer.

f. Valuation of benefits in kind

Emoluments subject to tax are not narrowed down to cash payments alone but apply equally to money worth. In other words, benefits in kind are taxable if they represent cash payments or can be converted into money. This principle emanates from the decision in **TENNANT V. SMITH**. (supra). His Lordship Halsbury, L.C. opined that “things capable of being turned into money” are taxable. The facts of the case are that a Bank manager was required to live at the Bank’s house rent-free. He was also required to leave the accommodation once he ceased to be the Bank manager. It was held that the value of the house was not part of his emoluments or income. It was not money or money’s worth in the hands, which could be turned into money. Where payments are made by the employer to a third party on behalf of the employee to discharge some liability of the employee, they will be taxable. In **RICHARDSON V. LYON (1943) 25 T.C 497**, for instance, where a company paid premiums on an endowment policy on the life of its manager in order to secure an annuity. On his retirement, the court held that he was liable to income tax on the payments made on his behalf.

g. Non-convertible benefit

A benefit will not be convertible where by its nature, or by the terms on which it is given, no money value can be obtained for it. Thus, a free meal in the works canteen cannot be converted into money. The employee has no alternative than to eat such meal personally or forfeit it or sell it if he wishes. But where the employee receives a benefit in cash instead of what would otherwise be a non-convertible benefit, the benefit in a sense would be to have been converted and therefore taxable. Thus also, in **SANDASON V. DURBRIDGE, (1955) 36 T.C 239** an allowance paid to the taxpayer in respect of meals eaten to the closure of works canteen was held assessable to income tax and again in **BIRD V. MARTHAD** ^{(1982) 5T.C 603}, it was held that compensation paid to an employee in respect of the withdrawal of a company’s car from the employee’s use was taxable emoluments.

J. Tax treatment of employees’ accommodation

Where an employee or an employee’s spouse is allocated a rent free accommodation, he or she is deemed to receive in addition to his emoluments, sum equal to the annual value of the premises.

And where the rent paid in respect of such accommodation by such an employee or spouse is less than the annual value of the premise, he or she is deemed to receive in addition to his emoluments an amount equal to the difference between the annual value and the actual rent he had paid.

According to section 5 (3) of PITA, 2004 (as amended), the term “annual value of the premises means: -

1. in relation to premises subject to any law governing assessment of local rate, the annual value of premises that is fixed for the purposes of such local rates under the law.
2. While in a situation where no law determines or fixes any rate to be paid, any amount determined by the relevant tax authority suffices.

k. Perquisites excluding living accommodation

S. 4(1) of the Act governs benefits or perquisites other than living accommodation. The section provides that where an employer incurs any expense in the provision of any benefit or perquisites to an employee, excluding living accommodation, the employee will be regarded as having received an additional emolument for the purpose of personal income tax. Again section 4 (2) of the Act provides that when an asset of the employer is used for the benefit of the employee, the additional emoluments will be equal to the annual amount so deemed to be incurred by the employer which is 5% of the amount expended by him in acquiring the asset or which is equal to the annual amount of the rent or hire expended by the employers on the asset.

l. No additional emolument for income tax purposes

There is no deemed addition to an employee’s emolument where he is only provided with meals which are provided for all staff or given luncheon vouchers which are not assignable by him or where he is provided with any uniform or all other protective clothing and expenses incurred on his behalf by the employer which are reasonable removal expenses including a temporary subsistence allowance by reason of a change of the employee’s employment which requires him to change his place of residence..(s. 4(3) of PITA.

m. Profession

The word profession has been defined in the Act but not satisfactory. The most helpful judicial exposition of its meaning is to be found in the judgment of Lord Justice Scrutton in **I.R.V.C MAXES (1919) 1 K.B 647** and it is as follows:

“it seems to me a present advice that a profession involves the idea of an occupation requiring purely intellectual skill of the operator or any manual skill or control as in painting and sculpture or surgery as distinguished from an occupation which is substantially a reproduction

or sale or arrangements for the production or sale of commodities. The line of demarcation may vary from time to time. The word profession used to be confined to the three learned professions, namely, church, medicine and law. It has now I think a wider meaning”.

The following have been regarded as carrying on profession.

1. A journalist
2. An Actress
3. An Architect

The following have been regarded as not carrying on a profession:

1. A stock broker:
2. An insurance broker
3. A photographer
4. An individual who made his living by successfully backing horses.

n. Vocation:

The word vocation in the words of Denmark J. in **PATRIDGE V. N.A KALANDAIN**, (1966) T.C 209 means the way in which a man passes his life. In that case it was held that a book maker who accepts bets is carrying on an organized vocation. In a similar vein, an individual who habitually supply racing forecasts to newspapers for reward was held chargeable on his earning but the winnings of a golf professional in the bets on his marches has been held not to be earnings of vocation. (*Is income from vocation chargeable?*).

1.4 Summary

Conclusively, it can be said that any engagement of a taxpayer whether holding an office or employed to do some particular works under any nomenclature is subject to tax liabilities so long he or she occupies such position in any year of assessment as can be seen from several judicial decisions. Under this unit, we were able to examine what employment taxation is all about. We learnt that there are differences between holding an office or working under any employment conditions in which income, wages, salaries etc are paid and are liable to pay personal income tax in different ramifications.

1.6 References/Further Readings/Web Resources

Ola, C.S (1999). *Income Tax Law and Practice in Nigeria*. Heinemann Educational Books Ltd, Ibadan.

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1.7 Possible Answers to Self-Assessment Exercise 13

The word office has no statutory definition, but in *GREAT WESTERN RAILWAY COMPANY V. BAKER* (1942) 24 T.C 190, Rowlatt J defined as: - "... a subsisting permanent substantive position which exist independently of the person who filled it and which goes on and is filled in succession by successive holders.

1. Under section 100 PITA (as amended) employment is defined to mean" any *appointment of office whether public or otherwise for which remuneration is payable*" The term "employment" includes an office and therefore it has more extensive meaning. Employment on general terms means an engagement, occupation, profession, trade, post or business.

MODULE 7 TAXATION OF BUSINESS INCOME

Unit1 Taxation of Business income

UNIT 1 TAXATION OF BUSINESS INCOME

Unit Structure

- 1.1 Introduction
- 1.2 Objectives
- 1.3 Taxation of Business income
- 1.4 Taxation of Business Income
- 1.5 Summary
- 1.6 References/Further Readings/Web Resources
- 1.7 Answers to Self-Assessment Exercises

1. 1 Introduction

We shall be concerned here with the taxation of the profits of a trade, business, profession or vocation and not with registered companies as the latter constitute a separate topic that shall be examined separately later in the second semester course outlines. There are tax liabilities attached to incomes derived from the profits of a trade, business, profession or vocation engaged by taxpayers. What constitutes trade is significant in the area of taxation, hence the need to know the badges of trade.

1.2 Learning Outcomes

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

- list the proceeds of Trade, Business, Profession or Vocation
- analyse how and when tax liabilities of the taxpayer could arise.
- exposed to the badges of trade

1.3 Taxation of Business Income

Section 3 (1) (a) PITA, 2004 (as amended), lays the foundation for the taxation of the profits of trade, business, profession and vocation. The section states that tax is payable on the income of every taxable person for every accounting year, from a source inside or outside Nigeria in respect of gains or profits from any trade business, profession or vocation for the period it was carried out.

Self-Assessment Exercises 14

1. Explain the term 'trade'
2. List any four factors that may help in determining whether a particular activity is a trade.

The most important words under section 3 (1) (a) of the Act are “trade” and “profits”. The meanings of the words will be thoroughly examined first.

1.3.1 The Meaning of Trade

The word “trade” is not defined statutorily in our income tax laws. So guidance and illustration as to the meaning must be sought from judicial decisions. Lamenting the difficulty inherent in the definition of the word trade, the court observed in **J.P. Harrison Walford Ltd V. Griffiths, (19630 A.C 1**. “The word ‘trade’ is one of those common English words which do not lend themselves readily to definition, but which all of us think we understand well enough. We can recognize a trade when we see it, and also an adventure in the nature of trade... short of any definition, the only thing to do is to look at the usual characteristics of a ‘trade’ and see how this transaction measure up to them”.

Also, in **KOWLOO STOCK EXCHANGE LTD V. C.I.R, (1964) T.C 602**, Lord Brigman observed: “the word ‘trade’ is no doubt capable of bearing a variety of meanings according to the context in which it is used. In its most restricted sense, it means the buying and selling of goods. In a slightly, wider sense, it includes in an appropriate context, the buying and selling of choses in action. It is commonly used... to denote operations of a character by which the trade provides to customers for reward some kind of goods or services.” Nigerian courts have attempted to define trade.

In **Arbico Ltd V. F.B.I.R.O (1966) ALLNLR 303**, Sowemimo J. Observes, while attempting to define the word trade that: -

“I quite agree that in determining the word trade, it should be given its ordinary meaning where the Act does not restrict such meaning. In this case, I agree that...the word be given its widest meaning. If an isolated transaction is of a commercial nature, then it comes within the meaning of the word trade”

and at p. 15 the Supreme Court further observed:

“we do not say that because there is no definition of ‘trade in our own laws we must give that word a more restrictive meaning that has been given in the United Kingdom, whereby the definition of trade includes any adventure or concern in the nature of trade”.

The Supreme Court’s observations though, not quite definitive of the word trade it does give an indication that Nigerian Court has the latitude to have recourse to English decisions whenever the need arose in trying to unite the knotty issue of definition in our tax legislations. It must be pointed out however, that in the **Arbico’s case**, the Supreme Court succinctly laid down the test for determining whether a particular transaction is trading or a transaction in the nature of a trade. The court stated as follows:

(When is the taxpayer’s purpose become immaterial regarding the profit made in a single transaction?)

“That a single transaction may be a transaction by way of a trade and that in determining whether profit from such isolated transaction is trading, the tax payer’s purpose or object cannot prevail over what he does if what he does has all the characteristics of trading. But if what he does is equivocal, his purpose or object may become very immaterial. That the fact that the memorandum of association of a company contains a power to sell property is an important consideration in determining whether the company’s intention on a sale of property is to make a trade profit, but it is not conclusive and where the power is exercised in a single occasion only, or where it is auxiliary to the main purpose of the company and has not been often enough to have become the main purpose itself, there is no presumption that a sale under a power is a trading activity rather than a sale capitalization of the profit of the business.”

The United Kingdom *Royal Commission on the Taxation of Profits and Income* in 1954 identified badges of trade as determining factors at any given point in time, whether or not a particular transaction constitutes trading or not. The commission listed badges of trade, and though subsequent cases have indicated more. Those six have remained the dominant factors today and the badges are as follows:

1.3.2 Badges of trade

1. The subject matter of realisation

The point to consider under this heading is that the subject matter of realization is such that the purchase cannot either use it himself, derive income from it, or derived pleasure from it, it points towards trading. Thus, a single purchase of a large quantity of toilet paper, or whisky, or brandy and of linen, far in excess of an individual's personal requirements, when coupled with a subsequent sale have been held taxable as trading receipts. In **MARTIN V. ROWRY (1927) A.C 313**, an agricultural Machinery merchant who had no connection with linen trade, purchase from the government its entire surplus stock of Aeroplane linen amounting to about 44 million yard. Failing to sell the linen out rightly to manufacturers, he set up an organization to facilitate its disposal to the public. He advertised extensively, rented offices and engaged a manager and staff. And by this method, he disposed of the linen over a period of 12 months and realized a profit of about 19 million. It was held that, although there was a single purchase, the operation constituted trading.

2. Length of ownership:

Though induction of ownership is not a very compelling reason, but it does serve as an induction. A quick resale points toward trading. Thus, a man may buy something, whether it be land or a chattel for his own use and enjoyment with no idea of a quick resale and then, quite expectedly he may receive an offer which is too tempting to refuse. That is a perfectly possible state of fact by the fact that there was a quick realization naturally leads one to scrutinize the evidence that it was not envisaged from the very first carefully. The illustrative case for this is that of **AMES V. SPANIEL PROPERTIES LTD.,(1913) 31 T.C 45**, a building company was negotiating the sale of an area to a local authority. At the instance of some shareholders in the building companies, the respondent company was incorporated to acquire the land to resell the land to the local authority. It was held that the resulting profit made on the sale of the land to local authority by the respondent company was clearly a trading profit. Buckley. J shedding more light at page 639 said:

“The purchase of a property on the verge of being cannot be regarded as an investment, for one element of atleast of investment must be that the acquirer of investment intends to hold it at annual rate for some times with a view of obtaining either some benefit (Income) in the meantime or obtaining some profit, but not an immediate profit by resale”

3 Frequency of transactions

Normally, a single transaction would not constitute trading, though in some instance, it may constitute trading. Where a transaction is repeated several times it would amount to trading.

In PICKFORD V. QUIRK (1927) 13 T.C 23 the tax payer was a member of syndicate which purchases the shares of a mill owning company. He liquidated the company and sold its assets to another company. For this purpose, the tax payer engaged in for transactions of this nature each resulting into a profit to him. It was held that though the transaction is considered separately, they were capital transactions; they all together constitute the carrying on of a trade.

4. Supplementary work on the property

Where the property is worked up in any way during the ownership so as to put it in more marketable condition, or if any exertions are made to find and attract purchasers, such as the opening of an office or larger scale advertising, there is some evidence of trading. For when there is an organized effort to obtain profit, there is a source of taxable income. But if nothing at all is done, the suggestion shows the contrary.

In CAPE BRADY SYNDICATE V. I.R.C.(supra), three individuals in wine trade form a syndicate independently in U.K. They blended U.K. wine with French brandy, recast and sold to different purchasers over a period of 18 months. It was held that it was assessable as profit of trade. Rowlatt, J. had this to say in the course of this judgment:

“This case presents some curious features. It was clear that these gentlemen did far more than simply buying an article, which they thought, was going cheap and resell it. They bought it with the view to transport it, with a view to modify its character by skillful manipulation, by blending with a view to alter not only the amount by which it could be sold, as a man split up an estate by altering the character in the way it was done, so that it could be sold in a smaller quantity. They employed experts and were themselves experts (it is business knowledge) to dispose it off over a long period of time. They did not buy it, they never intended to buy it and put it away and keep it. They bought it to turn it over advantageously by means of operations, which I have indicated”

(Briefly explain the badges of trade you know)

It must be borne in mind that the courts in determining whether a particular transaction is a trading activity or not, will always attach great importance as it did in the *Livingstone case* to the elaborate selling organization employed. It will also be laid on the amount of money spent on the property as an indication of trade. In cases relating to real

property, emphasis has been placed in appropriate circumstances on expenditure incurred to enhance the value of the land as an indication of trading. If however, the expenditure incurred is merely consistent with the land owners wish to realize his assets at the best possible price, this will not be treated as an indication of trading.

1. Profit motive:

The best approach in determining whether a particular activity is trading or not is to first examine a taxpayer's acts and operations objectively so as to discover whether they can fairly be called trading in view of the various decision so far reached on the subject. In the case of **WISDOM V. CHAMBERLAIN (1968) 45 T.C 120**, the court of appeal considered whether the sale of silver bullion was taxable. Mr. Wisdom purchased silver bullions, 70% of which was purchased by taking loan at high rates of interest. Mr. Wisdom contended that he had purchased the silver bullion as a hedge cushion against devaluation. It was held that it was an adventure in the nature of trade.

1.4 Circumstances responsible for realizations:

Even where the purpose of sale is inconsistent with trading the fact that the tax payer seized some emergency opportunity to sell the property is indicative of trading. There may be some explanation, such as a sudden emergency or opportunity calling for ready money.

In **WEST V. PHILIPS (1958) 38 T.C 54**, a builder built some houses to hold as an investment and some as resale. Only the latter was treated as part of his trade. Later, however, he decided to sell the other houses and he sold them through the same organization, which sold his trading houses. It was held by the court of appeal reversing the commissioner's decision that the taxpayer decided to sell the other houses for reasons unconnected with his trade. The reasons being raising cost of repair and increased taxation and therefore the investment houses remained outside the armpit of trade. Take note that these "badges of trade" do not stand as a panacea to what constitute trade for tax purposes.

The Minority Report of the Royal Commission of 1955 criticised against the badges of trade because it has the narrowing effect of the term Trade. It does not also consider the possibility of a new economic order or development. Also, the badges of trade are a matter of degree than kind such as length of period of ownership or the frequency of transaction.

(What are the drawbacks to badges of trade?)

Notwithstanding, the demerits of the "badges of trade" it serves as a watershed and bedrock in understanding what trade means. These badges of trade actually serve as key to unfold what trade is all about; particularly as regards the trading profit for tax purposes.

The major drawback of the badges of trade arises in:

- A. Mutual trading cases
- B. Illegal trading cases.
- A. Mutual Trading.

Any contribution of money by some people into a company fund which all members will benefit with no intention of making profit; an excess amount derived from this is exempt income. The reason being that a person cannot make profit by selling to himself. This is known as mutuality principles. In some instance, such persons may not be trading actually. Hence, to determine the commencement period for an assessment of income tax in respect of trading gains or profit is nil. In other circumstances, trading activity may be going on, but no profit is made. The main objective may be that the group only wishes to cover expenditure and return the surplus to its members as was decided in the case of **FLETCHER VS. C.I.R (1971) ALLER 1185**. Mutuality Principle usually applies to; members club, Cooperative Organisations and Mutual Insurance Companies”

To qualify the Mutuality Principles’

1. Mutual dealings between the contributors must exist and their identity must be known.
2. Introducing outsiders will warrant their income taxable.
3. It is the identity of the whole group that is required not of only an individual who are entitled to participate.
4. The mutuality must be genuine not a clandestine attempt to evade tax. If it is to evade tax, the court will lift the veil of mutuality principle so that they have to pay the tax.

The disadvantages of the above principle are:

1. It gives room for the tax avoidance.
2. It is not easy to identify genuine mutual transaction and from the commercial concerns operating as mutual companies.

B. Reject The So-Called “Splitting”

It was held in **MANN V. NASH 15 T.C 90** that;” severing illegal trading activity from the legal one would amount to unnecessary theoretical question. The easy way out is to examine whether the gains or profits arises out of trading activity hence, taxable since income tax is based on trade and profit of the trade. By this the state is not involved in any illegal trade in consenting to any illegal trade. It only finds profits from what seems to be a trade.

Both Irish, Britain and Nigerian courts adhere to the second approach i.e. rejecting the “splitting doctrine” and treat, the transaction as a trade subject to taxation of the profits derived from the trade. This is because it is equitable and most convenient. Thus, it is to be acknowledged that, once an activity is considered as trading, any profit derived from it is taxable notwithstanding its illegality. In addition, profits derived from *ultra vires* trading activities of a company is taxable as was decided in the case of **LEN ANUCH. V. WHITE. (1965) 42 T.C 369**. Therefore, to really understand what trade is, the above incurred in production is set off against trading receipt in a given year of assessment. The following points shall be considered in the computation of trading profits subject to tax.

- i) Trading receipt (ii) Trading Expenditure (iii) Where necessary, an adjustment of trading stock, debtors and creditors at the beginning and end of the accounting period.

The above points fall within accounting principles. The tax statutes seem to be silent in this area particularly on the items, which should or should not be taken into account when computing taxable profits.

As a result, the judicial attitude towards these items, shall be briefly examined with regards to the accounting principles.

i. **Trading receipts:**

Trading Receipts are receipts accruing from the profits derived from the trading activities. Trading receipts are taxable but not all trading receipts are taxable. The un-taxable trade receipts are: Capital receipts, receipts which tax has been deducted and non-trading receipts. To decide the items constituting trading and capital receipts, capital and income, should be contrasted. (*list the examples of trading receipts*). Income includes: - (i) any activity, which result in obtaining gains or profits either from invested capital, or skill, and labour or all the three. Income is what the tax law states is taxable income. The meaning is inexhaustible and illusive. Capital is not easy to define as income. Capital includes all aspects and assets of all trade, business or any other activity that income or profit are realised.

Hence any trading activity, which result, to profit or gain is known as trading receipts, which can be taxed. Examples of trading receipts are: -

1. Damages paid as a result of “commercial injury” such as breach of contract or deprivation of tax payers” trading stock, are trading receipts.

2. Compensation receipt for the acquisition of colliery area of a colliery company is a trading receipt.
3. Liquidated damages received by a shipping company are trading receipts.
4. Damages for the termination of agency before it was due are trading receipts.
5. Cancellation of delivery contract is also trading receipt.
6. Compensation for trading stock destroyed by fire is trading receipt.

The above are treated as trading receipt because damages were paid to reimburse trading profits, which the parties would have, gain had it being they were allowed to use their trading stock.

However, the above principle is qualified thus; “a payment to make up for the cessation for the future of annual taxable profits is not itself an annual profit at all” e.g.

- a) Compensation for the cancellation of “pooling agreement” affecting the entire business.
- b) Compensation for the sterilization of capital asset is not trading receipts because it is not a profit making apparatus.
- c) Compensation by a railway company manufacturing fire clay for leaving minerals under the railway line unworked is not trading receipts.

The above principle is viewed critically as amounting to capitalisation because, it amounts to conversion of right to income into capital.

The above first principle on trading receipts (1-6) is better than the later one (a – c) on the ground that the business or trade is not affected materially or benefit surrendered is not any enduring asset, hence it becomes trading receipts.

As a result, this is a contradiction between the first and second principle in the following points.

1. Sale of asset by testing the nature of the asset in relation to trade or business to qualify as trading receipts because they are revenue oriented.
2. Sale by an agent of assets purchased for the principal.
3. Sale of land for periodic payment or lump sum payment.

ii. Capital receipt:

The capital receipts arise thus: -

1. Grants and subsidies, if it is to meet capital expenditure or to supplement profits.
2. Where a stock company receives a grant for the purpose of relieving unemployment.

iii. Trading stock.

Any property, personal or real that is sold in ordinary course of trade carried on by the taxpayer in conjunction with other materials used in the manufacture, preparation or in the construction of such property is known as trading stock. It includes raw materials, work-in-progress and finished goods.

The income derived from the trading stock is called trading receipts hence, taxable. Hence, to ascertain the income of a company, the trading receipts must be set against the cost of the acquisition and disposal of the stock. This does not give an authentic profit or gain of a company because; the values of the stock-in-trade at the start or end of the period had not been taken into account.

The true and correct picture has been taken care of in the case of **WHIMSTER AND CO. VS. C.I.R. (1925) 12 T.C 813**, where lord president CLYDE propounded the principle thus:

“the ordinary principles of commercial accounting require that in the profit and loss account of the stock-in-trade at the beginning and at the end of the period covered by the account should be entered as cost or market price, whichever is the lower; although, there is nothing about this in the taxing statutes”.

Despite the fact that this principle was accepted *ad cathera* by the House of Lords, it has become sacrosanct. The next problem is defining *Cost* and *market value*. Market value means whole sale market as was held in **BRIG NEWMAN & CO. V. I.R.C (1928) 12 T.C 191**, and also, Russel L.J. In **B.S.C. FOOTWEAR LTD V. BRODY (1971) 47 T.C 495** stated: -“market value means the prices at which the stock could be expected in due course to be sold in the market in which the trade of selling by the taxpayers was conducted---‘Cost Value’ or ‘Cost Price’ is the valuation of work-in-progress; unfinished products to be carried forward to the next accounting period. e.g. uncompleted house or goods in the manufacturing stage. Account is taken of the beginning and at the

end of the accounting period as was decided in the case of **DUPLE MOTOR BODIES LTD V. OSLIME (39 T.C 537)**

The essence of this judicial rule is to check tax avoidance and evasion by making taxpayers to give proper account of values of stock-in-trade and work in progress so as to give their correct financial position. It should be noted that these novel formulae advanced by the learned Lord President Clyde is not adhered to by today's businessmen. They instead devised their other methods of valuation such as: -

- ii) The "Unit Cost Method", which states the articles actual industrial cost.
- iii) The "average cost method" = where the book cost of stock opening is averaged with the direct cost of new stock added in each succeeding period minus the average cost.
- iv) The "standard cost method" where the actual aggregate cost per unit is taken.
- v) 'Base stock method'
- vi) The 'last-in-first out "method (LIFO)
- vii) The first-in-first out method" (FIFO).

Take note that receipts need not necessarily be in cash, it could be a valuable asset such as shares or debentures. Thus, the market value of trading stock or services appropriated by the tax payers' property for personal use or use in another trade or business is added to his taxable income.

i. Trading expenditure.

Tax is charged on the full amount of the balance of the profit or gain derived by the deduction of the expenses involved in obtaining the income, but not on the gross profit of the trade or business. The rules applied to determine the expenses against trading receipts lies in the fact that they affect the revenue yield needed for economic development of the country and to introduce the element of fairness or equity in the tax system as they ensure that tax payers with comparable kinds of income enjoyed comparable tax treatment in respect of allowance for expenses. The following conditions must be satisfied before trading expenses are deductible.

1. Expenses must be of revenue nature and not of capital.
2. expenses must be incurred wholly, exclusively and necessarily for the production of the trading income even though the legislation forbid. But principles of commercial accounting must be adhered to.

The major problem here is how to identify the nature of the expenditure. In **ODEON ASSOCIATED HEADRESS LTD. V. HONES**. 48 T.C 257, it was held of the terms capital and revenue expenditure as follows: "In my mind, since difficulty arises in these two terms which are more or less applicable to accounting principles. What is more, the term covers multiferous area in that it becomes difficult to define the terms lucidly." Then there is no need to border ourselves with the definition. The highest one can do is to imbibe what Lord Denning said in the case of **HEATHER V. P. E. CONSULTING. GROUP LTD** 48 T.C 293. He said the best one can do is to search through the cases and see whether the instant problem has come up before. If so, go by it. If not go by the nearest you can find.

(Differentiate between trading stock and trading expenditure).

In conclusion, so far, we have been able to scrutinize what business taxation is all about. It is understood that for a business taxpayer to be liable to tax, he or she must satisfy certain requirements that may attract tax on their income arising out of their business acumen to wit the badges of trade legally as enumerated above. However, it is also disheartening for scholars in this field to have confidence in ascertaining some basic accounting principles when it comes to the issues of determining what are capital receipts, trading stocks, trading expenditures etc. Perhaps, that is why our tax laws are not enthusiastic on the issues stated above and thereby, leaving it to any relevant accountants in their various revenue departments to handle.

1.5 Summary

This unit considered the meaning of business taxation. It defined various types of business taxation under the badges of trade subject to chargeable tax. It was noticed that after classifying the badges of trade, there were other issues relating to the computation of trading capital, trading receipts, trading stock and expenditures etc which our tax statutes are quiet about it, but is left for the accounting profession to handle it.

1.6 References/Further Readings/Web Resources

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1.7 Possible Answers to Self-Assessment Exercise 14

1. The word “trade” is not defined statutorily in our income tax laws. So guidance and illustration as to the meaning must be sought from judicial decisions. The court in **Walford Ltd V. Griffiths, (19630 A.C 1.** observed that “The word ‘trade’ is one of those common English words which do not lend themselves readily to definition, but which all of us think we understand well enough. We can recognize a trade when we see it, and also an adventure in the nature of trade... short of any definition, the only thing to do is to look at the usual characteristics of a ‘trade’ and see how this transaction measure up to them”.
2. Some factors that may helping in determining whether a particular activity is a trade include:
 - a. Length of ownership
 - b. Frequency of transaction
 - c. Profit motive
 - d. Trading receipt

MODULE 8 PRINCIPLES AND THE TENETS OF INVESTMENT TAXATION

Unit 1 Taxation of Investment Income

UNIT 1 TAXATION OF INVESTMENT INCOME

Unit Structure

- 1.1 Introduction
- 1.2 Learning outcomes
- 1.3 Taxation of investment income
- 1.4 Taxation of Investment Income
- 1.5 Summary
- 1.6 References/Further readings/Web Sources
- 1.7 Answers to SAEs

1.1 Introduction

Investment income is an important aspect of taxation since it forms the basis in which taxpayers derives their income which will be subject to tax liability. For instance, dividends accruing to shareholders in a company are subject to tax. Also, interest, discounts, rents and annuities are all forms of income to the beneficiaries that can be subject to tax. Hence, it is imprudent to study these sources of income.

1.2 Intended Learning Outcomes

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

- appreciate the segments of income
- broaden knowledge on the subject matter.

1.3 Principles and tenets in the Taxation of Investment Income

This area of income is important in the sense that it forms the cradle in which a lot of business is undertaken because it generates a lot of revenue to the taxpayers engages in it. It also gives the relevant tax authorities to increase their tax net which invariably enhance revenue growth and development to the country. Investment income consists of the followings:

- i. Dividends
- ii. Interest
- iii. Discounts
- iv. Annuities and other annual payment and
- v. Rents

Self-Assessment Exercises 15

1. What does the law specifically say about dividends?
2. What can you say about the meaning of the word 'discount'?

i. Dividends

Section 3 (1) (9) of PITA provides that dividends received by individual shareholders are taken as income in the hands of such shareholders. Under the Act dividend means:

- (1) In relation to a company not being in the process of winding up or being liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus, shares, debentures or securities awarded to the shareholders.

(How can you explain the term 'dividends?'). This dividend is not restricted to capital dividends or any other distribution out of the assets of the company in the form of cash, but also, the issue of bonus redeemable shares or debentures and loan stock, provided that it is not issued at a consideration. Bonus, shares debentures and loan stock are all treated as dividends.

In relation to a company that is being loaned up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature earned before or during the winding up or liquidation. The use of dividends here means any profits received by individual shareholders. But it must not represent a repayment of capital.

The point that has to be understood is that under section 3 (1) (d) of the Act, all transactions pertaining to shares involving a company and its shareholders (including debenture holders) where a benefit accrues to the shareholder and the company not receiving a consideration for it, such benefit is treated as taxable. It is for this reason that distributions are made in respect of share capital in a winding up are normally excluded from the definition of dividend. They are instead treated as

return of capital, which gives rise only to capital gains or losses depending on each case.

Interests

Section 14 of PITA deals with taxation of interests on money lent by an individual or an executor or a trustee outside Nigeria to a person based in Nigeria. The main condition under the above section is that the individual to whom the money is lent must be resident or present in Nigeria at the time of the loan.

Under section 15 of PITA, another condition for taxability is that such loan must be deemed to be in Nigeria. The loan shall be deemed to be derived in Nigeria if:

1. There is liability to payment in Nigeria of the interest regardless of what form the payment takes and wherever the payment is made.
2. The interest accrues in Nigeria to a foreign company or persons regardless of whichever way the interest may have accrued. Interest according to this provision remains taxable irrespective of the place of contract or the place of payment so long as it is derived from investment in Nigeria.

ii. Discount

Discount is not statutorily defined in the tax laws. But in the case of **WILLINGALE V. INTERNATIONAL COMMERCIAL BANK** (supra), it was defined to mean a deduction of a sum from the value of Bills of Exchange, Promissory Notes or a Treasury Bills, which is normally calculated at a specific or defined percentage for the life or duration of the bill.

There are no known Nigerian cases on discount transactions. But, all the same, a discount transaction may be illustrated this way. A government may borrow some money under a Treasury Bill transaction from a person or an entity, by issuing a bill and promising to redeem the bill by a sum issued. Now the excess sum paid at the time of redeeming the Treasury Bill is regarded and treated as taxable income. This is not to say however, that discount is the same as interest.

Profit and discount transactions are assessed to tax on the date of realization or at an earlier date i.e. when such a bill is sold to a third party. It must be stated that the discount transaction referred to above is not the same as discounts often advertised by shop owners in the course of trade or business. The English case of **DITCHFINED V SHAPE**

(1953) 3 HDSN 784 may also afford an illustration of this rather difficult concept of discount transactions. In the case, Berger's paint manufacturing company the sum of \$2,399,000 free of interest as a part consideration for the sale of the entire share capital in the British Paints groups of companies. Later a merchant bank purchased the promissory note at a fee from the Dutch company. The taxpayer in turn purchased the promissory note from the merchant banks. The Promissory Note was later paid in full of Bergers on the due date stated in the promissory note.

The taxpayer later made a profit of £460,000 from the purchase of the promissory note from the merchant bankers. The revenue therefore sought to tax the profit of £460,000 as a profit arising from a discount transaction. The court of Appeal held that the purchase of the promissory note for less than the full face value of the note has a transaction and that the realized profit was arising from a discount.

iii. Annuity

The nature of an annuity can best be understood from the judgment of stamp, L. J. in **J.R.G V CHURCH COMMISSIONERS** (1903) 4 T.C 478 for England in this manner. First, the taxpayer parts with capital sum of money to which is then lost to, and invested by the recipient. And in return, the recipient agrees to pay the tax payer a certain sum of money the (annuity) for a given period which may be the rest of the tax payers' life or a predetermined period. For tax purposes, the annuity is treated as an income when received by the annuitant or tax payer.

In **FOLEY V. FLETCHER** (1929) 14 T.C 23, an annuity was described in the following manner:

"When an income is purchased with a sum of money and the capital has gone and has ceased to exist the principal having been converted into an annuity."

Annuity usually gives a right to the tax payer to receive fixed periodic payments either for life or for term of years. The most common form of annuity payments is in the form of yearly payments of a certain sum of money at specified intervals for a specific period of time for life. One point that has to be noted is that an annuity may be an agreement for the sale of property of an agreed principal sum of money. The agreement may specify payment by installments or a period of time or years, the aggregate of which will amount to the principal sum.

Before determining the issue of taxability, a distinction will usually first be drawn between capital and income. It is only those aspects that are of

income nature that are taxable. In **SCOBLE V. SECRETARY OF STATE INDIA (1942) ALLER 276**

The secretary of state for India, acquired a railway contract at a price of 35 million under an option in the contract agreement by way of annuity instead of a lump sum, for a period of 48 years and payable trice a year of such a sum that the aggregate payments equaled the amount of the value of the undertaking in addition to interest at 2.88 percent on the unpaid balance of the amount.

The House of Lords held that each of the separate payments was partly capital and partly interest. The court therefore ordered a dissection i.e. a separation of the capital aspect from those interest related aspects so that the interest related aspects were accordingly taxed. (*Distinguish between dividends, interest and discount*)

Though all annuities are annual payments not all annual payments are annuities. The Nigerian taxing Acts do not deal with annual payment. It is therefore unnecessary to consider annual payments as found in the taxing Acts of other jurisdictions like Britain.

iv. Taxation of income from property rights

Section 3 (1) of PITA governs payment of tax on gains or profits including any premiums arising from a right granted to any other person for the use or occupation of any property. A taxpayer is therefore liable to pay income tax on profits or gains arising in respect of rents, leases and premiums. It should be noted that the section taxes only income from the letting of property and not the capital itself. Under section 3 (3) (c) of the Act, it is clearly stated that where the rent is paid or to be paid in advance, it shall be deemed to accrue to the recipient from day to day over the period for which such rent has been paid. Thus, under the provision where rent is payable in advance under a lease exceeds five years, the whole amount of rent so paid or expressed to be paid in advance shall be treated as accruing evenly from day to day over the five years commencing on the first day of that period.

The above could be illustrated this way: where property is let for a period of 10 years at a rent of ₦2,000 per annum beginning from January 1996 and the sum of ₦20,000 is paid as rent in advance for a period of 10 years, the sum of ₦20,000 is paid as rent in advance for a period of 10 years. The sum of ₦20,000 will be spread over five years, beginning in each of the five years.

The point here is that, it is not advisable to collect in advance payment of rent for a period in excess of 5 years. That is, it is thus clear that it is

not only rent that is charged to income tax; premiums are also charged to tax too. This consists of premiums paid under certain leases.

1.4 Summary

From this unit, we can see that investment income is indeed significant under taxation theory. This is because, it forms an important sources of income to the taxpayer which in a greater interest gives the revenue authorities to generate more revenue for government through the taxation of income from these sources. Here, we were able to analyse and discuss the importance of interest, dividends, discount, annuities and property rights as major sources of income to the taxpayer and a target for the imposition of tax by the tax authorities which will add more sources of revenue for the government.

1.5 References/Further Readings/Web Resources

Ayua, I.A. (1996). *The Nigerian Tax Law*, Spectrum Pub. Ltd, Ibadan

Abdulrazaq, M.T. (1999). *Principle and Practice of Nigerian Tax Planning and Management*. Batay Law Pub. Ltd. Ibadan

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

Finance Act, 2021 (as amended).

1.6 Possible Answers to Self-Assessment Exercise 15

1. The law under section 3 (1) (9) of PITA provides that dividends received by individual shareholders are taken as income in the hands of such shareholders
2. Discount is not statutorily defined in the tax laws. But in the case of *Willingale V. International Commercial Bank* it was defined to mean a deduction of a sum from the value of a Bill of Exchange, Promissory Note or a Treasury Bill, which is normally calculated at a specific or defined percentage for the life or duration of the bill

MODULE 9 NIGERIAN PERSONAL INCOME TAX RELIEFS FOR TAXPAYERS

Unit 1 Personal Tax Exemptions and Reliefs

UNIT 1 PERSONAL TAX EXEMPTIONS AND RELIEFS

Unit Structure

- 1.1 Introduction
- 1.2 Intended Learning Outcomes
- 1.2 Personal Tax Exemptions and Reliefs
- 1.4 Summary
- 1.5 References/Further readings/Web Resources
- 1.6 Answers to Self-Assessment Exercises

1.1 Introduction

In order to reduce 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 emphasized.

1.2 Learning Outcomes

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

- explain taxpayer's tax reliefs
- describe the examples of tax reliefs.

1.3 Personal Tax Exemption and Reliefs

Succinctly put, Personal reliefs 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 the amount of expenses and number of dependent considerably reduce ability to tax on the full emolument; and a taxpayer must be left with enough to live on (Ayua. 1996:82-83)

(State the difference between tax exemption and tax relief)

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:

a. 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).

Self-Assessment Exercises 16

1. Explain the term 'personal tax relief'
2. Briefly discuss the term 'life assurance relief'

b. 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.

c. 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)

d. 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).

e. 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 taxpayers 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.

f. 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- 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; in any other case, the market value of the asset at that date; (subsection 1). 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, no chargeable gain shall accrue to the personal representatives and 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)

g. 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.

(Mention and briefly discuss the various allowance under the personal tax exemption and relief)

h. Disabled 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 living.

1.4 Summary

We can understand 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 fun left to take care of other family commitments. 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. To sum it up, this unit discusses all that is needed to know about Personal reliefs available to all Nigerian taxpayers generally.

1.5 References/Further Reading /Web Resources

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.

Ifueko Omoigui O. (2012). *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria*, Ibadan Nigeria.

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

1.6 Answers to Self-Assessment Exercise 16

- 1.** Personal reliefs 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.
- 2.** 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